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AFRICAN UNION ELECTION OBSERVER MISSION TO THE 20TH SEPTEMBER 2013 NATIONAL ELECTIONS IN THE KINGDOM OF SWAZILAND

PRELIMINARY STATEMENT

I. INTRODUCTION

1. In line with the African Charter on Democracy, Elections and Governance, the Chairperson of the African Union Commission, H.E. Dr. Nkosazana Dlamini Zuma, deployed an African Union Election Observer Mission (the Mission) to the 20th September 2013 National Elections in the Kingdom of Swaziland.
2. Led by Justice Maxon Mbendera, Chairperson of the Electoral Commission of Malawi, the Mission is comprised 19 observers drawn from the Pan-African Parliament, African Ambassadors to the African Union Commission in Addis Ababa, Election Management Bodies and African Civil Society Organizations from the following countries: Algeria, Burkina Faso, Burundi, Ghana, Liberia, Malawi, Namibia, Nigeria, Kenya, Rwanda, Sierra Leone, Tanzania, Western Sahara, Zambia, and Zimbabwe.
3. The Mission is supported by a team of experts from the African Union Commission, the Pan-African Parliament and the Electoral Institute for Sustainable Democracy in Africa (EISA).
4. The AU Mission observed the elections within the spirit and letter of the Durban Declaration on the Principles Governing Democratic Elections in Africa (AHG/Decl.1 (XXXVIII)), as adopted by the Assembly of Heads of State and Government of the African Union in July 2002; the African Charter on Democracy, Elections and Governance, which came into force on 15 February 2012; the Guidelines of the African Union Election Observation and Monitoring Missions, as well as the legal framework for the conduct of elections in the Kingdom of Swaziland.

5. The Mission arrived in the Kingdom of Swaziland on the 13th September 2013 and will remain in the country until 25th September 2013. Cognisant of the fact that the aggregation of results is ongoing and the results of the elections are yet to be declared, the AU Mission hereby presents its preliminary findings and recommendations based on its consultations and observations up to the close of polling and counting. A more detailed final report of the Mission will be shared with relevant Swaziland authorities after the elections and made available to the public on the African Union's website.

II. OBJECTIVES AND METHODOLOGY OF THE MISSION

6. In line with the mandate provided in the aforementioned AU instruments in paragraph 4 above, the objective of the AU Mission is to make an independent, objective and impartial assessment of the 20th September 2013 National Elections in the Kingdom of Swaziland.
7. To enable the Mission achieve its stated objective, it undertook the following activities in accordance with the Guidelines of the African Union Election Observation Missions and Election Monitoring,
 - a. The Mission consulted with key electoral stakeholders including The Electoral and Boundaries Commission (EBC), the Head of the Police, representatives of civil society organisations, political parties, the office of the UN Representative, Diplomatic Community and leaders of other International Election Observer Missions. The Mission will continue with its consultations with relevant stakeholders until its departure.
 - b. The Mission also participated in the briefing for international observers organised by the Electoral and Boundaries Commission (EBC) held on the 18th September 2013.
 - c. Members of the Mission also familiarised themselves with polling stations across the country before the Election Day.
 - d. The AU Mission deployed eight (8) teams of observers to constituencies in all the four regions of the Kingdom, namely: Hhoho, Maanzini, Lubombo and Shiselweni. On Election Day the teams visited a total of 71 polling stations in their areas of deployment.
 - e. The Mission also familiarised with the Constitution of Swaziland and the relevant electoral statutes of Swaziland in tandem with the AU instruments in paragraph 4 above and also the AU Resolution on Swaziland of 18 April – 1 May 2012 made in Banjul.

III. PRELIMINARY FINDINGS AND OBSERVATIONS

➤ The Legal Framework

8. The legal framework for the conduct of the 2013 National Elections consists of the Constitution of the Kingdom of Swaziland of 26th July 2005, and several statutes enacted by the Parliament of Swaziland in 2013 which include; the Voter Registration Act, 2013, The Elections Act, 2013, The Elections and Boundaries Commission Act, 2013, The

Elections Expenses Act, 2013, The Senate Elections Act, 2013 and The Parliament Petitions Act, 2013.

9. The Mission notes that the Constitution guarantees the existence of fundamental human rights and provides for universal adult suffrage in national elections conducted by secret ballot. It establishes the Electoral and Boundaries Commission as the principal body tasked with the conduct of elections and empowers Parliament to make laws regulating the conduct of elections. It also provides for an independent judiciary through which election disputes are resolved.
10. The Mission notes that the Constitution of the Kingdom of Swaziland in Article 14(1) (b) guarantees fundamental rights and freedoms including the rights to freedom of association and assembly. The Mission, however, notes that despite the guarantee of fundamental rights in the Constitution, the rights of association and assembly contained in Article 14(1) (b) of the Kingdom of Swaziland Constitution and Articles 10 and 11 of the African Charter on Human and People's Rights, the rights with regard to political assembly and association are not fully enjoyed. This was evidenced by the Mission's observation that candidates contested elections as individuals and not under political parties. The Mission further notes that there seems to be a conflict between the Articles 14 (1) (b), 25 and 79 of the Constitution of the Kingdom of Swaziland in regard to the rights to freedom of association.

