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| **AFRICAN UNION ELECTION OBSERVATION MISSION TO THE 21 SEPTEMBER 2018 PARLIAMENTARY ELECTIONS IN THE KINGDOM OF ESWATINI** |

**FINAL REPORT**

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# ACKNOWLEDGEMENT

The AUEOM to the Kingdom of Eswatini is grateful to all the individuals who contributed to its success. The Mission is primarily grateful to the Government and people of Eswatini for their warm welcome into the country. The Mission is further grateful to the Chairman and staff of the Electoral and Boundaries Commission (EBC) for their assistance and cooperation throughout the period of deployment in Eswatini.

The Mission’s work would not have been possible without the excellent efforts of all its observers and technical support staff. It is especially thankful to H.E. James A. Michel, former President of Seychelles, for his exceptional leadership, which was critical to the Mission’s contribution to a transparent and credible election in Eswatini.

**EXECUTIVE SUMMARY**

The Kingdom of Eswatini held primary and secondary level elections on 18 August and 21 September 2018, respectively. The primary level elections were held in each of the country’s chiefdoms to nominate candidates as well as elect members of the Executive Committee (*Bucopho*). At the secondary level, two elections were conducted, namely, the Heads of the Executive Committee (*Indvuna yeNkhundla*) and the members of the House of Assembly from 59 constituencies (*Tinkhundla*) into which the country is divided in terms of section 80 of the Constitution.

The primary and secondary level elections were conducted based on a political system that emphasizes individual merit as opposed to contestation by political parties and under the first-past-the-post system in which a candidate receiving the highest number of votes is elected into office.

The African Union (AU) participated in the elections following an invitation by the Government of the Kingdom of Eswatini, by deploying a short-term election observation mission, which arrived in the country on 14 September 2018. The Mission was led by His Excellency James Alix Michel, former President of Seychelles and comprised thirty (30) short-term observers (STOs) representing seventeen (17) AU member states. The presence of the AU election observation mission (AUEOM) in Eswatini was part of the AU’s mandate to promote democratic governance in Africa, which is in line with its vision for “an integrated, prosperous and peaceful Africa, driven by its own citizens and representing a dynamic force in the international arena”.

This final report presents the Mission’s overall findings and assessment of the conduct of the 2018 secondary elections. It is based on the Mission’s consultations with stakeholders and direct observation of voting day operations across the country.

**Summary of key findings**

Based on its observations and consultations with stakeholders, the AUEOM made the following findings:

* The electoral process was conducted in a generally calm and peaceful environment despite a wage-related workers’ strike or protests that broke out before Election Day.
* The legal framework within which the 2018 elections were conducted remains largely unchanged since the 2013 elections. The 2005 Constitution guarantees fundamental rights and freedoms such as freedom of association, assembly and expression. However, electoral stakeholders informed the Mission that practical restrictions on civil and political rights have remained. These relate to, among others, the ban on formation and participation of political parties in the electoral process under the 1973 decree, which still remains in force despite the passage of a new progressive Constitution in 2005.
* The Elections and Boundaries Commission (EBC) was well prepared and conducted both the primary and secondary level elections in a generally well-organised, professional and timely manner, despite some budgetary constraints. However, the closing of polling stations and transportation of ballots to central counting centers in each constituency made the counting process long and potentially compromised the security of the ballot as well as transparency and credibility of the counting process.
* Long queues were observed throughout in most of the polling stations visited in rural and urban areas – an indication of high voter turnout and participation in the electoral process.
* Although the Constitution and Women’s Act seek to enhance women’s political participation in the electoral processes through the provision of quotas, very few women were nominated as candidates in the primary and secondary elections. Only two women candidates were elected as Members of Parliament.

In the spirit of cooperation, the AUEOM offers the following recommendations:

* Encourages the Government of Eswatini to consider reviewing the 1973 decree and allow for the formation, registration and participation of political parties in elections in accordance with the provisions of the 2005 Constitution, and in compliance with the country’s international commitment.
* The EBC to consider reviewing the transporting of ballots from the polling stations to central counting locations to ensure transparency, credibility and efficiency of the counting process. The best practice is to count ballots at polling station level immediately after voting.
* While applauding relevant electoral stakeholders in Eswatini for ensuring that a large number of women participate in the electoral process as polling staff and voters, the Mission encourages them to promote women’s participation and gender equality in elected office.

