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# EISA ELECTION OBSERVER MISSION REPORT

# SWAZILAND



HOUSE OF ASSEMBLY ELECTION  
19 SEPTEMBER 2008



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EISA ELECTION OBSERVER MISSION REPORT No 29

EISA TECHNICAL  
ASSESSMENT  
TEAM REPORT

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P O Box 740  
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South Africa  
Tel: 27 11 482 5495  
Fax: 27 11 482 6163  
E-mail: [eisa@eisa.org.za](mailto:eisa@eisa.org.za)

[www.eisa.org.za](http://www.eisa.org.za)

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EISA strives for excellence in the promotion of credible elections, participatory democracy, human rights culture and the strengthening of governance institutions for the consolidation of democracy in Africa.

## CONTENTS

<b>Executive Summary</b>	<b>vii</b>
<b>Acknowledgements</b>	<b>viii</b>
<b>Terms of reference</b>	<b>ix</b>
<b>The EISA approach to election observation</b>	<b>xi</b>
<b>1. Political and socio-economic background</b>	<b>1</b>
1.1 Introduction	1
1.2 The demise of democracy	2
1.3 New challenges to the autocratic order	2
1.4 Constitutional reform	3
1.5 Run up to the 2008 elections	4
1.6 Geographic and socio-economic context	5
<b>2. Constitutional and legal framework</b>	<b>8</b>
2.1 The Constitutional order	8
2.2 Elections and Boundaries Commission	9
2.3 Electoral system	11
<b>3. Stakeholders: Political parties, mass media and civil society</b>	<b>13</b>
3.1 Party system, political parties and campaigning	13
3.2 Mass media	15
3.3 Civil society	15
<b>4. Election management</b>	<b>18</b>
4.1 Delimitation of constituencies	18
4.2 Setting of election dates	19
4.3 Voter registration	20
4.4 Registration of political parties	23
4.5 Nomination of candidates for elections	23
4.6 Campaign process	24
4.7 Media	25
4.8 Funding of political parties	26
4.9 Conflict prevention and management	26
4.10 Civic and voter education	26

4.11 Stakeholder relations	27
4.12 Electoral observation	27
4.13 Electoral staff	28
4.14 Electoral materials	29
4.15 Secrecy of the ballot	30
4.16 Voting and counting processes	31
4.17 Presentation of results	35
<b>5 Contributions of foreign governments</b>	<b>38</b>
<b>6. Post-election developments</b>	<b>38</b>
<b>7. Findings and recommendations</b>	<b>39</b>
7.1. Constitutional and legal framework	41
7.2. Stakeholders: Political parties, mass media and civil society	43
7.3 Election management	44
<b>Tables</b>	
Table 1: Kingdom of Swaziland selected indicators	7
Table 2: Key electoral dates in 2008	20
Table 3: Voter registration trends	22
Table 4: Polling units and materials	29
Table 5: Distribution of registered voters in Mandlangamphiso	30
Table 6: Voting patterns in Mandlangamphiso constituency	36
Table 7: Directly elected members of the House of Assembly by gender	37
Table 8: Voting statistics 1993 to 2008	38
<b>Appendices</b>	
Appendix 1: Members of the EISA Team	48
Appendix 2: EISA Technical Team launch press release	49
Appendix 3: Schedule of meetings and activities conducted	50
Appendix 4: Election results for Mandlangamphiso Constituency	52
Appendix 5: Voting Statistics for Mandlangamphiso Constituency	52
Appendix 6: Swaziland's EBC's code of conduct for international observers	53
Appendix 7: Directly elected Members of Parliament	54
Map of Swaziland	6

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## EXECUTIVE SUMMARY

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In line with its goal of promoting credible elections and democratic governance in Africa, EISA deployed a four member technical assessment team to the Swaziland House of Assembly election which was held on 19 September 2008.

This report sets forth the assessment of the EISA Team to the Swaziland elections including the Team's observations and analysis of the electoral process from the pre-election phase and the polling phase to the tabulation and announcement of the election results and allocation of House of Assembly seats. The report also presents the mission's findings and recommendations.

The Team prepared for the mission by studying the Constitution, electoral and other related electoral law, reviewing election reports of previous missions and researching and analysing the context within which the elections were to take place.

On 13 September 2008 the Technical Assessment Team arrived in the country and set about meeting with stakeholders and attending briefings. In the process the Team was able to accumulate at first hand the perceptions of stakeholders, the opinions of experts, and a mass of primary documents.

On the polling day, these teams covered 28 polling stations in three of the four districts. The Team members began to depart from Swaziland by 22 September.

The Team used the Principles for Election Management, Monitoring and Observation in the SADC Region (PEMMO; <http://www.eisa.org.za/EISA/publications/pemmo.htm>) as the basis for its election assessment. PEMMO is a document that was developed under the auspices of EISA and the Electoral Commissions Forum (ECF) of Southern African Development Community (SADC) Countries. It outlines standards and best practices for the conduct and assessment of elections in the SADC region.

Using PEMMO, on the basis of its observations, the Team compiled a list of findings from which conclusions were drawn and recommendations made.



## ACKNOWLEDGEMENTS

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EISA's Technical Assessment to Swaziland would not have been possible without the assistance and support of a number of people and institutions. The mission expresses its gratitude to all those who directly or indirectly contributed to the mission's success.

We thank the Independent Elections and Boundaries Commission of Swaziland (EBC) for inviting EISA to observe the 2008 House of Assembly elections in Swaziland and for facilitating the accreditation of Technical Assessment Team members as well as being available to respond to the mission's queries. The information provided was useful to the mission in achieving its objectives and especially in understanding the context within which the elections were being held.

Thanks go also to the political parties, civil society organisations (CSOs) and academics in Swaziland who made themselves available, not only for the briefing session but also to meet with the EISA Team in Mbabane and Manzini.

The Team is indebted to the people of Swaziland for their warmth, and willingness to share their experiences and their opinions on the elections as well as political developments in their country. We commend their peacefulness, which was evidenced by the calm environment within which the elections took place. Our gratitude is also extended to the Swiss Agency for Development and Cooperation (SDC) in Pretoria, without whose generous funding the mission would not have taken place. Thanks go to Ms Zahira Seedat, who organised and coordinated the logistics, and to Mr Deane Stuart and Mr Victor Shale, who prepared this report.

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## TERMS OF REFERENCE

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### INTRODUCTION

The Electoral Institute of Southern Africa (EISA) is sending a four member Technical Team to observe the Swaziland Secondary Elections to be held on the 19 September 2008. This is a short term Observer Mission concerning itself only to a limited extent with the pre-election process and focusing on the actual electoral process after familiarising itself with the legal framework of the Swaziland electoral process. Represented in the Mission will be EISA staff and a member of Namibia NGO Forum (NANGOF).

#### Objectives of the mission

1. To assess whether conditions exist for the conduct of an election that reflects the will of the Swaziland people.
2. Assess whether the election is conducted in accordance with the electoral legislative framework of Swaziland.
3. The Mission will use the "Principles for Election Management, Monitoring and Observation in the SADC Region" to assess the elections (PEMMO; <http://www.eisa.org.za/EISA/publications/pemmo.htm>).

### METHOD OF THE MISSION

In order to achieve the above the mission will:

- Obtain accreditation from the Swaziland Elections and Boundaries Commission.
- Obtain information on the electoral process from the Elections and Boundaries Commission.
- Meet with academics, representatives of Civil Society and other stakeholders to acquaint itself with the electoral environment.
- Report accurately on its observations and refer any irregularities to the Elections and Boundaries Commission.
- Observe all aspects of the election in those areas that it will visit.
- Assess if qualifying Swaziland citizens have been able to exercise their right to register as voters.
- Assess if the registered voters have easy access to voting stations and that they are able to exercise their vote in secret.

- Assess the logistical arrangements to confirm if all the necessary material is available for voting to take place efficiently.

**CONDUCT OF OBSERVERS**

Observers are required to disclose any conflict of interest that may influence their opinion about the conduct of the election, or discredit the election observer mission. The delegates are equally urged to observe strictly the section of the “Principles for Election Management, Monitoring and Observation in the SADC Region” dealing with the Code of Conduct for observers (pages 32-33 of the document).

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## THE EISA APPROACH TO ELECTION OBSERVATION

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EISA strives for excellence in the promotion of credible elections, participatory democracy, a human rights culture, and the strengthening of governance institutions for the consolidation of democracy in Africa. In this regard, EISA undertakes applied research, capacity building, advocacy and other targeted interventions. It is within this broad context that EISA fields election observer missions to assess the conduct of elections in the SADC region and the rest of the continent.

In preparation for the mission the Team examined and considered legal documents governing the conduct of elections in Swaziland, reviewed election reports of previous EISA and other missions and prepared a comprehensive historical, social and political overview. During the pre-election assessment and the observer mission itself, EISA representatives met with the Elections and Boundaries Commission (EBC), political parties and other electoral stakeholders in order to gain an understanding of the political context within which the elections were to take place (see Terms of Reference pp ix-x). During these meetings the EISA Team gained information and an understanding of whether and how crucial steps in the electoral process such as voter registration, boundary delimitation, selection of candidates and candidate nominations had taken place and how the campaign was proceeding.

The four person Team arrived on 13 September 2008 and received accreditation on 14 September (see Appendix 1: Members of the EISA Team). The Team attended a briefing by the Elections and Boundaries Commission on 16 September. The EBC gave an overview of what had taken place in the process since the announcement of the election date and the commission's general state of preparedness for the elections. The Team met with representatives of political parties and civil society organisations such as faith based and women's organisations, the media, NGOs, labour and business. The Team also consulted with other international and national observer teams (see Appendix 3: Schedule of Meetings and Activities Conducted).

This period was also used by the teams to familiarise themselves with the local context in which the elections were to take place and to observe the campaigning, the voting and the counting. On election day the Team observed the voting at 28 polling stations and on the following day the counting of ballot papers at two counting stations. The election was assessed with reference to the Principles for Election Management, Monitoring and Observation (PEMMO; <http://www.eisa.org.za/EISA/publications/pemmo.htm>).



# 1

# Political and socio-economic background



- Introduction
- The demise of democracy
- New challenges to the autocratic order
- Constitutional reform
- Run up to the 2008 election
- Geographic and socio-economic context

## 1.1 INTRODUCTION

The Kingdom of Swaziland is the only country in the Southern African Development Community (SADC) that excludes political parties from participation in election and representation in elective state structures. This was not always so, for at independence in 1968 it inherited a democratic system modelled on that of Westminster, though from the beginning, in comparison with other constitutional monarchies, an uncommon amount of power was concentrated in the hands of the monarchy. The abrogation of the independence constitution in 1973 and the abolition of multiparty democracy consolidated the power of the traditional aristocracy at the expense of the other social classes that grew from the modern capitalist sector of its economy. Consequently, as the forces of economic and social change have increased the size and power of these classes, the country finds itself increasingly wracked by labour unrest, social strife and political conflict.

Swaziland emerged as a polity from the migration of an Nguni group, the Dlamini, into the area in the 17<sup>th</sup> century. Under the leadership of a series of able kings they consolidated control over and assimilated the Sotho, Nguni and Tsonga groups in the area and provided refuge to others.<sup>1</sup> In the late 19<sup>th</sup> century the polity was increasingly subordinated to the Boer suzerainty and passed into English hands in 1902 after the South African War. King Sobhuza II consolidated the authority of the monarchy and led Swaziland to independence on 6 September 1968.

## **1.2 THE DEMISE OF DEMOCRACY**

Although Swaziland was formally a constitutional monarchy at independence, the constitution concentrated a great deal of power in the hands of the King and the traditional aristocracy while the royalist Imbokodvo National Movement (INM) held all 24 seats in the lower house of Parliament. However, in the first legislative election after independence, held in 1973, the opposition (NNLC) Ngwane National Liberatory Congress captured three seats. This outcome was regarded by the royal house and the aristocracy as a long term threat to their hegemony. Attempts to neutralise the members of the opposition resulted in conflict between the government and Parliament with the judiciary. On 12 April 1973 King Sobhuza, with the complicity of Parliament, abrogated the constitution, dismissed Parliament and assumed all powers of state, legislative, executive and judicial. He proclaimed that he would rule by decree in council with the cabinet and that all political parties, meetings and public activities were banned. A decree was issued providing for a 60 day detention without trial. In the period that followed opposition leaders were co-opted, silenced or forced into exile, but the elimination of political opposition led to industrial and social unrest in the urban areas throughout the second half of the 1970s.

