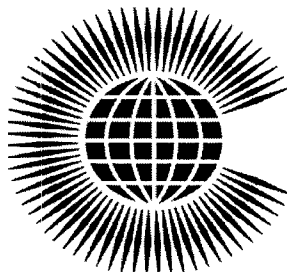


**Swaziland National Elections
18 October 2003**

**REPORT OF THE COMMONWEALTH
EXPERT TEAM**



Commonwealth Secretariat

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REPORT OF THE COMMONWEALTH EXPERT TEAM

	<i>Page</i>
Letter of Transmittal	
Chapter One: Introduction	1
Chapter Two: The Context	3
Chapter Three: Preparations for the Election	7
Chapter Four: The Poll and Count	13
Chapter Five: Conclusions and Recommendations	18
Acknowledgements	23

Annexes

- (a) Map of Swaziland
- (b) Biographies of members of the Expert Team
- (c) Invitation from the Government of Swaziland and reply from Commonwealth Secretary-General
- (d) Press release issued by Commonwealth Secretariat in London and Mbabane on 9 October 2003, and Departure Statement issued by Expert Team on 23 October 2003
- (e) List of meetings held
- (f) Report of Commonwealth Expert Team on Voter Registration, July 2003
- (g) Qualifications to be a voter or a member of the Parliament of Swaziland

**Swaziland National Elections
18 October 2003**

COMMONWEALTH EXPERT TEAM

23 October 2004

Dear Secretary-General,

We thank you for sending us to Swaziland to be present for the 2003 National Elections and have pleasure in submitting our report.

You will see from our Conclusions that we do not regard the credibility of these National Elections as an issue: no elections can be credible when they are for a Parliament which does not have power and when political parties are banned. We would like to believe that the current draft Constitution can yet be changed to provide for a transfer of power from the King to the Parliament and Government, and for freedom of association. If that is not possible then these two points must constitute the key features of the agenda for further reform in Swaziland and therefore represent the main issues to be tackled by the Government.

We therefore urge you to press the King of Swaziland as urgently and as strongly as possible to adopt this reform agenda and recommend that you should respond positively and speedily should technical assistance for that agenda be requested.

These may be the main issues but they are not the only ones. In line with our Terms of Reference we have outlined a number of other areas where we believe the Commonwealth can help. We were all impressed by the genuineness and sincerity of the Swazi people we met during our stay, especially the voters we encountered on polling day: straightforward people who are striving for a better life. We hope that the Commonwealth can help their country to improve on its electoral arrangements even as work continues on the bigger picture whose current character denied these elections their proper democratic meaning.

Hon David Thompson MP

Ms Angela Odah

Hon Hilary Mkatte

HE Rt Hon Don McKinnon
Commonwealth Secretary-General
Commonwealth Secretariat
Marlborough House
Pall Mall
London SW1Y 5HX

INTRODUCTION

INVITATION AND COMPOSITION OF THE EXPERT TEAM

This report presents the observations, conclusions and recommendations of the Commonwealth Expert Team which was present in Swaziland for the National Elections held on 18 October 2003.

The Commonwealth Secretary-General's decision to send an Expert Team followed an invitation from the Ministry of Foreign Affairs of Swaziland (see exchange of correspondence at Annex C). The Team consisted of:

Hon David Thompson MP (Leader of the Team)
Former Leader of the Opposition and Minister of Finance
Barbados

Hon Hilary Mkatte
Member, National Electoral Commission
United Republic of Tanzania

Ms Angela Odah
Co-ordinator
Transition Monitoring Group
Federal Republic of Nigeria

The Team was assisted by two members of staff from the Commonwealth Secretariat Political Affairs Division, Mr Christopher Child (Deputy Director and Head of the Democracy Section) and Mr Linford Andrews (Senior Programme Officer).

TERMS OF REFERENCE

The Team's Terms of Reference were as follows:

"The Commonwealth Expert Team for the 18 October National Elections in Swaziland shall observe the preparations for the elections, the polling, counting and results process and the overall electoral environment and will report to the Commonwealth Secretary-General, with recommendations, if appropriate, for Commonwealth technical assistance. The Secretary-General will in turn send the Team's report to the Government of the Kingdom of Swaziland, the Chief Electoral Officer and Commonwealth Governments. It will then be made public."

The experts were invited in their individual capacities and it was made clear in advance by means of a Circular to Commonwealth Governments and a press release (see Annex D) that the views they expressed regarding the elections would be their own and not those either of their respective Governments or of the Commonwealth Secretariat.

ACTIVITIES OF THE EXPERT TEAM

The Expert Team arrived in Swaziland on 9 October and began work by holding a series of briefing meetings in the Royal Swazi Sun Hotel and the Ezulwini Sun Hotel, Ezulwini, near Mbabane. These are listed at Annex E. Some of these meetings provided information on the electoral process, others provided background on the overall environment in which the elections were being held. The Team was also provided with written briefing materials, including the report of the Commonwealth Expert Team which had observed voter registration in July 2003, and of which Mr Mkatte had been a member (see Annex F).

On Sunday 12 October members of the Team were able to see campaigning, near Mbabane. The Team deployed on Tuesday 14 October to three base locations (with a break on Thursday 16 October for meetings and to be accredited by the staff of the Chief Electoral Officer). One team, consisting of Mr Thompson and Mr Mkatte, was based at the Royal Swazi Sun and from there covered the area from Manzini to Piggs Peak in the north-west. On election day this team divided into two, enabling it to cover its area more thoroughly. Another, consisting of Ms Odah and Mr Andrews, was based at Nhlanguano and from there covered the south of the country. A third, consisting of Mr Child, was based at Simunye and covered the east.

During deployment the teams toured their areas assessing the atmosphere, meeting people and observing the final preparations for the election. On Election Day itself – 18 October 2003 – they were present at polling stations in time to observe their opening. They then visited as many stations as possible during the day and ended by observing a closing procedure. The Teams then followed the ballot boxes to see how they were stored overnight. The counts were held the following morning. Each team followed the ballot boxes from their overnight storage and witnessed one or more counts, before returning to the Royal Swazi Sun Hotel. On polling day the Expert Team visited 45 polling stations in 21 constituencies. The following day it was present at 6 counts.

From 20 to 23 October the Expert Team prepared its report and held a number of follow-up meetings, with the Chief Electoral Officer and others, to obtain clarification and additional information (see Annex C). The Team left Swaziland on Thursday 23 October and its report was carried to London by Mr Thompson for presentation to the Commonwealth Secretary-General.

THE CONTEXT

TRADITION AND THE INSTITUTIONS OF POWER

The Swazi people have a very long history, during which they have developed social rules, systems of customary law and structures of traditional authority which are still very powerful today. Traditional norms remain influential in private life. Customary law is important, as Swaziland has a 'dual system' consisting of a 'western' legal system and another based on traditional law and custom. Meanwhile, traditional authority figures continue to wield immense power over the lives of ordinary Swazis. At the local level hereditary chiefs oversee and act as the guardians of the community. Nationally, the King, the Queen Mother and their network of royal and other advisers dominate the political system and public life: in practice they are the government – a government which the people cannot change, even though there are direct elections.

There is a Parliament, consisting of two Houses. The lower house is the House of Assembly: fifty-five of the MPs are chosen by direct elections, each representing an 'inkhundla' (in parliamentary terms a constituency, but also a local authority area consisting of a number of chiefdoms) while ten are appointed by the King¹. The Upper House is the Senate, ten of whose members are indirectly elected by the House of Assembly, with another twenty appointed by the King. However, while in recent years Members of Parliament have sometimes been assertive, Parliament is weak and in general subservient to the monarchy.

There is a Prime Minister and a Cabinet, and there are Government ministers and departments. But, as the *Establishment of the Parliament of Swaziland Order, 1992* says "the executive authority of Swaziland shall vest in the King". The Government is very much the King's Government. Its policies are those of or approved by the King. It is led by a Prime Minister who is appointed not because he commands the confidence of the majority in the House of Assembly, but because he commands the confidence of the monarch.

Some powers may be delegated, but ultimately both executive and legislative power is vested in the King. He has the right to veto whatever legislation Parliament adopts – because he is not obliged to give his assent – and under his residual emergency powers he may rule by decree whenever Parliament is not sitting. In practice the two main bodies which advise the King – the Council of Ministers and the Swazi National Council (which is made up of princes and others nominated by the King) – have more power than either the Government or the Parliament.

¹ The regional allocation was as follows: there were 14 constituencies in the north, 16 in the centre of the country, 14 in the south and 11 in the East.

GOVERNMENT REFUSAL TO OBEY COURT JUDGEMENTS

Considerable controversy was caused by two Decrees in the two years prior to the National Elections the Expert Team had come to observe. In June 2001 Decree No 2 reasserted and strengthened the King's absolute authority, severely restricted freedom of speech and freedom of the press, reinstated a 'non-bailable offence' provision and undermined the judiciary and Parliament. That Decree was later withdrawn. But in Decree No 3 which followed, the King retained the 'non-bailable offence' provision. This was declared by the Court of Appeal to be invalid. The court also ruled against the Government in two other cases. The Prime Minister subsequently announced that the Government would not be bound by the judgements. The entire court of appeal then resigned in protest. Subsequently, the Government refused to free a number of prisoners whose detention the court had declared illegal.

These incidents came after a number of other clashes between the Government and the judiciary. In one the Attorney-General allegedly advised the Chief Justice and two other judges that they would be removed if they defied his advice to dismiss a case of abduction allegedly involving agents of the King. These led critics to question official commitment to the independence of the judiciary.