The AUEOM concludes that, despite the prevailing constitutional and political environment, which proscribes political parties from participating in the electoral process, the elections were peaceful and well managed by the EBC.

# INTRODUCTION

Upon the invitation from the Government of the Kingdom of Eswatini, H.E. Moussa Faki Mahamat, the Chairperson of the African Union Commission (AUC) deployed a short-term election mission. The Mission was led by H.E. James Alix Michel, former President of the Republic of Seychelles, and comprised thirty (30) short-term observers (STOs) drawn from members of the Permanent Representatives Committee (PRC), i.e. African Ambassadors accredited to the African Union in Addis Ababa, the Pan-African Parliament (PAP), Election Management Bodies (EMBs), Civil Society Organisations (CSOs), Think Tanks and independent electoral and governance experts. A total of seventeen (17) AU members states are represented on this mission.

The key objective of the AUEOM was to make an independent, objective and impartial assessment of the conduct of the General Elections held on 21 September 2018 and proffer recommendations for the improvement of future elections in the Kingdom of Eswatini. The African Union normative frameworks guiding the Mission included: the 2007 African Charter on Democracy, Elections and Governance, the 2002 OAU/AU Declaration on the Principles Governing Democratic Elections in Africa and the 2002 Guidelines of the African Union Election Observation and Monitoring Missions. The Mission was also informed by other international principles as well as the legal framework for the conduct of elections in the Kingdom of Eswatini.

To achieve its objective, the Mission undertook a number of activities, including organising a two-day briefing programme for its observers on 17-18 September 2018 and engaging in stakeholder consultations including, the Chairman and members of the Electoral and Boundaries Commission (EBC), the Commissioner of the Royal Eswatini Police Service, political parties and civil society organisations. The Mission Leader also paid a courtesy call to His Majesty King Mswati III. The briefing and consultations were meant to orient the Mission and its observers on the historical and political context of the election, the preparedness of the Electoral and Boundaries Commission (EBC), the legal framework governing the election, and the role of civil society organisations and others in the electoral process.

Following the debriefing programme, the Mission deployed 11 teams to the four (4) regions of Eswatini. On Election Day, the teams visited 155 polling stations, 100 urban and 55 in the rural areas.

1. **PRE-ELECTION ENVIRONMENT**

## Background and Context

As was in the past elections, the 2018 elections took place within an environment that did not officially recognize the formation and operation of political parties in Eswatini. On one hand, the 2005 Constitution provides and guarantees fundamental rights and freedoms of the individual[[1]](#footnote-1), including freedom of assembly and association, in line with international and regional norms of democratic governance, while on the other, it emphasizes individual merit as the basis for election or appointment to public office[[2]](#footnote-2). This apparent contradiction in the constitutional provision effectively prevents the recognition and operation of political parties as vehicles for election of candidates to public office.

The elections also took place under a system of political governance in which the Executive branch reigns supreme over the other arms of government (the Judiciary and the Legislature) with the King as the highest authority. The King possesses extensive discretionary powers to summon, prorogue and dissolve parliament; assent to or reject bills; appoint or dismiss the prime minister and other ministers of the government; and appoint, suspend or remove the Chief Justice and other Justices of the superior courts.

## The Legal Framework

The legal framework governing the 2018 elections includes the Constitution (2005), the Elections Act (2013), the Parliament Petition Act (2013), Senate Elections Act (2013), the Elections and Boundaries Commission Act (2013), the Voters Registration Act (2013) and the Election of Women Act (2018), as well as regulations promulgated by the EBC. In addition, Eswatini is a signatory to a number of regional and international instruments governing democratic elections, including the 2004 SADC Principles and Guidelines Governing Democratic Elections (as amended in 2015) and the 2007 African Charter on Democracy, Elections and Governance.

In general, the legal framework provides for the preservation of key rights and freedoms, including freedom of association and assembly. Despite this, the AUEOM notes that the Constitution does not address the formation or role of political parties in the electoral process. There is an apparent contradiction between articles 14 and 25 of the Constitution, which guarantee freedom of association and assembly, and article 79, which establishes the system of government for Eswatini and emphasizes “individual merit” as a basis for election or appointment to public office.

The AUEOM further notes that despite the constitutional and legal reforms undertaken in 2013, the 1973 decree passed by King Sobhuza II, which dissolved and prohibited all political parties and similar bodies in Eswatini remains in force.

