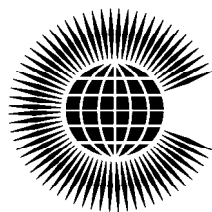


Swaziland National Elections

19 September 2008

Report of the Commonwealth Expert Team



Commonwealth Secretariat

Swaziland National Elections

19 September 2008

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COMMONWEALTH EXPERT TEAM

Swaziland National Elections
19 September 2008

HE Mr Kamallesh Sharma
Commonwealth Secretary-General
Marlborough House
Pall Mall
London SW1Y 5HX

24 September 2008

Dear Secretary-General

It has been a privilege to accept your invitation in which you asked us to observe the 2008 National Elections in the Kingdom of Swaziland. We now have the pleasure to submit our report to you.

You will wish to be aware that, throughout our visit, we have, without exception, been treated with kindness and co-operation. We were greatly impressed by the patience and sincerity of the Swazi people.

Swaziland has now adopted a new Constitution, which affords the nation an opportunity to make democratic progress. The real challenge is to gain the confidence of the democratic dispensation with an entrenched bill of rights, as is expected of Swaziland in accordance with Commonwealth principles and declarations.

We have carried out our task of observing the National Elections and have concluded that, in part, they met acceptable international standards. However, even under the new Constitution, Members of Parliament continue to have severely restricted powers, and political parties are denied formal recognition. They do not have the right to carry out activities which political parties would normally have in a multi-party democracy.

As we have stated, the constitutional and legislative framework of any country has a direct bearing on the electoral process. In addition, it influences all aspects of life, including social and economic conditions, for its citizens. This underpins the overall credibility of the electoral process.

We cannot therefore conclude that the entire process was credible.

We call upon you to continue your engagement with the Swazi Government to find constructive ways to effect the necessary constitutional, legal, administrative and other reforms through a process of consultation and dialogue. We further urge that regular reviews of progress be carried out, in order that the elections in 2013 can be conducted in accordance with the established democratic norms.

Finally, we wish to express our sincere thanks to the Commonwealth Secretariat staff, Mr. Linford Andrews, Political Affairs Officer and to Mrs. Madonna Lynch, Administrative Assistant, who accompanied us throughout our mission and provided invaluable assistance.

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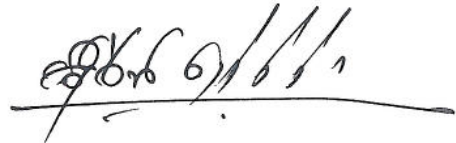
Dr Paul Kawanga Ssemogerere



Mr Edmond Sylvester Alpha



Ms Kaye Wight Oliver CMG OBE



Mr Rajith Keerthi Tennakoon

Chapter One

INTRODUCTION

INVITATION AND COMPOSITION OF THE EXPERT TEAM

The Commonwealth Secretary-General's decision to send an Expert Team to the 2008 National Elections in Swaziland followed an invitation from the Elections and Boundaries Commission (EBC) of Swaziland (see exchange of correspondence at **Annex One**). The Team consisted of¹:

Dr Paul Kawanga Ssemogerere (Team Leader)

Former Deputy Prime Minister
Uganda

Mr Edmond Sylvester Alpha

Chief; Field Coordination and Reporting Unit
National Electoral Commission
Sierra Leone

Ms Kaye Wight Oliver CMG OBE

Former British High Commissioner to Lesotho
United Kingdom

Mr Rajith Keerthi Tennakoon

Director
Campaign for Free & Fair Elections (CaFFE)
Sri Lanka

The Team was assisted by a Support Team of two staff from the Commonwealth Secretariat:

Mr Linford Andrews	Political Affairs Officer
Mrs Madonna Lynch	Administrative Assistant

TERMS OF REFERENCE

The Terms of Reference for the Expert Team were as follows:

"The Expert Team is established by the Commonwealth Secretary-General at the request of the Elections and Boundaries Commission of Swaziland. It is to observe relevant aspects of the organisation and conduct of the National Elections which are scheduled to take place on 19 September 2008, in accordance with the laws of Swaziland.

The Expert Team is to consider the various factors impinging on the credibility of the electoral process as a whole. It will determine in its own judgement

¹ See Biography at **Annex Two**

whether the elections have been conducted according to the standards for democratic elections to which Swaziland has committed itself, with reference to national election-related legislation and relevant regional, Commonwealth and other international commitments.

The Expert Team is to act impartially and independently and shall conduct itself according to the standards expressed in the International Declaration of Principles to which the Commonwealth is a signatory. It has no executive role; its function is not to supervise but to observe the process as a whole and to form a judgement accordingly. In its Final Report, the Expert Team is also free to propose to the authorities concerned recommendations for change on institutional, procedural and other matters as would assist the holding of future elections.

The Expert Team is to submit its report to the Commonwealth Secretary-General, who will forward it to the Government of Swaziland, the Chairperson of the Elections and Boundaries Commission of Swaziland, political and civil society organizations and thereafter to all Commonwealth Governments.” (See Annex Three).

ACTIVITIES OF THE EXPERT TEAM

The Expert Team arrived in Swaziland on 13 September 2008 and began holding a series of briefing meetings at the Royal Villas, Ezulwini, near Mbabane. These are listed at **Annex Four**. The Team was briefed by the EBC on their preparations for the election, and held a series of meetings with a wide range of political and civic organisations to assess the overall environment in which the elections were being held. The Team was also able to meet with the Royal Swaziland Police, as well as various international and domestic observer groups. The EBC provided the Team with written briefing materials, including information on polling centres, a code of conduct for international observers, the handbook for polling procedures, as well as the ***Constitution of the Kingdom of Swaziland***².

The Team deployed on Wednesday 17 September to three base locations. One team, consisting of Dr Paul Ssemogerere and Mr Linford Andrews, was based at the Royal Swazi Spa and from there covered the administrative capital, Mbabane, the Ezulwini Valley and the Manzini region. Another, consisting of Mr Edmond Alpha, was based at Nhlanguano and from there covered the Shiselweni region. A third, consisting of Ms Kaye Oliver and Mrs Madonna Lynch, was based at Piggs Peak and covered the Hhohho region. The final team member, Mr Rajith Tennakoon, covered the Lubombo region from his base at Siteki.

During deployment, the teams met with Regional Administrators, local elections officials, the Royal Swaziland Police and some candidates as well as their agents, to assess the atmosphere and final preparations for the election. Some protests organised by trade union members and political associations

² Hereafter referred to as ‘The Constitution’ unless otherwise stated.

were observed at a number of border posts in the Lubombo and Shiselweni regions. On Election Day itself – 19 September 2008 – members of the Expert Team were present at polling centres in time to observe their opening. They then visited as many stations as possible during the day and ended by observing closing procedures. The team members then followed the ballot boxes to see how they were stored overnight at the respective police stations in the regions, before observing counts held the following morning. On polling day the Expert Team visited 45 polling stations in 22 constituencies³. The following day it was present at four counts.

From 20 to 23 September the Expert Team prepared its report and held a number of follow-up meetings, with the EBC and others, to obtain clarification and additional information. The Team issued a statement on its departure from Swaziland on Wednesday 24 September, whereafter its report was submitted to the Commonwealth Secretary-General (see **Annex Five**).

³ Constituencies visited by the team were Piggs Peak, Ndzingeni, Mandlangamphisi, Mhlangatane, Mayiwane, Ntfontjeni, Mpolonjeni, Siphofaneni, Siteki, Mhlume, Nklongo (only Ngcamphalala), Shiselweni I, Shiselweni II, Maseyisini, Zombodze, Lobamba, Mbabane West, Mbabane East, Mhlambanyatsi, Lamgabhi, Ntondozi, Lobamba Lomdzala.

Chapter Two

THE CONSTITUTIONAL AND LEGAL FRAMEWORK

In its Terms of Reference, the Team was mandated to “*consider the various factors impinging on the credibility of the electoral process as a whole*”, and to “*determine in its own judgement whether the elections have been conducted according to the standards for democratic elections to which Swaziland has committed itself, with reference to national election-related legislation and relevant regional, Commonwealth and other international commitments*”.

In doing so, the Team took into account the fact that a new Constitution was adopted by the Kingdom of Swaziland, as brought into effect in February 2006⁴. This was a significant step taken by Swaziland in the context of good governance and the rule of law, given that the country up till then had been ruled by decree. It was a welcome initiative for the people of Swaziland that the Monarchy was accommodated in the Constitution; important within the context of traditional norms and the local culture.

We acknowledge that the Monarchy and the *tinkhundla* system are highly revered institutions, with a traditional and cultural basis. The challenge was to bring them into harmony with the democratic dispensation which Swaziland embraced through its acceptance of various regional and international declarations and protocols on human rights and democracy.