The impasse between the Government and the Appeal Court judges remained when the Expert Team arrived in the country. Several of those who briefed the Team referred to a "rule of law crisis".

POLITICAL PARTIES BANNED

At the same time there has been a long-running "political rights crisis". Although several political groups operate openly and are able to criticise the Government, there is a formal ban on political parties. There are direct elections, a universal franchise and a secret ballot. But the organisations that are needed to provide a structure for political participation, to inject issues into the campaign by translating preferences into public policies and programmes, to present a comprehensive alternative to the incumbent government, to aggregate and represent social interests and to carry out all the other functions that political parties perform, are prohibited. Several of those to whom we spoke prior to election day pointed out that the absence of political parties reinforced the tendency for individual MPs to focus on important but local issues to the detriment of establishing national plans and priorities. It also placed a heavy burden on NGOs: for in the absence of political parties it falls to them to act as vehicles for change, to express dissent, to promote transparency and to enhance the national conversation.

The denial of freedom of association – one of the most fundamental political freedoms – is accompanied by limitations on freedom of speech

through the occasional harassment of journalists and a government policy not to permit private broadcasting. Campaigns for democratic rights by pro-democracy activists, trade union and other civil society bodies have been met with police action ranging from the withholding of permission for meetings², to forcible dispersal of such events, harassment and arrests.

DRAFT CONSTITUTION

Over the years there has been considerable pressure for reform, especially since the re-introduction of universal adult suffrage in 1993. In particular, there have been demands for a new Constitution. A Constitutional Review Commission which was set up in July 1996 reported five years later and was then disbanded. In January 2002 the King appointed a Constitutional Drafting Committee which presented the King with a draft Constitution on 31 May 2003.

Its supporters point out that the new draft makes provision for a Bill of Rights, the separation of powers, the independence of the judiciary and the strengthening of gender equality. However, the draft does not provide for a transfer of power from the King to the Parliament and Government and it retains the ban on political parties.

Many we spoke to said that they thought the National Elections should have been held only after the Constitution was adopted. As it was the elections were held at the end of the post-publication process of public consultation on the draft Constitution. The final draft now has to be drawn up and adopted. But the means and the timing of that adoption are as yet unclear³.

This then is the context in which Swaziland prepared for the 2003 National Elections. Its principal characteristics were a political system which placed power in the hands of the King, the Queen Mother and their advisers; restrictions on and the denial of fundamental rights, most seriously the banning of political parties; a refusal by Government to obey court judgements; and uncertainty regarding the country's future constitutional framework.

It was clear to the Expert Team that in view of some of these circumstances the credibility of these National Elections was not at issue:

² Permission is required from the Commissioner of Police for meetings of a political nature, processions, or demonstrations in any public place.

³ The Commonwealth Secretariat had helped in drawing up the new draft, through the provision of two legal experts – from Ghana and Tonga – to work with the Constitutional Drafting Committee. A senior Secretariat official had also visited Swaziland on a number of occasions since 2001 to assist the process.

no elections can be credible when they are for a Parliament which does not have power and when political parties are banned. We recognised, however, that our observations and recommendations might be of assistance in improving the electoral arrangements which one day will be an invaluable asset to a genuinely democratic Swaziland. It was in that spirit that we set out to observe the preparations for these elections.

PREPARATIONS FOR THE ELECTION

THE ELECTION MANAGEMENT BODY

The election management body is the National Elections Office, which consists of the Chief Electoral Officer and a Deputy Electoral Officer (both appointed by the King) and a professional secretariat of three staff members. There is no Election Commission and the Elections Office has no regional offices: at election time it is reliant on officials of the Regional Administration.

THE LAW

The main items of legislation relating to the electoral process are as follows:

- The Voter Registration Order 1992 (VRO 1992);
- The Elections Order 1992 (EO 1992);
- The Establishment of the Parliament of Swaziland Order 1992 (EPSO 1992).

The Voter Registration Order 1992: the VRO 1992 provides for the display of the voters' register at regional and sub-regional offices. Section 16 further stipulates that a voters' list, as prepared and amended from time to time, should be printed not later than one month before every election, in accordance with Section 32 of the EPSO 1992. Section 17 entitles every interested person to secure a copy at a fee. Citizens are entitled to inspect the register and to make copies or to take extracts from it.

The Elections Office told us that the register was not displayed prior to the primary elections, but that it was available for inspection at some point prior to the National Elections we had come to observe. We were told that as a result of the failure to display the voters register before the primaries some voters did not appear in the voters list for those elections. Even after those elections, it was not clear when or for how long the register was displayed. When we checked shortly before election day we found that the register was invariably not available. This meant that voters could not check on or challenge their entry. We believe that in future the register must be more easily available, at clearly identified locations – preferably at inkhundla level as well as at regional and sub-regional offices - and that copies should be publicly available, especially to candidates and political parties.

This order also sets out the law in relation to election petitions. In our view this needs to be clarified so that - despite legitimate challenges - the process of holding national elections can continue with certainty while the Courts dispose of the matters before them. Currently the law, as contained in Sections 14 and 15 of the VRO 1992, is not clear on the

effect of the filing of an appeal to a Magistrate under section 14 or to a Judge of the High Court or Court of Appeal under section 15. Several objections were raised following the primary elections held in September 2003. Some organisations and individuals brought cases before the High Court. For instance, the former Minister of Justice and Constitutional Affairs, Mr Magwagwa Mdluli, was alleged to have illegally registered some voters in absentia in his inkhundla, Maseyisini. The issue was referred to the High Court; pending the outcome of the case, the secondary elections in Maseyisini were postponed by a court order.

The Elections Order 1992: this Order sets out the law regarding nominations, polling, counting and the results process. Nominations for the House of Assembly are made at the village or chiefdom level. Nominees must be registered voters in that inkhundla (constituency). The procedure set out under Section 4 is that the King issues a writ addressed to the Returning Officer of each inkhundla through the Chief Electoral Officer. The writ specifies the day of nomination of candidates, the time and place of nomination and the day on which the poll shall be held. Then the Chief Electoral Officer publishes the notice for nomination. Under Section 5 of the EO 1992, the number of candidates nominated for each community must be not less than four, and not more than ten. The nomination has to be endorsed and consented by the nominated candidate and supported by not less than fifteen persons registered in the inkhundla. The candidate is required to deliver to the Returning Officer a declaration on oath, as to her/his qualification, and thereafter present himself to the police for the purposes of obtaining a clearance certificate which the candidate then delivers to the Returning Officer.

We were told by the Chief Electoral Officer that there had been 1,500 nominations, 300 of which were for women. We note that the nominations were conducted without prior campaigns. We believe that there should be provision for a campaign period so that citizens can be made aware of the qualities and qualifications of the candidates.

The law also sets out the rules concerning the appointment of agents. It states in Section 8.15 that a candidate at any election may *inter alia* appoint one polling agent and one messenger in respect of each polling station. The candidate has to notify the Returning Officer of such appointments at least seven days prior to polling day.

One complaint we heard was that the provisions of this Order for the appointment of public officers as Returning and Presiding Officers was not complied with, because retired officials had been appointed. We believe that the law should have been followed.

The Establishment of the Parliament of Swaziland Order 1992: this established the Parliament of Swaziland and repealed an earlier 1978 Order. (See page 6 for the composition of the House of Assembly and Senate). The King makes his appointments to the two Houses "after

consultation with such bodies as the King may consider appropriate". It would be, we think, better to stipulate the qualifications of the bodies or persons the King should consult.

The Order also sets out the qualifications that must be met for a person to be a voter or a member of the Senate or House of Assembly. (These are reproduced at Annex G).

THE ELECTORAL TIMETABLE

For the 2003 National Elections the timetable was as follows:

Voter Registration	23 June-4 August 2003
Nominations	23-24 August 2003
Primary Elections	20 September 2003
Secondary Elections	18 October 2003

The primaries, designed to decide who would go forward to the secondary elections – the National Elections our Team had come to see – were held on the basis of universal suffrage and a secret ballot. The rules for the primaries were slightly different from those used in the National Elections. In particular, voters who were not on the register were allowed to vote so long as they could produce a valid registration certificate. We were told by the Chief Electoral Officer that because voters at the primary elections had to vote at specified polling stations other voters could identify them. However, at the National Elections voters would be able to vote anywhere in their constituency, making it necessary for them to both have a registration certificate (or a passport or other form of acceptable ID) and be on the register. It was nevertheless of concern to us that any voters at any election should be able to vote without being on the register.

The outcome of the primary elections was interesting. Of the 50 incumbent MPs who ran for re-election only 20 won their nominations. Several prominent Cabinet Ministers failed to win nomination and most opted not to contest the elections. The 1,500 nominees were reduced to 333 candidates. Of these only 30 were women.

VOTER REGISTRATION

A fresh voters' list is created 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. A three-person Commonwealth Expert Team visited Swaziland in July 2003 to observe the voter registration process. Its report (at Annex F) sets out the procedure in detail.

The Expert Team's main conclusions were that overall the registration process was implemented in an efficient manner by the National Elections Office and that registration staff were well trained and professional. The Team was concerned, however, at the small numbers of people it observed registering. It recommended that in the interest of enhancing the involvement of civil society in the democratic process the electoral system needed to be made more inclusive, so that civil society and political organisations could play a role in educating and mobilising the public on their rights and responsibilities as voters. It also recommended that provision be made in the electoral laws for domestic observers from civil society organisations to observe relevant aspects of the electoral process and for the National Elections Office to facilitate this.