## Electoral System

The Kingdom of Eswatini operates a two-round electoral system in the election of members of the House of Assembly. A primary election is held in each of the country’s chiefdoms to choose a candidate for the secondary election. The winner of the primary election then contests in the secondary elections held in the constituency that covers the chiefdom. Both rounds – primary and secondary – operate on a first-past-the-post basis, with all candidates running as independents.

The AUEOM noted that public international law does not prescribe the electoral system to be used by states. However, states are obliged to ensure that their choice of any electoral system allows for inclusiveness, equal suffrage, transparency and the upholding of fundamental rights and freedoms.[[3]](#footnote-3) The Mission noted that the electoral system used in the 2018 elections largely satisfied the international criteria of inclusiveness, equal suffrage and transparency but fell short of respecting the fundamental right of citizens to form themselves into political association for the purpose of contesting the elections.

## Election Management

The EBC is an independent body that is established by the 2005 Constitution with a sole mandate to prepare, conduct, and supervise all activities of the electoral process, including voter registration, civic and voter education and constituency boundary delimitation. According to Section 90 of the 2005 Constitution, the five members of the Commission – chairperson, deputy chairperson and three other members – are appointed by the King on the advice of the Judicial Service Commission from among persons with qualifications of a judge or a superior court or with high moral character and demonstrable competence. They served for a period not exceeding twelve years without the option for renewal.

In the exercise of its functions under the Constitution, the Commission is supported by a secretariat consisting of a head and other support staff who are charged with responsibility to provide technical and administrative support to the Commission and carry out other functions as deemed necessary. Members of the secretariat are either seconded from the civil service or appointed based on individual experience and expertise.

In preparation for the 2018 General Elections, the EBC undertook a number of activities, including, boundary delimitation, voter registration, voter education, training of electoral officials, procurement and distribution of election materials. The Mission noted that the EBC implemented all parts of the electoral process according to the publicized Election Calendar in line with international best practice and was well prepared. However, the Commission did cite budgetary constraints in the run up to the elections, although these did not have any significant impact on the smooth and timely running of the polls. Stakeholders the Mission consulted informed that the EBC acted impartially and transparently in the administration of the elections.

## Constituency Delimitation

Both the 2005 Constitution and the 2013 Electoral Act require the EBC to review and determine the boundaries of constituencies (*Tinkhundla*) every fourth year of Parliament and submit recommendations to the King whether to change or maintain the existing boundaries. In doing so, the EBC is required to take into consideration the population quota, terrain, means of communication and other factors. For the 2018 elections, four (4) constituencies were added to make fifty nine (59).

The AUEOM did not receive any report from stakeholders it consulted that the process was manipulated to favour particular individuals or done in violation of established rules.

## Voter Registration

A new voter registration exercise was carried out between May and June 2018 in preparation for the elections. The Mission received reports that the process recorded a high turnout of eligible voters intending to cast the ballot.

## Campaigning

Canvassing for votes during primary elections is prohibited. According to Section 87 (5) of the Constitution, campaigning was only authorized for the secondary elections, starting on 19 August and ending on 20 September 2018. During this period, a candidate could publish any campaign material but this had to be approved by the EBC. It was reported that campaigning for the 2018 elections was mostly done on a one-to-one basis as opposed to utilizing the print media and mass rallies. Campaign posters were also observed in some areas.

The AUEOM noted that the prohibition of campaigning during primary elections did not allow for thorough scrutiny of potential candidates to be elected to parliament.

## Civic and Voter Education

Civic and Voter Education was mainly conducted by the EBC although civil society organisations complemented its efforts. The messaging centred on mobilization of people to go and vote, promotion of peace and this was disseminated largely at community level. Civil society groups also held public outreaches calling for the stop of ritual killings related to boost chances of getting elected.

## Participation of Women

The legal framework of Eswatini provides for an increase in women representation in Parliament. The Constitution of Swaziland in articles 84(2) and 86(1) requires quotas for women and marginalized groups be observed in the composition of the House of Parliament. A new piece of legislation was also introduced in 2018, the Election of Women Act to particularly address women’s representation into elected office. Eswatini also committed to a number of regional and international instruments to promote gender equality. These include the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), Convention on the Political Rights of Women (CPRW) and SADC Declaration on Gender and Development of 1997.