We observe that in any country the prevailing political environment influences all aspects of life including social and economic conditions for its citizens. One of the major areas it affects is the constitutional and legislative framework governing electoral processes. This underpins the overall credibility of the electoral process.

Adoption of the new Constitution

The pressure for political reform, which had led to the establishment of a Constitutional Review Commission in 1996 (to be disbanded and replaced by a Constitutional Drafting Committee in 2002) was supposed to result in a Constitution which made provision for a Bill of Rights, the separation of powers, the independence of the judiciary and the strengthening of gender equality⁵.

However, in reaching the compromise of accommodating the global trend towards democracy and popular participation and due regard for Swazi cultural norms and traditions, the final Constitution that eventually emerged - while going a long way in providing for the Bill of Rights, constitutional

⁴ The **Constitution of the Kingdom of Swaziland**, as accepted on behalf of the Swazi Nation by the Swazi National Council assembled at Ludzidzini, 4th October 2004

⁵ In its Report on the 2003 National Elections (p.5), the Commonwealth Expert Team referred to the fact that supporters of the then draft Constitution had pointed out that these provisions were contained in the draft. The Team also pointed out, however, that the draft did not provide for a transfer of power from the King to Parliament and Government and had retained the ban on political parties.

governance and separation of powers - contains a number of inherent contradictions within its provisions.

These contradictions need to be addressed and resolved, especially given Swaziland's commitment to regional and other international democratic norms on human rights and democratic governance, including most notably: the SADC Principles and Guidelines Governing Democratic Elections, the African Charter on Democracy, Elections and Governance as well as the UN International Covenant on Civil and Political Rights (ICCPR).

Executive power and the Monarchy

There is an inherent "dualism" in the Constitution of Swaziland. Whereas in a constitutional democracy, a Head of State acts on the advice of the Cabinet and/or Parliament, under the Swazi Constitution the King may also act on his own discretion or on the advice and recommendation of other persons or authorities⁶. This could be problematic for both the Government and the Monarch. In Section 67, in appointing the Prime Minister, the King will do so on the recommendation of the King's Advisory Council; leading to potential source of institutional conflict between the Cabinet and the King's Advisory Council, or between the King's Advisory Council and Parliament.

A mechanism should be established to insulate the Monarchy from the turbulence of politics.

Protection and Promotion of Fundamental Rights and Freedoms (Bill of Rights)

In the Constitution, there are contradictory provisions in both letter and spirit, in particular Chapter III (Section 14), which guarantees the fundamental human rights and freedoms of an individual. In particular, in terms of the freedom of assembly and association (Section 14(1)(b) and Section 25⁷ of the Constitution), these rights are in fact negated in Section 79 of the Constitution, which limits participation in the electoral process on an individual basis only. This goes against the global trend of interpretation on the freedom of association and assembly, which caters for political parties as well⁸.

Powers of Parliament

Powers which are normally reserved for Parliament in established democracies, such as parliamentary approval for an incoming Prime Minister and a Cabinet and for state institutions such as the Elections and Boundaries Commission (EBC) are placed in other authorities in the Constitution of Swaziland e.g. the King's Advisory Council.

⁶ **Constitution of the Kingdom of Swaziland**, Section 65(1) (b) and 65(4)

⁷ **Constitution of the Kingdom of Swaziland**, Section 25(1)

⁸ See: **Constitution of the Republic of South Africa**, Section 19(1); and in judgement of Justice Mamba in High Court case no. 2792/2006 of **Jan Sithole, N.O. and others vs the Prime Minister and others**

Appointment of the Judiciary

While the independence of the judiciary is provided for in the Constitution⁹, superior court judges (including the Chief Justice) are appointed by the King, on the advice of the Judicial Service Commission (JSC)¹⁰, whose independence is questionable. The JSC is constituted of the Chief Justice, plus two legal practitioners, as well as the Chairman of the Civil Service Commission, plus two other persons - all appointed by the King¹¹. This means that only two are established officials, with four others appointed at the discretion of the King. This appointment system has the potential to ultimately undermine the independence of the judiciary. This contradiction, in turn, has implications for other appointments.

Appointment of the Elections and Boundaries Commission (EBC)

The Constitution provides that the members of the EBC are appointed by the King on the advice of the JSC¹². The present EBC was appointed with effect from March 2008, under a legal notice. While we commend the establishment of the EBC, as recommended by the Commonwealth Expert Team in its 2003 report, the procedure for the appointment of the EBC and its composition has been challenged by numerous political associations and civil society groups¹³, with a number of court cases being filed. Of concern is the fact that no enabling legislation has, as yet, been tabled in Parliament, to establish the EBC. This would have not only established the body as a legal entity, but it would also have specified its additional powers, based on the provisions of the Constitution.

Court Judgements on the Constitution

As a result of its inherent contradictions, there are contentions over the Constitution. As stated above, numerous constitutional cases were filed and applications made in the courts, with all the cases being similar. Although most cases have been disposed of, one case remains pending¹⁴; where the applicants claim that their rights under the Constitution's Bill of Rights are being violated by their exclusion from participating in the process of conducting voter education. They are also challenging the validity of the EBC¹⁵.

⁹ Section 141 of the Constitution

¹⁰ Section 153(1) of the Constitution

¹¹ Section 159 of the Constitution

¹² Section 90(2) of the Constitution

¹³ The application by the Swaziland Coalition of Concerned Civic Organisations (SCCCO) is still pending in court.

¹⁴ Ibid.

¹⁵ The Team was informed that the EBC was established only under Legal Notice 32 (2008) and not under a law made by Parliament.

The Electoral Law

In the absence of legislation for a new election law¹⁶, the principal legislative acts relating to electoral arrangements in 2008 were the same that prevailed in previous elections:

- the *Elections Order 1992* (EO 1992)
- the *Voters Registration Order 1992* (VRO 1992)¹⁷

The enactment of an election law superseding the above 1992 Orders, and bringing the electoral process in line with the Constitution and international standards for best practices, should be treated as a matter of urgency.

Assessment

Swaziland has taken a bold step in the right direction for constitutional democratic development. While we take cognisance of the challenges posed by the implementation of a new Constitution, especially on matters of interpretation, it is the striving for best electoral practice and the acceptability of the Constitution as the supreme law to *all the people* of Swaziland that needs to be pursued in earnest. This includes the amendment of relevant electoral laws, as well as vital pieces of legislation governing the electoral process, to bring them in line with related sections of the Constitution.

In the consolidation of any democracy, a Constitution is by nature an organic document, and should serve as a basis for further reform. A natural process of constitutional development will serve to take this process in Swaziland forward. This would by no means preclude due regard for Swazi cultural norms and traditions.

We therefore recommend that the Constitution be revisited, in consultation with relevant Swazi political and civil society organisations, to harmonise those provisions which are in conflict. Further, we recommend that, as a matter of urgency, an enabling law for a credible and broadly supported EBC, as well as other relevant electoral laws, be enacted. Should it be required, this could be achieved with technical support from constitutional experts.

¹⁶ The Team was made aware of an unsuccessful attempt to table a bill in Parliament for such a law that would have superseded the 1992 Orders before the elections.

¹⁷ i.e. King's Orders in Council 1/1992, 2/1992 and 3/1992

Chapter Three

THE POLITICAL ENVIRONMENT

OVERVIEW

The political environment in the run up to elections in Swaziland is unique with the excitement, hustle and bustle which surrounds multi party elections totally absent.

Political organisations are currently unable to register and participate as political parties in elections in Swaziland. Instead the electorate votes for individuals. Minimal voter education has been provided and the voters appear to have little knowledge of the democratic systems which are available to other countries in the region and to the wider world.

The vast majority of our interlocutors had reservations concerning the present political environment. There was a widely held view that increased “political space” was required to permit the unbanning of political parties. A few advocated achieving this by incremental change but in the main more immediate action was sought by the “progressives” and within civil society. Indeed in the immediate run up to the elections, there were incidents which indicated that a few groups or individuals were intent on forcing change by violent means.

POLITICAL ORGANISATIONS

Despite the limitations on political parties a number of political organisations do exist as *de facto* political parties. The three most prominent are the Sive Siyinqaba National Movement (SSNM), which terms itself a “conservative modernist” party, the People’s United Democratic Movement (PUDEMO) and the Ngwane National Liberatory Congress (NNLC) commonly called the “progressives”. The “progressives” consistently called on their supporters to boycott the 2008 elections and promised strikes in the week leading up to polling day. The SSNM, together with the smaller African United Democratic Party (AUDP), encouraged their supporters to take part in the electoral process. Their rationale was that any change to the political system should come “from within” the present system.

LABOUR UNIONS

The Swaziland Federation of Trade Unions (SFTU), the Swaziland Federation of Labour and the Swaziland National Association of Teachers (SNAT) are active in the political field. They are sympathetic to the “progressive” political parties and they too called for a boycott of the elections. The SFTU has close links with the Congress of South African Trade Unions (COSATU).