Of a total population of more than 1 million and approximately 400,000 people who could have registered, 228,950 voters were registered for the National Elections, 119,535 of them women. We were told by the Chief Electoral Officer that as late as 10 October corrections were still being made to the register.

We make a proposal on voter registration in Chapter Five.

THE CAMPAIGN

Candidates were allowed to campaign from 22 September to 17 October 2003. Independent campaigning was prohibited, so the campaign was very low-key, with none of the motorcades, rallies and other high profile events which are familiar features of the campaign period in other countries. There were no bill boards or banners and few posters, and those which we did see were black and white A4 sized sheets featuring only the name and photograph of the candidate. We did not come across any leaflets or manifestos. There were neither expenditure limits nor a requirement to submit accounts. Nevertheless, we were told that many candidates did expend funds, for instance by buying beer and food for villagers, organising parties and providing kit for local football teams. One told us that he had provided coffins to members of the local community who could not afford them. People we met told us on several occasions that candidates were expected to build bridges for the local community, even before they were elected.

Most candidates appeared to concentrate on the chiefdom from which they came. In the absence of party political campaigning – with its emphasis on policy and public presentation – it was difficult for voters from outside the candidate's chiefdom to interact with candidates and to compare policies. However, the Returning Officer for the inkhundla did take the candidates around together to various chiefdoms so that they could meet the community. Members of the Expert Team were present at two of these 'hustings' sessions, in the Mautseni inkhundla. The questions from the voters largely concerned funding for the development

of their communities, reflecting a general tendency by voters to see MPs much more as conduits for local development than legislators with a national agenda.

We noted that the underground political parties had not gone so far as to publicly 'unban' themselves and provoke the authorities into repressive action. However, a small number of candidates were linked with particular organisations. While the banned PUDEMO decided not to take part one other organization which is widely regarded as a putative political party was linked with at least one high profile candidate. Similarly women's and youth organisations provided some support for candidates who they believed represented their interests.

CIVIC AND VOTER EDUCATION

The National Elections Office had the primary responsibility for conducting a voter education campaign across the country. However, the Chief Electoral Officer told us that due to limitations on his budget his office was able to do relatively little in this area. Notices were placed in Swaziland's two national dailies, the *Times of Swaziland* and the *The Swazi Observer* and there was some use of radio and television. Meanwhile, NGOs we met told us that their efforts to promote civic education had met with official resistance.

MEDIA

The print media covered the run-up to the elections with vigour. The *Times of Swaziland* was especially active, although it tended to be rather sensational: we hope that it will do more in future to discuss issues as well as to report on personalities. However, coverage by the broadcasting media was disappointing. The limitation on resources was quoted in explanation. Radio Swaziland told us that they carried short items by the candidates early in the morning, but there was little news about the election and in the week up to the poll we heard no discussion programmes or any other substantial coverage. This mattered because the majority of Swazi citizens have access to the radio, so this is a perfect medium for conveying information and creating awareness. Although the state broadcasting media had internal guidelines there was no Code of Conduct regarding the behaviour of the media. There was no allocation of broadcast 'free time' for candidates.

WOMEN

We were told that for these elections there was an organised 'Vote for Women' campaign, although we did not see evidence of this at the local level. Women's groups also organised a number of workshops prior to the election. They complained that female candidates were

disadvantaged as they had more limited resources than men. They were also less confident. Despite the small number of women candidates the fact that there were as many as 30 was regarded as something of a breakthrough. We were told, however, that many men did not welcome the idea of women in Parliament and that pressure would be applied locally to prevent the election of women candidates.

DOMESTIC AND INTERNATIONAL OBSERVERS

There were five groups of international observers: the Commonwealth Expert Team, a group from the South African NGO EISA (Electoral Institute of Southern Africa) and national groups from Botswana, Zimbabwe and Zambia. There were also domestic observers, for the first time at a National Election. These were organised by The Co-ordinating Assembly of Non-Governmental Organisations (CANGO), which placed advertisements in newspapers asking for volunteers. CANGO observers also observed the primary elections.

THE POLL, COUNT AND RESULTS PROCESS

The mood prior to polling day – Saturday 18 October – was one of uncertainty. Three days before election day at least eight court cases arising from primary election disputes were before the courts, as late as the day before the poll the High Court ordered the postponement of elections in three tinkhundla – Gege, Nkhaba and Maseyisini; and although Chief Electoral Officer Robert Thwala had declared 18 October a public holiday – to encourage a good turnout – the Federation of Swaziland Employers and Chamber of Commerce (FSECC) announced that employers were not compelled to pay workers if employees took the day off to vote. Arrangements nevertheless went ahead.

ARRANGEMENTS

The conduct of the poll in each inkhundla was the responsibility of a Returning Officer, appointed by the Chief Electoral Officer. Each polling station was managed by a Presiding Officer, assisted by polling officers and security personnel. The officials were all present or former public servants. The prescribed polling process was as follows.

The polls would open at 7.00am and close at 6.00pm. Before the commencement of the poll the ballot boxes would be shown to the voters and the candidates' agents. They would then be locked in full view of all present. On arrival at the polling station the voter would show her/his left thumb to a polling official who, in order to verify that double or multiple voting was not being attempted, would use a special ultra-violet device to check for traces of the special dye which would be applied after voting. The voter would then present her/his registration certificate to be checked against the voters' register. Then the voter would be given a ballot paper for the election of the Member of Parliament, move to a screened compartment and make a cross on the picture of one candidate of her/his choice. The voter would show a polling official the official mark on the ballot paper, fold it and place it in the ballot box marked 'MP'. The voter would then be given a ballot paper for the election of the 'Indvuna' or 'headman' (in effect a liaison officer between the MP and the community). The procedure would be the same, except that the ballot paper would be placed in a separate box (marked 'Tindvuna'). The voter's left thumb would then be marked with the special dye and she/he would be free to leave the polling station.

At the official closing time, any voter who had already been issued with a ballot paper 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. 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.

The count was due to take place on the morning of 19 October at designated counting centres in each constituency, beginning at 8.00 am. First the seals were checked. Then the boxes were opened, the ballot papers from the different polling stations mixed, the postal ballots added⁴ and the papers sorted by candidate and counted. After the count the Returning Officer would announce the results and declare the winning candidate.

An analysis of the process, based on the Expert Team's observations⁵, is presented below.

EVALUATION

Adequacy of Polling Stations: the polling station layout and facilities were mostly adequate and the atmosphere open and friendly but businesslike. However, some were exposed to the elements (such as Ngwenyameni in Zombodze, which was located in a chicken coop), while others were congested (for example, at Ntondozi) and many seemed to be badly sited: although the provision of official transport helped, some voters told us that they had to walk for as long as three hours. We also noted that polling stations were not always well identified.

Opening and Closing Times: there was a marked variation in the opening and closing times. Most stations visited began voting at or near 7.00am. On the other hand, in Lubuli High School in Lubuli inkhundla the Presiding Officer informed our team that voting started at 6.00am and at Ngwenyameni in Zombodze inkhundla when our team departed at 8.50am voting had still not started. In several places the opening was held up while Presiding Officers waited for the agents to arrive. We believe that the opening and closing times should be clearly set out in the electoral law in future.

Turn-out: even as late as 21 October no official turnout figure was available. However, Radio Swaziland stated the day after the election that it had been around 50%, and voter turn-out appeared to us to have been good at most stations, even though by no means all employers closed their operations for the day. There were long queues at several stations, although there were none at all in some.

⁴ Postal ballots were available to Swaziland diplomats abroad and members of the security forces.

⁵ Polling stations were visited in the following tinkhundla: Kwaluseni, Lamgabhi, Mhlambanyatsi, Manzini North, Siteki, Matsanjeni, Hlane, Mhlume, Lomahasha, Dvokodweni, Zombodze, Somntongo, Matsanjeni, Shiselweni II, Hosea, Lubuli, Ntfontjeni, Piggs Peak, Ntondozi, Ngwempisi and Kukhanyeni.

Adequacy of the register: we found that the voters' register included the names of most of those who wanted to vote. However there were some instances of names not being on the register. At Hlushwana Primary school in Matsanjeni inkhundla six intending voters had registration certificates but could not vote because their names were not on the register. At Dinabanye and Nkonka in Matsanjeni inkhundla there were nine. In Piggs Peak and elsewhere there was a different complaint: here some voters who had registered but transferred found that they were not on the list (and therefore were not allowed to vote) because the transfer process had not been completed in time.

Polling procedures: we were concerned to find that the number of the voter's registration certificate was written on the counterfoil of the ballot paper by one of the polling officials. Since both the counterfoil and the ballot paper bore the same ballot paper number it would in theory be possible to find out how a voter had cast her/his ballot. This is in our view a bad practice and should be discontinued. We also observed that some polling day procedures were not uniformly applied across the country. For instance, in some places the polling station dye was applied to the back of the thumb rather than the nail. We also observed that in some stations ballot boxes were neither locked nor sealed during the voting, that at others they were locked but not sealed and that at some they were both locked and sealed. Even if agents were present we especially regretted the total absence of any locks, which we saw, for instance, at Lomahasha Primary School in Lomahasha inkhundla and at St Pauls, Good Shepherd and Sitsatsaweni Primary Schools in Siteki inkhundla. On the positive side of the account, at all the stations at which we were present we were pleased to note that only those who were on the register were allowed to vote, and that officials demanded the stipulated identification documents from the relatively small number of voters who did not bring their registration certificates.

Efficiency of polling officials: at most stations we visited the Presiding Officers seemed to be aware of the procedures governing the polling process, there were sufficient polling officials and they discharged their duties efficiently. There was relatively fast processing of voters: the average time taken by each voter was four minutes.