To give a legal basis and legitimacy to the new order the 1978 “Establishment of the Parliament of Swaziland Order” was promulgated creating the *tinkhundla* system. Political parties remained banned and the members of the House of Assembly would be indirectly elected; voters would elect delegates to an electoral college that would elect members to the House of Assembly and Senate from among themselves in secret. The process was to be overseen by an electoral committee appointed by the King. Candidates were vetted by the King and were not permitted to campaign while voting was public. Parliament was restricted to a debating platform to give advice to the King. Subsequently, an election was held in terms of this system in 1978 and, with some modifications, thereafter every five years until 2003. By King Sobhuza’s diamond jubilee in 1981 his authority was absolute.

## **1.3 NEW CHALLENGES TO THE AUTOCRATIC ORDER**

King Sobhuza II died on 21 August 1982 and his death prompted a jockeying for positions of wealth and power amongst the ruling elite during the period of the regency. The unseemly power struggle, and popular perception of

endemic corruption, dissipated the aura that Sobhuza had built up around the monarchy. In the middle of 1983 students, intellectuals and trade unionists assembled to form a loose coalition of popular organisations, the People's United Democratic Movement (PUDEMO). On 25 April 1986 Prince Makhosetive was invested as King Mswati III and was able to assert his authority quickly and convincingly.

From 1987 doubts about the *tinkhundla* system were expressed within the Senate and amongst some of the chiefs, while academic research confirmed a high degree of popular antipathy and the Prime Minister advised King Mswati to review the system. Popular discontent, fuelled by corruption, growing unemployment and poverty, manifested itself in continuing labour unrest that continues until the present day. In 1990 PUDEMO leaders were brought to trial on various charges, including high treason, but this move served only to publicise the organisation, popularise its cause and increase its recruitment of new members. Through the 1990s the organisation became increasingly militant and political demonstrations grew ever larger and more frequent.

#### **1.4 CONSTITUTIONAL REFORM**

In June 1991 King Mswati responded to the groundswell for reform by establishing a commission to review the *tinkhundla* system. Packed with "old guard" politicians, the commission was rejected by PUDEMO and other democracy activists – as was a second review committee. Its report, published in October 1992, recommended that the system remain largely unchanged except that the *tinkhundla* system be reformed; House of Assembly elections would be conducted by an independent authority and be by secret ballot in a two stage process: In the "primary elections" individual chiefdoms within each *inkhundla* would choose candidates and in the secondary stage elections would be held at the level of the *tinkhundla*, where 55 members of the House of Assembly would be directly elected by universal adult franchise. The executive power of the King would remain untrammelled and political parties would remain banned. The recommendations were implemented and from 1993 to 2003 elections were held on this basis.

Since opposition to the constitutional order did not abate, and the Southern African Development Community (SADC) and international actors



expressed increasing concern, the King appointed a Constitutional Review Commission (CRC) that included a wider range of interests and views than hitherto. However, this too was rejected by pro-democracy groups. An ominous turn of events was a series of bomb blasts in 1998, apparently aimed at assassinations of public figures, including the King; an unknown group calling itself the “Tigers” took responsibility.<sup>2</sup> In April 2001 the report of the CRC was made public and recommended the retention and strengthening of the status quo. In December 2001 Mswati appointed a Constitution Drafting Committee of 15 members.

In late 2002 Chief Justice Sapire resigned and six judges of the Court of Appeal followed because orders issued by the judiciary were not upheld by the government, while High Court judges refused to hear cases and members of the legal profession went on strike. Only in April 2005 was the crisis resolved and in 2006 the Court of Appeal reconstituted. In April 2003 protests at the suspension of the constitution by King Sobhuza II in 1973 were dispersed by police with teargas, forming the backdrop for the dissolution of the Parliament in May for the *tinkhundla* election of September/October. In November 2003 a Draft Constitution was finalised and was promulgated on 26 July 2005 after some minor changes and came into effect on 8 February 2006. The power of the King in every sphere of governance was maintained, save his right to govern by decree, which was removed. The inclusion of a progressive bill of rights was a significant step forward. Pro-democracy organisations universally rejected the Constitution.<sup>3</sup>

### **1.5 RUN UP TO THE 2008 ELECTIONS**

The promulgation of the new constitution did not result in the abatement of political and labour unrest and repressive measures such as the deployment of riot police with tear gas and arrests of labour and political activists became more frequent and more brutal. In late October 2007 a series of petrol bombings aimed at public buildings occurred in various parts of the country, and on 16 December members of PUDEMO were arrested and charged with treason as a result. Allegations of assault and torture were made in court and one person was sentenced to two years in prison.<sup>4</sup>

In February 2008 six political parties, including PUDEMO and NNLC, urged a boycott of the polls that were to be held in terms of the new constitution.

In March striking textile workers were tear-gassed and severely beaten and 40 were hospitalised. On 5 July 2008 a PUDEMO rally was banned and those gathered were violently dispersed by the police. In early August a group styled the Umbane People's Liberation Army set off two bombs in Big Bend and Mpaka. On 3 and 4 September 2008, in Manzini and Mbabane respectively, the Swaziland Federation of Trade Unions (STFU) and the Swaziland Federation of Labour (SFL), in conjunction with other democracy activists, were able to organise a demonstration that drew more than 10 000 people. SFTU called for a week of mass action from 15 to 19 September 2008 in the run-up to the House of Assembly elections.<sup>5</sup> The EISA Team was informed by several trade unionists and political activists that they intended to bring the campaign to a climax by blockading the border posts between Swaziland and South Africa on 18 September (the eve of election day) in cooperation with the Congress of South Africa Trade Unions (COSATU). Accordingly, the Team determined to pass by Ooshoek in the north, the main border post, and also Mahamba in the south while doing reconnaissance of polling stations. Police road blocks had been set up to turn away prospective demonstrators. At the border posts no demonstrations were evident. It later transpired that key leaders had been arrested and taken for "joy rides" in the back of police vans at high speed over poor dirt roads.

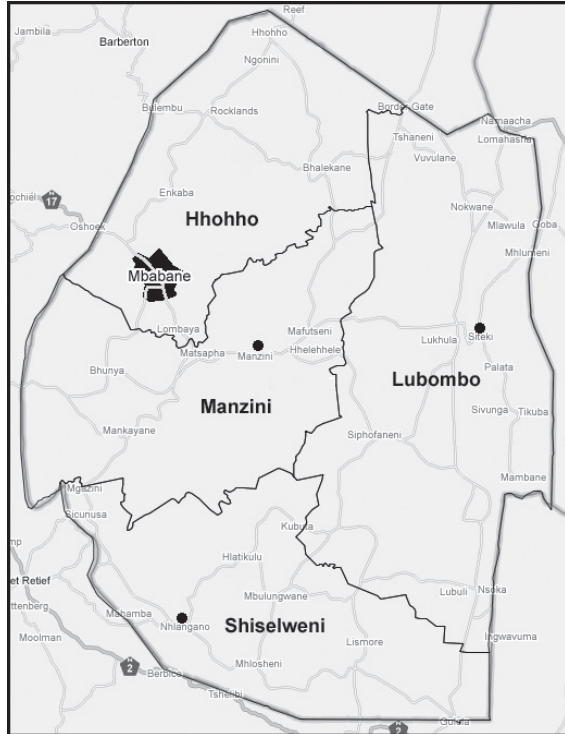
## **1.6 GEOGRAPHIC AND SOCIO-ECONOMIC CONTEXT**

The landlocked Kingdom of Swaziland lies on the eastern starboard of the Southern African sub-continent about 3° south of the Tropic of Capricorn (26°36'S, 31°31'E). Small in size (17 363km<sup>2</sup>) and compact in shape, it is almost wholly surrounded by South Africa, with a short border with Mozambique to the east. The terrain is rugged: from the grassland of the Highveld in the west the land falls down through the Middleveld to the bushveld plains of the Lowveld and then rises again to the plateau of the Lebombo mountains. As the land falls from west to east, so temperatures rise and precipitation declines, but rainfall rises again in the Lebombos. Perennial rivers, the Komati, Umbeluzi, Great Usutu and the Ngwavuma, drain from the Highlands in the west through deep gorges in the Lebombos into Delgoa Bay.<sup>6</sup>

Nearly half the population is concentrated on the rich soils of the Middleveld where population densities reach 50 inhabitants per km<sup>2</sup>. The main urban settlements are Mbabane, capital of the Hhohho district, with an estimated

population of 73 000 people in mid-2005, and Manzini, capital of the Manzini district, with a population of 25 571 at the 1997 census (see map below). The other two administrative districts are Lubombo (capital Siteki) and Shiselweni (capital Nhlangano). The population of 1.1 million people is remarkably homogeneous, being overwhelmingly Swazi ethnically and linguistically and Christian.

Adult literacy stands at 78.3% for women and 80.9% for men. Population growth has declined to 0.6% (2005-15) as a result of the HIV / AIDS epidemic (adult prevalence in 2007 was estimated at 26%), life expectancy is low (female 41.4 yrs, male 40.4 yrs in 2005) and infant mortality is high (110/1000 in 2005). Traditionally the status of women has been low and “women have been considered as minors and denied control and ownership of assets”.<sup>7</sup> Economic growth has stagnated, partly due to the impact of HIV / AIDS, over the last eight years (an average of a little over 2% a year) as has real per capita income (0.5% average since the mid-1990s). As a result of high inequality (the wealthiest 10% of the population obtains 43% of all income) and high unemployment (40% in 2008) large numbers of people have been impoverished (69% in 2001) and a quarter of the population required food assistance in 2007.<sup>8</sup>



**Table 1: Kingdom of Swaziland selected indicators<sup>9</sup>**

Area	17 363 sq km
Capital	Mbabane
Major cities	Manzini
Population	1.1 million, 2005
Pop growth rate	0.6%, 2005-15
Urbanisation	24.1%, 2005
Life expectancy	Female 41.4 yrs, male 40.4 yrs, 2005
Infant mortality	110/1000, 2005
HIV/AIDS prevalence	26%, adult, 2007 est
Adult literacy rate	Female 78.3%, male 80.9%, 2005
Military expenditure	1.8% of GDP; 2005
Health expenditure	4.0% of GDP; 2004
Legal system	Roman-Dutch law, traditional law
Independence	6 September 1968
GDP	US\$2.936 billion, 2007 est
GDP per capita	US\$2 523, 2007 est
GDP growth rate	2.9%, 2007 est
Main exports	Chemicals, clothing, sugar, wood pulp and wood products
Currency	100 cents = 1 Lilangeni
Unemployment	40%, 2008
Inflation rate	8.2%, 2007 est
External debt ratio	12.3% of GDP, 2007
Roads	3 594 km, 28.2% tarred
Rail	300 km
Airports	1 international (Manzini)
Ethnic groups	Swazis (97%), other Africans (2%), others (1%)
Languages	Official languages Siswati, English; some Zulu and Tsonga
Religion	Christian 86.9%, African Traditional 10.7% and None 1.2%

# 2

## Constitutional and legal framework



- The constitutional order
- Elections and Boundaries Commission
- Electoral system

The Constitution of the Kingdom of Swaziland of 2005, the 1992 Elections Order and the 1992 Voters Registration Order provide the legal framework within which elections are conducted in Swaziland. Despite conflicts and discontinuities between the Constitution and the other laws (discussed below), none of these laws have been amended since their initial adoption. However, the Suppression of Terrorism Act, 2008, which was passed in May 2008, gave the government wide ranging powers to deal with dissenters and clamp down on the media and was brought to bear in the post-election period (see 6. Post-election developments).<sup>10</sup>

### 2.1 THE CONSTITUTIONAL ORDER

As far as constitutional arrangements are concerned, enormous executive power is concentrated in the hands of the King. In terms of Article 4 of the Constitution he is the Head of State and Commander in Chief of the security forces. Article 64 places executive power with the King, who exercises it directly or through the Cabinet. The King is generally supposed to act on the advice of the Cabinet or its members in terms of Article 65, but the King has wide discretion in the appointment and removal of the Prime Minister and other members of cabinet in terms of Articles 13, 67 and 68. Article 68(4)(e) permits the King to remove a Minister from office if a resolution of no confidence is passed by two-thirds of the members of the House of Assembly, but does not compel him to do so.

The Constitution vests legislative power in the King-in-Parliament in Article 106. Article 93 prescribes that Parliament consists of a House of Assembly and a Senate. The House of Assembly is composed, according to Article 95, of not more than 60 members elected in constituencies (*tinkhundla*; see the “Tinkhundla electoral system” below for details) and 10 members appointed by the King. Four women may be elected to the House of Assembly by a joint sitting of Parliament from a shortlist of candidates supplied by the Election and Boundaries Commission, but only, according to Article 86, if the total number of women in Parliament as a whole is less than 30%. However, should they be elected, each woman must represent a different one of the four regions the country is divided into. In terms of Article 94, the Senate must consist of 10 members elected by the House of Assembly and 20 members appointed by the King. At least half of each group of Senators must be women. The elaborate measures to secure the representation of women in Parliament are necessary because of the poor representation of women in the past, and they reflect a progressive determination to advance the cause of women. In the House of Assembly elected in 2003 only nine of the 55 elected members of the House of Assembly (16.4%) were women.<sup>11</sup> It is important to note that a careful reading of the constitutional provisions governing the passage of legislation through Parliament, Articles 107, 117 and First Schedule Article 4, discloses that the King effectively has the power to veto legislation and Parliament cannot over ride the veto.