➤ **Election Management:**

11. The conduct of elections in the Kingdom of Swaziland is managed by the Electoral and Boundaries Commission. The EBC holds the primary responsibility for the conduct of elections. The Mission notes the coordination of efforts among institutions involved in the conduct of elections such as the Electoral and Boundaries Commission and the security agencies.

➤ **Voter Registration:**

12. The EBC adopted Biometric Voter Registration (BVR) in registering voters for the 2013 national elections. The adoption of the BVR enabled the registration to be quick, easy and highly portable. This also enabled the EBC to compile a credible voter register purged of multiple registrants and other forms of irregularities. The process resulted in a total of 415,012 Swazis (69.2% of eligible persons) being registered as voters.

➤ **Civic and Voter Education**

13. The EBC undertook voter education initiatives to enlighten voters on the required procedures for the elections. Civic education initiatives were focused on non-violent elections, the need to include marginalised groups like women, youth and the disabled in public affairs and the need to participate in elections. The Commission adopted the campaign clarion "*ngete ngasala sakha kwetfu*" (I will not remain behind) to mobilise voter participation.

➤ **Participation of Women and the Marginalized Groups**

14. The Mission notes that the Constitution of Swaziland in Articles 84(2) and 86(1) requires quotas for women and marginalised groups be observed in the composition of the House of Parliament, the Mission however noted that there were few women contesting the National Elections of 20th September 2013. Representation of women in elective public office is also enshrined in the Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa and the Convention on the Elimination of all Forms of Discrimination against Women.

➤ **Media**

15. The Mission notes that there is no code of conduct for the regulation of media reporting during electoral processes as well as specific laws on equitable access of State owned and other media by candidates during the electoral process.

IV. ELECTION DAY OBSERVATIONS

16. The voting and counting processes took place in a peaceful and tranquil environment. Most of the polling stations observed by the AUEOM opened on time and were generally fully staffed, with all the required materials, and, secured by security officers.

17. Polling was carried out in an atmosphere devoid of violence, harassment and disturbances. In most of the polling stations visited, priority was given to the aged, pregnant women, voters with infants and physically challenged persons. Physically challenged voters who required assistance were also allowed to vote with assistance from a person of their choice.

18. The presence of candidate agents and independent elections observers (national and international) was observed at all the polling stations visited. Specifically, AU observers noted the presence of the following groups, the SADC Parliamentary Forum, SADC Elections Observers, and Commonwealth Observers. Despite their presence, candidates' agents were visibly inactive.

19. Polling stations closed on time as required by law. The Mission noted that the EBC adopted a centralised focal point for counting of ballots. Though explanations were given for the adoption of this model the Mission wishes to note with concern that a centralised counting of ballots is susceptible to abuse and puts a lot of strain on EBC officials in sorting and counting of all the ballots.

V. RECOMMENDATIONS

20. Based on its observations and consultations, the Mission:

- a) Urges the Kingdom to review the Article 79 of the Constitution to be in conformity with Articles 14 (1) (b) and 25 which enshrine the fundamental freedoms of conscience, expression, peaceful assembly, association and movement as well as international principles for free and fair elections and participation in electoral process and specifically the OAU/AU Durban Declaration on the Principles Governing Democratic Elections in Africa.

- b) Calls on the Kingdom of Swaziland to implement the African Commission's Resolution on Swaziland of 18th April-2nd May 2012 Taken in Banjul, the Gambia calling on the Government of the Kingdom to respect, protect and fulfil the rights to freedom of expression, freedom of association and freedom of assembly.
- c) Recognising that women constitute over 50 % of the population of Swaziland, the Mission appeals to the Kingdom of Swaziland to take measures as well as develop mechanisms to achieve increased representation of women and physically challenged persons in elective public positions in accordance with the Constitution and the African Charter on Human and Peoples Rights on the Rights of Women in Africa and the Convention on the Elimination of all Forms of Discrimination against Women.
- d) Recognising the important role of the media in modern democracy, the Mission encourages the Kingdom of Swaziland to develop an enforceable media code of conduct on elections.
- e) Further urges the EBC to reconsider the centralised approach to counting of ballots and adopt a decentralised approach of counting ballots at the polling station immediately after close of polling.
- f) Underscores the need for EBC to develop a productive and effective role of agents in the electoral process.