The role of the candidate's agents: agents were present at most centres we visited and had few complaints. If anything they were too relaxed: they generally remained quiet even when voters had well-founded complaints about the process. We regretted that none of them had copies of the voters' register.

Secrecy of the ballot: secrecy of the ballot during the marking process was assured in all but one of the polling stations at which we were present. The exception was in Ntondozi inkhundla, where it was observed that the voting compartment was facing the wrong way and that the marking of the ballot paper was visible.

Voter behaviour: it was clear from our observations across the country that voter education prior to the elections was inadequate. Many voters in the rural areas appeared to be confused as to the procedure following their collection of the ballot paper and had to be guided at every stage by the Presiding Officer before casting their votes. The voters themselves were very orderly as they waited calmly for their turn to vote. However, traders selling snacks and fruit were sometimes disruptive and in some places the polling station was very noisy – at Bhekinkhosi Primary School in Kukhanyeni inkhundla, for instance.

Security: this was provided by police, sometimes supported by soldiers. According to our observation it was effective and discreet.

Logistics/materials: all but one of the polling stations visited had a good supply of the required materials.

Domestic Observers: we welcomed the presence of domestic observers, who in our view were diligent and competent. However, there were only 110 of them. We hope that there will be many more for the next elections.

Women Voters: the turnout of women voters as a proportion of the total number was impressive. We cannot comment on pressures that might have been applied elsewhere, but during our observation at the polling station we were aware of only one aspect of the process that may have impeded their full participation in the poll: this was the poor standard of transport in some places, which one agent told us had deterred some women from voting.

Closure: most polling stations we visited closed at 6.00pm. The stipulated procedures were adhered to and the police took safe custody of the ballot boxes at all the stations we observed. We were, however, surprised that agents did not always follow the boxes to the police station.

The Count: in all cases where we were present we were able to confirm that the integrity of the sealed ballot boxes had not been compromised during the night. Facilities at the counting stations we saw were adequate, except for Ntondozi which was cramped. The count started late at several of the centres at which we were present: for instance at Shiselweni II it started at 9.35am, while at Zombodze it had still not started at 9.30am. While there were slight variations from place to place the procedures were adhered to. Candidates and/or their agents and domestic and international observers were allowed to observe. The procedure for the announcement of the results was properly implemented.

Media Coverage: we were surprised at the inadequacy of election day coverage and the information provided on election day by Radio Swaziland, which of all the media has the most extensive reach: the fact that it was election day was not even mentioned on the early morning news. We were told that the explanation for Radio Swaziland's generally poor coverage was due to inadequate resources but cannot believe that this is the only reason for the inadequacy on polling day. It was a significant shortcoming.

SHORTCOMINGS AND SUCCESSES

As noted above, there were some shortcomings. Of most importance was the recording on the ballot paper counterfoil of the number on the voter's registration certificate; the failure to lock some of the ballot boxes during voting; the faulty application of the polling station dye in some places; the variation in practice concerning and confusion over the opening and closing times; the location and identification of the polling stations; the failure to provide candidates' agents with copies of the register, the agents' sometimes inadequate understanding of their role and their absence in some places; the small number of domestic observers; and the inadequacy of coverage and information on state radio on election day.

But these were outweighed by the successes. The commitment to the election by those who voted was clear. Voters turned out despite the very cold and windy weather, sometimes long queues and the threat by the employers not to pay absent workers. The number of women candidates - though still inadequate - increased. A genuine and largely successful attempt was made to ensure the secrecy of the ballot, with well-screened voting compartments. We were pleased to note that at all the stations at which we were present only those who were on the register were allowed to vote, and that officials demanded the stipulated identification documents for all those who did not bring their registration certificates. There was an open, friendly and businesslike atmosphere at the stations we visited, the process was smooth, the layout good and voters were processed quite fast. Voting and counting centres were generally well managed: the Presiding Officers and election staff were efficient and generally understood and followed the correct procedures. The police were civil, discreet and effective: we saw no intimidation or harassment of voters in any of the stations visited.

OVERALL JUDGEMENT

Our overall judgement is that within the serious limitations set out in Chapter Two and given the shortcomings noted above, the elections were well conducted.

CONCLUSIONS AND RECOMMENDATIONS

We do not regard the credibility of these National Elections as an issue: no elections can be credible when they are for a Parliament which does not have power and when political parties are banned.

Whatever happens regarding the draft Constitution we hope that progress can soon be made to allow political parties and to introduce constitutional arrangements by which an elected Parliament and the Government which is drawn from it will have real power.

We noted the serious concern regarding observation of the rule of law and the separation of powers, which are both key elements in any democratic arrangement.

So far as the conduct of these elections is concerned:

PREPARATIONS FOR THE ELECTION

- **Timing:** we were surprised by the timing of the elections and agree with the Commonwealth Expert Team which was present in Swaziland for voter registration in July 2003 that it would have been preferable for the consultative process on the Constitution to have been concluded first. We note that the decision on timing meant that voter education prior to the election and civic education on the Constitutional issues would be undertaken simultaneously. We believe that this was undesirable, because it led to confusion in the minds of voters and competition for the same resources.
- **Election Management Body:** we commend the Chief Electoral Officer and his staff on their management of the electoral process, especially in view of their small numbers. However, we believe that Swaziland should establish an independent election management body. Such a body, staffed by officials who are independent of the Government service, is essential for proper election management.
- **The Voters' Register:**
 - we believe that present voter registration arrangements should be revised with a view to a complete re-registration, the use of a continuous voter registration system thereafter and the introduction of a photo-ID card system;
 - we agree with the Commonwealth Expert Team which was present for voter registration, that "technical and financial assistance should be provided to the National Elections Office so that it may achieve the capacity necessary to establish and maintain a permanent computerised voter register";

- we were informed that the voters' register was not displayed prior to the primary elections: we regret this and believe that in future the Electoral Office must meet the timetable for publication and display;
 - contrary to the law, the register did not appear to be available at all regional and sub-regional offices prior to the National Elections, which meant that voters could not check on their inclusion in the list. We believe that in future the register must be more easily available, at clearly identified locations – preferably at inkhundla level as well as at regional and sub-regional offices - and that copies should be publicly available, especially to candidates and political parties.
- **Political Parties:** the ban on political parties has damaged Swaziland. It denies the right to freedom of association and prevents the formulation of national manifestos, programmes and platforms on which candidates – and a potential government - can be judged by the voters. It also removes the opportunity for the democracy and transparency in candidate selection which party processes can bring.
 - **Campaigning:** we believe that the absence of political campaigning as it is understood elsewhere has reduced the opportunities for the candidates to interact with and be accountable to the voters, and has harmed the electoral process.
 - **Women Candidates:** we were disappointed at the small number of women who were selected as candidates and hope that steps can be taken to increase the number for future elections;
 - **Voter and Civic Education:** there is a need for much more of both, so that voters are aware of the importance of registering to vote, the role of Government and Parliament, and the choices and opportunities before the citizen. We noted the frustration of NGOs that they were not able to do more in this area and hope that they will be enabled to do so in the future.
 - **Media Coverage:** we were disappointed by the coverage provided by the electronic media, which is especially serious in the case of radio given its reach, but impressed by the vigour of the print media. We believe that a Code of Conduct should be introduced well ahead of future elections, to ensure high standards and balanced coverage.
 - **Officials:** we were concerned at the absence of the election authorities at the tinkhundla prior to election day, which meant that legitimate questions and inquiries by citizens about voting procedures could not be pursued.

THE POLL, COUNT AND RESULTS PROCESS

Earlier in the report we noted several shortcomings in the poll, count and results process. The most important were:

- the recording on the ballot paper counterfoil of the number on the voter's registration certificate;
- the failure to lock some ballot boxes during voting;
- the faulty application of the polling station dye in some places;
- the confusion over polling station opening and closing times;
- the location and identification of the polling stations;
- the failure to provide candidates' agents with a copy of the register, the agents' sometimes inadequate understanding of their role and their absence in some places;
- the small number of domestic observers;
- the inadequacy of coverage and information on state radio on election day.

But these were outweighed by the successes:

- the commitment to the election by those who voted;
- the increased – though still inadequate – number of women candidates;
- the genuine and largely successful attempt to ensure the secrecy of the ballot;
- the adherence to procedure;
- the positive atmosphere at, good management of and efficiency of the polling stations and the effective security.

Our overall judgement is that within the serious limitations set out in Chapter Two and given the shortcomings noted above, the elections were well conducted.

RECOMMENDATIONS

We recommend:

- the early promulgation of a new Constitution providing *inter alia* for power to be held by Parliament and Government, the existence of political parties and respect for the rule of law;
- the establishment under the new Constitution of a properly staffed and resourced independent election management body;
- measures to foster an environment in which political parties, civil society and the media can promote wider public discussion of political issues: in this context we recommend a properly-funded civic and voter education programme (including assistance to NGOs) and help to the print and broadcast media so that they can improve their political coverage;
- the revision of all existing election laws and practices and, in order that officials can be fully conversant with the changes made in line with these recommendations, an enhanced and continuous training programme for all voter registration and election officials;
- a complete re-registration followed by the introduction of a system of continuous voter registration, incorporating the use of a photo-ID voter registration certificate.

TECHNICAL ASSISTANCE

We therefore recommend technical assistance as follows and urge the Commonwealth Secretary-General to respond positively to any requests along these lines:

- a programme of expert advice, support and assistance to facilitate the re-introduction of political parties and to enhance the effectiveness of the domestic election observers;
- an adviser to help in the establishment of an independent electoral management body;
- a voter registration adviser to assist in the proposed re-registration and the introduction of continuous voter registration and photo-ID voter registration certificates;
- a media adviser to help the electoral management body and the print and broadcast media with their civic and voter education programmes and to assist the media in their coverage of politics.