In general, amendments to the Constitution, according to Article 245, may be made by a joint sitting of Parliament and/or a national referendum. Entrenched clauses may only be amended by a two-thirds majority of a joint sitting of Parliament, while especially entrenched clauses, listed in Articles 246 and 247, require a three-quarters majority and the approval of a national referendum.

## **2.2 ELECTIONS AND BOUNDARIES COMMISSION**

The Elections and Boundaries Commission (EBC) was established as an independent authority by the new constitution and replaces the National Elections Office, which previously managed Swaziland’s elections between 1998 and 2003. Article 90 of the 2005 Constitution provides that the EBC consists of a Chair and Deputy-Chair and three other members appointed by the King on the advice of the Judicial Services Commission. Commissioners

may only be removed by the King for incompetence or misbehaviour on the recommendation of the Judicial Services Commission (so Article 90(10) read with 158). The term of office of a Commissioner is twelve years and, in terms of Article 90, is not renewable.

The Constitution, Article 90(5), tasks the EBC with the following:

- To supervise voter registration.
- To ensure fair and free elections.
- To facilitate voter education.
- To delimit *tinkhundla* (constituencies).
- To produce periodic reports on work done.

In terms of Article 92 the EBC is required to produce a report after each election on that election for the minister responsible for elections. The EBC must also produce a report making recommendations on the boundaries of the *tinkhundla* (see 4.1 below for details). The provisions of the constitution are brief and schematic and additional legislation is required to regulate the responsibilities, powers, functioning and finances of the EBC.

The EBC members appointed by King Mswati III in early March 2008 are:

- Chief Gija Dlamini (Chair)
- Mzwandile Fakudze (Deputy Chair)
- Nkosingumenzi Dlamini
- Gloria Mamba
- Ncumbi Maziya

The composition of the EBC was subject to criticism from the beginning and in April a broad range of activist organisations, including PUDEMO, NNLC, the Swaziland Federation of Trade Unions, the Swaziland Federation of Labour (SFL) and the Swaziland National Association of Teachers (SNAT), petitioned the High Court to declare the body illegal, arguing that the members were not independent as required by the Constitution, but either state functionaries or civil servants. The Swaziland Coalition of Concerned Civil Organisations (SCCCO) called on the EBC to resign in late April and, when resignations were not forthcoming, SCCCO filed a similar suit in July asking the High Court to declare the EBC illegal. However, the elections took place before a court ruling on these cases could be made.<sup>12</sup>

Almost all the stakeholders regarded the members of the EBC as royal appointees. Stakeholders did not regard the EBC as independent and believed that the EBC operated under the instruction of the King. Stakeholders also expressed the view that the EBC was not representative of society as a whole, but was drawn exclusively from government officials or members of the aristocracy. Most believed that the Commissioners do not meet the qualifications laid down in the constitution in Article 90(6): “The chairperson, deputy chairperson and the other members of the Commission shall possess the qualifications of a Judge of the superior courts or be persons of high moral character, proven integrity, relevant experience and demonstrable competence in the conduct of public affairs”. Only Channel Swazi reported any meetings with the EBC and none of the organisations that the EISA Team interviewed had been invited to any briefings or public addresses (see Appendix 3: Schedule of meetings and activities conducted). Members of the public and press were excluded from meetings held by the EBC with the chiefs. One stakeholder said that the EBC had been invited to participate in a workshop on the elections and had declined. Most stakeholders were of the view that the EBC was lacking in transparency and secretive in its operations. They felt that even information that should indisputably have been in the public domain, such as the election timetable, was given out piecemeal and very late in the day.

### 2.3 ELECTORAL SYSTEM

Swaziland’s unique *tinkhundla* electoral system requires some elucidation. An *inkhundla* (singular of *tinkhundla*) was originally a grouping of chiefdoms devised for administrative and military mobilisation and was used in World War II for recruiting labour for the war effort. Initially, the *tinkhundla* did not form part of the electoral system.

The 1967 election that preceded independence was conducted according to a block vote system in an arrangement that was enshrined in the 1968 Swaziland Independence Order, which then also governed the House of Assembly election of 1972. The country was divided into eight large constituencies, delimited by an independent Delimitations Commission, that each returned three members to the House of Assembly. Each voter had three ballots and the three candidates with the highest number of votes in each constituency were elected by plurality.<sup>13</sup>



When non-party elections for the House of Assembly were held in 1978 they were conducted under the 1978 Establishment of the Parliament of Swaziland Order (not to be confused with the 1992 Establishment of the Parliament of Swaziland Order discussed below), which first employed the *tinkhundla* as electoral constituencies. These were determined by the King. The Order established an Electoral Committee appointed by the King to supervise elections. Until the 1993 election, voters were not registered, nor did they elect members of the House of Assembly directly and the ballot was not secret. Instead voters elected an electoral college by passing through a gate designated for the candidate of choice while officials counted them. The members of the Electoral College elected the members of the House of Assembly from among their number.<sup>14</sup> The 1992 Establishment of the Parliament of Swaziland Order issued by King Mswati gave the system the form that was eventually taken up into the 2005 Constitution; a Delimitations Commission was re-established, voter registration was introduced for the first time, secret ballot was restored and representatives were to be directly elected by plurality. In 1998 a National Elections Office replaced the Electoral Committee.<sup>15</sup> The chief innovation of the Constitution of 2005, as far as elections are concerned, was the establishment of the EBC, which included in its mandate the delimitation of *tinkhundla*, previously the realm of the Delimitations Commission, as well as the functions performed by the Electoral Office. Currently, in terms of Article 80 of the 2005 Constitution, an *inkhundla* is established by the King on the recommendation of the EBC to serve (amongst other things) for the election of members of the House of Assembly. Following the nomination of candidates at public meetings, elections take place in two phases, both by secret ballot, using the first-past-the-post system:

- In the primary phase the individual constituent chiefdoms hold elections to nominate members to stand as candidates at *inkhundla* level in the secondary phase. At this point, according to Article 87(5), no campaigning is permitted.
- In the secondary phase candidates are permitted to campaign and each *inkhundla* elects a member to the House of Assembly.

# 3

## Stakeholders: Political parties, mass media and civil society



- Party system, political parties and campaigning
- Mass media
- Civil society

### 3.1 PARTY SYSTEM, POLITICAL PARTIES AND CAMPAIGNING

Political parties were banned in Swaziland through Proclamation No 7 of 12 April 1973 issued by King Sobhuza II. This proclamation has not since been repealed. The Constitution of the Kingdom of Swaziland (2005) makes no mention of political parties, but Article 25 does guarantee freedom of association. In May 2006 the Swaziland High Court ordered the government to register the African United Democratic Party as a legal political party on the basis of this clause (and others) in the Constitution and the ministry of Justice and Constitutional Affairs agreed to comply with the court order. On 14 August 2007, in response to media reports to the contrary, King Mswati III asserted that political parties remained banned. In April 2008 the Chair of the EBC, Chief Gija Dlamini, reiterated that political parties were unlawful and would not be permitted to take part in the 2008 election. Despite the prior High Court ruling he asserted that the freedom of association clause in the constitution did not extend to political parties. In July 2008, in arguments put to the High Court, the Attorney General Majahenkhaba Dlamini said that parties were indeed legal, but not permitted by law to participate in elections, saying, “when it comes to public functions they have to come as individuals” (cited in Mamba 2008).<sup>16</sup> Given the curious legal situation that has arisen, there is no legislation in Swaziland governing aspects of political party life such as registration, regulation, funding and financial control.

In July 1983 students, intellectuals and trade unionist formed the People's United Democratic Movement (PUDEMO) but the organisation only came to the public eye in late 1989 when PUDEMO circulated pamphlets in the urban areas criticising the aristocracy. In 1990 senior members were the subjects of a high profile treason case, which publicised the organisation's activities and objectives and broadened its support base. In February 1992 PUDEMO announced that it was unbanning itself and that it would henceforth operate openly in Swaziland. PUDEMO has conducted campaigns of civil disobedience, organised marches, demonstrations and border blockades and has become increasingly militant and radicalised.<sup>17</sup> The Ngwane National Liberatory Congress (NNLC) revived from dormancy in 1998 and has taken a more conservative position than that of PUDEMO, as reflected in its decision to allow its members to compete in the 2003 House of Assembly elections as individuals when PUDEMO urged a boycott of the polls. Traditionally the NNLC is an African nationalist party that draws its support from much the same constituency as PUDEMO, but despite their overlapping constituencies and past differences on tactics the two organisations formed a united front together with civic organisations and student groups to promote a boycott of the 2008 election.<sup>18</sup>

Sive Siyinqaba was launched as a cultural movement on 2 April 1996 to counter the perceived anti-monarchical radicalism espoused by PUDEMO and the trade union movement, but supported the restoration of multi-party politics. It reconstituted itself as a political organisation on 5 August 2006, restyling itself as Sive Siyinqaba National Movement (SS), with a wide support base amongst conservatives.<sup>19</sup> The movement has become increasingly outspoken and critical of the government, such as when the rule of law crisis erupted in 2002 and more recently over the decision to bar civil servants, and therefore teachers, from standing for election in 2008. The party fielded candidates in 2003 and 2008.<sup>20</sup> The Swaziland National Front (SWANAFRO), founded by businessman Elmond Shongwe, and the Swaziland National Progressive Party (SNPP) have failed to garner popular support. More recent arrivals, with an undemonstrated support base, are the avowedly liberal African United Democratic Party (AUDP), formed in October 2005 with Sibuso Dlamini as secretary general, and the Inhlava Forum, led by former cabinet minister Mfomfo Nkambule, which was formed in April 2006; the former fielded candidates in 2008 while the latter did not.<sup>21</sup>

Parties participating in the elections, such as the SS and the AUDP, did not campaign for the candidates affiliated to them, fearing that it would weaken their candidates rather than strengthen them amongst voters opposed to political party participation in public life. They supported their candidates with funds and other logistical aid.<sup>22</sup>

### 3.2 MASS MEDIA

The media are overwhelmingly controlled by the state and used to advance the position and cause of the monarchy. The state owns one of the country's two daily newspapers, the *Swaziland Observer*, and its sister Saturday paper the *Weekend Observer*, as well as the radio broadcaster with the widest coverage, the Swaziland Broadcasting and Information Station and the Swaziland Television Broadcasting Corporation. The broadcasters eschew political content and focus on entertainment. The private TV *Channel Swazi* is strongly aligned to the monarchy. The private daily newspaper, *The Times of Swaziland*, is frequently critical of the government and has the highest circulation, along with its sister papers the Saturday *Swazi News* and the *Times Sunday*. Among the smaller and more stridently critical, but less influential, independent publications are *Nation Magazine*, a periodical news magazine, and the *Voice*. With the exception of the Internet, the public and private media are tightly controlled by the Ministry of Public Service and Information. The Internet has become pervasive in the main urban areas and, though not yet fully exploited, has increasingly become a source of information outside of state control and critical of the government and the monarchy. There are also two small radio stations: *Voice of the Church* and a community station. There is no code of conduct governing media reporting on elections or allocation of time to candidates in the state media.<sup>23</sup>

### 3.3 CIVIL SOCIETY

Joubert, Masilela, and Langwenya summarise the situation in Swaziland in the following way: "Civil society in Swaziland is weak, fragmented and largely unable to access and influence decision making procedures both at national and local levels". This generalisation is particularly true for elections and electoral matters.<sup>24</sup> The main elements of civil society are the trade unions, the churches and the non-governmental organisations (NGOs).