PRE-ELECTION DEMONSTRATIONS

On 3 and 4 September a large demonstration was held immediately prior to the 40/40 celebrations on 6 and 7 September to mark the 40th birthday of King Mswati III and 40 years of independence. Organised by the “progressive parties” and the SFTU, it was widely reported that a significant number of people took to the streets of Manzini, the country’s main commercial city, reassembling in Mbabane, the capital, the following day. The march was marred by the detonation of two small explosive devices and allegations of heavy handed action by the forces of law and order. For their part, the police strenuously argued that their conduct was proper under the circumstances.

Strikes threatened by the “progressives” and the labour unions for the week of the elections did not take place. However, on the day before the elections, efforts were made to block four borders posts between Swaziland and South Africa in conjunction with COSATU. The demonstrators had approached the authorities to request police protection for these demonstrations but this was refused on the grounds that interference with international borders was illegal. Despite this the demonstrations went ahead. According to local press reports and other sources the leaders of PUDEMO and SFTU and some seven other members were arrested at the Ngwenya post and held for some hours before being released.

In other areas potential demonstrators were prevented by the police from reaching the border posts. In Mahamba, demonstrators who had gathered three kilometres away from the border post, were dispersed by the police, while at the Lavumisa border post, demonstrators were seen in pockets chanting slogans as they moved about in open vans. During the night preceding the count, the steps leading to the building where counting was to take place in Mbangweni were bombed. Some 60 to 70 protesters were present at Tshaneni, near the Mananga border post; however, a number were blocked by the police from assembling, thus preventing them from reaching the border post.

CIVIL SOCIETY

We met a number of active groups in civil society, including Lawyers for Human Rights, the Gender Consortium and the International Community of Women in Southern Africa Living with HIV, which form part of the Coordinating Assembly for Non-governmental Organisations (CANGO). The Swaziland Council of Churches also works closely with CANGO. CANGO has received some funding from the Commonwealth Foundation.

Comments were made to the effect that the Report of the Commonwealth Expert Team of 2003 had had no impact on the political dispensation of Swaziland. Hence it failed to be a working document, as there was no improvement in the status quo since then.

We were also informed that, at a multiparty consultative conference convened by CANGO in June 2008, the NNLC, PUDEMO and the SFTU affirmed their intention to call on their members to boycott the elections. However after internal debate CANGO decided reluctantly to participate in the electoral process as it was considered that this could be used as an opportunity to provide civic education to the electorate. In the event the brief electoral timetable allowed the provision of only minimal voter education. However CANGO and the Swazi Council of Churches both of which are organisations with national outreach did train local election observers, on whom we comment further in Chapter Four of this report.

An attempt was made in February 2008 to establish an official umbrella group, the Swaziland United Democratic Front, to represent all civil society activists but, according to reports, this was not universally accepted.

WOMEN AND YOUTH

Swaziland has some considerable distance to go before it meets the provisions laid down in the SADC Protocol on Gender and Development which the country signed at the SADC Summit in South Africa in August 2008. On the information we were provided, only five parliamentary seats out of a total of 51 declared were gained by women. The main problems facing women appear to be resistance from male voters including in some instances actual physical threats, lack of civic education and, perhaps most critically, lack of control of financial resources because of their position in Swazi society.

A campaign entitled “Vote for a Woman” was mounted by CANGO but it began late and with inadequate funding and as a result did not appear to have achieved any conspicuous success.

We did not see indications that as yet women had formed pressure groups to seek a greater political role. However in late August 2008, 1000 women under the banner of the organization, International Community of Women in Southern Africa Living with HIV, held a protest march in Mbabane to draw attention to their particular plight and to protest against what they saw as the inequitable disbursement of public funds.

Swazi youth leadership we met seemed to have little interest in the political process; and there did not appear to be any structured civic education provided for them. The team did not see any obvious results from the NGO-led campaign “Vote for Youth”. The team recommends that programmes should be introduced by the EBC, in conjunction with civil society, to encourage Swazi youth and women to participate fully in the democratic process.

MEDIA

The electronic media is 100% government controlled. We were told that Radio Swaziland carried two broadcasts each day on elections procedures, and also aired phone-in programmes. Similarly, Swazi TV broadcast programmes on election procedures.

The two leading newspapers in the print media are the Swazi Observer and the Times of Swaziland. The first is owned by the government. It encouraged participation in the election process, included information provided by the EBC and covered the presence of international election observers. It gave little information about the pro-democracy demonstrations. The second, which is foreign owned, included articles on the activities of the “progressives” and reports on in-fighting between candidates. These articles tended to be written in a somewhat sensational style and there was minimal coverage of issues. We recommend that capacity building programmes should be undertaken to cultivate professionalism in the media.

Measures should be put in place to ensure a level playing field for all candidates and other interested parties for accessing the government-owned media during the elections.

In general the Kingdom of Swaziland attracts little international coverage. However some articles did appear recently in the international press concerning the demonstrations on 3 and 4 September and linking them to protests against the style of government and to growing poverty in the country.

ISSUES OF GOVERNANCE

In our wide ranging discussions we were struck by the concern expressed in many quarters about the lack of a direct relationship in the current constitution between the protection of human rights and the electoral process. Indeed, the Government of Swaziland is party to a number of instruments to this effect. It is widely accepted internationally that democracy includes the right of individuals to associate with and support the political party of their choice. Yet in practice this right currently does not exist. As we have recorded elsewhere there have been a number of challenges - so far unsuccessful – directed against the constitution on this ground.

Swaziland has stark economic and social problems. According to statistics¹⁸ two thirds of Swazis live in chronic poverty and a majority of the population depend on food aid. Cultural norms undermine women's rights. The country has the highest rate of HIV prevalence in the world, 10% of the population are orphans and the life expectancy is now 31 years for the newly born. We were also informed by a number of sources that corruption is on the increase.

¹⁸ According to statistics produced by the Economist Intelligence Unit (EIU), UNDP and the Government of Swaziland

Swaziland has deeply established cultural traditions which place considerable emphasis on the rights of the individual. However, the country may be fast approaching a crossroads, as in the light of the socio-economic problems, its citizens may decide to seek ways to improve their lives through the introduction of a multi-party system which gives them powers to collectively question and change the status quo.

Chapter Four

PREPARATIONS FOR THE ELECTIONS

The crucial nature of the 2008 National Elections in Swaziland demanded adequate preparations at both administrative and technical levels to enhance credibility of the process and to meet the standards for democratic elections to which Swaziland has committed itself¹⁹. The election was the first held under the new Constitution of the Kingdom of Swaziland, hence the pressing need to initiate strategies to establish and strengthen the necessary processes.

Administration of the Elections

An administrative framework was instituted to promote the independence of the EBC and its transparency. This included accounting, procurement, human resource management and auditing best practice procedures. They were critical to building confidence in the Commission and an essential ingredient in their efforts to attract multiple source funding.

Structure of the Election Administration

The EBC, as provided in the Constitution, was established in March 2008. It consists of a Chairperson, deputy chairperson and three other members, appointed by the King on the advice of the JSC.

The requirements for the appointment²⁰ are that members of the Commission shall possess the qualification of a Judge of the superior courts or be persons of high and moral character, proven integrity, relevant experience and demonstrable competence in the conduct of public affairs. Elections and Boundaries are specialised fields and it is important that those appointed should have knowledge of all technical aspects of the process.

Functions of the Elections and Boundaries Commission²¹

The EBC, which was established in March 2008, has the following functions as enshrined in Section 90(7) of the Constitution:

- oversee and supervise the registration of voters and ensure free and fair elections at primary, secondary or other levels;
- facilitate civic or voter education as may be necessary in between elections;
- review and determine the boundaries of tinkhundla areas for purposes of elections;
- perform such other functions in connection with elections or boundaries as may be prescribed;
- produce periodic reports in respect of work done.

¹⁹ For example, the SADC Principles and Guidelines Governing Democratic Elections

²⁰ **Constitution of the Kingdom of Swaziland**, Section 90(6)

²¹ **Constitution of the Kingdom of Swaziland**, Section 90(7a – 7e)

Nevertheless, with the extremely short timeline from the EBC's inception to the conduct of the elections, some technical and procedural aspects of the Commission's mandate were to some extent overlooked. We took cognisance of the fact that the Commission is newly appointed, and that in conjunction with its technical staff had the responsibility for undertaking numerous electoral tasks under a very tight schedule. Moreover, there were no clear procedures in the processes of voter education and general concept of operations. This explains, among other issues, the reasons for the lapses and flaws as the processes were being implemented.

The EBC has an Elections Advisor from Lesotho, provided by the Commonwealth, who assists with administrative and technical advice. We suggest that the EBC also seeks further assistance from other relevant organisations, who could offer technical support in different areas.