OTHER ASSISTANCE

We also recommend:

- a programme of support and assistance for Members of Parliament and parliamentary staff, to be organised by the Commonwealth Secretariat and the Commonwealth Parliamentary Association with the purpose of helping Parliament to be as vigorous as possible;
- assistance in appropriate areas by Commonwealth NGOs such as the Commonwealth Broadcasting Association, the Commonwealth Press Union, the Commonwealth Journalists Association, the Commonwealth TUC and the Commonwealth Local Government Forum.

ACKNOWLEDGEMENTS

We are pleased to have this opportunity to thank all those who have helped us during our time in Swaziland.

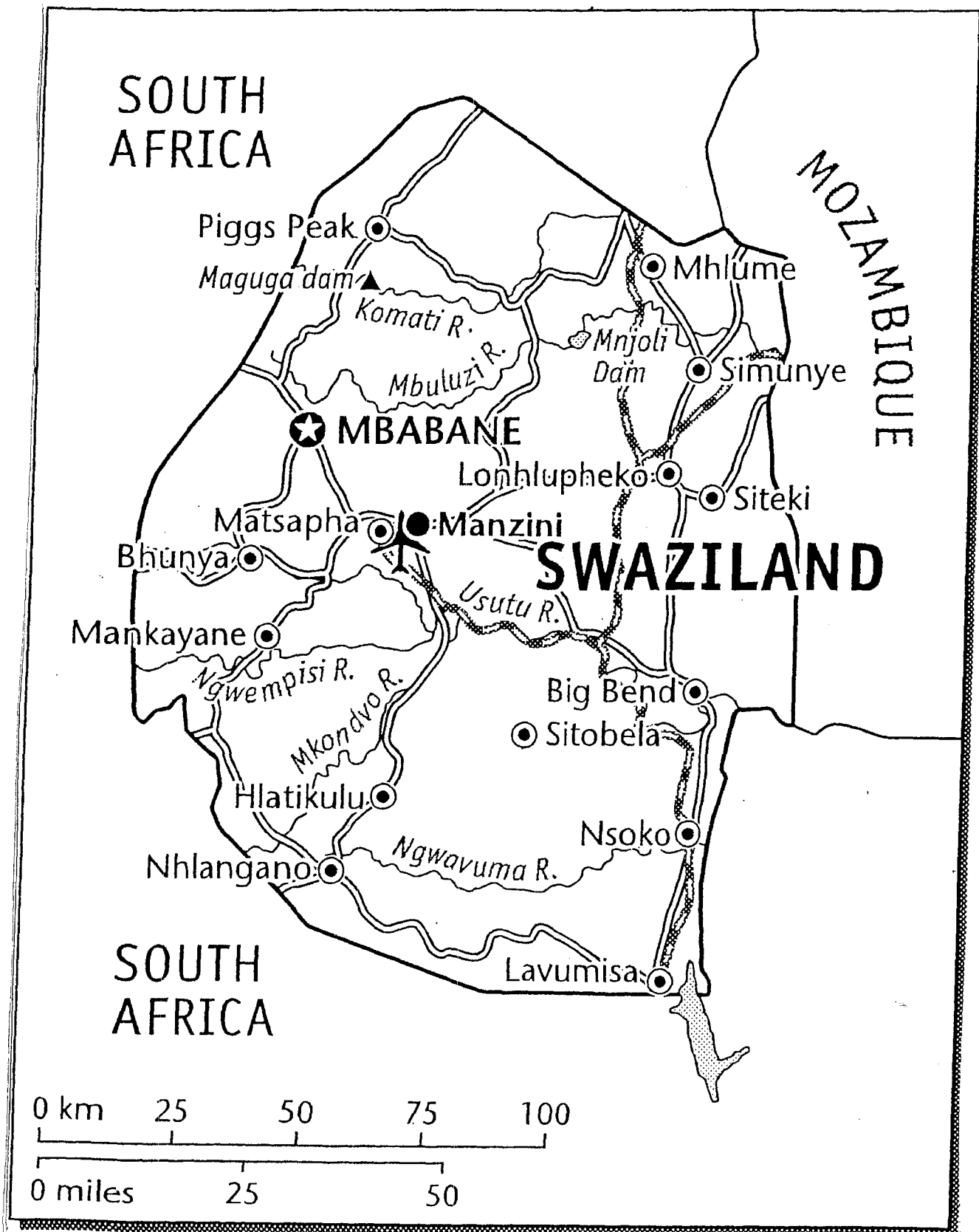
In particular we wish to acknowledge the co-operation and assistance of the Chief Electoral Officer and his staff in Lobamba and in the regions, the Royal Swaziland Police and the civil society organisations, Commonwealth High Commissioners and others who briefed us in Ezulwini and in the field. We owe our drivers – Mr Zakhele Dlamini, Mr Themba Magagula, Mr Mduduzi Nkambule and Mr Sipho Dlamini – special gratitude.

Most of all, however, we wish to express our appreciation to the people of Swaziland. They were without exception good humoured and helpful. We wish them well in their efforts to secure a democratic future.

ANNEXES

ANNEX A

MAP OF SWAZILAND



ANNEX B

BIOGRAPHIES OF THE MEMBERS OF THE EXPERT TEAM

HON DAVID THOMPSON MP

Mr Thompson has been a Member of Parliament in Barbados for 16 years and is an Attorney at Law. He was Minister of Finance from 1992 to 1994 and Leader of the Opposition from 1994 to 2003 and is an active member of the Commonwealth Parliamentary Association. Mr Thompson has been a Legal Consultant for the Caribbean Law Institute, the Caribbean Policy Development Centre and CARICOM in the areas of Trade Law, Intellectual Property Law and the Law of Charities and Non-governmental Associations.

HON HILARY MKATTE

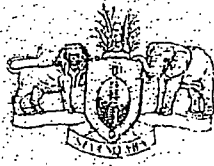
Mr Mkatte is a member of the National Electoral Commission, the Judicial Services Commission and the Board of the Tanzania Legal Corporation of the United Republic of Tanzania. He is now in private legal practice and was formerly an Acting Judge of the High Court and a Commissioner for Lands. Mr Mkatte has observed elections before in Kenya and Uganda.

MRS ANGELA ABAH ODAH

Mrs Odah is the National Co-ordinator of the Transition Monitoring Group (TMG), a coalition of 170 civil society organisations in Nigeria. TMG was formed in 1999 to observe elections, foster civic education, promote democratic norms and campaign for the completion of the transition process in Nigeria. Ms Odah was responsible for the management of 10,000 election observers during the May 2003 Nigerian elections. She has been a consultant on gender empowerment with the Friedrich Ebert Stiftung, for whom she has designed its gender empowerment document and two publications (*FEF/WIN Beijing +5 Impact Assessment* and *Military Rule and Nigerian Women*).

ANNEX C

**INVITATION FROM THE GOVERNMENT OF
SWAZILAND AND REPLY FROM COMMONWEALTH
SECRETARY-GENERAL**



Note No. 1/2003

The Ministry of Foreign Affairs and Trade of the Kingdom of Swaziland presents its compliments to the Commonwealth Secretariat, and has the honour to inform the Secretariat about the upcoming National Elections for Members of Parliament to be held in the Kingdom of Swaziland on the below mentioned dates. The Ministry has the further honour to request the Secretariat to provide its Observers to participate in this event. The dates of the elections are as follows:

Nominations 23- 24 August 2003

/ Primary elections 20 September 2003

Secondary / final elections 18 October 2003

The Ministry of Foreign Affairs and Trade of the Kingdom of Swaziland avails itself of this opportunity to renew to the Commonwealth Secretariat the assurances of its highest consideration.

MBABANE

30 JULY, 2003





COMMONWEALTH SECRETARY-GENERAL

COPY

H E Rt Hon Donald C McKinnon

23 September 2003

Dear Minister

Further to the Note (1/2003) from your Ministry of 30 July 2003, inviting the Commonwealth Secretariat to send observers for the National Elections for Members of Parliament, I am writing to inform you that I have decided to send a Commonwealth Expert Team for the elections which take place on 18 October.

I anticipate that the Team will begin work in Swaziland on Friday 10 October. Its Terms of Reference will be as follows:

"The Commonwealth Expert Team for the 18 October National Elections in Swaziland shall observe the preparations for the elections, the polling, counting and results process and the overall electoral environment and will report to the Commonwealth Secretary-General, with recommendations, if appropriate, for Commonwealth technical assistance. The Secretary-General will in turn send the Team's report to the Government of the Kingdom of Swaziland, the Chief Electoral Officer and Commonwealth Governments. It will then be made public."

I will write shortly concerning the composition of the Team and the Political Affairs Division of the Commonwealth Secretariat will be in contact with your High Commission in London and the Chief Electoral Officer to provide further details. A press release will be issued in the normal way at the start of the mission and the Secretariat will issue a Circular to Governments shortly.