The **trade unions** through their umbrella bodies, especially the larger

Swaziland Federation of Trade Unions (SFTU) but increasingly also the smaller Swaziland Federation of Labour, have played a key oppositional role in the past, even before independence, and have strong ties with the two main opposition parties PUDEMO and NNCL. They have exercised this political role through border blockades, general strikes, mass demonstrations and, since 1998, have consistently called for boycotts of elections.<sup>25</sup>

There were 70 NGOs affiliated with the NGO umbrella body Coordinating Assembly of Non-Governmental Organisations (CANGO) in 2005 alone. CANGO formed an NGO Electoral Support Network for the 2003 election with 15 organisations, and for the first time national election observers were deployed in Swaziland; some 108 observers were deployed in all the constituencies. EISA partnered with CANGO to produce workshop material and to train trainers and evaluate workshop outcomes. Attempts to repeat the exercise in 2008 were hampered by the EBC, which accredited only 10 observers. NGOs have played no role in educating voters in the past and in 2008 (but see “4.10 Civic and Voter Education”). Some NGOs attempted a civic education programme to encourage voting for women candidates in 2003 and 2008, with limited success.<sup>26</sup> The rule of law crisis of 2003 led to the founding of the Swaziland Coalition of Concerned Civic Organisations (SCCCO) by a broad range of civil society actors, including trade unions, business organisations, the Council of Churches, CANGO and lawyer bodies.<sup>27</sup> In May 2004 civil society bodies such as churches and civic organisations formed the National Constitutional Assembly (NCA) to oppose the implementation of the new constitution without popular consultation. In May 2006 the NCA launched an unsuccessful application to the High Court for the Constitution of Swaziland Act 001 of 2005 to be nullified. In May 2008 the court rejected the application saying that the Constitution was the will of the Swazi people.<sup>28</sup>

Christians are in an overwhelming majority in Swaziland (87% of the population), but the churches generally shy away from direct political involvement. The largest single group of **churches** is the League of African Churches, the umbrella body of the Zionist churches, which was formed under the patronage of King Sobhuza II in 1937. They have traditionally provided strong support for the monarchy. The Swaziland Conference of Churches (SCC) was formed in 1929 as the Swaziland Missionary Conference;

dominated by evangelicals, it has remained firmly apolitical. In 1976 the more liberal mainline churches left the SCC to form the Council of Swaziland Churches (CSC). The CSC has become increasingly aligned with the pro-democracy forces and was a founding member of the SCCCCO and of the NCA.<sup>29</sup> In 2008 the CSC informed the EISA Team that they had managed to obtain accreditation for only 20 national observers although they applied for the accreditation of 53 observers.

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# 4

## Election management

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- Delimitation of constituencies
- Setting of election dates
- Voter registration
- Registration of political parties
- Nomination of candidates for elections
- Campaign process
- Media
- Funding of political parties
- Conflict prevention and management
- Civic and voter education
- Stakeholder relations
- Electoral observation
- Electoral staff
- Electoral materials
- Secrecy of the ballot
- Voting and counting processes
- Presentation of results

Election management in Swaziland has been hampered in the past by tardiness in the appointment of top electoral management body members, leaving them with insufficient time to properly plan and execute their mandate. In addition to this, insufficient resources have been allocated to them to do so. There was clear evidence, however, that the 2008 elections were better resourced than were those in previous years.

### **4.1 DELIMITATION OF CONSTITUENCIES**

Section 11 of the 1992 Establishment of Parliament Order re-established a Delimitation Commission appointed by the King to delimit the 55 *tinkundhla*

used as electoral constituencies. The 2005 Constitution, in Articles 90 and 91, abolished it and transferred its function to the Elections and Boundaries Commission (EBC). The boundaries of the *tinkundhla* are supposed to be reviewed every five years, one year before the dissolution of the House of Assembly, and the EBC is to make recommendations to the King on adjustments to be made nine months before the dissolution of Parliament; while the King must proclaim the actual boundaries at least six months before the dissolution of Parliament.

However, the King appointed the EBC only in early March 2008 and there was no time to conduct a review of the *tinkhundla* boundaries. In July the Minister of Justice and Constitutional Affairs announced that a review would be undertaken only in 2009, after the election. No new delimitations have been undertaken since the 1993 election and considerable disparities may have emerged between the populations of the *tinkhundla*.<sup>30</sup>

At the two constituencies where the EISA Team observed counting, Lombamba Lomdzala was 9% under the quota of voters it should have had, while Mandlangamphiso was 32% under the quota. The total number of registered voters was 350 778, which, divided by the 55 *tinkhundla*, gives a quota of 6 378 voters per constituency. Mandlanamphiso had 4 362 registered voters (68% of the quota). Lobamba Lomdzala had 5800 registered voters (90.9% of the quota). However, none of the stakeholders raised this as an issue, but complained rather that the delimitation as it stands groups chiefdoms with large populations and those with small populations together, so that the larger chiefdoms dominate the electoral process (for the practical significance of this see 4.17 Presentation of results).

#### **4.2 SETTING OF ELECTION DATES**

The 1968 Swaziland Independence Order gave the King the power to determine the dates of elections and this prerogative was taken up in the 2005 Constitution (Article 136). In a similar fashion, the 1968 Swaziland Independence Order empowered the King to dissolve Parliament at any time and call an election, which was again transferred to the Constitution of 2005 (Article 134). The Swaziland Independence Order 1968 determined that elections had to be held within three months, but the 2005 Constitution shortened this period to 60 days (Article 136).



In terms of this legislation, the King may proclaim any date he wishes. However, the appointment of the EBC on 7 March 2008 and the proclamation of the election date shortly thereafter in early May made it impossible for the EBC to conduct a review of *tinkundla* boundaries (this process takes a year; see “4.1 Delimitation of Constituencies” above) and left little time to prepare for the primary and secondary elections, as can be seen in Table 2. The Commission was appointed in early March and had to prepare for the primary elections held on 23 August, giving an entirely new body with no experience of the difficulties of conducting an election less than six months to do so. For its part, according to stakeholders, the EBC did not release an election calendar to the public, but announced dates for voter registration and other events piecemeal and late in the process.

**Table 2: Key electoral dates in 2008**

Event	Dates
Appointment of the EBC	7 March
Voter registration drive	19 May-22 June
Dissolution of Parliament	30 June
Proclamation of election dates	29 July
Nomination of primary candidate	2-3 August
Primary election day	23-24 August
Secondary election	19 September
Counting day	20 September

**Source:** Compiled from interviews with members of the EBC and stakeholders.

### 4.3 VOTER REGISTRATION

Until provisions for it were made in the 1992 Voters Registration Order, no registration of voters was undertaken in Swaziland. In terms of this legislation, registration of voters takes place at public meetings (section 5). In chiefdoms this is done at the chief’s kraal, in the presence of the chief and his council, who vouches for the prospective voter’s eligibility. Most stakeholders objected to the method of registration in the rural areas either because they believed that chiefs would refuse to vouch for voters because a particular chief believed that the voter would vote for a candidate other than the one favoured by the chief, or because they felt that it enabled the

chief to identify those who did not register and enable the chief to exercise coercion to compel the voter to register, and in a few cases for both reasons. In urban areas it is done in the presence of the Indvuna Yenkhundla (elected head of the *inkhundla*) and voters must produce some form of identification. Registration is done by a registration officer or electoral officers, who receive the information publicly and orally, write it down on a registration form and issue the voter with a certificate of registration that is valid for five years and must be presented when voting. In the 2008 election EISA observers noted that the “certificate” took the form of a voter’s card that included a photo as well as the prescribed personal details, which greatly improved voter identification by polling staff managing the voters’ roll and reduced the risk of fraud or double voting. The voter’s name and address is then entered on the voters’ roll for that *inkhundla*.

In terms of Articles 88 of the 2005 Constitution, a person qualifies to be registered as a voter if that person is 18 or older and is a resident citizen of Swaziland. However, people who are of unsound mind, have been sentenced to death or life imprisonment, or have been sentenced to disqualification for an electoral offence, are disqualified from voting by Article 89. In 2008 the voter registration drive took place from 19 May-22 June.

The Voters Registration Order provides that copies of the voters’ rolls must be kept at Regional and Sub-Regional Offices and anyone is entitled to inspect them or make copies of them at no charge. It should be noted that these centres are not easily accessible to voters, especially poor voters in the rural areas. Any voter may lodge objections to the contents of a roll with the electoral officer of the *inkhudla*, who must investigate the complaint and make a determination on it. This ruling may be appealed against to a magistrate within 14 days of notification. Amendments to the roll may be made up to nomination day. Officials conducting the voter registration are employed on a temporary basis. In 1996 the Chief Electoral Officer suggested the introduction of a continuous system of voter registration but this has not been implemented. It should be noted that in 2003 and 2008 the voters’ rolls were not made available timeously to the public prior to the primary election. As a result of this some voters who were omitted from the list were not able to vote. Moreover, when the Commonwealth Expert Team attempted to access them shortly before the 2003 election they were not available.<sup>31</sup>

In 2008 stakeholders across the board complained of the shambolic state of the voters' roll during the primary elections and averred that the rolls were available neither before nor after the primaries for inspection. In 2008 the primary elections had to be extended by a day at least in part because of the delays caused by polling officials spending a good deal of time trying to resolve problems that arose from inaccuracies on the voters' roll that could have been corrected had the roll been made available for public inspection. The 2008 EISA Team noted on secondary voting day that the bulk of the errors found during the primaries had been rectified. It was also observed that the voters' roll was composed of facsimiles of the voters' cards for that *inkhundla*.

In Table 3 it can be seen that the percentage of voters that are estimated to have registered exceeds that of previous years and reverses the low levels experienced in 1998 and 2003. Some stakeholders attributed the high registration rates to enthusiasm for the elections held under the new constitution and to the King's summoning of the nation to the royal kraal, where he urged his people to register and to vote. Some stakeholders, on the other hand, expressed the belief that a high degree of coercion was exercised by chiefs in the rural areas as a result of the summoning of the nation. The EBC explained the stagnation in the estimated eligible population numbers at 400 000 as being due to the effects of AIDS mortalities. Thus the estimated eligible population of voters in 2008 remained the same as in 2003.<sup>32</sup>

**Table 3: Voter registration trends**

Year	Estimate eligible	Registered Voters	% Registered
2008	400 000	350 778	87.69
2003	400 000	228 616	57.15
1998	398 000	198 445	49.86
1993	359 924	283 693	78.82

**Source:** Commonwealth Expert Team 2003; Karume 2003; Thwala 1996; 1999; 2004; Dlamini 2008.<sup>33</sup>

#### 4.4 REGISTRATION OF POLITICAL PARTIES

Political parties are not permitted to take part in the electoral process and no legislation exists to govern their registration (see “3.1.1 Legal situation” above).

#### 4.5 NOMINATION OF CANDIDATES FOR ELECTIONS

The nomination of candidates for House of Assembly elections is governed by sections 5-8 of the 1992 Elections Order. The voters of each of the several chiefdoms in an *inkhundla* nominate candidates to stand for election at a public meeting in the chief’s kraal by show of hands. The holding of nomination sessions in public meeting is not specified in the law but is the past and current practice. It has been criticised as undemocratic because it has allowed chiefs to intimidate their subjects and block the nominations of candidates for personal reasons. Stakeholders also repeatedly expressed similar concerns about the process to the EISA Team in 2008. According to section 5 nominations must be endorsed by 15 voters registered in that *inkhundla*, but Article 87 of the 2005 Constitution reduced that figure to 10. The nomination paper must be endorsed by the candidate, be accompanied by a clearance certificate from the police, be handed over to the returning officer and the candidate must take an oath that he or she is qualified to be a candidate. Candidature may not be withdrawn after 16:00 on nomination day. No more than ten or fewer than four candidates may be nominated. This is ensured by the electoral officials who supervise the process at the public meetings where nominations are held.<sup>34</sup>

The criteria for qualification or disqualification as members of Parliament are set out in Articles 96 and 97 of the 2005 Constitution respectively. A candidate must be a citizen of Swaziland, at least 18 years old, a registered voter with the *inkhundla*, and must not be in arrears on taxes. People are disqualified from standing if they are unrehabilitated insolvents, of unsound mind, under sentence of imprisonment for more than six months or have been sentenced to death, are soldiers or civil servants who have not been granted leave for the duration of Parliament, have been found legally incompetent to hold public office, have an undisclosed conflict of interest by virtue of being a contractor to the government or hold an electoral office. Candidates nominated at these meetings then compete with one another in a secret ballot primary election in each chiefdom and the winner becomes that chiefdom’s candidate for the

House of Assembly in the secondary elections held at *tinkhundla* level. In 2008 voting had to be extended for an extra day because of the unexpectedly high turnout of voters and the many errors in the voters' roll (see "4.3 Voter Registration").<sup>35</sup> After the 1993 and 1999 elections the Chief Electoral Officer complained that the candidate of the chiefdom with the largest population in the *inkhundla* almost always won the election and called, without success, for reform of the system.<sup>36</sup> At the two counting stations observed by the EISA Team in 2008, the candidates from the largest chiefdoms won the secondary elections.

