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The Preliminary Statement of the SADC Lawyers' Association (SADC LA) Election Observation Mission to the Kingdom of Swaziland Delivered by the Head of Mission, Professor Michelo Hansungule, on Sunday, 22nd September, 2013 at 10.00 a.m. in the Emantini Room at the Lugogo Sun, Ezulwini, Swaziland

1. Introduction

The SADC Lawyers Association (SADCLA) was officially accredited to observe both the Primary and Secondary Elections in the Kingdom of Swaziland by the Election and Boundaries Commission (EBC) by way of a letter with reference number EBC/47, which was issued on 14th August, 2013. The SADCLA wishes to express gratitude to the EBC for inviting and welcoming its Election Observation Mission to observe the primary elections of the Kingdom of Swaziland, which took place on Saturday, 24 August 2013, and the secondary elections of the Kingdom of Swaziland, which took place on Friday 20 September 2013.

The Association is also indebted to *emaSwati*, the people of the Kingdom of Swaziland, for extending a warm welcome and for their hospitality during both Observation Missions to the Kingdom of Swaziland.

SADC Lawyers' Association

The SADC Lawyers' Association (SADS LA) is an independent voluntary association made up of Law Societies and Bar Associations from the Southern African Development Community (SADC) region. Its mandate is to advance and promote human rights, respect for the rule of law, promote democracy and good governance in the region. In pursuit of this vision, SADC LA works very

closely with other regional and international organisations in the legal profession to help influence politicians and decision-makers in Southern Africa to bring about just societies based on the principles of equal opportunities, independence of the judiciary and protection of fundamental liberties. In that regard, the Election Observation Missions of the Primary and Secondary Elections of the Kingdom of Swaziland falls within SADC LA's broader objective to contribute towards the development of just and democratic societies in the region and the promotion of free, fair and credible elections, as preconditions for durable peace and sustainable development.

2. Mission Objectives

SADCLA's Observation Mission to the primary and secondary elections in the Kingdom of Swaziland had the following objectives - to:

1. Promote understanding and share experiences on the national, SADC, AU and UN principles and standards governing democratic elections in the Kingdom of Swaziland;
2. Facilitate the understanding of the electoral laws and processes in the Kingdom of Swaziland;
3. Observe the elections and produce reports, which inform on the observation processes and make practical recommendations for strengthening democratic processes; and
4. Improve collaboration between SADC LA and the Elections and Boundaries Commission (EBC) and other relevant government, legal and civil society stakeholders.

3. Background to the Mission

Having resolved to engage as observers in the 2013 elections in the Kingdom of Swaziland, the SADC LA undertook a series of activities to assess how the electoral environment (legal and political) conform or may not conform to the existing laws of the land and to the regional and international standards on elections espoused by the SADC, AU, and UN declarations and protocols as benchmarks. Among others, the SADCLA conducted the following activities:

- The SADCLA hosted a training workshop from 25-26 March 2013 on Election Observation and Monitoring, targeting twenty-eight persons pooled from the SADC legal fraternity and civil society organisations to

form a core team of SADC LA observers for elections observation missions in the SADC.

- From 8 – 11 July, 2013, the SADC LA undertook a High-Level Visit to the Kingdom of Swaziland. The delegation was led by the President of the SADCLA, Mrs. Kondwa Sakala-Chibiya and comprised of Mr. Maxwell Boqwana; Ms. Emilia Siwingwa and Mr. Francois Butedi. The Mission conducted courtesy calls on the Chairperson of the Election and Boundaries Commission; the Chief Justice of the Kingdom; the Minister of Justice; the Law Society of Swaziland and civil society organisations, among several others. The objective of the mission was to prepare for the election observation deployment and acquaint the SADC LA with the unique system of governance and electoral laws and processes applicable in the Kingdom Swaziland.
- In February 2013, the SADCLA commissioned a country assessment on the Kingdom of Swaziland to provide empirical information on the country's historical and political background, the legal system, and the unique system of governance prevailing in the Kingdom. This was part of the continuing learning processes purposefully undertaken by the association as a means of equipping and adequately preparing for the Mission. In an effort to better navigate the dichotomy between dualism, that is the traditional and modern systems of governance in the Kingdom, the SADC LA conducted a stakeholder review of the draft report in late March 2013 and undertook several expert consultations. The report is now ready for publishing and shall be made widely available on the SADC LA website and on e-mail immediately following this Mission.
- On 23rd August 2013, Professor Michelo Hansungule led a six-member elections observation team to observe the Primary Elections, which were held on 24th August 2013. The team comprised of three (3) women from Swaziland, Malawi and Tanzania, as well as three (3) men, one from Zambia and two from Swaziland. Preceded by a de-briefing session led by local experts, the observers were deployed to the Hhohho and Manzini regions in Swaziland in three (3) teams.