That said, we commend the EBC for their efforts in striving to ensure that the entire electoral process met acceptable international standards.

BOUNDARY DELIMITATION

The 2005 Constitution, Section 91(1) allows the EBC to review the number and boundaries of tinkhundla (constituencies), during the fourth year of Parliament and submit to the King a report with recommendations to retain or change the existing position. The report shall be made at least nine months before the dissolution of parliament in terms of Section 134(2).

The boundaries of each inkhundla shall be such that the number of inhabitants of an inkhundla is as nearly equal to the population quota as is reasonably practicable having regard to the terrain, the means of communication(transport) within that inkhundla and any other relevant community interest. The boundaries of an inkhundla shall not extend over more than one region.

We were told by the EBC that a review of constituency boundaries was yet to be carried out. Hence, the current constituency boundaries, as provided for in the current Constitution, remain based on the 1993 constituency demarcation. However, it is not clear if the provisions for the review of constituency boundaries are reflective of international standards²². Presently, Swaziland has 55 constituencies, distributed across the four regions of the country, namely: Hhohho, Lubombo, Manzini and Shiselweni.

In practice, the demarcation of constituencies could have technically determined the adequacy of registration and polling centres in the country. During polling, we observed that in certain rural areas polling centres were far apart with voters sometimes walking or travelling long distances (ten to twenty kilometers) to access them. We recommend that there should be an urgent review of constituency boundaries, to ensure adequate numbers of polling centres and stations, with proximity as one of the major criteria.

²² Constitution of the Kingdom of Swaziland, Section 91

ELECTION TIMETABLE

Prior to the elections, the EBC had not provided a comprehensive election time-table covering all aspects of the process leading to the poll, count and announcement of results. Election timelines are very important in ensuring timeliness and strict adherence to dates and activities.

The timetable for the elections was as follows:

Nominations	:	2nd and 3rd August 2008
Primary Elections	:	23rd August 2008
Secondary Elections	:	19th September 2008

The timetable, as provided, was inadequate and subject to last minute changes. We recommend the drafting and approval of an election timeline for the EBC long ahead of time to pave the way for adequate planning, preparation and implementation.

VOTER REGISTRATION

The Right to Vote

In order to qualify for the right to vote, a Swazi citizen should have reached 18 years of age²³; should be in possession of a voter registration card and their name must be included on the voters' register with a photo and registration ID number. Further, a person needs to be of sound mind to be registered. What the law does not make clear is at what fixed time/date the person should have attained 18 years to qualify. In developing democracies, citizens should have reached 18 years either on the eve of elections or election day. We recommend that the EBC enacts regulations to clarify the provision on voting age.

Voter Registration Procedures

A fresh voters list is prepared prior to each National Election. This is prepared from registration books compiled by registration officers. The register contains the names, addresses, gender, chiefdom and registration number of all registered voters. The Constitution clearly outlines the duty of the electoral management body (EMB) to oversee the entire exercise. The Commonwealth Expert Team (CET) which observed the 2003 National Elections affirmed an earlier recommendation from the CET which observed the voter registration exercise in July 2003 that 'technical and financial assistance should be provided to the EBC so that it may achieve the capacity necessary to establish and maintain a permanent computerised voters register.'

We commend the EBC on having introduced a semi-computerised system during the 2008 voter registration exercise, conducted from 19 May till 22 June. We recommend that the EBC seeks to implement a fully computerised

²³ Constitution of the Kingdom of Swaziland, Section 88(1)

system well before the 2013 National Elections, in order to allow sufficient time for proper voter sensitisation.

The Optimal Mark Recognition (OMR) system adopted by the Commission during the registration process was an effective system of discouraging double or multiple registration. Photos of voters and registration numbers were both on their scannable Voter ID cards and Voters roll. Any attempt to double register would have been biometrically picked up by the system.

For purposes of the elections, the EBC set up registration centres in the four regions²⁴. The EBC claimed to have undertaken a countywide education campaign on voter registration, but from information gathered the sensitisation exercise was low key, with the media providing minimal support.

The Voter Registration Order 1992 provides, inter alia, for the display of voters' registers at regional and sub-regional offices.

A major shortfall in this exercise was the inability of the EBC to once again implement the exhibition and inquiry processes of the registration exercise to give it credibility and acceptance. The reason given was the timing of the nomination process which, in the view of the EBC, was of more concern to the electorate. This meant voters were not able to check or challenge entries on the voters' register. These processes could have created room for an effective Final Voters Register (FVR) with appropriate corrections made. It is recommended that an exhibition and inquiry process is instituted as a standard procedure prior to any future election, in conjunction with appropriate voter education.

THE NOMINATION PROCESS

Section 87 of the Constitution provides that all nominations for Bucopho, or Members of Parliament shall be open and supported by a maximum of ten nominees and a minimal of five, qualified to vote in that *inkhundla*. This was done by the raising of hands in support of the individual candidates.

Nominations for both primary and secondary elections were held on the 2nd and 3rd August, 2008.

Generally, the process was considered to have been carried out satisfactorily across the country, although the rules for nominations seem somewhat opaque.

²⁴ We were not provided with the final statistics on the total number of registration centres and eligible voters registered during the registration period.

CIVIC AND VOTER EDUCATION

The EBC has the primary responsibility of facilitating civic or voter education²⁵. However, on a national perspective, very little or no voter sensitisation or civic education was implemented. The electorate were virtually ignorant of most of the processes of the elections.

TRAINING AND CAPACITY BUILDING

For elections to be well administered in a country, the training and capacity building of its staff is paramount in ensuring credible, impartial, genuine and acceptable elections. When these tenets are absent, the staff will be unable to fulfill the tasks required of them.

Training provided for the Returning Officers, Presiding Officers and other Elections Staff was minimal, lasting only a few hours in most cases. Polling officials claimed to have received very little capacity building to administer the electoral process.

Generally, though the elections staff performed diligently, in some cases they did not meet acceptable standards in the performance of their duties. There were discrepancies in procedures followed in some polling stations and even during counting. We address these discrepancies in details in Chapter Five. However, the election officials were more or less able to ensure an acceptable poll, considering the short tenure of the EBC.

Much needs to be done to improve the capacity of election officials. The EBC does not appear to have designed detailed procedures on the counting process, and we recommend that this should be rectified.

LOST VOTER ID CARDS

The issue of lost voter ID cards had both positive and negative trends in the electoral process, particularly during polling.

Voters who claimed to have lost their Voter ID cards were issued a certificate of permit to complete and be approved by the Returning Officer or Presiding Officer after referral to the EBC officials. In certain instances, chiefs or reputable community members authenticated the voter's identity, thus allowing him/her to vote.

The positive aspect was that it allowed all eligible voters to exercise their franchise on the right to vote. Negatively, it created room for some corrupt individuals to make use of the opportunity by engaging in double voting. Despite the above observation, only few cases of lost voter ID cards were actually reported in the course of the polling exercises across the country.

²⁵ Constitution of the Kingdom of Swaziland, Section 90(7b)

This underscores the need for the EBC to establish electoral laws, rules and regulations within the ambit of the constitution. This will help close the gaps and lapses within the system as there will always be a document for reference and guidance. Activities or issues related to the Commission will be implemented within the framework of the law.

We recommend that the EBC establish regulations to clarify the steps a voter should take in the event of a lost voter ID card.

TRANSPARENCY AND ACCOUNTABILITY

The Expert Team commends the EBC in its drive to make the elections transparent and acceptable at both national and international levels. The invitation of domestic and international observers to the elections was a clear manifestation of its commitment to ensure a credible election despite the tight timeframe.

However, in terms of the preparations for the elections, we are of the opinion that, in certain areas, internationally acceptable standards for the elections were not met. Candidates' agents were not trained on procedures related to the conduct of polling and counting. In Chapter Five, we make further reference to this point. As earlier mentioned, there were no clearly laid-down procedures on counting and retrieval of election materials.

DOMESTIC AND INTERNATIONAL OBSERVERS

There were several other groups of international observers, including the African Union Observer Mission, Pan African Parliament Observers, SADC, the SADC Electoral Commissions Forum (ECF) and EISA (Electoral Institute of Southern Africa). Domestic observer groups included CANGO, the Council of Swaziland Churches, the US Embassy, the National Democratic Institute (NDI) and media representatives²⁶.

THE CAMPAIGN

There were no detailed guidelines provided for the conduct of campaigns. The campaigns generally in the country were low key. Candidates met with community members on a rotational basis under the supervision of regional supervisors and Returning Officers during the primary and secondary elections.

Only a few candidates' posters were seen in isolated places and pasted on commercial vehicles across the country. There were no visible signs of candidates' bill boards nor did we observe any election rallies.

²⁶ A recommendation on observers is made in Chapter Five.

