

ELECTIONS AND BOUNDARIES COMMISSION ACT

ACT No 3 of 2013



I ASSENT

.....
MSWATI III
KING OF SWAZILAND
.....**2013**

AN ACT
Entitled

AN ACT to elaborate the functions and powers of the Elections and Boundaries Commission; to regulate the conduct of the Commissioners in the performance of their work; to provide for the establishment of committees by the Commission and the co-opting of persons to assist the Commission in the performance of its functions; to provide for a Secretariat of the Commission and the functions of the secretariat; to provide for accreditation of election observers and monitors by the Commission; and to provide for other matters incidental to the effective operation of the Commission.

ENACTED by the King and the Parliament of Swaziland.

ARRANGEMENT OF SECTIONS

PART I

PRELIMINARY

1. Short title and commencement
2. Interpretation.

PART II

THE ELECTIONS AND BOUNDARIES COMMISSION

3. Elections and Boundaries Commission.
4. Oath of office.
5. Conduct of Commissioners.
6. Vacancy in Commission.
7. Functions of the Commission.
8. Meetings of the Commission.
9. Conflict of interest.
10. Power to co-opt.
11. Committees of the Commission.
12. Non-liability of commissioner.
13. Secretariat of the Commission.
14. Functions of Secretary

PART III

ELECTIONS

15. Conduct of elections.
16. Report on elections.

17. Contents of report on elections.
18. Resolution of disputes.
19. Election observers and monitors.

PART IV

ELECTORAL BOUNDARIES AND LOCAL GOVERNMENT AREAS

20. Review of tinkhundla boundaries.
21. Report on tinkhundla boundaries
22. Local government areas
23. Administration of local government areas

PART V

MISCELLANEOUS

24. Funds of the Commission.
25. Books of account and audit.
26. Privilege of communication.
27. Legal representation.
28. Rules.
29. Regulations

Schedule: Oath of office

AN ACT

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AN ACT to elaborate the functions and powers of the Elections and Boundaries Commission; to regulate the conduct of the Commissioners in the performance of their work; to provide for the establishment of committees by the Commission and the co-opting of persons to assist the Commission in the performance of its functions; to provide for a Secretariat of the Commission and the functions of the secretariat; to provide for accreditation of election observers and monitors by the Commission; and to provide for other matters incidental to the effective operation of the Commission.

ENACTED by the King and the Parliament of Swaziland.

PART I

PRELIMINARY

Short title and commencement.

1. (1) This Act may be cited as the Elections and Boundaries Commission Act, 2013.
- (2) This Act shall come into force on a date to be determined by the Minister by notice in the Gazette.

Interpretation.

2. In this Act, unless the context otherwise requires—

“Chairperson” means the chairperson of the Commission;

“Commission” means the Elections and Boundaries Commission established in terms of section 90 of the Constitution and section 3 of this Act;

“Constitution” means the Constitution of the Kingdom of Swaziland Act, 2005 (Act No. 001 of 2005);

“Head” means Head of Secretariat in terms of section 14 of this Act;

“local government area” means a geographical area referred to in section 219 of the Constitution and section 22 of this Act;

“Minister” means the Minister responsible for elections;

“population quota” means the number obtained by dividing the number of inhabitants of the Region (as ascertained by reference to the latest national population census) by the number of *tinkhundla* into which the Region is to be divided in terms of section 80 of the Constitution and section 20 (2) of this Act;

“Secretariat” means the Secretariat of the Commission established in terms of section 90 (14) of the Constitution and section 6 of this Act.

PART II

THE ELECTIONS AND BOUNDARIES COMMISSION

Elections and Boundaries Commission.

3. (1) There is established a Commission to be known as the Elections and Boundaries Commission (hereinafter referred to as the Commission) consisting of five members. The Commissioners shall be appointed and removed, in terms of Section 90 of the Constitution.

(2) The King shall appoint a Chairperson and a Deputy Chairperson from among the members of the Commission.

(3) In the absence of the Chairperson and Deputy Chairperson, the remaining members of the Commission shall elect an acting chairperson or deputy chairperson from their number.

(4) The Chairperson shall be the spokesperson of the Commission, or the Commission may appoint from outside or designate from amongst its members a person to act as the spokesperson for the Commission.

(5) The Commission may be represented at any forum or meeting by any member of the Commission or the Secretariat that is nominated by the Commission.

(6) The Commission shall be independent and shall not be subject to the direction or control of any other person or authority in the performance of its functions.

(7) The Commission shall be impartial and shall exercise its powers and perform its functions without fear, favour or prejudice.

Oath of office.