Don McKinnon

Hon Mr Roy Fanourakis
Minister of Foreign Affairs
PO Box 518
Mbabane
SWAZILAND

ANNEX D

**PRESS RELEASE ISSUED BY COMMONWEALTH
SECRETARIAT IN LONDON AND MBABANE ON 9
OCTOBER 2003 AND DEPARTURE STATEMENT
ISSUED BY EXPERT TEAM ON 23 OCTOBER 2003**



COMMONWEALTH

NEWS RELEASE

03/69

9 October 2003

ANTIGUA AND BARBUDA
AUSTRALIA
THE BAHAMAS
BANGLADESH
BARBADOS
BELIZE
BOTSWANA
BRUNEI DARUSSALAM
CAMEROON
CANADA
CYPRUS
DOMINICA
Fiji ISLANDS
THE GAMBIA
GHANA
GRENADA
GUYANA
INDIA
JAMAICA
KENYA
KIRIBATI
LESOTHO
MALAWI
MALAYSIA
MALDIVES
MALTA
MAURITIUS
MOZAMBIQUE
NAMIBIA
NAURU
NEW ZEALAND
NIGERIA
PAKISTAN*
PAPUA NEW GUINEA
SAMOA
SEYCHELLES
SIERRA LEONE
SINGAPORE
SOLOMON ISLANDS
SOUTH AFRICA
SRI LANKA
ST KITTS AND NEVIS
ST LUCIA
ST VINCENT AND THE GRENADINES
SWAZILAND
TONGA
TRINIDAD AND TOBAGO
TUVALU
UGANDA
UNITED KINGDOM
UNITED REPUBLIC OF TANZANIA
VANUATU
ZAMBIA
ZIMBABWE*

Commonwealth to send Expert Team for Swaziland elections

Commonwealth Secretary-General Don McKinnon is sending a five-person Expert Team to Swaziland for the National Elections to be held on 18 October.

The decision to send the Expert Team follows an invitation from the Government of Swaziland. The team will observe preparations for the elections, the polling, counting and results process and the overall electoral environment. The members of the mission are:

Hon David Thompson MP
(Team Leader)
Member of Parliament and former
Leader of the Opposition
Barbados

Ms Angela Odah
Co-ordinator
Transition Monitoring Group
Federal Republic of Nigeria

Hon Hilary Mkatte
Member, National Electoral Commission
United Republic of Tanzania

assisted by two Commonwealth Secretariat staff members:

Mr Christopher Child
Political Affairs Division

Mr Linford Andrews
Political Affairs Division

This is the second Commonwealth Expert Team to be in Swaziland for these elections: a three-person Team was present in July 2003 to observe the voter registration.

Note to Editors

The members of the Expert Team will begin work on 10 October and will remain in Swaziland until 23 October. Their report will be submitted to the Commonwealth Secretary-General, who will in turn send it to the Government of Swaziland, the Chief Electoral Officer and Commonwealth Governments. The report will then be made public.

The members of the Team have been invited in their individual capacities and the views they express regarding the elections will be their own and not those either of their respective Governments or of the Commonwealth Secretariat.

For media enquiries please contact Christopher Child, Political Affairs Division, on +268 6176807.

ISSUED BY THE COMMUNICATIONS & PUBLIC AFFAIRS DIVISION
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* These countries
are currently suspended
from the councils
of the Commonwealth

**Swaziland National Elections
18 October 2003**

COMMONWEALTH EXPERT TEAM

Royal Swazi Sun Hotel, Ezulwini, Swaziland
Tel: +268 416 5000 Fax: +268 416 1859

DEPARTURE STATEMENT

We are leaving Swaziland today having completed our report to the Commonwealth Secretary-General. When he constituted our Expert Team earlier this month he gave us the following Terms of Reference:

"The Commonwealth Expert Team for the 18 October National Elections in Swaziland shall observe the preparations for the elections, the polling, counting and results process and the overall electoral environment and will report to the Commonwealth Secretary-General, with recommendations, if appropriate, for Commonwealth technical assistance. The Secretary-General will in turn send the Team's report to the Government of the Kingdom of Swaziland, the Chief Electoral Officer and Commonwealth Governments. It will then be made public."

We will now deliver our report to the Secretary-General and the process set out in our Terms of Reference will proceed. As soon as it is publicly available we hope that citizens of Swaziland will read our report and that they will see it as a sincere attempt to help advance the cause of democracy.

We have been in Swaziland since 10 October. During that time we have been helped by many individuals and organisations. We are therefore pleased to have this opportunity to thank them. In particular we wish to acknowledge the co-operation and assistance of the Chief Electoral Officer and his staff in Lobamba and in the regions, the Royal Swaziland Police and the civil society organisations, Commonwealth High Commissioners and others who briefed us in Ezulwini and in the field.

Most of all, however, we wish to express our appreciation to the people of Swaziland. Those we met during our stay were without exception genuine, good humoured and helpful: straightforward people who are striving for a better life. We wish them well in their efforts to secure a democratic future and trust that the Commonwealth will continue to work with them as partners in that effort.

Ezulwini, 23 October 2003

NOTE TO EDITORS: the members of the team were Hon David Thompson MP (Team Leader), Ms Angela Odah and Hon Hilary Mkatte

FURTHER INFORMATION: Christopher Child on +44 7710 356 901 or
Linford Andrews on +268 617 6807

ANNEX E

LIST OF MEETINGS HELD

Chief Electoral Officer
Co-ordinating Assembly of Non-Governmental Organisations (CANGO)
High Commissioner, Mozambique
High Commissioner, United Kingdom
Human Rights Association of Swaziland
Lawyers for Human Rights – Swaziland chapter
Lutsango LwakaNgwane
Media Institute of Southern Africa (MISA), Swaziland
Ngwane National Liberatory Congress (NNLC)
People's United Democratic Movement (PUDEMO)
Radio Swaziland
Royal Swaziland Police
Sive Siyinqaba
Swaziland Coalition of Concerned Civil Organisations
Swaziland Federation of Trade Unions (SFTU)
Swaziland National Council
Swazi Observer
Swaziland Television
Swaziland Youth Council
Times of Swaziland
United Nations Development Programme (Swaziland Office)

ANNEX F

**REPORT OF EXPERT TEAM ON VOTER
REGISTRATION, JULY 2003**

**Report of the Commonwealth Expert Team to Voter
Registration in Swaziland
14-18 July 2003**

INTRODUCTION

Following an invitation from the Chief Electoral Officer of Swaziland, Mr Robert M Thwala, the Commonwealth Secretary-General constituted a two-person Commonwealth Expert Team to visit Swaziland for part of the voter registration period scheduled for 23 June - 20 July 2003. The Expert Team comprised Justice Hilary J Mkatte, Commissioner, National Electoral Commission, Tanzania, and Mr William A Sage, Deputy Chief Electoral Officer, Province of Alberta, Canada. They were assisted by Ms Nishana Jayawickrama of the Political Affairs Division of the Commonwealth Secretariat.

The Team's Terms of Reference were as follows: *"Following an invitation to the Commonwealth Secretariat from the Chief Electoral Officer to observe voter registration in Swaziland, the Commonwealth Expert Team is to observe relevant aspects of the organisation and conduct of the voter registration process, in accordance with the laws of Swaziland. They are to consider the various factors impinging on the credibility of this part of the electoral process and to determine in their own judgement whether it provides a sound basis for continued preparations for the General Elections.*

The Expert Team will act impartially and independently. It has no executive role; its function is not to supervise but to observe the process and to form a judgement accordingly. It will submit its report to the Commonwealth Secretary-General, who will in turn forward it to any Commonwealth Observer Group which will be present in Swaziland for the General Elections in 2003. The Secretary-General may also decide to draw any major matters of concern to the Government of Swaziland, the National Elections Office, individuals and groups participating in the electoral process and, if necessary, Commonwealth governments."

Method of work

The Expert Team held meetings with the following individuals and organisations: Mr Robert Thwala, Chief Electoral Officer; Mrs Sibongile Mohammed, Director, National Elections Office; Mr John Mkhonta, Information and Education Officer, National Elections Office; Hon Magwagwa EB Mdluli, Minister of Justice and Constitutional Affairs; Mr Comfort Mabuza, National Director, Media Institute of Southern Africa; Ms Elizabeth Lwanga, Resident Co-ordinator, United Nations Development Programme (UNDP); Mr Lare M Sisay, Deputy Resident Representative, UNDP; Mr Jabulani Dlamini, Governance Advisor, UNDP; HE. Mr Walter S Seate, High Commissioner, South African High Commission; HE. Mr David Reader, High Commissioner, British High Commission; Mr Jan Sithole, Secretary-General, Swaziland Federation of Trade Unions; Mr Obed M Dlamini,

Swaziland Democratic Alliance; Mr Musa Hlophe, Coalition of Concerned Civil Organisations and Dr Joshua Mzizi, Human Rights Association of Swaziland.

The Team visited 27 registration centres across the Southern, Eastern and urban regions of the country.

A. LEGAL AND ADMINISTRATIVE FRAMEWORK:

The principal legislative acts relating to electoral arrangements are:

- the *Establishment of the Parliament of Swaziland Order 1992* (EPSO 1992)
- the *Elections Order 1992* (EO 1992)
- the *Voters Registration Order 1992* (VRO 1992)⁶

Criteria for registration: Any citizen of Swaziland who has attained the age of 18 is qualified to be registered as a voter for the purpose of elections to elect members of the House of Assembly. We were told that the total eligible voting population was around 400,000, or approximately 40% of the total population.