We recommend that the EBC, in collaboration with political parties, the police, the media and other key stakeholders, should develop enforceable guidelines for the conduct of campaigns. Consideration should be given to the issue of campaign financing, for the purpose of providing a level playing field.

RECRUITMENT OF POLLING STAFF

The EBC has no regional offices and at election time was reliant on officials appointed in the regions to serve as Returning officers and Presiding Officers. The EBC is yet to have regional offices staffed by permanent members. During the elections, the EBC relied further on Regional Election officials who were recruited on temporary basis to assist in pre-polling, polling, counting and retrieval exercises.

Some 3000 election officers were recruited countrywide on an ad hoc basis to administer the elections. They took oaths and signed contracts, legally binding them to their temporary employment. In the polling centres which we observed, the polling officials were mainly female.

The role of the EBC in the recruitment of polling staff was not transparent, and we recommend that this shortcoming should be addressed.

ELECTION OFFENCES

According to information gathered in our discussions and our observations made during our deployment, in some cases electoral offences ranged from the intimidation or harassment of voters, attempts at double registration or multiple voting strategies and impersonation. Impersonators traced absentees and voted on their behalf because of the flexibility in the procedures governing loss of voter ID cards. However, these did not appear to be numerous.

During the voter registration exercise, and also prior to the primary and secondary elections, there were reports of intimidation and bribery of prospective voters by politicians. Politicians allegedly also threatened voters to either register or lose certain benefits like scholarships, food aid, health facilities and job opportunities.

We recommend that more rigid procedures are introduced to curtail attempts to circumvent the provisions of the electoral law. We strongly recommend that an Elections Court be established.

Chapter Five

THE POLL, COUNT AND RESULTS PROCESS

Under the provisions of the new Constitution, Polling Day proceeded reasonably smoothly, without major shortcomings in the voting, counting or results processes. Despite some attempts to disrupt the elections through border blockades and bombings, the elections went ahead as planned (these events are covered in Chapter Three). However, in five constituencies²⁷, the poll was postponed due to litigation.

PRE-POLLING ARRANGEMENTS

Prior to the polling activities on 19th September 2008, the EBC had recruited and conducted some training for polling officials across the country. Ballot boxes and other non-sensitive materials were distributed to all polling centres in the country the previous day. By all indications, the staff were ready to conduct the elections the following day with all non-sensitive materials in place and the sensitive materials distributed during the early morning hours.

ARRANGEMENTS FOR POLLING DAY

The conduct of the poll in each inkhundla was the responsibility of a Returning Officer, appointed by the EBC. Each polling centre was managed by a Presiding Officer, assisted by polling officers and security personnel. The prescribed polling procedure was as follows:

The polls would open at 7:00 am and close at 6:00 pm. Before the commencement of the poll the ballot boxes would be shown to the voters and the candidates' agents to prove they were empty. They would then be locked in full view of all present. On arrival at the polling centre, the voter would present his/her voter ID card to an Election Official seated by the entrance of the centre. The Election Officer would then check for the voter's name in the voters register and mark a cross on his/her photo when identified, to prove that he/she has voted.

Then the voter would be given a ballot paper for the election of the indvuna (in effect a liaison officer between the MP and the community) and move to a screened compartment and make a cross on the picture of one candidate of her/his choice, which is dropped into the first ballot box marked 'indvuna' and with the constituency name.

The voter would next proceed to another Election official who would issue him/her with another ballot paper for the 'MP' election. The same procedure would be applied in marking the ballot in a screened compartment, after which the voter drops the folded ballot paper in another ballot box marked 'MP', under the supervision of an election official who controls the ballot box.

²⁷ These constituencies were: Kwaluseni, Maseyisini, Mbabane East, Nkilonko and Timphisini. The secondary elections in Nkilonko were subsequently held on 21st September 2008. There are a total of 55 *tinkhundla* in which the secondary elections were to be contested.

For both elections, the Voter ID registration number of the voter is written on the ballot counterfoil by the respective election officials.

The voter would then proceed to another Election Official who would authenticate the two votes by punching the voter ID card once, after which the voter is to leave the centre.

At the official closing time of 6:00pm, any voter still in the queue would be allowed to cast her/his vote. Then the Presiding Officer would secure the boxes with sealing wax and string and the candidates and agents would affix their own seals if they wished and also record the seal numbers on the boxes.

Once all the paperwork had been properly completed and all the equipment and materials packed away, the boxes would be taken under police guard to the police station for safe custody overnight to be counted the following morning in the presence of all key stakeholders.

The count would then take place at a designated counting centre in each constituency, beginning at 8:00am, though during the counts some centres started late.

First the seals and padlocks would be checked in the presence of all key stakeholders. Then the boxes would be opened, the ballot papers (packed separately according to centres) counted and put aside for both indvuna and MP elections to be reconciled later.

During this period, the postal ballots would be added²⁸ and the papers sorted by the Constituency Returning Officer and Supervisor, sometimes with the assistance of presiding officers and election officials present during the count. After all the centres have gone through these procedures, formal counting of the packed ballot papers would proceed.

The results would then be recorded and announced, with the winning candidates for the respective positions announced by the Constituency Returning Officer in the presence of the candidates, their agents, the police, domestic and international observers and election officials.

The results would then be forwarded to the EBC headquarters for data processing and certification.

The police would be present in the centres throughout.

²⁸ Postal ballots were available to Swaziland diplomats abroad and members of the security forces.

EVALUATION OF POLLING DAY

Opening and Closing of Polls

According to reports gathered by the team, polling started in most parts of the country at 7:00a.m. and closed at 6:00p.m. in the evening. However there were a few reports of polling centres opening in remote rural areas at 8:00am as the election officials had not received clear instructions on the procedure²⁹.

Closing of polls took place generally across the country at 6:00pm in the presence of the candidates/agents, observers and the election officials. There was only minimal written guidance to cover the counting procedures. We recommend that expanded, written clear guidelines relating to the procedures for the count should be produced.

Ballot boxes were locked and sealed in the presence of all present at the centre. However, in some cases only locks and not seals were used. We recommend that standard procedures be implemented for the sealing of boxes and to be immediately followed by the reconciliation of used and unused ballot papers.

We further strongly recommend that appropriate equipment (e.g. lamps or lanterns) be provided to ensure that the closing process can proceed smoothly and transparently.

Voting

Voting in the secondary elections was generally carried out in an orderly manner with voters queuing at polling centres as early as 6:30am. In urban and largely populated areas, queues were long and voters waited for many hours to cast their ballots. In rural and less populated areas, and in some centres, was completed by mid-day. In cases of disorderliness, because of the large number of voters in the queue, presiding officers ensured, with the help of the police, that the process continued in accordance with the law.

Women turned out in large numbers to cast their votes. Senior citizens and voters with disabilities were also seen in reasonable numbers and were competently assisted by polling officials where the need arose.

Security

We were informed that the Royal Swaziland Police had overall responsibility for security, and commend them for carrying out their duties efficiently and humanely during the entire polling process. They were very discreet in the execution of their duties. We however recommend that for subsequent

²⁹ The original guidelines in the EBC Handbook of Polling Procedures had included polling hours as 8am to 5pm, but these were changed to 7am to 6pm and announced widely in the media.

elections, the police should be educated on electoral issues which relate to their security role.

Polling Procedures

In most instances, procedures provided for polling were adequate, though there was some confusion with the sequencing, including the punching of voter ID cards and the issuing of ballot papers to voters. Though the guidelines stipulated that ballot papers for the MP and indvuna (constituency headman) elections were to be issued separately, this did not always happen. In certain instances, the ballot papers were issued simultaneously, which led to some confusion when being placed in ballot boxes. It is recommended that the guidelines be followed to the letter, whereby ballot papers are issued separately to the voter. We further recommend that transparent, durable ballot boxes be used in future. We also recommend that the procedure for the punching of voter ID cards at a specified location on the card be uniform and that this take place after voting.

Whatever the situation, voters were able to cast their votes free from harassment or any form of intimidation. Nevertheless, we recommend further in-depth training for all polling staff.

Efficiency of Polling Officials

Polling Officials, though not trained effectively, performed satisfactorily. They were stationed in all the polling centres within the stipulated time and even spent the night in some centres to ensure the safety of sensitive polling materials. They were very friendly and ready to receive and assist all voters and made every effort to ensure that all eligible voters were able to cast their vote. Priority was accorded to senior citizens and those with disabilities.

Domestic and International Observers

The presence of domestic and international observers in a number of polling centres facilitated an enabling environment wherein outsiders were allowed to observe the process and determine whether it was credible and acceptable. This conformed to prescribed international procedures governing the conduct of elections.

We recommend further training for the capacity building of domestic observers.