4. (1) A member of the Commission shall, on appointment, take and subscribe to the oath of allegiance and the oath for due execution of office as set out in the Schedule.

(2) The oath of office shall be administered by the Attorney General or a representative of the Attorney General.

Conduct of Commissioners and staff of Secretariat.

5. (1) A member of the Commission—
- (a) shall serve impartially and independently and perform in good faith and without fear, favour or prejudice, the functions of that member;
 - (b) if appointed on full time basis, shall serve as such to the exclusion of any other duty or obligation arising out of any other employment or occupation or the holding of any other office, unless specifically authorized by the King;
 - (c) shall not at any meeting of the Commission during the discussion of any matter in respect of which that member has any financial or other interest which might prevent that member from performing the functions of that member in a fair, impartial and proper manner be present, cast a vote, or in any other manner participate in that meeting unless permitted by the Commission.
- (2) A member of the Commission—
- (a) shall not, during that member's term of office, be eligible for appointment or nomination to any political office;
 - (b) shall not, whether directly or indirectly, in any manner give support to, or oppose, any candidate participating in an election, or any of the issues in contention between candidates;
 - (c) shall not, by the member's association, membership, statement, conduct or in any other manner, place in jeopardy that member's perceived independence, or in any other manner harm the credibility, impartiality, independence or integrity of the Commission;
 - (d) shall not make private use of or profit from any confidential information gained as a result of the member's appointment and functions as a member.
- (3) A member who contravenes any of the provisions of this section shall be subjected to disciplinary action.
- (4) Except for subsections (1) and (2 (a)), the provisions of section 5 shall apply, *mutatis mutandis*, to the staff of the Secretariat.

Vacancy in Commission.

6. (1) A vacancy arising within the membership of the Commission due to any cause shall be filled in accordance with section 90 of the Constitution as soon as may be practicable

(2) The member appointed to fill a vacancy shall serve only the balance of the term remaining for the replaced member.

(3) The Commission may, subject to the provisions of the Constitution and its own rules of procedure, act notwithstanding any vacancy in its membership or the absence of any member.

Functions of the Commission.

7. (1) The functions of the Commission are set out in sections 90, 91, 92 and 219 of the Constitution and include the following—

- (a) to prepare and update the voters roll;
- (b) to oversee and supervise the registration of voters for purposes of national and local elections;
- (c) to supervise and manage elections at primary, secondary or other levels;
- (d) to ensure free, fair and democratic elections;
- (e) to conduct or facilitate civic or voter education from time to time as may be necessary;
- (f) to declare and publish election results under its authority;
- (g) to promote conditions which are conducive to open, democratic and credible elections;
- (h) to promote knowledge of democratic election processes;
- (i) to promote public awareness of electoral matters by means such as civic education or appropriate information programmes;
- (j) to adjourn, postpone, cancel or order fresh elections if scheduled elections are disrupted by natural disaster, civic violence or strife;
- (k) to accredit election observers or monitors;
- (l) to review and determine the number and boundaries of *tinkhundla* areas or polling divisions;
- (m) to recommend the establishment of, or abolition of local government areas or the alteration of boundaries of local government areas;
- (n) to produce periodic reports in respect of its work;
- (o) to prepare an annual budget for due approval;
- (p) to perform any other functions and exercise other powers in connection with elections and boundaries as may be prescribed.

(2) The Commission shall, for the purposes of performing its functions—

- (a) acquire the necessary staff, whether by secondment or appointment on contract or otherwise;
- (b) establish and maintain the necessary facilities for collecting and disseminating information regarding electoral matters;
- (c) co-operate with educational or other bodies or institutions with a view to the provision of instruction to or the training of persons in electoral and related matters; and
- (d) generally, perform any act that is necessary for or conducive to the performance of its functions.

Meetings of the Commission.

8. (1) The Commission shall meet at a time and place that it deems expedient for the transaction of its business.

(2) The Chairperson shall convene the meetings of the Commission.

(3) The Chairperson shall preside at all meetings of the Commission and in the absence of the Chairperson, the Deputy Chairperson shall preside.

(4) Three members of the Commission including either the Chairperson or the Deputy Chairperson shall constitute a quorum for any meeting of the Commission.

(5) In the case of a tie of votes, the person presiding shall, in addition to the deliberative vote as a member, have a casting vote.

(6) Except as otherwise expressly provided in this section, the Commission may prescribe its own procedure.

Conflict of interest.

9. (1) If at any stage during the course of any proceeding before the Commission it appears that any member of the Commission has or may have an interest which may cause a conflict of interest on the part of that member –

- (a) that member shall forthwith disclose in full the nature of interest and leave the meeting so as to enable the remaining members to determine whether that member is precluded from participating in the meeting by reason of a conflict of interest; and
- (b) the disclosure of the interest and the decision taken by the remaining members regarding that interest shall be recorded in the minutes of the meeting.