Location of registration centres: Registration of voters takes place at an inkhundla or constituency.⁷ Swaziland is divided into 55 tinkhundla for the House of Assembly elections. Tinkhundla centres are further divided into a number of polling divisions. A voter may register in any one polling division of his choice in the inkhundla so long as he has actually resided in that inkhundla for a continuous period of at least three months or if he has retained his home in that inkhundla for the same period.⁸

Disqualification of voters: A person is not entitled to register as a voter if s/he has either been certified to be insane or judged to be of unsound mind under the laws of Swaziland or is under sentence of death imposed by a court in any country for an offence which constitutes a criminal offence in Swaziland.⁹

⁶ i.e. King's Orders in Council 1/1992, 2/1992 and 3/1992

⁷ S80 of the Draft Constitution describes the tinkhundla system in the following manner: "(1) For purposes of political organisation and popular representation of the people in Parliament, Swaziland is divided into several areas called *tinkhundla*. (2) An *inkhundla* (a) is established by the King on the recommendation of the Elections and Boundaries Commission (b) consists of one or more chiefdoms which act as nomination areas for the elected members of the House (the *primary* level of elections) (c) is, among other things, also used as a constituency for the election of the elected members of the House (the *secondary* level elections) (3) The *tinkhundla* unit or areas, inspired by a policy of decentralisation of state power, are the engines of development and the central pillars underpinning the political organisation and economic infrastructure of the country through which social services to the different parts of the Swazi community are facilitated and delivered."

⁸ Moreover, a person who by the nature of his occupation cannot retain his home in any inkhundla is allowed to register in the inkhundla of his principal place of business. Further, a person who is in government service outside Swaziland (and his spouse and adult children) may register in the inkhundla where he resided prior to taking his post outside Swaziland. (S6, VRO 1992)

⁹ S10 EPSO 1992

National Elections Office: The EO 1992 provides for the appointment of the following officials to perform duties under the EO 1992 and the VRO 1992:

(i) The Chief Electoral Officer (Umphatsi Lukhetfo), who is appointed by the King, is responsible for the overall supervision of elections and preparation of all electoral documents and of all election officers under his/her control.

(ii) The Deputy Chief Electoral Officer- has responsibility to the Chief Electoral Officer

At the present time the position of Deputy Chief Electoral Officer is vacant. A Secretariat, comprising a Director and two officers, has recently been established to support the Chief Electoral Officer on a permanent basis.

(iii) Electoral officers: officers charged with the overall supervision of all election arrangements in the constituencies under them, and the compiling and publishing of a register of voters and the hearing of objections. These officials are seconded from government ministries for the registration period.

(iv) Registration officers: Every polling division has a Registration Officer whose duty is to assist the Electoral Officer in the compilation of the register of voters. S/he is the officer primarily responsible for the initial phase of voter registration.

Method of registration: The Voters Registration Manual, published by the National Elections Office, sets out two ways in which a voter may register. The first, which applies to those registering outside the country, is not relevant for the purposes of this report. The second method is as follows: applicants must attend a public meeting (registration centre) arranged for the purpose of registering voters. There s/he must answer questions put to her/him by the registration officer as to his/her identity. If s/he satisfies the registration officer that s/he fulfills the criteria of citizenship and age, s/he will be duly registered. In rural areas, each chiefdom supplies two members of its inner council to verify the identity of registrants. In urban areas, registrants must provide one form of identity document such as passport, tax identification number, drivers' license, birth certificate, naturalisation papers or national ID card.

The full name and particulars such as codes specifying the inkhundla, polling division, chief and indvuna (supervisor of an inkhundla) is entered by the registration officer onto a form of which the registrant is given a red duplicate. This duplicate serves as the certificate of registration. It contains a serial number which becomes the voter's number in the register of voters. This certificate is valid for 5 years from the date of registration and the voter needs to present this certificate for identification purposes on polling day. If s/he loses this certificate s/he would not be prevented from voting but would need to supply an alternative form of identification such as those listed above.

Preparation of the register: The electoral officer for each inkhundla has responsibility for preparing a register for that inkhundla from the contents of the registration books compiled by the registration officers. The voters list contains serial numbers, surnames and addresses for all voters. There is provision for the drawing up of a supplementary voters list. The electoral officer is responsible for the checking of particulars on this list and for the correction of mistakes.

Amendments may be made up until nomination day and the electoral officer must state reasons for any removals, restorations or additions of names. Electoral officers are responsible for sending completed registration lists for their inkhundla to the NEO in Mbabane where the lists will be transferred onto computer.

We were told that a fresh voters list was created prior to each general election. The ultimate intention is to establish a permanent, computerised voter's register, but staff shortages have meant that this process has been delayed.

Display and inspection of register: The register of voters for a constituency is to be open for public inspection at Regional Administration Offices, Sub-Regional Offices and the office of the electoral officer¹⁰ to allow any voter to object to the inclusion, retention, restoration, addition or removal of any name in the voters list. Objections are to be made on an approved form, and appeals against the decision of the Electoral Officer must be made within 14 days to a magistrate.

We were told that display is scheduled to begin on 18 August 2003.

Elections: Political parties are banned and elections are therefore held on a non-party basis. Direct elections by secret ballot are held for 55 seats in the House of Assembly. The King appoints a further 10 members of the House of Assembly. There is also an unelected 30-member Senate comprising 20 Senators appointed by the King and 10 elected by the House of Assembly.

Nominations for the House of Assembly are made at the village or chiefdom level. The community assembles at the chief's kraal on a designated date to submit nominations. Nominated candidates must be registered voters in that inkhundla and require at least 15 registered voters in the constituency to support their nomination. A minimum of four candidates (upto a maximum of ten) are required to be nominated within each community. Once nominations are received by the NEO, candidates must obtain police clearance.

Primary elections then take place at the chiefdom level. Each chiefdom elects a candidate by secret ballot and these candidates then stand for a secondary election at the inkhundla level. Each successful candidate in the secondary elections becomes the member of parliament for that inkhundla.

Independent campaigning is prohibited for both primary and secondary level elections. The returning officer for the inkhundla takes the candidates around together to the various chiefdoms so that they can meet the community and discuss issues of local concern with them. The state is responsible for the costs of transportation of the candidates.

On 18 July 2003, the Chief Electoral Officer announced the provisional electoral timetable as follows:

- | | |
|---|---------------------------------|
| • Nominations | 23-24 August 2003 |
| • Primary Elections | 20 September |
| • Candidates introduced to constituents | 23 September– 2 October |
| • Secondary elections | 3 rd week of October |

¹⁰ cf. S11 VRO 1992

B. OBSERVATIONS

Our main findings were as follows:

- **Public awareness of the registration exercise**

The NEO placed advertisements on television, radio, the press and posters around community areas. We were told that dramatisations explaining the registration process took place in community centres in rural areas and observed television and print advertisements. We also noted posters prominently displayed around registration centres.

Registration officers we spoke to were of the opinion that the public was generally aware of the registration exercise. However, we had little opportunity to question members of the public as we encountered very few on our visits. When questioned on this, registration officers thought that people were aware of registration but that they were not interested in registering. In response to our enquiries as to the gender and age balance of those registering, we established that on the whole, men and women were represented in approximately equal numbers. However there appeared to be a greater number of older voters registering as compared to 18-29 year olds. Registration officers often told us that young people were on the whole apathetic about the electoral process. It must be noted that our conclusions are based mainly on interviews with registration officers since as noted above, we observed very few people actually registering.

While we were present in Swaziland the Chief Electoral Officer announced that the registration period would be extended for two weeks beyond the month initially allocated.

- **Accessibility of venues**

There were approximately 325 registration centres which operated from 8am-5pm seven days a week. In urban areas these were situated in schools, community halls, regional administration offices, shopping centres and industrial sites. Most rural registration centres were located in the royal kraal or chief's headquarters.

We found that urban registration points were within easy reach of both residents and workers. Many rural centres, on the other hand, especially taking into account the lack of transport and the greater distances involved, would have required lengthy journeys by foot to reach. However, we considered this to have been unavoidable and noted that the chief's headquarters seemed a logical place to carry out registration from and would certainly be a location known to all local residents.

We noted that registration officers often travelled around their polling divisions in order to carry out mobile registrations. On some occasions they had moved to shopping centres frequented by local residents or had conducted door to door registration. We were also informed of instances where staff had visited local schools in order to register those who had recently turned 18 years of age. On several occasions however, we were unable to locate registration staff at the

centres where they meant to be and there was no indication at the centres of where they had moved onto. Indeed, on our visit to the Southern region, two-thirds of the centres visited contained neither registration staff nor an indication of where they had gone. This lack of information would obviously hinder and discourage a person who had travelled to a specific registration centre. While carrying out mobile registrations is highly commendable and demonstrates a commitment to reaching as wide a part of the community as possible, we recommend that in the future there should be a clear procedure for informing the public of days and locations of such registrations.

- **Registration staff**

They are employed on a temporary basis for the registration period and were provided training in the form of day-long seminars. We noted the staff to be uniformly well-trained, helpful and professional in their approach. They all said that their training had been sufficient and that they had not encountered any situations that fell outside their area of training.

- **Ease of registration**

We found that the registration process was extremely quick and simple. Whilst we did not observe many people actually registering, those we did witness were registered in no more than three or four minutes. The public certainly had ample opportunity to register: centres were open on weekends, and in the urban areas of Manzini and Mbabane we were informed that staff had decided to stay open during the lunch hour in order to enable workers to register at a convenient time.

- **Verification of identity**

The procedures whereby an applicant's identity was checked appeared to work well. In urban areas applicants were required to produce one of the specified forms of identification. In rural areas, the competent witness attested as to the applicant's identity and whether they were local to that inkhundla. We were informed that in the case of elderly voters, whether rural or urban, attestation as to identity by the competent witness would be sufficient, since many elderly voters did not possess documentary forms of identification such as passports and driving licences. Registration officials also questioned applicants as to their local provenance and details of their chief. Since this information was supported by the documentary identification supplied and where relevant, verification by the witness, we concluded that the checks in place were sufficiently rigorous so as to ensure that only those entitled to register in that area were permitted to do so.