Role of Candidates' Agents

Candidates' agents were present in most of the centres but, in general, they were not conversant with the procedures for polling day. It is recommended that suitable training be provided to address this shortcoming.

Secrecy of the Ballot

The design of the ballot papers did not guarantee the secrecy of the ballot as voter ID numbers were recorded on the counterfoils. We consider this a potential violation of the secrecy of the ballot, as an attempt could be made to trace how a particular vote was cast. We raised this concern with the EBC, who were already aware of the issue, and promised to have it addressed in subsequent elections.

Transportation of Ballot boxes

Election officers, accompanied by the police, took necessary measures to transport the ballot boxes to the nearest main police stations, where they were kept overnight. In some cases we noted that, surprisingly, neither the candidates nor their agents joined the convoy to the police station, nor did they do so the following morning when the boxes were retrieved for the count.

The safety of the ballot boxes was not guaranteed in police stations, as irregularities could have occurred during the night.

We are therefore recommending that ballots be tallied, counted and reconciled immediately after the close of polls at the respective polling stations. This would ensure transparency, thus eliminating uneasiness and tensions from candidates and their agents.

Chapter Six

CONCLUSIONS AND RECOMMENDATIONS

As we have noted earlier in our report, we commended the EBC and its staff for undertaking their numerous electoral tasks under a very tight schedule. We also noted that polling day proceeded reasonably smoothly without any major shortcomings. In general, Presiding Officers and Election Staff were efficient and the police were discreet in their presence. Despite the shortcomings noted, in particular the lack of clear procedures in the processes of voter education and general concept of operations, we are of the opinion that polling day was reasonably well conducted.

However, in considering the various factors impinging on the credibility of the electoral process as a whole, as we were mandated to do, we also took into account political developments in Swaziland since the 2003 National Elections. At that time, the Constitution was in draft form, undergoing a process of negotiation and consultation. The CET which observed those elections concluded that they did not regard the credibility of the 2003 National Elections as an issue, given that no elections could be credible when they were for a Parliament which did not have power and when political parties were banned.

Swaziland has now adopted a new Constitution, which affords the nation an opportunity to make democratic progress. The real challenge is to gain the confidence of the democratic dispensation with an entrenched bill of rights, as is expected of Swaziland in accordance with Commonwealth principles and declarations.

Therefore, in our assessment of the political environment and developments since then, we could not ignore the broader issue of governance in Swaziland, in particular the interface between the provisions of the Constitution and the entire electoral process. We also noted our serious concerns on the inherent inconsistencies and contradictions, particularly as they relate to the separation of powers (or lack thereof) and the rule of law. We also expressed our deep concern for the inconsistency and contradictions as they relate to the interpretation of the fundamental right of freedom of association and assembly, where political parties are denied formal recognition, so that they do not have the right to carry out activities which political parties would normally conduct in a multi-party democracy.

We believe that the Monarchy and a multi-party democracy are not mutually exclusive, and that a mechanism should be found to insulate the Monarchy from the turbulence of politics.

We conclude that, in the consolidation of any democracy, a constitution is by nature an organic document, and that a natural process of constitutional development will serve to take the consolidation of democracy in Swaziland forward. This by no means precludes due regard for Swazi cultural norms and traditions.

While we take cognisance of the challenges posed by the implementation of a new constitution, especially on matters of interpretation, it is the striving for best electoral practice and the acceptability of the Constitution as the supreme law to *all the people* of Swaziland that would need to be pursued without delay and in earnest. This includes the amendment of relevant electoral laws, as well as vital pieces of legislation governing the electoral process, to bring them in line with related sections of the Constitution.

In the modern world, which is complex and constantly evolving, a multi-party democratic system has proved to be the best one for accommodating diversity and well-treasured norms in society. Practical experience has shown that institutions which have been marginalised have suffered. Confidence in the institutional framework to promote a vibrant electorate is vital, as a conscientious, well informed electorate is critical in this day and age.

In any country the prevailing political environment influences all aspects of life including social and economic conditions for its citizens. One of the major areas it affects is the constitutional and legislative framework governing electoral processes. This underpins the overall credibility of the electoral process.

We cannot therefore conclude that the entire process was credible.

It is ultimately for the people of Swaziland to decide on the process and the direction which should be pursued, with due regard to respect for the Monarchy as well as local traditions and custom, while meeting its international obligations as a fully-fledged member of the Commonwealth, SADC, the African Union and other global institutions.

We therefore make the following recommendations:

The Constitutional and Legal Framework

The Constitution

- that, while cognisant of the respect due to the institution of Monarchy, which in itself should be safeguarded and accommodated, the Constitution be revisited. This should be carried out through a process of full consultation with Swazi political organisations and civil society (possibly with the support of constitutional experts), to harmonise those provisions which are in conflict. The aim is to ensure that Swaziland's commitment to political pluralism is unequivocal.
- that measures be instituted to ensure that the principle of separation of powers is upheld.

The Electoral Law

- that the 1992 Elections and Voter Registration Orders are replaced by an electoral law which is in line with the 2005 Constitution and with best international practice.

EBC

- that enabling legislation to ensure the independence of the EBC be introduced, in conformity with the provisions of the Constitution, and in accordance with international standards;

Preparations for the Election

Boundary delimitation

- that after enabling legislation establishing the EBC has been introduced, the EBC should carry out a review of boundary delimitation, with technical support if requested.
- that there should be an urgent review of constituency boundaries, to ensure adequate numbers of polling centres and stations, with proximity as one of the major criteria.

Election Offences

- that the EBC introduces more rigid procedures to curtail attempts to circumvent the provisions of the electoral law.
- establishment of an Election Offences Court to investigate and adjudicate on irregularities and malpractices.

Voter Education

- Nation-wide voter education and sensitisation must be intensified to encompass all aspects of the electoral process.

The Campaign

- That the EBC, in collaboration with the political organisations, police, the media, and other key stakeholders, develops enforceable guidelines for the conduct of campaigns.

Training and Capacity-Building

- that in-depth training be provided for all polling officials as well as candidates' agents;
- training on the electoral process for the Royal Swaziland Police as it relates to their security role.

Youth

- that programmes should be initiated to encourage the youth to participate fully in the democratic process.

Media

- measures should be put in place to ensure a level playing field for all candidates and other interested parties for accessing the government-owned media during the elections.
- that capacity building programmes should be undertaken to cultivate professionalism in the media.

Voter registration

- the display of the voters' register for exhibition, inquiry and corrections should be instituted uniformly as standard. Adequate civic education in support should be provided.
- that EBC seeks to implement a fully computerised voter registration system well before for the 2013 election, in order to allow sufficient time for proper voter sensitisation.

Election Timetable

- that the EBC draft and approve an election timeline in a timely manner, to pave the way for adequate planning, preparation and implementation.

Recruitment of Polling Staff

- that the EBC introduces a transparent process for the recruitment of polling staff.

Domestic Observers

- that further training for the capacity-building of domestic observers be provided.

The Poll, Count and Results Process

Arrangements on Polling Day

- that the EBC consider reviewing its procedural arrangements on polling day:
 - to ensure the integrity of the ballot, by removing voter ID numbers recorded on ballot paper counterfoils;
 - to revise the sequence of the procedures such that ballot papers are provided separately in two consecutive procedures to voters,

to ensure that no confusion occurs when votes are placed in ballot boxes;

- that transparent, durable ballot boxes be used in future;
- voter ID cards: that the procedure for the punching of voter ID cards at a specified location on the card be uniform and that it takes place after voting;
- special voting procedures for civil servants, members of the Royal Swaziland Police, security services and members of His Majesty's diplomatic service stationed abroad should be transparent;
- opening and closing times for polling centres should be revised according to standard procedures;
- establishing procedures on counting and retrieval of election materials;
- increasing the number of polling centres to reduce the often long distances voters have to travel on registration and polling days.
- polling stations should be created within polling centres, to ease the problem of long voter queues and confusion among polling officials.

Voting

- that the EBC makes regulations to clarify the provision on voting age.
- that the EBC establish regulations to clarify the steps a voter should take in the event of a lost voter ID card.

The Count

- that the EBC, which does not appear to have designed detailed procedures on the counting process, should rectify the situation.
- that the ballots be tallied, counted and reconciled immediately after the close of polls at the respective polling stations.
- that standard procedures be implemented for the sealing of boxes and to be immediately followed by the reconciliation of used and unused ballot papers.
- that appropriate equipment (e.g. lamps or lanterns) be provided to ensure that the closing process can proceed smoothly and transparently.

Technical Assistance

In light of our recommendations, we urge the Commonwealth Secretariat and its partners, including the Commonwealth Parliamentary Association as well as other Commonwealth NGOs, to respond positively to any requests for technical assistance as the need arises.

