

Pre-conditions for Elections Programme in Southern Africa (PEPSA)
Baseline Analysis Questionnaire

Country	Swaziland	Researcher	Lomcebo Dlamini
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Please enter your answers in the space below each question.

[I] Country Political Context (Introduction Section of the SADC Principles)

General

1. *Has the country undergone a democratic transition? If so, when and how?*

No. At independence in 1968, a constitution was put in that established a democratic system of governance recognising multi-parties, separation of powers of the three arms of government and a bill of rights. However, this constitution was subsequently repealed by the then King Sobhuza II in 1973 and with its repeal political parties were banned, the bill of rights was abrogated and the King became the supreme authority vesting all the powers of governance in himself. However, the country is presently undergoing constitutional reform and is in the final stages of completing a new constitution, which recognises the freedoms of expression, association and assembly.

2. *Has the country's government signed and ratified major international human rights declarations and protocols? Which ones?*

Yes. The following Conventions have been signed and ratified by Swaziland:

- *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT);*
- *International Covenant on Civil and Political Rights (ICCPR);*
- *International Covenant on Economic, Social and Cultural Rights (ICESCR);*
- *Convention on the Elimination of All Forms of Discrimination against Women (CEDAW);*
- *Convention on the Elimination of All Forms of Racial Discrimination (CERD);*
- *Convention on the Rights of the Child (CRC);*
- *African Charter on Human and People's Rights*

(Source: UNDP Human Development Report, 2004)

Political parties

3. *Is the country a multi-party democracy?*

No. Presently, political parties are illegal.

4. *How many political parties are registered and active?*

Not applicable (While political parties exist and operate, they are illegal thus unregistered)

5. *How many parties are represented in the legislature?*

None. Legislative membership is by individual merit (and although there are known members of banned parties in the legislature, they are not there as party representatives but as individuals elected from a particular local context)

6. *Do political parties have programmes?*

(Political parties run limited programmes for their members within the confines of their legal status)

7. Which party is the ruling party?
Not applicable.
8. What is its membership base and how many?
Not applicable.
9. Which one is the main opposition party?
Not applicable.
10. What is its membership base and how many?
Not applicable.
11. How is the participation of parties in elections regulated and legislated?
Not applicable.
12. Are political parties generally aware of the SADC principles governing democratic elections?
Yes.
13. If so, what is their attitude towards the principles?
The SADC Principles are viewed as being potentially useful as an advocacy tool for opening up of political space and the reintroduction of multi-partyism in the contest for political power.
14. How have political parties promoted the implementation of the SADC principles?
Apart from calling on government to comply with its regional commitments, there has been no specific programme implemented for the promotion of the Principles.
Civil society
15. What is state of civil society organisations?
There is a steady growth of the number of CSOs whose mandates are human rights- and good governance-based. Also, other organisations/ institutions such as trade unions, the church and the business sector are also becoming more active in addressing such issues. These organisations have been increasingly willing to openly challenge government on its conservative political stance, as evidenced by the recent participation in the constitution-making process.
16. Is the general legal and political environment conducive for civil society organisations to operate?
As a result of the lack of recognition of various rights and the absence of certain policy and legislative instruments, such as those governing NGOs, the existence and operation of CSOs is tenuous because they are always vulnerable where they deal with issues regarded as "sensitive" in Swaziland such as politics. The Freedom House rating for civil liberties in Swaziland is "5" and the country is classified as not being free. (1-Most Free; 7-Least Free)
17. What specific roles do CSOs play in the electoral process?
CSOs have engaged in the following activities: Voter and civic education; using the electoral process platform to interrogate issues of good governance, including the continued banning of political parties; as well as observing and monitoring elections.
18. What legal/political constraints restrain the CSOs before and during elections?
Provisions that require lengthy procedures for meetings because of the absence of freedom of expression, association and assembly and place the permission for such meetings at the discretion of the authorities. Lack of uninhibited access to communities as a result of traditional leadership in the areas that do not permit the discussion of political issues in their communities.
19. Are CSOs aware of the SADC Principles governing democratic elections?
Generally, yes.
20. If so, what is their attitude towards the principles?
The Principles are viewed as having the potential to be used to advocate for Swaziland's