The Mission noted that despite these commitments, women remained under-represented in parliament. The number of women contesting for parliamentary and local government seats in this election remained low[[4]](#footnote-4), thus negatively impacting on the representation of women in the new parliament, which had only two elected female members.

## Media

The media’s role in the election is regulated by a code of conduct developed by the EBC. The Mission noted that there was a lack of media pluralism.

1. **ELECTION DAY OBSERVATION**

The AUEOM observed opening in eleven (11) polling stations, voting in one hundred and fifty-five (155) polling stations, and closing and counting in seven (7) counting centers. Based on its observation of the voting process, the Mission noted the following:

* Voting process took place in a generally peaceful and orderly environment.
* Most of the polling stations visited by AU observers opened on time, and had sufficient materials to conduct the process.
* All polling stations visited had adequate staff, with the majority being women. Observers noted that the staff performed their duties professionally and generally adhered to voting procedures.
* Most polling stations were accessible to the elderly and people with disabilities who were also given preferential treatment.
* Candidate agents and citizen observers were present in some polling stations and were allowed to perform their duties without restriction or interference.
* No campaign materials or activities were observed in all polling stations visited excepted in two cases where campaigning was observed.
* Security personnel were visibly present in all polling stations visited but their presence was professional and non-intrusive.
* Long queues were observed in some polling stations visited particularly in the rural areas. Observers also noted the long distances between polling stations in the rural areas.
* The secrecy of the vote was generally guaranteed.
* The closing process at polling stations was done in accordance with EBC procedures, though it was time consuming. Counting of ballots was done at central locations, a situation that has the potential to compromise the security of the ballots.

Generally, the voting process was administered well except for the challenges encountered with the counting process.

1. **CONCLUSION AND RECOMMENDATIONS**

## Conclusion

The 2018 General Elections in the Kingdom of Eswatini were conducted in a peaceful environment. The EBC administered the election in a professional manner, despite the challenges observed by the Mission, especially during closing and counting stages of the electoral process.

The Mission extends its profound gratitude to all Eswatini electoral stakeholders and voters for participating in the electoral process with enthusiasm and in a peaceful manner.

## Recommendations

Based on its observations and consultations, the Mission offers the following recommendations for improvement of the conduct of future elections in Eswatini:

 ***The Government/Legislature***

* Encourages the Government and Legislature to consider reviewing the 1973 decree, which dissolved and prohibited all political parties and similar bodies in Eswatini and allow parties to freely participate in the electoral process in accordance with provisions of the African Charter on Democracy, Elections and Governance.
* Urges the Eswatini authorities to consider entrenching the principle of separation of powers between the Executive, Legislature and Judiciary in accordance with the 2007 African Charter on Democracy, Elections and Governance.
* Urges the Government to consider reviewing the electoral system to enhance inclusivity and foster participation of marginalized groups such as youth and people with disabilities.
* Urges the Government of Eswatini to ensure that the Electoral and Boundaries Commission is adequately resourced to carry out its mandate effectively and efficiently.
* Applauds the Kingdom of Eswatini for signing the African Charter on Democracy, Elections and Governance on 29 January 2008, and further implores the Kingdom to consider ratifying, domesticating and implementing the Charter.

***The Elections and Boundaries Commission:***

* While applauding the EBC for ensuring that a large number of women participate in the electoral process as polling staff and voters, the Mission encourages it and other stakeholders to promote women’s participation and gender equality in elected offices.
* Urges the EBC to consider counting of ballots at polling stations immediately after voting to enhance efficiency, transparency and integrity of the process.
* Implores all electoral stakeholders to embark on comprehensive and continuous voter and civic education.
* Applauds the EBC for providing transportation for voters to polling stations. However, the Commission is encouraged to consider increasing the number of polling stations, especially in rural areas where the distances between the stations are too long.
* Urges the EBC to make public the total number of votes in the elections.

 ***Candidates and Civil Society Organisations (CSOs):***

* Encourages candidates’ agents and citizen observers to enhance their participation in all the stages of the electoral process.

1. . See sections 14 & 25 of the 2005 Constitution. [↑](#footnote-ref-1)
2. . Ibid section 79. [↑](#footnote-ref-2)
3. . UN, ICCPR, Art. 2(2); AU, AfCHPR, Art. 1. [↑](#footnote-ref-3)
4. . Out of about 336 nominated candidates, 51 were women, representing just 15.1%. [↑](#footnote-ref-4)