We were informed by the Chief Electoral Officer that it was envisaged that future registration exercises would require applicants to furnish a national identity card with the intention that for the 2008 elections all registration applications would be accompanied by this card. We were told that some, mostly urban voters, already possessed the new identity card, but that generally passports and tax

identification numbers were the most common forms of documentary identification.

- **Supply of materiel**

There did not appear to be any difficulties regarding the supply of registration materiel to registration officers. We were informed that if they ran out of registration books, they would either contact the electoral officer or wait until s/he visited on their regular round (which took place either daily or every two days). Registration officers were also able to convey messages to the electoral officer through the local police station if necessary.

- **Conditions of work**

We often found that registration officers, particularly but not exclusively, in rural areas, had to work under difficult conditions. Many officers worked outside, either under the shade of a tree or by rocks. This left them exposed to the elements and would cause difficulty in inclement weather. However, on balance we realised that on most occasions there was often little alternative to this. The registration officers were certainly visible to the members of the public, and it was a testimony to their diligence that none complained about their conditions of work.

- **The electoral environment:**

Our main observation with regard to the voter registration exercise was the exceedingly small number of people we actually saw registering during our visits to centres. In approximately 85% of the centres we visited we did not encounter any registrants. While some registration officers at these centres had registered people prior to our arriving, an equal number said that they had not registered anybody that day, despite the fact that some of these interviews took place in the afternoons. One of the reasons could have been that we were present during the official last week of registration (although this was subsequently extended - see above). However, in our experience, the final week of registration would more often see greater numbers of people coming to register themselves.

We did note a difference in percentages registered in rural and urban areas. In several rural areas, we were told by registration officers that upto 50% of those eligible had registered. In some, particularly urban areas, we were told that only 10-25% of the eligible population had registered. Figures reported in the press put the total number of registrants 3 weeks into the exercise at 100,000 or around 25% of those eligible.

As to the possible reasons for this apathy, we did not consider lack of public awareness to be among them. It appeared to us that the lack of public participation in the registration process was symptomatic of a wider public disengagement with electoral processes. For instance, civil society organisations played no role in educating and mobilising voters to register and thus exercise their franchise. The provision of education on electoral rights and responsibilities seemed to be the preserve of the election management body and the chiefs at

inkhundla level. Nor were domestic observers from civil society involved in monitoring the integrity of the registration process. We were of the view that key stakeholders such as civil and political organisations needed to be brought into the electoral process so that they could play an active role in educating and mobilising the public to exercise their vote. We were also of the opinion that public participation in democratic activity both at local and national level may increase if political parties, which currently have de facto existence, were given legal recognition.

The prevailing public uncertainty over the timing of elections, was, we believe, also a factor in the small numbers registering. Those organisations we met strongly called for a postponement of the general elections until public consultations on the draft constitution had been completed and the new constitution enacted. Elections held under the new constitution, would, it was expressed, have greater legitimacy amongst the public. We too concluded that public confidence in the electoral process as evidenced by a higher turnout at elections would be enhanced by the postponement of the elections until the constitutional consultation process had been concluded.

C. CONCLUSIONS AND RECOMMENDATIONS:

- We consider that the overall registration process was implemented in an efficient manner by the National Elections Office.
- Technical and financial assistance should be provided to the NEO so that it may achieve the capacity necessary to establish and maintain a permanent computerised voters register.
- Registration staff were seen to be well-trained and professional in the manner in which they carried out their work.
- There was however a need to clearly inform the public of days when registration officers would be carrying out mobile registrations and of the locations where these would be held.
- We are concerned at the very small numbers of people we noted registering. We hope that the extension of the registration deadline will encourage greater numbers to register.
- We are of the view that a programme of voter education aimed at young voters may help to partially address this apparent apathy.
- We are also of the view that the electoral system needs to be made more inclusive so that civil society and political organisations can play a role in educating and mobilising the public on their rights and responsibilities as voters.
- In the interests of enhancing the involvement of civil society in the democratic process, we recommend that provision be made in the electoral laws for domestic observers from civil society organizations to observe relevant aspects of the electoral process and for the NEO to facilitate this as necessary.

- While we consider that the voter registration exercise has been carried out in a credible and transparent manner, having observed aspects of the voter registration exercise, we are of the opinion that public confidence in the process would be enhanced by and serious consideration should be given to postponement of the elections until the constitutional consultative process has been concluded.

Annex

REGISTRATION CENTRES VISITED

Eastern Region

<i>Inkhundla</i>	<i>Polling division</i>
	Lobamba
	Mahlanya
Mbabane East	Regional Administration Office
	Simunye
Lomahasha	Lomahasha
Dvokodweni	Malindza
Dvokodweni	Mdumezulu
Mabonduweni	Matcetjeni
Mabonduweni	Sigcaweni

Manzini

<i>Inkhundla</i>	<i>Polling division</i>
	Manzini Central High School
Manzini North	St Paul's High School
Manzini South	Nazareen Primary School
Manzini South	Zakhele Community Hall
Kwaluseni	Matsapha Government School
Manzini South	Sihlaheni
	Ngwane Park
Nhlambeni	Shali

Mbabane

<i>Inkhundla</i>	<i>Polling division</i>
	Nkwalini Primary School
Mbabane West	Mahwalala Red Cross
Mbabane East	Msunduzi Hall
Mbabane West	Mbabane Central High School

Southern Region

Shiselweni 2	Mbangweni
	Jopa Primary School
	Textile Factory
Zombodze	Zombodze-royal kraal
	Jericho Primary School
	Ebylylyn Bering

ANNEX G

QUALIFICATIONS TO BE A VOTER OR A MEMBER OF THE PARLIAMENT OF SWAZILAND

The provisions of the Establishment of the Parliament of Swaziland Order 1992 concerning the above are as follows:

Qualifications to be a Voter

Sections 9 and 10 state that:

- "9. (1) Subject to the provisions of section 7, a person shall be qualified to be registered as a voter for the purpose of election of elected members of the House of Assembly if, and shall not be qualified unless, he has attained the age of eighteen years and is a citizen of Swaziland.
- (2) A person shall be entitled to be registered in one Inkhundla or polling division only.
10. No person shall be qualified to be registered as a voter or to vote, if -
- (a) he is certified to be insane or otherwise adjudged to be of unsound mind under any law in force in Swaziland;
 - (b) he is, for an offence which is a criminal offence in Swaziland, under sentence of death imposed on him by a court in any country."

Qualifications to be a member of the Senate or House of Assembly

Sections 19 and 20 state that:

"19. Subject to the provisions of section 20 a person shall be qualified to be elected or appointed as a Senator or to be elected as an elected or appointed as a member of the House of Assembly if, and shall not be qualified to be so elected or appointed unless, he -

- (a) is ordinarily resident in Swaziland;
- (b) is a person qualified for registration as a voter; and
- (c) has been so registered in any Inkhundla.

20. (1) No person shall be qualified to be elected or appointed as a Senator or to be elected as an elected member or appointed as a nominated member of the House of Assembly who -

- (a) is, by virtue of his own act, under acknowledgement of allegiance, obedience or adherence to a foreign power or state;
- (b) is a member of the armed forces of Swaziland or is holding or acting in any public office or is holding or acting in any other office established by or under any law that may be prescribed;
- (c) is a party to, or is a partner in a firm or a director or manager of a company which is a party to, any subsisting Government contract, and has not made the appropriate disclosure of the nature of the contract and his interest, or the interest of the firm or company, therein:

Provided that the provisions of this paragraph shall not apply in the case of a Senator or a nominated member of the House of Assembly if he is appointed as such without his consent being obtained prior to the appointment;

- (d) is an unrehabilitated insolvent or an undischarged bankrupt, having been adjudged or otherwise declared an insolvent or a bankrupt under any law for the time being in force in any country;
- (e) is certified to be insane or otherwise adjudged to be of unsound mind under any law for the time being in force in Swaziland;
- (f) is, for an offence which is criminal offence under the law of Swaziland, under sentence of death imposed on him by a court in any country, or is, for such an offence, under a sentence of imprisonment (by whatever name called) for a term of or exceeding six months, including a suspended sentence, imposed on him by such a court or substituted by the competent authority for some other sentence imposed on him by such a court;
- (g) has at any time been, for an offence which is a criminal offence under the law of Swaziland, under a sentence of imprisonment for a term of or exceeding six months (other than a suspended sentence which has not been enforced) imposed on him by a court in any country or substituted by competent authority for some other sentence imposed on him by such a court:

Provided that if two years or more have elapsed since the termination of the sentence of imprisonment, the person shall not be disqualified for membership of Parliament by reason only of such sentence;

- (h) is disqualified for membership of the Senate or House of Assembly under any law for the time being in force relating to offences connected with elections; or
- (i) in the case of an elected member of the House of Assembly, holds or is acting in, any office, the functions of which involve any responsibility for, or in connection with, the conduct of any election or the compilation or revision of any electoral register.

(2) For the purposes of subsection (1)(c) the appropriate disclosure of the nature of and interest in a Government contract shall be -

- (a) in the case of an elected Senator, disclosure to the elected members of the House of Assembly through the Speaker of the house immediately after the election is held under section 39 of this order;
- (b) in the case of an appointed Senator or a nominated member of the House of Assembly, disclosure to the King immediately after the appointment is made;
- (c) in the case of an elected member of the House of Assembly, disclosure during the period commencing with the notification of the writ for the election in the Gazette and ending three days before the date of the election, by publication of a notice in English in the Gazette and in English and Siswati in a newspaper circulating in Swaziland."