<i>compliance with its commitments and in turn catalyse the progression of the country towards democratisation.</i>
21. <i>How have CSOs promoted the implementation of the SADC principles?</i>
<i>There has not yet been any specific programme of action on promoting the Principles.</i>
22. <i>Are CSOs engaged in civic and voters education? Please specify who does what and who it reaches.</i>
<i>Voter education has been ad hoc and carried out at election time. It is also a fairly recent phenomenon. In the 2003 elections, a collective of organisations, namely LEARN, WLSA, Umtapo waBomake, Gender consortium to specifically carry out voter education encouraging the participation of women in the elections. Civic education on constitutional and good governance issues has also been carried out by the Coordinating Assembly of NGOs (CANGO) and the Swaziland Coalition of Concerned Civic Organisations (the Coalition/ SCCCCO).</i>
Media
23. <i>What economical/ legal/or political constraints restrain the media in general?</i>
<i>There are over 32 restrictive media laws that ensure the limited scope within which media operates. Further, there is no media policy. There is tight censorship on the government controlled media.</i>
24. <i>Is there an independent media council?</i>
No.
25. <i>Are the state media independent?</i>
No.
26. <i>Do the state media perform the role of a public service broadcaster?</i>
No.
27. <i>Is there a self-regulatory body of the media?</i>
No.
28. <i>A media monitoring project?</i>
No.
29. <i>Do the media have a general code of conduct and ethics?</i>
<i>No. However the Swaziland National Association of Journalists (SNAJ) has recently adopted a code of ethics for their members although it is not of general application.</i>
30. <i>How is this enforced?</i>
<i>Not applicable. (The SNAJ code has not yet become operational)</i>
31. <i>What specific role do the media play in the electoral process?</i>
<i>The media is a platform to debate electoral and development issues, to provide publicity for candidates; and keep track of the progression of the electoral process, including reporting of disputes.</i>
32. <i>Is there a specific code of conduct for election reporting?</i>
No.
33. <i>How is this enforced?</i>
<i>Not applicable.</i>
34. <i>What legal/or political constraints restrain the media during elections?</i>
<i>The existing restrictive laws, “sensitivity” of political issues and consequently the threat of recrimination results in a lack of depth of analysis of political issues.</i>
35. <i>Is the media generally aware of the SADC principles governing democratic elections?</i>
<i>The media awareness of the Principles to the extent that the media reported on their adoption by SADC.</i>
36. <i>If so, what has been/is its role in promoting the principles?</i>
<i>There has been no deliberate or active promotion of the Principles and their appearance in the</i>

<i>media has been limited to reporting their existence and adoption.</i>
[III] Principles for Conducting Democratic Elections (Section 2 of the SADC Principles)
37. <i>What legislation provides for citizen participation in the political process, especially in elections?</i>
<ul style="list-style-type: none"> • <i>Establishment of the Parliament of Swaziland Order of 1992;</i> • <i>Elections Order of 1992;</i> • <i>Voters' Registration Order of 1992.</i>
38. <i>In what concrete ways does citizen participation in the political process (especially before and during elections) take place?</i>
<i>Citizens participate by attendance of community meetings; writing to the media; and participating in media "talk-shows" on election issues.</i>
39. <i>What legislation provide for political freedoms including freedom of association, political movement and freedom of speech?</i>
<i>None. These were explicitly removed with the repeal of the 1968 constitution.</i>
40. <i>Are these freedoms and political tolerance allowed by political actors during electioneering?</i>
<i>No. (Although they are ostensibly allowed within the confines of the Tinkhundla/ constituency centres during the campaigning process)</i>
41. <i>What is the frequency and regularity of elections in the country (consider both national and local government elections please)?</i>
<i>Elections in Swaziland take place every five years.</i>
42. <i>Are there the dates of elections specifically predetermined by a relevant constitutional or legislative provision?</i>
<i>No. They are announced by the Elections Office.</i>
43. <i>To what extent is access to public resources (i.e. funding for campaigning and access to the public media) by political parties during elections equitable?</i>
<i>Not applicable.</i>
44. <i>What is the exact role of the judiciary in the electoral process?</i>
<i>Adjudication of election disputes.</i>
45. <i>Does the judiciary exhibit impartiality in handling electoral matters?</i>
<i>There is inconsistency in practice but there have been cases where candidates have complained of the courts being biased.</i>
46. <i>Which Electoral Management Bodies (EMBs) have the responsibility to run elections?</i>
<i>The Elections Office under the Chief Electoral Officer.</i>
47. <i>What is the exact role of these Electoral Management Bodies (EMBs) in the electoral process?</i>
<ul style="list-style-type: none"> • <i>Registration of voters;</i> • <i>Conducting voter education;</i> • <i>Counting of Votes.</i>
48. <i>How independent and impartial are these EMBs in discharging their electoral mandates?</i>
<i>The Establishment of Parliament Order of 1992 establishes the Elections office as an independent commission and stipulates that its officers undertake their work with impartiality. However, the Officers are King's appointees and thus the commission has come under criticism for lack of independence. There have also been cases where officers have been accused of engaging in corrupt practices resulting in the success of certain candidates</i>
49. <i>Which institutions are responsible for conducting voter education?</i>