#### **4.6 CAMPAIGN PROCESS**

In terms of Article 87(5) of the Constitution, no campaigning is permitted until after the primary election. Since campaigning is restricted by the Constitution to the period between the primary and secondary elections, and since the one follows shortly after the other, the campaign period is relatively short. This was the case even prior to the promulgation of the 2005 Constitution. The 1992 Elections Order does not mention campaigning at all and the 1992 Establishment of Parliament Order, section 12(4), restricted campaigning to allowing each candidate to address a public meeting convened by the electoral authorities with the individual chiefs "on development and other issues, in line with national policy", a practice which was followed into 2008. From 1978 to 1992, no campaigning had been permitted at all. Section 71 prohibits campaigning on election day on pain of a fine of 500 emalangeni or three months in prison. In 2008 the primary election was held on 23 and 24 August and the secondary on 19 September. Thus there were scarcely five weeks available for campaigning, but this was longer than the periods allowed in previous elections, where less than a month was allowed for campaigning.<sup>37</sup> This period seemed very short to Team members.

Campaigning since 1992 has thus been a low key affair, with no rallies or marches, and is restricted to the handing out of pamphlets, the distribution of T-shirts and a few paid advertisements in the media. However, in 2008 stakeholders pointed to more robust campaigning than in previous elections. The EISA Team noted the use of larger posters – some of them in colour – by some candidates and vigorous door to door canvassing by candidates' supporters. Nevertheless, compared with elections in other parts of the SADC region, campaigning generated little public interest. Campaigning

focused on local issues such as promises of clinics, transport infrastructure and employment creating projects. There is no code of conduct governing campaigning activities. No incidents of violence or intimidation were reported to the Team. There are no legal restrictions on campaign expenditure. Stakeholders reported that the campaigns of many sitting members of the House of Assembly were relatively well funded since members could take out loans of 30 000 Lilangeni against their pensions.

Allegations were also made that government ministers abused state resources for campaigning, but no concrete instances were advanced to support these allegations. According to the leaders of the Sive Siyinqaba National Movement (SS), candidates aligned to the SS were given financial and technical assistance. Candidates standing as individuals and those aligned with the African United Democratic Party had to finance their own campaigns, which made campaigning more difficult for them as a result of financial constraints.

The 1992 Elections Order contains measures in sections 63-65 to suppress practices such as bribing voters with food, entertainment or money and the use of threats or intimidation. However, the EISA Team members found that candidates ignored these provisions. In 2008 the more robust campaigning alluded to above often took the form of candidate sponsored public celebrations. The celebrations are necessary to attract voters, since voters are not driven by partisan loyalties nor do they have any strong belief that who they vote for will make any real difference. They are also a way of circumventing a traditional custom that no public meetings be held without the endorsement of the chief.<sup>38</sup> Moreover, EISA Team members were surprised to discover that stakeholders were wholly ignorant of the legal provisions that outlawed these practices.

#### **4.7 MEDIA**

There are no regulations or code of conduct governing coverage of candidates by the public media. A wide range of observations were made by stakeholders on the coverage by the media in 2008. Generally it was felt that:

- The media did attempt to keep voters informed, but did not recognise the role they should be playing as voter educators.

- Coverage by the print media was better than that of the broadcast media.
- Coverage by public media was biased and the private media were censoring themselves and inclined to favour some candidates over others.

Only a minority felt that coverage was good and treatment was fair.

#### **4.8 FUNDING OF POLITICAL PARTIES**

Political parties are not permitted to take part in the electoral process and no public funding is made available to them (see “3.1.1 Legal situation” above).

#### **4.9 CONFLICT PREVENTION AND MANAGEMENT**

The EBC is not tasked with hearing disputes, nor is there any specific legislation governing dispute resolution, so election petitions are heard by the High Court. Though this has generally proved adequate it has presented some difficulties for the EBC on occasion. In 2008 elections were postponed in five *tinkhudla* because of unresolved disputes.

#### **4.10 CIVIC AND VOTER EDUCATION**

Article 90 of the 2005 Constitution tasks the Elections and Boundaries Commission with the facilitation of civic and voter education. Prior to this it was the responsibility of the Chief Electoral Officer. From the 1993 election onwards it became the practice to form an ad hoc committee of various government departments and parastatal organisations, called the Electoral Publicity Committee, to effect and monitor voter education efforts in the mass media and through posters.<sup>39</sup> This was also repeated in 2008.

Stakeholders generally expressed dissatisfaction with the voter education conducted by the EBC, though many were aware of advertisements placed in the media and workshops conducted in the rural areas. Some attributed the inadequacy to lack of time, since the EBC had been constituted only six months before the secondary election. Others complained of a narrow focus on technical matters to the detriment of broader civic education. Many felt that more would have been achieved if civil society actors had been drawn into the process, and some expressed the view that the EBC and chiefs had

actively hindered CSO efforts. Many mentioned that Women in Law Southern Africa (WILSA) had conducted civic education workshops to encourage people to vote for women candidates.

To the EISA Team's great regret, we were not able to make contact with WILSA while we were in Swaziland. Several actors said that NGOs had conducted workshops, but could not say who these bodies were. A few professed no knowledge of any voter education effort by the EBC at all.

#### **4.11 STAKEHOLDER RELATIONS**

All stakeholders that the 2008 EISA Team met with said that no effort had been made to draw their organisation into the process. Many said that the only stakeholders that the EBC had consulted with were the heads of the various chiefdoms. Moreover, the media had been barred from these meetings. Frequently the view was expressed that the media was used as a channel for one-way top-down communication, through press releases, as a way of controlling information flow and censoring information. Some attributed the EBC's lack of transparency and inclusiveness to arrogance while others thought that they viewed other actors as rivals and were suspicious of their motives.

#### **4.12 ELECTORAL OBSERVATION**

There is no legislation governing election observation by either national or international observers and no code of conduct was issued to them in the past. Observers are currently accredited by the EBC, but prior to the 2008 election this was done by the Chief Electoral Officer. There was little international interest in observing Swaziland's elections in the past. In 2003 EISA deployed a Fact Finding Mission, while the Commonwealth deployed two Expert Teams, one to observe the voter registration and one to observe the elections themselves. Other teams were deployed by the governments of Botswana, Zimbabwe and Zambia.<sup>40</sup> In 2008, however, there were eight missions in all. These included EISA, the African Union, the Commonwealth, the Electoral Commissioners' Forum of the Southern African Development Community, the Japanese Embassy, the Pan African Parliament, the Southern African Development Community and the Embassy of United States of America. The accreditation of international observers was quick and professional and they were supplied with copies of the electoral laws and handbooks on



various aspects of the electoral process and given a “Code of Conduct for International Observers”.

National observers were deployed for the first time in the 2003 election. The NGO umbrella body CANGO mobilised 15 organisations to create an NGO Electoral Support Network, which deployed 108 observers throughout the country in 2003.<sup>41</sup> In 2008 national observers from CANGO’s Electoral Support Network and from the Council of Swaziland Churches were trained by EISA and the National Democratic Institute with the aim of providing each *inkhundla* with one observer from each organisation. However, the EBC accredited only 10 observers from the Electoral Support Network and 20 from the Council of Swaziland Churches, leaving 25 *inkhundla* without national observers.

Section 15 of the 1992 Elections Order permits each candidate to appoint one election agent and, for each polling station, one polling agent and one messenger. Their names must be submitted to the returning officer at least seven days before the election if they are to be present in polling or counting stations.

#### **4.13 ELECTORAL STAFF**

The EBC is assisted in its work by a permanent secretariat. Other officials are appointed on a temporary basis from government ministries or from serving or retired civil servants and teachers. These include registration officials, returning officers to supervise the elections in each *inkhundla* who also act as the counting officer, presiding officers for each polling station who also are also responsible for the count for their polling station, and seven polling officials who also act as counting staff. However, because of the unexpectedly high turnout in the primary elections, additional staff were recruited for many polling stations, which bore fruit in that most polling stations were able to accommodate all the voters without polling being extended. Temporary staff are usually seconded three months before an election and are put through a two day training workshop to equip them with the skills required to perform their functions.<sup>42</sup>

In 2008, the EISA Team found the electoral staff to be well trained, professional, efficient and polite. The assistance they rendered to voters went

a long way to remedying the deficiencies in voter education. The importance of this work is illustrated by the situation that arose in Buhlebuyezi, where the electoral officials were overwhelmed by the crowd of voters demanding their attention and had no time to explain to voters what was expected of them. This was reflected in the unusually high number of spoiled ballots at the polling station, namely 4.6%, while other polling stations in the same constituency ranged from 0.7% and 1.5%. If Buhlebuyezi is excluded, the figure for the other polling stations together was 0.8% (see Appendix 5: Voting Statistics for Mandlangamphiso Constituency). In polling stations where the presiding officer was female, so were all the polling officials and if the presiding officer was male, then the polling officials were males and females in equal numbers. There were more female than male presiding officers, so women formed the bulk of the staff.

#### 4.14 ELECTORAL MATERIALS

Section 14 of the 1992 Election Order permits a returning officer to requisition any suitable building for use as a polling station, except private dwellings. The returning officer is required to pay the owner compensation for any damage done during polling. Ballot boxes and polling booths were borrowed from South Africa in the past, but this practice has been discontinued. Vehicles are drawn from the Central Transport Administration depots. From 1993, when ballot papers were first used for elections, these were printed in Swaziland by local companies and have borne the names of candidates below photographs of them. Ordinary ballots are printed on white paper and tendered ballots on green paper.<sup>43</sup> As can be seen in Table 4, the number of polling stations was increased substantially in 2008 to reduce the distances voters had to travel. Also in 2008 more state transport was made available to carry voters to the polling stations.

**Table 4: Polling units and materials**

Item	Number			
	1993	1998	2003	2008
Constituencies	55	55	55	55
Polling divisions	56	56	56	55
Polling stations	257	257	257	342

Counting stations	55	55	55	55
Ballot papers	na	na	Na	±350 778
Ballot booths	630	na	Na	±1 030
Ballot boxes	320	na	Na	±1 030

Source: Thwala 1996; 1999; 2004, 2005; Dlamini 2008<sup>44</sup>

The distribution of the polling stations was erratic, for polling facilities in Ekuvinjelweni and Buhlebuyeza were inadequate. This seems to be due to the practice of providing a single polling station for each chiefdom, regardless of the number of registered voters. Buhlebuyeza, for instance (see Table 5), had 45% of the registered voters in the Mandlangamphiso constituency, but only one polling station, while the other 55% of the registered voters were allocated five polling stations.

**Table 5: Distribution of registered voters in Mandlangamphiso**

Chiefdom	No registered	% of registered
Buhlebuyeza	3 203	45.28
Emzacini	1 350	19.08
Ekuphakameni	1 112	15.72
Ka Guquka	494	8.47
Zamondo	316	6.98
Nonyane	494	4.47
<b>Total</b>	<b>6 969</b>	<b>100</b>

Source: Compiled from Appendix 5: Voting statistics for Mandlangamphiso Constituency

#### 4.15 SECRECY OF THE BALLOT

Article 87 of the Constitution establishes the principle that both primary and secondary elections must be by secret ballot, as does section 33(1) of the 1992 Election Order. However, the Constitution (Article 87(3)) permits assistance to a voter who is handicapped and the Election Order (section 35) provides that the presiding officer may render such assistance to these voters. In

2003 an EISA Team member reported instances of security force personnel assisting voters to cast their ballots in contravention of section 35.<sup>45</sup> However, no instances of such behaviour were observed, nor reports received by the 2008 Team.

The Elections Order, 1992 section 31(1)(b) requires that polling officials write the voter numbers on the counterfoil of the ballot papers. Since the ballot papers contain the same serial numbers as their counterfoils it is thus theoretically possible to determine how each voter had voted and so the secrecy of the vote is seriously compromised.

#### **4.16 VOTING AND COUNTING PROCESSES**

Sections 16-39 of the Elections Order, 1992 govern the set up of the polling station and the procedures to be followed on voting day. In the two polling stations where opening procedures were observed the stations opened at the stipulated time of 07:00. The correct opening procedures were followed; declarations of secrecy were taken from polling staff and candidate's representative (section 20), notices with candidates were placed outside the polling station (section 21), the presiding officers ensured that only authorised people were in the polling station (section 22), the polling station was laid out in a manner that would facilitate control of the flow of voters and polling booths were set up to ensure secrecy (section 25). Ballot boxes were inspected for damage, demonstrated to all be empty and then locked with a padlock but not sealed; however, the keys were handed over to the police for safe keeping (section 26).

The EISA Team managed to observe voting at 28 polling stations on election day. None of the perimeters of the polling stations were marked, but since campaigning is not permitted on election day and there was an adequate police presence at the polling stations this did not create any difficulties. Indeed, no campaigning in the vicinity of polling stations was observed or reported to the EISA Team. At one polling station candidate campaign posters were found, but these were removed before the polling station was set up. The law does not in fact require that perimeters be marked.