ACKNOWLEDGEMENTS

We wish to extend our thanks and appreciation to the Elections and Boundaries Commission (EBC), including all their personnel whom we met in the field. We are grateful to leading officials in the Government of Swaziland, including the outgoing Speaker of Parliament, the Minister of Justice and Constitutional Affairs, the Attorney-General, the Commissioner of the Royal Swaziland Police, as well as leading figures from various organisations who briefed us during our stay. We also express our gratitude to the resident diplomatic corps and to representatives of both international and domestic observer groups.

A special word of thanks is due to our drivers Mr Thulasizwe Madzinane, Mr Patson Dlamini, Mr Menzie Zikalala, and Mr Sydney Mthupha, without whom we would have been unable to carry out our task.

In particular, we should make mention of the unfailing courtesy and kindness extended to us by the people of Swaziland. We wish them well for the future.

ANNEXES

ANNEX 1



Elections & Boundaries Commission
P.O Box 6358
Mbabane, H100
Kingdom of Swaziland

Telephone: 00268 4162504/6
Facsimile : 00268 4162981
Email : elections@realnet.co.sz

EBC/41

29TH JULY, 2008.

Attn: Mr. Stevens

The Commonwealth Secretary-General
Commonwealth Secretariat
Marlborough House,
Pall Mall,
LONDON SW1Y 5HX.

Dear Sir,

RE: ELECTION DATES

Greetings from the Elections and Boundaries Commission. Once more, we want to express our appreciation for the support we have received from your good office.

It is my privilege and honour to inform you of the nomination, primary election and secondary election dates as follows:

Nominations: Saturday 2nd and Sunday 3rd August, 2008.

Primary Elections: Saturday 23rd August, 2008.

Secondary Elections: Friday 19th September.

We will keep you informed of further developments on the electoral process.

Your usual co-operation is highly appreciated.

Yours sincerely,

[Handwritten signature]
29/07/08

CHIEF GIJA S.G. DLAMINI
CHAIRMAN



COMMONWEALTH SECRETARY-GENERAL

11 September 2008

Dear Chief Dlamini,

Following a report of an assessment mission to Swaziland that there is broad support for the presence of Commonwealth observers for the forthcoming National Elections on 19 September 2008, I have therefore decided to constitute a Commonwealth Expert Team for the elections.

I am pleased to inform you that the composition of the Commonwealth Expert Team is:

Dr Paul Ssemogerere (Team Leader)

Former Deputy Prime Minister
Uganda

Mr Edmond Alpha

Chief: Field Coordination and Reporting Unit
National Electoral Commission
Sierra Leone

Ms Kaye Oliver CMG OBE

Former British High Commissioner to Lesotho
United Kingdom

Mr Rajith Keerthi Tennakoon

Director
Campaign for Free & Fair Elections (CaFFE)
Sri Lanka

The Expert Team will be supported by a two-person staff team from the Commonwealth Secretariat's Political Affairs Division:

Mr Linford Andrews
Mrs Madonna Lynch

We have written in similar terms to the High Commissioner of Swaziland in London so that the Government is fully informed.

Chief Gija S G Dlamini

...2/

Marlborough House, Pall Mall, London SW1Y 5HX, United Kingdom

Tel: Switchboard +44 (0)20 7747 6500 Direct Line +44 (0)20 7747 6103 Fax: +44 (0)20 7930 2299

E-mail: secretary-general@commonwealth.int Website: www.thecommonwealth.org

The Expert Team will assemble in Swaziland on 13th September, and will remain on the ground till after the election date, to depart on 24th September. It is envisaged the Expert Team will seek a meeting with you and members of the Elections and Boundaries Commission soon after their arrival in Swaziland.

The Terms of Reference of the Expert Team will be as follows:

"The Expert Team is established by the Commonwealth Secretary-General at the request of the Elections and Boundaries Commission of Swaziland. It is to observe relevant aspects of the organisation and conduct of the National Elections which are scheduled to take place on 19 September 2008, in accordance with the laws of Swaziland.

The Expert Team is to consider the various factors impinging on the credibility of the electoral process as a whole. It will determine in its own judgement whether the elections have been conducted according to the standards for democratic elections to which Swaziland has committed itself, with reference to national election-related legislation and relevant regional, Commonwealth and other international commitments.

The Expert Team is to act impartially and independently and shall conduct itself according to the standards expressed in the International Declaration of Principles to which the Commonwealth is a signatory. It has no executive role; its function is not to supervise but to observe the process as a whole and to form a judgement accordingly. In its Final Report, the Expert Team is also free to propose to the authorities concerned recommendations for change on institutional, procedural and other matters as would assist the holding of future elections.

The Expert Team is to submit its report to the Commonwealth Secretary-General, who will forward it to the Government of Swaziland, the Chairperson of the Elections and Boundaries Commission of Swaziland, political and civil society organisations and thereafter to all Commonwealth Governments."

All observers have been invited in their individual capacities. Within the above Terms of Reference the Expert Team will form an independent judgement that will in no way represent either the views of any Government or of my office.

It is hoped the work of the Expert Team can make a useful contribution to the strengthening of the democratic process in Swaziland.

Please accept the assurances of my highest consideration.

Regards,



Kamallesh Sharma
Secretary-General

Chief Gija S G Dlamini
Chairman
Elections and Boundaries Commission
P O Box 6358
Mbabane, H100
Kingdom of Swaziland

ANNEX 2

Dr Paul Kawanga Ssemogerere (Uganda)

Dr Paul Kawanga Ssemogerere was Deputy Prime Minister and Minister of Foreign Affairs of Uganda from 1988 to 1994. In this capacity he participated in the formulation of the Commonwealth *Harare Declaration* (1991) and chaired the OAU Council of Ministers from 1992 to 1993). He also chaired the OAU Ministerial Mediation Committee on Senegal and Mauritania Conflict and participated in the OAU Ministerial delegation to the UN Security Council Meeting on South Africa and to the Conference on the Democratisation of South Africa (CODESA). He was a UN Observer during South Africa's first Multi-Racial Elections in 1994.

From 1994 to 1995 he served as Deputy Prime Minister & Minister of Public Service. During his tenure he harmonised the Terms of Service of Heads of Security Agencies viz., the Army, the Police and the Prison Service. He also served as Minister of Internal Affairs from 1985 to 1988 during which he released political prisoners detained by the previous Government under the Public Order and Security Act (1967), and lifted a ban on newspapers. He instituted and chaired a tripartite consultative forum on Law Enforcement and participated in the Experts meeting on the establishment of the International Criminal Court (Vienna, 1988) and established the UN African Institute for Crime Prevention and the Treatment of Offenders (UNAFRI) in Kampala.

He served as President of the Democratic Party (DP) from 1980 to 2005; Leader of the Parliamentary Opposition (1980 to 1985) and DP Presidential candidate (1980). He was also a Presidential candidate of the Opposition alliance for multi-party democracy – the Inter Political Forces Council (IPFC) – in 1996.

He was a member of Constituent Assembly for the enactment of the 1995 Uganda Constitution (1994 to 1995) and member of the National Caucus for Democracy which sought to secure entrenched provisions for a Bill of Rights and Democracy, the principle of separation of powers and the rule of law.

His current interests include writing on human rights and democracy related topics and issues; and developing an eco-tourism facility at Kalangala, Ssesse Islands, Lake Victoria.

Mr Edmond Sylvester Alpha (Sierra Leone)

Edmond Sylvester Alpha is the Chief, Field Coordination and Reporting Unit, National Electoral Commission (NEC) Sierra Leone. He has been with NEC for the past three years (2005 to date), and prior to attaining this position in 2007, was the Electoral Officer Tonkolili District (Northern Sierra Leone). Edmond served in the capacity as District Electoral Officer for two years before he was promoted to serve in the present capacity as Chief, Field Coordination and Reporting Unit, NEC headquarters, Freetown.

Before becoming an election administrator, he taught for twelve years at educational institutions in Sierra Leone. He taught at primary and secondary schools in Sierra Leone and was Lecturer at Njala University for 9 years.

During his years at the University, he was part-time Lecturer, Milton Margai College of Education and visiting Lecturer to the St Paul's Major Seminary, Regent, Freetown, Sierra Leone.

He has served his country in various capacities. During the 2004 National Census, he was the Senior Field Officer for Freetown East II. He is also an Examiner in Literature-in-English with the West African Examinations Council and a playwright.

He holds a B.A. Ed, M.A. Ed in Literature/Linguistics (S/L) and Certificates in Journalism and Election Management (BRIDGE Modules 1-10). He wrote several books at the University for the Courses he taught at Bachelor and Masters levels.

Miss Kaye Oliver, CMG, OBE (United Kingdom)

Miss Kaye Oliver was a member of the Diplomatic Service until 2002. She spent sixteen years in Africa, including as Ambassador to Rwanda and Burundi and as High Commissioner to Lesotho.