<i>The Elections Office is primarily responsible for conducting voter education. In addition, recently CSOs have also undertaken their own voter education programmes.</i>
50. <i>In what ways do these institutions coordinate their efforts in undertaking voter education?</i>
<i>The activities of these institutions are not really coordinated. The attempts by the Elections Office to coordinate such activities at constituency level and in the media have been hampered by a lack of financial and human resources.</i>
51. <i>Is there a political culture of acceptance and respect of election results by political parties? What explains this trend?</i>
<i>Generally, yes, although there have been disputes on allegations of corruption and rigging. The general acceptance of results is probably due to the fact that there is no competition with respect to political power and certain groups wanting to pursue differing national programmes as all those elected are confined to the system in which the King is the absolute power and therefore their political influence is limited.</i>
52. <i>If not, why do political parties contest election results?</i>
<i>Not applicable.</i>
53. <i>What the legal provisions exist for the management for election-related disputes?</i>
<i>They are contained within the Voter Registration Order and Elections Order of 1992 and relate to aspects of the election process from registration to campaigning to results.</i>
54. <i>What institutional and regulatory mechanisms are in place for the constructive resolution of election-related disputes?</i>
<i>The use of the court process. Section 28 of the 1992 Establishment of Parliament Order gives the High Court jurisdiction to determine election-related disputes.</i>
[III] Guidelines for Observation of Elections (Section 4 of the SADC Principles)
55. <i>What legislation guarantees the rights and freedoms of the citizens?</i>
<i>None at present.</i>
56. <i>Does the political culture and practice protect and promote citizens' freedoms?</i>
<i>No. The Freedom House classification for political Rights in Swaziland is '7'. (1-Most Free; 7-Least Free)</i>
57. <i>What possibilities do citizens have to complain (independent human rights commission/ombudsman?)</i>
<i>None. The foundation of any complaint must be couched within the existing provisions of common law, customary law, and statutory law and use the normal court process in doing so.</i>
58. <i>To what extent is the election environment free, fair and peaceful?</i>
<i>Elections in Swaziland are generally peaceful. The "freeness" and "fairness" questions are more complex because of the political and constitutional situation and hence a declaration in this regard must reflect that there is no free political activity so that even though there are no instances of extreme violence and intimidation, the political system is such that there cannot be freeness and fairness.</i>
59. <i>How is voter registration conducted and by whom?</i>
<i>Registration is conducted at local constituency levels by the elections office.</i>
60. <i>Is voter registration conducted periodically around elections or continuously?</i>
<i>Voter registration is only conducted in the period immediately preceding elections.</i>
61. <i>Is the process of voter registration satisfactory and acceptable to all stakeholders?</i>
<i>No. The process is usually surrounded by controversy.</i>
62. <i>How is the voters' roll prepared and by whom?</i>
<i>The Elections Office prepares the voters' roll.</i>
63. <i>How is the voters' roll maintained and regularly updated and by whom?</i>

<i>The Elections Office maintains the roll and updates it at election time.</i>
64. <i>To what extent is the voter's roll easily accessible and non-discriminatory?</i>
<i>It is not really accessible and non-discriminatory.</i>
65. <i>Is the process of preparation and maintenance of the voters' roll satisfactory and acceptable to all stakeholders?</i>
<i>No.</i>
66. <i>Is there a culture of announcement of the date of elections timeously to allow all contestants to prepare for the contest?</i>
<i>Generally, yes.</i>
67. <i>What legal provisions regulate private and public funding for political parties?</i>
<i>Not applicable.</i>
68. <i>How transparent are the mechanisms for private and public funding of political parties?</i>
<i>Not applicable.</i>
69. <i>To what extent are the mechanisms for private and public funding to political parties satisfactory and acceptable to all stakeholders?</i>
<i>Not applicable.</i>
70. <i>To what extent does the location of polling stations compromise the integrity of the electoral process and its outcome?</i>
<i>The central locations of these stations inhibit accessibility and favour local candidates.</i>
71. <i>Where does counting of votes take place?</i>
<i>At local inkhundla centres or where there are no inkhundla buildings at public buildings such as schools in that inkhundla constituency.</i>
72. <i>In what way(s) does the location of the counting of votes affect the integrity of the poll?</i>
<i>There is no evidence that the location of the counting of votes affects the integrity of the poll.</i>
73. <i>What legal provisions regulate election monitoring and observation?</i>
<i>None at present.</i>
74. <i>Which institutions are responsible for facilitating election monitoring and observation?</i>
<i>The Elections Office facilitated some observation in the last elections.</i>
75. <i>Who is allowed to monitor and observe elections? Why?</i>
<i>The Elections office has the discretion to decide this as election monitoring and observation are relatively new phenomena for Swaziland.</i>
76. <i>Do monitors and observers get accorded adequate time to be able to monitor and observe all the three stages of the electoral process?</i>
<i>These are dependent on the Elections Office but during the last elections in 2003, monitors were given some time to observe the elections.</i>
77. <i>Do observers get deployed two (2) weeks before the voting day?</i>
<i>This was not the case in the previous elections in 2003.</i>
[IV] Responsibilities of Member States Holding Elections (Section 7 of the SADC Principles)
78. <i>What are the legislated qualifications for voting?</i>
<i>In order to be eligible to vote a person should be a Swazi citizen who has attained the age of eighteen years and is of sound mind.</i>
79. <i>What are the legislated disqualifications from voting?</i>
<i>A person is disqualified from voting if they are insane, of unsound mind, or is under a court-imposed death sentence in Swaziland or in any other country.</i>
80. <i>Are these legal provisions for qualification and disqualification applied fairly during elections?</i>
<i>Yes. There have not been significant complaints of discrimination in this regard.</i>