Most polling stations were laid out so that procedures monitoring by the presiding officer was facilitated. However, at Buhlebuyeza polling station,

visited at 16:30, the presiding officer had lost control of the situation entirely. There were large numbers of voters crowded around the door. Fearing that they would not be able to vote (since section 37 mandates the closure of the polling station promptly at the stipulated time), the voters had pressed past the personnel controlling the door. The polling station was so crowded with voters waiting to cast their ballot that it was barely possible to move around, much less to ensure adherence to procedures. Clearly, many of the voters became discouraged and failed to vote, for the turnout for Buhlebuyeza was 55%, while the other polling stations in the constituency ranged between 62% and 73%. If one excludes Buhlebuyezi from the calculation then the average turnout for the constituency was 67%.<sup>46</sup>

In general, though there were long queues at many polling stations, once inside the station the flow of voters was smooth and voting was quick. Most voters were able to cast their ballot within 3-5 minutes.

Generally, polling stations had all the equipment and materials that was required. However, the presiding officer of Ekuvinjelweni polling station, with a very high registration and high turnout rate, decided to facilitate voting by creating an additional stream. Since he only had two stamps, the ad hoc stream had to stamp ballots en masse. Since he had only two punches, he relied on the honour of voters and requested them to report to one of the two punching officers for the other streams to have their voters' cards punched. He also made a request to the returning officer to send an additional stamp and punch. Unfortunately he was so overworked he was not able to ensure that only voters who had been through the register checking process were allocated ballot sheets. Here and at Kwalweni polling station no lists of candidates were displayed outside as required by section 21 of the Order.

In general, procedures were correctly and uniformly followed throughout all the polling stations observed. A significant inconsistency in procedure came from treatment of the ballot boxes. In 10 polling stations (35.7% of polling stations observed) ballot boxes were sealed but not locked; in another 10 (35.7%) they were both sealed and locked. In one case they were sealed but not locked and in another case (Buhlebuyeza again) they were improperly sealed with ordinary sealing wax and not locked. In this last case too many ballots were stuffed in the box and the hinge sprang free and broke the seal.

Though no provision is made in law for it, in the past voters' fingers were marked with ink as an additional safeguard against voters voting twice.<sup>47</sup> However, the practice has been discontinued because it was found that the ink could be easily removed. Instead in 2008 the voters' card was clipped, but this was inconsistently executed. In some cases this was done when the voter was issued with a ballot sheet and in other cases as the voter left the polling station. A third inconsistency was in the stamping of the ballot sheets. At six polling stations (21%) ballots were pre-stamped en masse, rather than being stamped as they were issued to voters, as required by section 31(1)(c)).

Every effort was made to accommodate voters who were not found on the voters' roll for the polling station:

- Voters not on the roll, but whose voter's card indicated that they were registered to vote at the polling station, were permitted to vote.
- Voters not on the roll and whose voter's card indicated that they were registered elsewhere to vote, but could produce a certificate of transfer to that polling station, were permitted to vote.
- Voters not on the roll and whose voter's card indicated that they were registered elsewhere to vote, but could not produce a certificate of transfer to that polling station, were not permitted to vote. They were directed to the polling station where they were registered to vote there. In many cases state transport was available to ferry the voters there.

In 2008 the candidate polling agents observed by EISA Team members were attentive to the polling and counting processes and raised objections where necessary without being obstructionist. Generally, polling agents from more than one candidate were present when EISA Team members visited. The exception was at Mangwanene, where the EISA Team observed the opening procedures at the beginning of the poll. There was only one polling agent present. The presiding officer attributed the lack to the earliness of the hour and said she expected more to arrive in due course.

The close of the poll is governed by the Elections Order 1992, sections 37, 40-45. According to section 37(1) after the time for the close of poll (in 2008

this was 18:00), no person may be issued with a ballot paper and only voters with ballot papers inside the polling station are permitted to vote. This did not present a problem at most polling stations, for from after 13:00 no queues were observed at polling stations visited except for Buhlebuyeza. When EISA Team members returned there at 18:20 it was already closed and it could not be determined whether there were still voters waiting to vote at 18:00, nor whether they had been permitted to vote. The correct closing procedures were observed at the polling station where the close of poll was observed. The law does not specify when or where the counting is to take place or what is to be done with the ballot boxes and documentation in the interim, but only prescribes that the presiding officer should deliver them personally to the returning officer. In Swaziland it has been the custom to undertake the count of all the polling stations at a single counting centre on the day after election day.

The 2003 the EISA Team observed that in most cases the presiding officer retained custody of the ballot boxes and materials, but in a few cases they were handed over to the police for safe keeping.<sup>48</sup> In 2008 the Team observed that all the ballot boxes were uniformly handed over to the police and none were safeguarded by the presiding officers. No cases were observed where the candidates' polling agents accompanied the ballot boxes and materials to the police station to observe the handover. No documentation was made or signed nor were records kept of what was deposited in the walk-in safe. The voting day records and other materials were retained by the presiding officers and taken home with them for the night. The following morning the ballot boxes were retrieved from the walk-in safe by the presiding officers and transported by them to the counting station. Only one instance was observed where candidates' polling agents were present to observe the process.

At Zombodze Emuva polling station there was a demonstration on election day. The previous MP, Titus Thwala, lost the primary election to become a candidate in the secondary election and launched a court bid to overturn the results, but lost the case. His supporters held a demonstration to protest his exclusion from the ballot at the Zombodze Emuva, but they were dispersed by the police. Voting continued throughout, without interruption.<sup>49</sup> Apart from this, polling day proceeded peacefully and without disturbance and no instances of intimidation were brought to the Team's attention.

The counting of the vote was delayed somewhat at one counting station because it took a while for the counting officer (the constituency returning officer) to ensure that the large numbers of people present were legally entitled to be there. There were a large number of candidate polling agents present who were vigilant and prevented errors from being made. The returning officers were sensitive to their complaints and responsive to their suggestions. There were also national observers present at both counting stations and a large number of international observers at one station, but only EISA members at the other. The various observers inspected the ballot boxes and were universally satisfied that they had not been tampered with overnight.

The **count** was undertaken by presiding officers acting as counting officers and polling officials acting as counting officials, and the whole process was overseen by the returning officers. The provisions of the law on the execution of the count are schematic, allowing the returning officers a good deal of discretion in conducting it. As a consequence the returning officers were able to experiment with different methods until a method was found that was as quick as possible without compromising transparency or allowing errors to creep in. In both counting stations the results forms were completed by the returning officers, but in neither case were candidates or their agents invited to sign the results form. The law does not, in fact, require that the returning officer issue such an invitation (see section 49). Overall the counting of the votes was conducted efficiently and in keeping with high standards of transparency and rigour.

#### **4.17 PRESENTATION OF RESULTS**

At both counting stations the returning officer announced the results of the election at the end of the day. In neither counting station were the results posted outside the station although the law requires it (section 49(3)(a)). Because of the five disputes that had not been resolved by election day primary elections and secondary elections continued to take place for some time after the election and the final list of elected members was only made available on the 20 October 2008 (see Appendix 7: Directly elected members of Parliament).

As voters in the secondary election regard voting against the candidate of



their chiefdom as an act of disloyalty to their chief, the candidate from the largest chiefdom is almost certain to win, regardless of that person's merit (see 4.1 Delimitation of constituencies). This is easily demonstrated with reference to the voting patterns in Mandlangamphiso Constituency given in Table 6. The largest chiefdom, in terms of valid votes cast, is Buhlebuyeza with 39.6% of the vote. Here 90.6% of the voters in the chiefdom cast their votes for the candidate of that chiefdom, while only 7.8% of the votes cast for that candidate came from outside the chiefdom. This candidate obtained the largest share (38.9%) of the vote and won the election. Had the other chiefdoms rallied around another candidate Buhlebuyeza's candidate might have lost. In fact, for the most part, each chiefdom was loyal to its own candidate, with between 75.8% to 93.4% of the vote of each chiefdom going to its own candidate (the exception being Ka Guquka, whose voters deserted their candidate en masse). No candidate managed to draw more than half of his votes from outside his chiefdom (the candidates were all men).

**Table 6: Voting patterns in Mandlangamphiso constituency**

Chiefdom of candidate	Chiefdom % of votes cast	Candidate's percentage of votes of:		
		Own chiefdom	Other chiefdoms	Constituency total valid
Buhlebuyeza	39.6	90.6	7.8	38.9
Emzacini	20.8	83.5	23.5	22.7
Ekuphakameni	15.2	75.8	17.1	14.3
Ka Guquka	9.5	29.1	18.8	3.4
Zamondo	8.5	93.4	43.5	14.1
Nonyane	5.4	83.5	30.9	6.5

**Source:** Compiled from Appendix 4: Election results for Mandlangamphiso Constituency

Table 7 shows that the number of women directly elected to the House of Assembly has declined by two since 2003. However, in terms of Article 95 of the Constitution, 2005, since the total number of women in Parliament falls short of 30% an additional four women will be indirectly elected to the House of Assembly (see 2.1 Constitutional Order for the details of the arrangement). This would bring the number of elected women in the House of Assembly to 11 out of 59 members, or 18.6%.

**Table 7: Directly elected members of the House of Assembly by gender**

Year	Men	Women	Total	% Women
2008	48	7	55	12.7
2003	46	9	55	16.4
1998	53	2	55	3.6

Source: Thwala 2004; Dlamini 2008; EISA 2003<sup>50</sup>

In many ways the call by the trade unions, most of the political parties and many civil society organisations for a boycott of the election transformed the election into a referendum on the legitimacy of the new Constitution and the political order that it enshrines. The King's response to the boycott call was to summon the nation to the royal cattle byre and urge the people to register for the election and to vote. The government's response has been to pour resources into the election to enable the EBC to conduct it efficiently and to ensure that voters were able to vote.<sup>51</sup> The chiefs for their part mobilised their subjects in the rural areas to register and to vote.<sup>52</sup> Table 3: Voter registration trends shows that the Swazi people turned up in large numbers to register, reversing the apathy that characterised the 2003 election: a record 88% of the 400 000 estimated eligible population registered for these elections.

The best indication we have of whether the boycott was a success or not is the voter turnout rate. In Table 8 we can see that there was a slight but steady decline (3%) in the number of voters casting their ballots between 1993 and 2003. However, in the 2008 elections, despite the large number of voters who registered for the election and efforts of the authorities to galvanise voters, the turnout actually dropped by nearly 4%, 1% more than over the previous three elections together. Thus only 47.4% of the 400 000 estimated eligible voters actually voted.

From this we may conclude that large numbers of Swazis heeded the boycott call and thereby signalled their disenchantment with the current Constitutional dispensation.

**Table 8: Voting statistics 1993 to 2008**

Year	Registered	Votes cast	% Turnout	Valid votes	Spoilt votes	% spoilt
2008	350 778	189 559	54.0	172 513	1 949	1.03
2003	213 947	123 807	57.9	na	na	na
1998	198 445	119 845	60.4	na	na	na
1993	283 693	173 053	61.0	na	na	na

Source: Thwala 1996; 1999; 2004; Dlamini 2008; Khumalo, 2008<sup>53</sup>

## 5 CONTRIBUTIONS OF FOREIGN GOVERNMENTS

The changes made to the electoral system in 1992 (see 2.3 Electoral system) led to an influx of donor aid, especially from Taiwan, Germany and Britain. However, when further reforms did not materialise after 1992, donor interest declined. From 1998 onwards elections were funded by the government with some support coming from South Africa (the loan of ballot boxes and booths) and Britain (the donation of a computer). The rule of law crisis from 2001 onwards led to a cooling of relations between Swaziland and European countries and donor aid for elections ceased entirely.<sup>54</sup>

## 6 POST-ELECTION DEVELOPMENTS

Late in the night of counting day four men attempted to blow up a bridge leading to a royal residence over the highway at Lozitha. The premature explosion killed two and one escaped. One of the men was badly injured and captured. The incident caused tension between the government and political activists because the latter refused to condemn the bombing outright. Subsequently King Mswati said that political activists, whom he called terrorists, would be eliminated. Under the 2008 Suppression of Terrorism Act, on 14 November PUDEMO was banned along with three other organisations and the leader of PUDEMO was arrested and charged with terrorism. On 27 November journalists were warned by the Attorney General that the government would not tolerate support for terrorists by them. Marches and demonstrations have been banned and activists arrested.<sup>55</sup>

# 7

## Findings and recommendations



- Constitutional and legal framework
- Stakeholders: Political parties, mass media and civil society
- Election management

The Technical Assessment Team used the **Principles for Election Management, Monitoring and Observation in the SADC Region** (PEMMO; <http://www.eisa.org.za/EISA/publications/pemmo.htm>) as the basis for its assessment and its recommendations are in line with the principles established by PEMMO.