The SADC LA Secondary Election Observation Mission was deployed from Tuesday, 17th September, 2013 and the mission was officially launched on Wednesday, 18th September, 2013. The Observer Team comprised the following eleven (11) people: five (5) men and six (6) women from the legal fraternity and civil society, with three (3) from Swaziland, two (2) from Zambia, one (1) from South Africa, one (1) from Botswana, one (1) from Lesotho, one (1) from Zimbabwe, one (1) from the Democratic Republic of the Congo, and one (1) from Tanzania.

The Observer Team, also comprising the President of the SADC LA – Mrs. Kondwa Sakala-Chibiya - was once again led by Professor Michelo Hansungule. The Team was deployed to twenty-seven (27) polling stations in the four (4) regions of Swaziland thus:

S/N	Region	Constituencies	Polling Stations
1	Hhoho	- Lobamba	1. Ezabeni, Mlindazwe; 2. Ezabeni Gogo Centre; 3. Lobamba, Lobamba High; 4. Nkanini; 5. Ezulwini Roman Catholic; 6. Langeni; and 7. Somjalose.
2	Manzini	North and South	1. Eticancweni; 2. Zakhele; 3. Mjingo; 4. Mhobodleni; 5. Moneni; 6. Mafutseni; 7. Ngwane Park; 8. Fairview; and 9. Hillside High.
3	Shiselweni		1. Ekupakameni High School; 2. Mauukutfa Primary School; 3. Joppa Primary School; 4. Nsongweni High School; and 5. Nkwene Chief's Kraal.
4	Lubombo		1. Malindza; 2. Mpaka High School; 3. Mhlume; 4. Lumahasha Central; 5. Siteki Makhewo; and 6. Simunye.

Preceding the deployment, the observers participated in a mandatory debriefing session, which covered the following topics presented by local experts drawn from various sectors of Swazi society:

1. The Rule of Law and the State of the Judiciary in Swaziland;
2. The Law Society's Perspectives and Expectations on the Electoral Processes in the Kingdom of Swaziland;
3. Equal Status of Women in Elections in the Kingdom of Swaziland; and

4. The Electoral Environment and Civic Engagement in the Lead Up to the Secondary Elections in the Kingdom of Swaziland.

This debriefing also informed on the final deployment plan.

During the course of the secondary elections period, the SADC LA Elections Observation Head of Mission and SADC LA President formally engaged various national stakeholders including, the Elections and Boundaries Commission (EBC); Lawyers; and Judges. The Head of Mission and SADC LA President also formally interacted and exchanged information with international observer missions, including the Commonwealth Elections Observation Mission; SADC Elections Observation Mission; SADC Electoral Advisory Council; and SADC Council of NGOs.

4. Preliminary Findings

4.1. Pre-election environment

SADC LA noted the empirical information, as well as media and oral reports on incidents that occurred in the lead up to the secondary elections that create concerns over the sufficiency and application of the legal framework governing or related to the elections, including the Constitution.

SADC LA further noted the reports from some sectors of society suggesting an overwhelming increase in the desire for a multi-party democracy in the absence of an enabling legislation for the establishment of political parties. This is notwithstanding the right to freedom of association, which is enshrined and entrenched in Article 25 of the Constitution of Swaziland. Naturally, this draws concerns over Swaziland's capability to hold genuine elections in accordance with the principles set out in the Swaziland Constitution itself.

SADC LA also noted the promulgation of the following six (6) electoral acts which came into force just weeks before the primary elections, following enactment by Parliament and assent by His Majesty, the King: Elections Act, 2013; Elections and Boundaries Commission Act, 2013; Elections Expenses Act, 2013; Voters' Registration Act, 2013; Senate (Elections) Act, 2013; and Parliament Petitions Act, 2013. In this instance, the date of assent raises serious questions over the practical amount of time available to the EBC and civil society groups to conduct a thorough voter education bearing in mind that voter education ended before the Primary elections. In this regard, the SADC LA would like to underscore that voter education in Swaziland, like in other African countries, is a priority.