81. <i>Is the practical application of the qualifications and disqualifications satisfactory and acceptable to all stakeholders?</i>
<i>Yes. There have not been significant complaints of discrimination in this regard</i>
82. <i>Is the political environment generally conducive for all political parties to campaign freely without undue hindrance?</i>
<i>Not applicable for political parties as they are illegal. However, the individual candidates are generally free to campaign in their constituencies within the limits set by the law.</i>
83. <i>Is there a code of conduct for political parties and to what extent do parties adhere to it?</i>
<i>Not applicable for political parties. However, for individual candidates, there are certain acts that are prohibited by the Elections Order of 1992 such as bribery, personation, undue influence and treating.</i>
84. <i>To what extent are the EMBs competent, effective and well resourced in carrying out their mandate?</i>
<i>The Elections Office faces major resource – including human and financial - constraints. This affects the effectiveness of the Office in carrying out its mandate.</i>
85. <i>To what extent are the courts competent, effective and well resourced in dealing with electoral matters?</i>
<i>Swazi courts are generally under-resourced and dealing with election-related matters is an additional strain on the judiciary.</i>
86. <i>What legal guarantees and institutional mechanisms exist to prevent electoral fraud, vote-rigging and other illegal election practices?</i>
<i>There are some prohibited actions outlined in the legislation governing elections.</i>
87. <i>What cases of electoral fraud and vote rigging have been brought to the fore and how have these been dealt with?</i>
<i>In the last elections, several complaints on rigging and corruption were taken to court and these were duly determined.</i>
88. <i>What common irregularities tend to become characteristic feature of elections and how have these been dealt with?</i>
<i>There have been allegations of bribery and undue influence of both voters and election officers</i>
89. <i>Are there measures which restrict the freedom of movement of the citizenry or election observer missions?</i>
<i>No. There have been no reports of such restrictions.</i>
90. <i>Are candidates and/or their agents allowed to monitor the whole electoral process without undue restrictions?</i>
<i>Yes.</i>
91. <i>What is the nature of the participation of women, youth and people with disabilities in the electoral process? Is it high or is it low and why?</i>
<i>The participation of women as voters is high but not as candidates.</i>
<i>Young people and people with disabilities have very low participation in the elections.</i>
<i>For people with disabilities, this is due to inaccessibility of the electoral process to them that takes cognisance of their disabilities.</i>
92. <i>Do observers get invited ninety (90) days before the voting day?</i>
<i>No. Election observation is a new phenomenon and thus this time period has not yet been implemented.</i>
93. <i>Do observers get accorded free movement throughout the country and room to communicate with all political parties and candidates, EMBs, media, CSOs and voters without undue</i>

<i>hindrance?</i>
<i>The observers in the previous elections were not prevented from accessing any areas or from communicating with anyone involved in the election process.</i>
94. <i>Is the process of invitation and accreditation of observers efficient and non-discriminatory?</i>
<i>At the moment this process is at the discretion of the Elections office.</i>
95. <i>Are observers allowed access to all relevant national laws and regulations?</i>
<i>Yes.</i>
96. <i>Are observers allowed access to relevant election materials such as constituency delimitation report, voters' Roll etc?</i>
<i>Observers were allowed to access this documentation in the last election.</i>
97. <i>Do observers have an unimpeded and unrestricted access to all polling stations and counting centres?</i>
<i>Yes.</i>