Election management of the elections in 2008 was hampered by tardiness in the appointment of the electoral management body members, leaving them with insufficient time to properly plan and execute their mandate. However, the current EBC is a permanent body with a term of 11 years, ensuring that at least this situation will not arise for the next election.

In the past insufficient resources were allocated for the conduct of elections, but the 2008 elections were clearly better funded. In addition the EBC will be able to execute its constitutional obligation to review the boundaries of electoral constituencies, for they have not been reviewed since 1993. Most importantly, the members of the EBC have undergone a baptism of fire and are now fully conversant with the electoral system's strengths and deficiencies and fully proficient at organising and conducting elections.

Despite the lack of time available to the EBC, progress was made in a number of areas, by comparison with the previous election:

- Voters' cards that include a photograph of the voter have been implemented. Voters' rolls are now composed of facsimiles of the voters' cards. These measures speed up voter identification at polling stations and greatly reduce the risk of double voting taking place.
- Substantial corrections were made to the voters' roll after their poor condition became manifest during the primary elections, providing the EBC with an excellent foundation on which a continuous voters' roll can be implemented.
- The accreditation of international observers was quick and professional.
- There was a marked improvement in the way that candidates' polling agents performed their tasks.
- The number of polling stations was increased and more state transport was made available to carry voters to the polling stations. The distribution of the polling stations was erratic in some instances and there is scope for further improvements in this regard.
- The electoral staff was well trained, professional, efficient and polite. The assistance they rendered speeded up voting and reduced spoiled ballots.
- Most polling stations were laid out so that procedures monitoring by the presiding officer was facilitated.
- The flow of voters was quick.
- Polling stations had all the equipment and materials that was required, with a few exceptions that can easily be eliminated in the future.

It is to the credit of the EBC that it was able to make these achievements given the time constraints and the members' lack of experience. There is much yet to be done, for the Swazi legal and constitutional framework is sorely deficient and Swaziland falls far short of the standards that would have to be met in order for the country to be classed as a democracy. These matters lie outside the control of the EBC commission and are the province of the King and Parliament and are discussed in sections 7.1 and 7.2. There are also many grave deficiencies in electoral management to which the EBC can and should address itself; these are discussed in section 7.3.

## 7.1 CONSTITUTIONAL AND LEGAL FRAMEWORK

Enormous power is concentrated in the hands of the King. The direct and active role that the King plays in the political life of Swaziland has polarised the Swazi people. This is in direct conflict with his higher and more crucial role as the living embodiment of the Swazi nation and of its culture:

- Executive authority is vested in the hands of a hereditary monarch and not in the hands of a democratically elected office-bearer who is answerable to the electorate. *The Team recommends that executive power be vested in a Prime Minister who should be answerable to the House of Assembly as the elected representatives of the citizens of Swaziland.*
- One-third of the members of Parliament are appointed by and answerable to the King, who is not an elected office-bearer. *The Team recommends that the number of executive appointees be drastically reduced and the purpose of the appointments be clearly defined in the Constitution. All such appointments should be made by the King on the advice of the Prime Minister and ratified by the House of Assembly. It is worth noting that countries like Kenya provide for the appointed MPs to be recommended by the parliamentary parties proportional to their representation in the national assembly.*
- The King effectively has the power to veto legislation and Parliament cannot over ride the veto. *The Team recommends that the King have the power to veto legislation only once and that vetoed legislation can then be passed by Parliament in a constitutionally determined process and by a constitutionally determined majority.*
- There is an almost universal perception amongst stakeholders that the King has undue powers in regard to the appointment of the members of the EBC and in its day to day functioning, so that its independence from the executive is brought into question. *The Team recommends that alternative models of appointing the EBC be explored, and adapted to Swaziland's needs so as to secure the EBC's independence from the executive and the perception of independence in the eyes of stakeholders.*

The *tinkhundla* system was originally developed for military and labour mobilisation and administrative purposes, but now also serves as the basis

for electoral constituencies. The *tinkhundla* have been proved to be deficient in this regard:

- The chiefdoms serve as a nomination base for the primary elections for the secondary phases. Here the chiefs have used their power to influence the nomination and election of candidates in the primary election in a way that is in conflict with basic democratic values and practices. They are in a position to coerce the voters.
- The grouping of the chiefdoms into an *inkhundla* necessarily and unavoidably advantages candidates from chiefdoms with large populations over those with small ones.
- Currently an *inkhundla* is established by the King on the recommendation of the EBC.
- Both the chiefdoms and the *tinkhundla* are traditional social units and form the basis of enduring social ties and relations. The boundaries of these are not flexible and cannot be changed from one election to another, as can those of regular constituencies.
- Election petitions on the outcome of primary elections have led to the postponement of secondary elections in some constituencies in every election since 1993, making the EBC's difficult task even more difficult.

*The Team recommends that the tinkhundla be restricted to their traditional social functions and that an alternative system be adopted for the election of members of the House of Assembly.*

Contradictory and deficient electoral legislation is in place:

- The 2005 Constitution of the Kingdom of Swaziland conflicts with the 1992 Elections Order and the 1992 Voters Registration Order.
- Some matters that should be prescribed in the legislation are either absent or incomplete. Most significantly, the law does not specify when or where the counting is to take place or what is to be done with the ballot boxes and documentation in the period between the completion of voting and the counting of the votes.

- After the time for the close of poll no person may be issued with a ballot paper and only voters with ballot papers inside the polling station are permitted to vote, leaving voters who have possibly queued for hours without the chance to vote.
- There is no legislation governing the functioning of the EBC, nor any law governing electoral observation by national and international observers.
- The Elections Order, 1992 section 31(1)(b) requires that polling officials write the voter numbers on the counterfoil of the ballot papers, which seriously compromises the secrecy of the vote.

*The Team recommends that the electoral legislation be reviewed so as to harmonise it with the provisions of the Constitution and to reflect best current practices nationally and internationally. Legislation should also be adopted to flesh out the schematic provisions of the Constitution on the EBC and legislation governing national and international observation should be adopted.*

The 2008 Suppression of Terrorism Act gives the government wide ranging powers to deal with dissenters and clamp down on the media.

- The Act is intended to combat the real threat that terrorism presents in Swaziland and internationally, but its provisions are so wide and far reaching that it provides the government with unprecedented and unwarranted powers that present a more real threat to the security and civil liberties of the Swazi people than do the terrorists. *The Team recommends that the Act be reviewed and drastically amended or repealed and replaced with a more carefully designed instrument against terrorism and that in the interim great prudence be exercised in the use of this legislation.*

## **7.2 STAKEHOLDERS: POLITICAL PARTIES, MASS MEDIA AND CIVIL SOCIETY**

Parties are legal, but not permitted by law to participate in elections:

- This places undemocratic limitations on people's right to freely choose their representatives, in violation of Articles 25 and 84 of the Constitution. Voters who believe that political parties have no place in the political life of Swaziland would be free to vote for independent candidates.



- This creates unnecessary social and political conflict and unrest and endangers the stability of the state and the well being of society.
- This has also led to successive Houses of Assembly that are dominated by parochial concerns rather than national ones.

*The Team recommends that political parties be permitted to participate in elections and that parties that foreswear violence be unbanned through a transparent and fair legal process with possibility to appeal. Legislation governing aspects of political party life such as registration, regulation, funding and financial control should be enacted.*

The media are overwhelmingly controlled by the state:

- The public media are directly controlled by the executive. *The Team recommends that public media be given charters that secure their autonomy and provide them with a clear public service mandate against which they can be measured and called to account by Parliament, who should exercise oversight over them.*
- The private media are tightly controlled by the Ministry of Public Service and Information. *The Team recommends that the provisions of Articles 24 of the Constitution be enforced by abolishing all practices that infringe on the freedom of the press.*
- There is no code of conduct governing media reporting on elections or allocation of time to candidates in the state media. *The Team recommends that a code of conduct be adopted and that equitable air time allocation be enforced in order to secure fair treatment to all participating candidates in elections by public and private media.*

## **7. ELECTION MANAGEMENT**

The executive exercises authority over electoral matters that ought not to lie within the competence of the executive:

- The EBC is responsible for reviewing constituency boundaries and makes recommendations to the King on adjustments. It is the King who proclaims the boundaries. *The Team recommends that the constitution be amended to provide that the EBC determine the*

*constituency boundary adjustments that are required. If oversight is felt necessary, this should be provided by a parliamentary committee.*

- The Minister of Justice and Constitutional Affairs announced that a review would be undertaken in 2009. Article 90 of the constitution establishes the EBC as an independent authority and gives to it the task of reviewing the boundaries. Article 91 specifies that the review should be undertaken in the last year of Parliament's term (in the case of this Parliament that would be 2012). *The Team recommends that members of the executive refrain from making statements on matters that are within the scope of the EBC's mandate, so that widespread perceptions that the EBC lacks independence from the executive are not reinforced.*
- The King has the power to determine the dates of elections. *The Team recommends that the dates of elections be determined by provisions in the constitution and not by executive fiat.*

The EBC and many members of civil society have an unnecessarily adversarial relationship with one another:

- Stakeholders are not consulted at all, nor is their help or their buy-in solicited by the EBC.
- Stakeholders complain of a lack of transparency, and of top down communication by the EBC with society through the media.
- Civil society bodies who wished to observe the elections were hindered by the EBC, which placed unnecessary restrictions on the numbers accredited.
- Civil society members who wished to conduct voter education complained that the EBC actively discouraged and hindered their efforts.

*The team recommends that the EBC take active steps to engage with members of civil society, so as to enhance transparency and the credibility of the EBC and confidence in the electoral process and its outcomes. Should the EBC do so, it will find that civil society will actively aid it in its efforts and help shoulder some of the burden that the EBC presently bears alone.*

Swaziland lacks a continuous system of voter registration:

- The EBC had to create a voters' roll from scratch, with very little time to do so. Because of the lack of time, the voters' rolls could not be made available to the public for inspection. Consequently no corrections could be made and the voters' rolls were found to be seriously defective in the primary elections.
- Voters' rolls are made open for inspection by the public at Regional and Sub-Regional Offices, which are not easily accessible to poor rural voters.

*The Team recommends that a system of continuous voter registration be adopted and that voters' rolls be displayed publicly at the centres where voters registered.*

There are no laws or codes of conduct governing coverage of candidates by the public media to ensure fair coverage and equitable access to the media by participants. *The team recommends that laws and codes of conduct be adopted.*

Voter and civic education conducted by the EBC is inadequate, and too narrowly and too technically focused. *The team recommends that the EBC approach one of the many NGOs that have expertise in the design of nationally appropriate voter and civic education programme. The Team also recommends that additional resources be allocated to the execution of voter and civic education drives. The Team further recommends that the EBC invite NGOs to submit proposals for the conduct of voter and civic education programmes and accredits those that are appropriate, so reducing the burden it must bear in this regard.*

Some significant deficiencies were observed in the voting, counting and results presentation processes:

- A significant inconsistency was found in the way ballot boxes were sealed. *The Team recommends that standard seals be used throughout, that if ballot boxes are locked this is in addition to the seal and not in place of it and that the use of sealing wax be strongly prohibited.*
- Ballot boxes and materials were stored at police stations overnight and counting was undertaken the next day; this creates a risk of ballot box tampering and electoral fraud. *The Team recommends that counting be undertaken directly after the close of polls*

*at the polling stations.*

- At counting stations reconciliations were not made before counting proceeded, nor were materials or records checked. *The Team recommends that these procedures be enforced for the sake of accuracy.*
- The results were not posted outside the counting station. *The Team recommends that these be posted for the sake of transparency.*

**APPENDIX I**  
**MEMBERS OF THE EISA TEAM**

<b>Name</b>	<b>Organisation</b>	<b>Country</b>	<b>Gender</b>
Alwin Awases	Namibian NGO Form	Namibia	Female
Zahira Seedat	EISA	South Africa	Female
Victor Shale	EISA	Lesotho	Male
Deane Stuart	EISA	South Africa	Male

## APPENDIX 2

### EISA TECHNICAL TEAM LAUNCH PRESS RELEASE



#### 11 September 2008

EISA is deploying a Technical Assessment Team to the Swaziland 2008 House of Assembly Election scheduled for 19 September 2008. The team will be composed of three members and is expected to arrive in Mbabane on 13 September in order to hold a series of meetings with election stakeholders ahead of election day. Stakeholders include the Elections and Boundaries Commission, political parties, CSOs and academics. The team will remain in the country until 23 September in order to observe the voting and counting processes as well as post polling activities. The team will cover selected rural and urban areas around Swaziland.