With such questions, therefore, it was not surprising that challenges to the Primary Election were filed at the High Court seeking an interdict of the secondary elections, based on various allegations including the use of 'muti' (black magic) by primary election candidates. Some of the cases are still being held while others have already been disposed of by the court. An *ex tempore* ruling dismissed five such challenges with costs on the eve of the secondary elections. The SADC LA is of the view that this was unfair on the applicants as it precluded them from having a level playing field in participating in the elections and further denied them opportunities to appeal.

4.2. Election Day

4.2.1.Voting Process

The SADC LA observed the opening of polling stations in the regions where observers were deployed. Most Polling Stations opened on time and had the requisite electoral material to facilitate a smooth voting process. The voting process in most stations was apparently peaceful and smooth with no major incidents, despite the long queues which built up in a number of Polling Stations.

However, SADC LA noted with concern that the confusion and disorganization in the Dvokodweni Polling Station, in Malinzda, in the Lubombo region, voting might have been compromised due mainly to unpreparedness. For example, voting proceeded while the station was being set up with posters of candidates being displayed while voters were already casting ballots; the election materials were not in place 30 minutes after the station opened and voters were given one ballot paper at a time. Some voters left without being marked, which opened the voting process to manipulation, as voters could vote more than once. The presence of the Chief, and his active monitoring of the voting process, was also a major cause for concern as his presence may have influenced some voters to vote in a particular manner, due to intimidation, against their free will. This has raised further concerns about the role of Chiefs in the elections especially as many polling stations were based inside royal kraals and in some instances, within close proximity of the Chiefs' residences.

The SADC LA Observers also noted that while in some Polling Stations, special arrangements were made for the elderly, in others like the Roman Catholic School in Ezulwini, the elderly were made to stand in long queues like all the other voters. The SADC LA also noted with concern that the visually disabled (blind) voters were not provided ballot papers in braille. In one Polling Station, an electoral official assisted a visually disabled voter to complete a ballot paper,

thereby raising concerns about the voter's right to privacy as well as the voter's ability to freely exercise their right to vote.

The SADC LA also observed that in many Polling Stations, voting booths were placed very close to one another, thereby compromising the integrity of the vote.

The SADC LA observed with concern that there were inconsistent applications of election procedures. For example, in some Polling Stations, registration of voters was done by hand and voters were provided with slips, while in other stations the procedures were different. Again, there were no uniform standards in the verification of special votes as some were verified at the Polling Station while others were included in the ballots counted at the Central Counting Centre. Furthermore, it was possible to arrive at different interpretations, applications, therefore creating confusion regarding the ballot papers - whereas during the primary election, the ballot papers had eight (8) boxes with pictures of eight (8) candidates, during the secondary election some pictures had been removed leaving empty spaces under the pictures of the current candidates. In this regard, some voters used the empty spaces to mark their votes to express their choices - in some Polling stations, those ballots were accepted, whereas in some stations like Dvokodvweni Polling Station, those were regarded as spoilt ballots. Fifty (50) out of fifty nine (59) spoilt votes in this Polling Station were as a direct result of this.

The SADC LA also noted an incident where Observers were refused access to a Polling Station unless they completed a declaration of secrecy form.

It is the view of the SADC LA that these discrepancies in the interpretation and application of electoral processes and legislation are a manifestation of insufficient civic and voter education to both the electorate and particularly, the electoral staff.

Otherwise, the SADC LA noted with satisfaction the high turn-out of female voters in many Polling Stations. For example, in a Polling Station in Manzini North, about 46% of voters were women and 99% of the electoral officials were also women. However, the SADC LA notes with concern that following the secondary elections, the number of elected female candidates has fallen far below those contesting in the Primary Elections and even further below the 50% threshold prescribed in the SADC Protocol on Gender and Development.

SADC LA also noted with satisfaction and wishes to commend the EBC for the transportation arrangements made for the elderly and persons with disability to and from Polling Stations.

4.3. Post – election

4.3.1.Vote Counting

While vote counting seems to have been satisfactory and in accordance with legislative directive/provisions, albeit delayed, the SADC LA observed with concern that the counting process itself was laborious and tedious and is in need of urgent reform. The SADC LA also noted that the logistics of transporting the actual ballot papers from voting stations to central counting areas is a risk and a potential area for manipulation and interferences.