Since 2002 she has worked as an independent consultant and has evaluated a number of peace-building programmes in Africa on behalf of the Department for International Development (DFID). She is a Director of Electoral Reform International Services (ERIS). She has observed elections earlier, including for the Commonwealth, in Kenya, Rwanda, Burundi, Zambia and Nigeria.

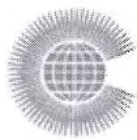
Miss Oliver is a member of the All Party Parliamentary Group on the Great Lakes Region and Genocide Prevention (APPG).

Mr. Rajith Keerthi Tennakoon (Sri Lanka)

Mr Rajith Keerthi Tennakoon is a Director and the Media spokesman of Campaign for Free and Fair Elections (CaFFE) in Sri Lanka. He was a founding member of Civil Monitoring Commission (CMC) on Abductions, Disappearances and Extra Judiciary Killings in the war torn country. Mr. Tennakoon is the consultant of the *"Index on Books and Articles on Federalism in Sri Lanka"*, a project funded by the Berghof Foundation for Conflict Studies and currently under the facilitation of the Secretariat of the National Alliance for Peace (SNAP). He has had a long career in various positions within the media sector including the Media Secretary of Ministry of Plantation Industries, a columnist and a foreign news analyst. His publications include *Media Censorship in Sri Lanka*, *The Art of Making Kings-- Political Communication in the Election Time in Sri Lanka*. He has also compiled many Media Monitoring reports on Sri Lankan Elections.

Mr. Tennakoon is the Political Communication specialist in the Colombo Political School in Sri Lanka.

ANNEX 3



COMMONWEALTH

NEWS RELEASE

Commonwealth Team observes Swaziland elections

16 September 2008

A Commonwealth Expert Team will observe the National Elections due to take place on 19 September 2008 in Swaziland, Commonwealth Secretary-General Kamallesh Sharma announced today.

Mr Sharma said that the Team of four, supported by a two-person staff team, will be led by Dr Paul Kawanga Ssemogerere, Former Deputy Prime Minister of Uganda.

"These elections are the first to be conducted under the new Constitution which came into effect in 2006", Mr Sharma stated.

The Secretary-General added that the mandate of the Team is to observe the preparations for the election; the polling, counting and results process; and the overall electoral environment. The Team is to assess the overall conduct of the process and make appropriate recommendations for the future strengthening of the electoral process in Swaziland.

The Team which arrived in Swaziland on 13 September will remain in the Southern African country until 24 September. It has been constituted at the invitation of the Elections and Boundaries Commission of Swaziland.

The full composition of the Commonwealth Expert Team is:

Dr Paul Kawanga Ssemogerere (Team Leader)

Former Deputy Prime Minister
Uganda

Mr Edmond Sylvester Alpha

Chief: Field Coordination and Reporting Unit
National Electoral Commission
Sierra Leone

Ms Kaye Wight Oliver CMG OBE

Former British High Commissioner to Lesotho
United Kingdom

Mr Rajith Keerthi Tennakoon

Director
Campaign for Free & Fair Elections (CaFFE)
Sri Lanka

The Secretariat support staff team will be led by Mr Linford Andrews, Political Affairs Officer in the Political Affairs Division.

This is the third Commonwealth Expert Team to be present in Swaziland. Previous Commonwealth Expert Teams observed the voter registration in July 2003 and the National Elections in October 2003.

Note to editors:

The Team's report will be submitted to the Commonwealth Secretary-General, who will then in turn send it to the Government of Swaziland, the Elections and Boundaries Commission and Commonwealth Governments.

The Expert Team will act impartially and independently and shall conduct itself according to the standards expressed in the International Declaration of Principles for Election Observation to which the Commonwealth is a signatory.

For media inquiries, please contact:

In Swaziland: Mr Linford Andrews, Political Affairs Officer, on Tel: +44 (0)752-5392-496 or +268-676-7906 or e-mail: l.andrews@commonwealth.int

In London: Mr Julius Mucunguzi, Communications Officer and Assistant Spokesperson for Africa on e-mail: j.mucunguzi@commonwealth.int or Tel: +44-7894-593-517.

ANNEX 4

LIST OF MEETINGS HELD BY THE COMMONWEALTH EXPERT TEAM

African Union Observer Mission
Ambassador, United States of America
Attorney General (Mr. Majahenkhaba Dlamini)
Coordinating Assembly of NGOs (CANGO)
Council of Swaziland Churches
EISA Secretariat
Elections and Boundaries Commission (EBC)
European Union Delegation to Swaziland
Former Speaker of Parliament (HRH Prince Guduza)
High Commissioner, Mozambique
High Commissioner, South Africa
International Community of Women in Southern Africa Living with HIV
Lawyers for Human Rights
Lutsango LwakaNgwane/Women Parliamentary Caucus
Media Institute of Southern Africa (MISA)
Minister of Justice and Constitutional Affairs (HRH Prince David)
Ministry of Justice and Constitutional Affairs (Legislative drafters)
National Democratic Institute for International Affairs (NDI)
Ngwane National Liberatory Congress (NNLC)
Open Society Initiative for Southern Africa (OSISA)
Pan-African Parliament Election Observer Mission
Peoples United Democratic Movement (PUDEMO)
Royal Swaziland Police
SADC Election Observer Mission
SADC Electoral Commissions Forum
Sive Siyinqaba 'Sibahle Sinje' National Movement
Swaziland Coalition of Concerned Civil Organisations
Swaziland Federation of Labour
Swaziland Federation of Trade Unions (SFTU)
Swaziland National Association of Teachers (SNAT)
Swaziland National Youth Council
United Nations Development Programme (Swaziland)
Women and Law in Southern Africa (WLSA) - Swaziland
World Vision International

ANNEX 5



COMMONWEALTH EXPERT TEAM

Swaziland National Elections
19 September 2008

DEPARTURE STATEMENT

We depart Swaziland today having completed our report to the Commonwealth Secretary-General. When he constituted the team to observe the 2008 National Elections, we were provided with the following Terms of Reference:

"The Expert Team is established by the Commonwealth Secretary-General at the request of the Elections and Boundaries Commission of Swaziland. It is to observe relevant aspects of the organisation and conduct of the National Elections which are scheduled to take place on 19 September 2008, in accordance with the laws of Swaziland.

The Expert Team is to consider the various factors impinging on the credibility of the electoral process as a whole. It will determine in its own judgement whether the elections have been conducted according to the standards for democratic elections to which Swaziland has committed itself, with reference to national election-related legislation and relevant regional, Commonwealth and other international commitments.

The Expert Team is to act impartially and independently and shall conduct itself according to the standards expressed in the International Declaration of Principles to which the Commonwealth is a signatory. It has no executive role; its function is not to supervise but to observe the process as a whole and to form a judgement accordingly. In its Final Report, the Expert Team is also free to propose to the authorities concerned recommendations for change on institutional, procedural and other matters as would assist the holding of future elections.

The Expert Team is to submit its report to the Commonwealth Secretary-General, who will forward it to the Government of Swaziland, the Chairperson of the Elections and Boundaries Commission of Swaziland, political and civil society organisations and thereafter to all Commonwealth Governments."

Our report will now be delivered to the Commonwealth Secretary-General. We hope that when it is publicly released it will be useful to the people of Swaziland.

We wish to extend our thanks and appreciation to the Elections and Boundaries Commission (EBC), including all their personnel whom we met in the field, for their unfailing co-operation and support. We are grateful to the senior government officials, political and civil society leaders, the resident diplomatic

corps as well as representatives of both domestic and international observer groups who briefed us during our stay.

Throughout our stay and travels throughout Swaziland we have, without exception, been treated with unfailing courtesy and kindness. We were greatly impressed by the patience and sincerity of the Swazi people and wish them well for the future. We trust that the Commonwealth and other international partners will continue to offer their support to the people of Swaziland.

Royal Swazi Spa Hotel, Ezulwini, 24 September 2008

Note to Editors: the members of the team were Dr Paul Kawanga Ssemogerere (Team Leader), Mr Edmond Sylvester Alpha, Ms Kaye Wight Oliver CMG OBE and Mr Rajith Keerthi Tennakoon.

Further information: Linford Andrews on (+44)(0)752 5392 496 or l.andrews@commonwealth.int

Code of Conduct for International Election Observers

The members of this Commonwealth Expert Team signed the *Code of Conduct for International Election Observers*. This and the *Declaration of Principles for International Election Observation* have been agreed by a number of organisations which sponsor international election observation to ensure that such observation is undertaken in line with the highest standards of professionalism and integrity. The Commonwealth Secretariat has endorsed both.

Copies of these documents may be obtained from the Democracy Section, Political Affairs Division, Commonwealth Secretariat, Marlborough House, Pall Mall, London SW1Y 4HX, United Kingdom, or the Commonwealth Secretariat website, which is www.thecommonwealth.org.