The general objectives of the team conform to EISA's mission of promoting credible elections and democratic governance in Africa. In particular, the mission seeks to determine if:

- the conditions exist for the conduct of elections that would allow the people of Swaziland to freely express their will and their choice;
- the elections will be conducted in accordance with the legal and constitutional framework for elections that is established in the Kingdom of Swaziland;
- Principles for Election Management, Monitoring and Observation in the SADC Region (PEMMO; <http://www.eisa.org.za/EISA/publications/pemmo.htm>).

EISA will also provide secretarial and other support to the election observer mission of the Pan African Parliament.

EISA is a regional non-governmental organisation established in 1996 and based in Johannesburg, South Africa. Its mission is to strive for excellence in the promotion of credible elections, participatory democracy, human rights culture and the strengthening of governance institutions for the consolidation of democracy in Africa. It services governments, electoral commissions, political parties, civil society organisations and other institutions operating in the democracy and governance fields in the SADC region.

### APPENDIX 3

#### SCHEDULE OF MEETINGS AND ACTIVITIES CONDUCTED

#### Sunday 14 September

Time	Organisation	Type	Activity
11:30 - 12:30	EBC	EMB	Accreditation and briefing
14:00 - 14:30	History Dept of UNISWA	Academic	Briefing
16:15 - 17:30	CANGO	NGO umbrella	Briefing & Stakeholder questionnaire

#### Monday 15 September

Time	Organisation	Type	Activity
10:00 - 11:00	PUDEMO	Party	Stakeholder questionnaire
12:30 - 13:10	Channel Swazi	Media	Stakeholder questionnaire
14:20 - 15:25	Council of Swazi-land Churches	Faith	Stakeholder questionnaire
15:40 - 16:50	SCCCO	NGO	Briefing & Stakeholder questionnaire
17:05 - 18:00	Inhlava Forum	Party	Stakeholder questionnaire

#### Tuesday 16 September

Time	Organisation	Type	Activity
07:45 - 08:45	Royal Swazi Police	State	Briefing
09:00 - 11:00	Elections and Boundaries Commission	EMB	Briefing
11:15 - 12:15	Commonwealth EOM	EOM	Swop notes
12:00 - 13:00	Swaziland Conference of Churches	Faith	Stakeholder questionnaire
14:00 - 15:00	AUDP	Party	Stakeholder questionnaire
16:00 - 17:00	Sive Siyinqaba	Party	Stakeholder questionnaire

#### Wednesday 17 September

Time	Organisation	Type	Activity
09:00 - 10:30	Media Institute of Southern Africa	Media	Briefing & Stakeholder questionnaire

10:30 - 12:00	Election Observer Missions	EOM	Swop notes & Coordinate ED
11:30 - 12:15	Swaziland Federation of Trade Unions	Labour	Briefing
14:30 - 15:30	Ngwane National Liberatory Congress	Party	Stakeholder questionnaire

### Thursday 18 September

Time	Organisation	Type	Activity
10:30 - 11:30	FSE & Chamber of Commerce	Business	Stakeholder questionnaire
11:30 - 16:00	Reconnaissance of polling stations		
16:00 - 17:30	Japanese Embassy	EOM	Swop notes

### Friday 19 September

Time	Activity
06:30 - 19:30	Observation of voting and the securing of balloting boxes and material

### Saturday 20 September

Time	Activity
06:30 - 21:30	Observation of the counting of the ballots

### Sunday 21 September

Time	Organisation	Type	Activity
11:30 - 12:45	National Constitutional Assembly	NGO	Stakeholder questionnaire & briefing
12:45 - 13:15	Swaziland United Democratic Front	Party Coalition	Briefing

### Monday 22 September

Time	Organisation	Type	Activity
10:25 - 11:15	Elections and Boundaries Commission	EMB	Briefing
12:00 - 13:30	League of African Churches	Faith	Stakeholder questionnaire



**APPENDIX 4**  
**ELECTION RESULTS FOR MANDLANGAMPHISO CONSTITUENCY**

Chiefdom of Candidate	Candidate of Chiefdom						Total Votes
	Buhlebuyeza	Emzacini	Ekuphakameni	Ka Guquka	Zamdondo	Nonyane	
Buhlebuyeza	1524	30	66	6	46	10	1682
Emzacini	71	739	13	9	9	44	885
Ekuphakameni	40	57	520	7	54	8	686
Ka Guquka	6	110	9	117	137	23	402
Zamdondo	2	17	1	3	338	1	362
Nonyane	9	13	0	2	14	192	230
<b>Total Votes</b>	<b>1652</b>	<b>966</b>	<b>609</b>	<b>144</b>	<b>598</b>	<b>278</b>	<b>4247</b>

**Source:** Results published by the Counting Officer for Mandlangamphiso Constituency at the end of counting day.

**APPENDIX 5**  
**VOTING STATISTICS FOR MANDLANGAMPHISO CONSTITUENCY**

Chiefdom	No Registered	Total Votes	% Turnout	No Spoilt	% Spoilt
Buhlebuyeza	3203	1763	55.04	81	4.59
Emzacini	1350	898	66.52	13	1.45
Ekuphakameni	1112	691	62.14	5	0.72
Ka Guquka	599	407	67.95	5	1.2
Zamdondo	494	367	74.29	5	1.36
Nonyane	316	232	73.42	2	0.86
<b>Total</b>	<b>7074</b>	<b>4358</b>		<b>111</b>	

**Source:** Results published by the Counting Officer for Mandlangamphiso Constituency at the end of counting day.

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## **APPENDIX 6**

### **SWAZILAND'S EBC'S CODE OF CONDUCT FOR INTERNATIONAL OBSERVERS**

#### **CODE OF CONDUCT FOR INTERNATIONAL OBSERVERS**

- Observers will carry the prescribed identification issued by the Elections Boundaries Commission and will identify themselves to any interested authority upon request.
- Observers will maintain strict impartiality in the conduct of their duties and shall at no time express any bias or preference in relation to national authorities, candidates or with reference to any issue in contention in the electoral process.
- Observers will not display or wear any partisan symbols, colours or banners.
- Observers will undertake their duties in an un-obstructive manner and will not interfere with the election process, polling day procedures, or the vote count.
- Observers may wish to bring irregularities to the attention of the local election officials, but they must never give instructions or countermand decisions of the election officials.
- Observers will base all conclusions on well documented, factual, and verifiable evidence.
- Observers will refrain from making any personal or premature comments about their observations to the media or any other interested persons, and will limit any remarks to general information about the nature of their activity as observers.
- Observers must comply with all national laws and regulations.
- Observers must show respect for the people and culture of the country.

## APPENDIX 7 DIRECTLY ELECTED MEMBERS OF PARLIAMENT

### HHOHHO REGION

Inkhundla	Member	Gender
Hhukwini	Mkhululi D. Dlamini	Male
Lobamba	Majahodvwa Khumalo	Male
Madlangempisi	Bongani Mdluli	Male
Maphalaleni	Sicelo Dlamini	Male
Mayiwane	David Shongwe	Male
Mbabane East	Esther Dlamini	Female
Mbabane West	Johane Shongwe	Male
Mhlangatane	Mbalekelwa J. Ndwandwe	Male
Motshane	Robert Magongo	Male
Ndzingeni	Lutfo Dlamini	Male
Nkhaba	Enock J. Dlamini	Male
Ntfontjeni	Hendry Dlamini	Male
Timphisini	Jennifer du Pont	Female
Piggs Peak	Hlob'sile Ndlovu	Female

### LUBOMBO REGION

Inkhundla	Member	Gender
Dvokodweni	Mtiti Fakudze	Male
Hlane	Mduduzi Magagula	Male
Lomahasha	Meninjeni Mahlalela	Male
Lubuli	Timothy Myeni	Male
Matsanjeni	Nkululeko Mbhamali	Male
Mhlume	Siphiwe Kunene	Female
Mpolonjeni	Nicodimus Mashwama	Male
Nkilongo	Trusty Gina	Female
Siphofaneni	Gundwane Gamedze	Male
Siteki	Joseph Souza	Male
Sithobela	Patrick M. Mamba	Male

## MANZINI REGION

Inkhundla	Member	Gender
Kukhanyeni	Clement Dlamini	Male
Kwaluseni	Sibusiso Dlamini	Male
Lamgabhi	Ntuthuko Dlamini	Male
Lobamba Lomdzala	Marwick Khumalo	Male
Ludzeludze	Nonhlanhla Dlamini	Female
Mafutseni	Joseph Madonsela	Male
Mahlangatsha	Musa Ngcobo	Male
Mangcongco	Mduduzi Dlamini	Male
Manzini North	Macford Sibandze	Male
Manzini South	Thandi Z. Nxumalo	Female
Mhlambanyatsi	Petros Mavimbela	Male
Mkhiweni	Rodgers Mamba	Male
Mtfongwaneni	Patrick Gamedze	Male
Ngwempisi	Veli Shongwe	Male
Nhlambeni	Frans Dlamini	Male
Ntondozi	Peter Ngwenya	Male

## SHISELWENI REGION

Inkhundla	Member	Gender
Gege	Musa Kunene	Male
Hosea	Mduduzi Mabuza	Male
Kubuta	Charlie Myeza	Male
Maseyisini	Mduduzi Dlamini	Male
Matsanjani	Qedusizi E. Ndlovu	Male
Mtsambama	Bheki Mkhonta	Male
Ngudzeni	Big Boy Mamba	Male
Nkwene	Aaron S. Dladla	Male
Zombodze	Johannes Ndlangamandla	Male
Sandleni	Gibson C. Hlophe	Male
Shiselweni 1	Wilson F. Ntshangase	Male
Shiselweni 2	Benedict Xaba	Male
Sigwe	Vumani Nxumalo	Male
Somntongo	Doward Sihlongonyane	Male

**Source:** Dlamini, S 2008 “Swaziland election figures”, 21 October, e-mail from the ECB’s PRO to the writer.

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- throughout the sub-continent. In Swaziland it became law through the King's proclamation of 1973, and so a matter of proper etiquette hardened into law.
- 39 Thwala 2004, *op cit*, 4;-5 Karume 2004, *op cit*, 17; 2003, *op cit*, 24, 25; Commonwealth Expert Team 2003b, *op cit*, 11.
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- 41 Coordinating Assembly of Non-Governmental Organisations 2003, *op cit*, 4, 5.
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- 44 Thwala 1996, *op cit*, 3, 7, 13; Thwala 1999, *op cit*, 4; 2005, *op cit*, 9; Thwala 2004, *op cit*, 2. Dlamini, S 2008 "Briefing by the PRO of the EBC", 22 September.
- 45 Karume 2004, *op cit*, 21.
- 46 Compiled from Appendix 5: Voting statistics for Mandlangamphiso Constituency
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- 51 No figures could be obtained on moneys spent on this or previous elections (with the exception of Kabemba (2004b, *op cit*, 35), who supplies a figure of 17 million euros for 1998). However, evidence of increased expenditure is found in the increase in the number of polling stations from 257 to 342 (+33%, see Table 5: Polling units and materials) along with the staff and materials needed to make them operational. Other evidence lies in the increase in transport to ferry voters on election day and in the increase in polling staff after the primaries as well as the resources consumed to bring the voters' rolls from a very poor condition into excellent condition between primary and secondary voting days.
- 52 Voter registration in the rural areas is undertaken at the kraals of the chiefs and in their presence; to fail to register when instructed to do so is a public act of resistance and insubordination. Each chiefdom has but one polling station that needs be monitored and only a handful of assembly points for transportation to the polling stations, which makes the task even easier since voters for the most part arrive in neat batches. Failure to vote is thus also a public act of resistance. Since 75% of the population is rural, and given the high premium that is placed on loyalty to the chiefs, the chiefs have enormous sway over decisions made by most voters in the election period. Above and beyond this the majority of stakeholders alleged that many chiefs had threatened those who did not register and vote with the loss of access to state services, and especially to the loss of study scholarships for children.
- 53 Thwala 1996, *op cit*, 13; 1999, *op cit*, 4 (the results for one constituency were outstanding); 2004, *op cit*, 110-111; Dlamini, S 2008 "Swaziland election figures", 21 October, e-mail from the EBC's PRO to the writer; telephone conversation with the EBC Principal Elections Officer, Mr Khumalo, 17 December 2008.
- 54 Kabemba 2004b, *op cit*, 35; Rule 1998, *op cit*, 11.
- 55 *Times of Swaziland* 2008 "SA man charged for Lozitha bombing" 22 September; *Swazi Observer* 2008 "SA 'bomber' charged with high treason", 22 September; MISA 2008 "Critical journalists could be viewed as "supporting terrorists" and arrested, warns attorney general", 18 November, [www] <http://www.ifex.org/en/content/view/full/98624> (accessed 20 November); ARTICLE 19 2008. *op cit*.