4.3.2.Post- election-environment

The post-election environment was generally calm with no reports of dissatisfaction or violence reported in the areas observed.

5. Highlight of the Areas of concern

- 5.1. The SADC LA noted that (6) six electoral laws were enacted just weeks before the start of the primary elections and this may have had an adverse effect on voter education and in the capacity of the election officers to discharge their responsibilities in accordance with the newly enacted legislation because they may not be aware of the new legislation.
- 5.2. Discrepancies – SADC LA observed with concern that there was a clear lack of uniform standards in the interpretation and application of electoral processes, which varied from Polling Station to Polling Station.
- 5.3. Cultural practices impacting on women’s rights: SADC LA observed that while there was a high turnout of female voters in Polling Stations observed by the organization, there are still several cultural practices that hinder women’s full participation and access to electoral processes. A case in point is the lady who was disqualified for taking up candidacy for wearing trousers. SADC LA also observed that other female voters had to wear kangas (a wrap) in order to vote in Polling Stations within the Chief’s kraals, which creates a restriction on the freedom of exercising one’s right to vote.
- 5.4. Voter education: SADC LA noted with concern that only the EBC conducted voter education and that there is no report available about the extent and reach of that process. There was inadequate voter education

to the public, electoral staff as well as judicial officers, resulting in different interpretations and applications of electoral processes. Here we are referring to the need to unpack the term “voter education” whenever it is used and to highlight that judges and lawyers, like voters and electoral officials, should be exposed to voter education and to emphasize the need for the government to create special electoral courts in order to timely and independently facilitate electoral disputes.

- 5.5. Voting Stations: SADC LA observed that the arrangement to have voting stations within the Chief’s kraals might compromise the free exercise of the right to vote for some villagers, in particular.
- 5.6. Vote Counting - SADC LA observed that the logistics of transporting ballots from Polling Stations to central counting centres was open to many security risks and may have contributed to the delays observed in the start of the counting process in many of stations.

6. Recommendations

Drawing on the information gathered in the pre-election phase; and based on its observations and consultations with local stakeholders; SADCLA provides the following recommendations:

6.1. Preliminary Recommendations to the EBC

Efforts should be made to/towards -

- 6.1.1. Continued and continuous reform of the electoral system and laws;
- 6.1.2. Continuous update of the voters roll;
- 6.1.3. Develop uniform method of verifying and counting special votes at the requisite polling station rather than at the counting centre;
- 6.1.4. Conducting of vote counting at polling stations to avoid delay and logistical, as well as security, risks of transporting them to different venues. The votes would then be collated in a central place;
- 6.1.5. Accredite other NGOs to conduct voter education on a continuous basis;
- 6.1.6. Improve electoral infrastructure, particularly larger spaces to accommodate polling booths;
- 6.1.7. Continuous registration of voters as people attain majority age; and
- 6.1.8. Voting Stations should be held in neutral places particularly outside the Chief’s Kraals;

6.2. Preliminary Recommendations to the Government of the Kingdom of Swaziland

- 6.2.1. Recognising that the EBC does not have a mandate over the political system, but given Section 25 of the Constitution which provides for the freedom of association, the SADC LA recommends to authorities beyond the EBC to implement Section 25 of the Constitution as interpreted and applicable to the regional and international instruments applicable to the Kingdom of Swaziland;
- 6.2.2. Implementation of the growing views of sections of society, as guaranteed in section 25 of the Constitution, which called for the introduction of a multi-party system. SADC LA is not prescribing a multi-party system as the relevant system, but recommends that the will of the people be respected in this regard. Furthermore, the SADC LA recommends the speedy enactment of the implementing legislation, as a means of implementing Section 25 of the Swaziland Constitution`

7. Conclusion

The SADC LA Observation Mission has noted that the elections were held in an “apparently peaceful” manner.

A more detailed report of our findings with detailed recommendations will be released and shared with all stakeholders, including the Government of the Kingdom of Swaziland.

The report will be available on the SADCLA website at the end of October 2013.

By and for the SADC Lawyers’ Association (SADC LA) Elections Observation Mission to the Kingdom of Swaziland, Professor Michelo Hansungule (Head of Mission).

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