- (2) Notwithstanding any provision of this Act, if any member—
 - (a) participates in any manner whatsoever in any meeting or proceeding contrary to subsection (1) or section 5 (1)(c); or
 - (b) fails to disclose any interest and is present at a meeting of the Commission,

the meeting or proceeding may be reviewed and varied or set aside by the Commission on its own or by the High Court at the instance of any person.

Power to co-opt.

10. (1) The Commission may co-opt, on terms and conditions that the Commission may determine, a person of suitable qualification or expertise to assist the Commission on a temporary basis in the discharge of any function of the Commission.

(2) The Commission may, with the consent of the Minister responsible for the civil service, confer powers or impose duties on any public officer or on any authority of the Government for the purpose of the exercise of its functions.

Committees of the Commission.

11. (1) The Commission may appoint committees that the Commission may consider necessary, under such terms and conditions that the Commission may determine, for the efficient discharge of its functions under this Act.

(2) A committee shall make recommendations to the Commission for approval.

(3) Subject to any direction given by the Commission, a committee appointed under this section may regulate its own procedure.

Non-liability of Commissioner.

12. A member of the Commission is not liable for anything done or omitted to be done or spoken in good faith and has the same protection and privilege in the case of any action or suit brought against that member for anything done or omitted in the honest execution of duty, as is by law given to acts done or words spoken by a judge of the High Court in the exercise of a judicial function.

Secretariat of the Commission.

13. (1) Subject to the Constitution, the Commission shall have a secretariat consisting of a Head and support staff.

(2) The Secretariat shall –

- (a) provide technical and administrative support to the Commission;
- (b) keep proper files and correspondence for the Commission;

- (c) keep proper records of minutes;
- (d) convene and prepare for meetings as the chairperson may direct; and
- (e) carry out any other function which the Commission or the Chairperson may direct.

(3) The size, qualification and grading of the staff of the secretariat shall be determined in terms of section 183 (1) of the Constitution.

Functions of Head of Secretariat

14. The Head shall be responsible for—

- (a) organizing and managing the secretariat;
- (b) taking minutes of the Commission;
- (c) keeping the Commission informed of all the activities of the Secretariat.

PART III

ELECTIONS

Conduct of general elections.

15. (1) The Commission is the sole authority for the conduct of general elections at primary, secondary or other level, subject to the Constitution, this Act and the laws governing voter registration and elections.

(2) In preparing for elections, the Commission may mobilize and engage any available temporary assistance to ensure that the elections are successful, free, fair and democratic.

Report on elections.

16. (1) The Commission shall, as soon as practicable after every election, produce and submit a report on that election to the Minister in terms of section 92 (1) of the Constitution.

(2) Where necessary, the Commission shall produce and submit a supplementary report.

(3) The report shall also state whether any election observers (and if so, how many) covered the elections and the report or reports the observers made on the elections.

(4) The report under this section shall be tabled before Parliament for information only so soon after it has been submitted as may be practicable.

Contents of report on elections.

17. The report of the Commission under section 16 shall contain among other things, the following information—

- (a) the general conduct of the elections and the number of voters who participated;
- (b) any irregularities observed and how the Commission dealt with the irregularities;
- (c) whether any nomination or election was disputed and with what result;
- (d) any observed or remarkable peculiarities; and,
- (e) recommendations, if any.

Resolution of disputes.

18. (1) Unless the dispute is otherwise resolved at a lower level, the Commission shall examine and decide any alleged irregularity or unfair advantage in connection with an election process made in the prescribed manner.

(2) Where the irregularity or unfair advantage is confirmed, the Commission shall take appropriate action to correct the irregularity and any adverse effects caused by that irregularity or unfair advantage.

(3) An appeal or review of the decision of the Commission shall lie to the High Court.

Election observers and monitors.

19. The Commission may accredit any individual, group or institution as an election observer or monitor at any election in terms of sections 73 and 74 of the Elections Act.

PART IV

ELECTORAL BOUNDARIES AND LOCAL GOVERNMENT AREAS

Review of tinkhundla boundaries.

20. (1) During every fourth year of Parliament, the Commission shall review the number and boundaries of tinkhundla into which Swaziland is divided for election in terms of section 91 of the Constitution.

(2) The Commission shall ensure that the number of inhabitants of an inkhundla is as nearly equal to the population quota as is reasonably practicable, taking into account the terrain, the availability of transport and other relevant community interest.

(3) The boundaries of an inkhundla shall not extend beyond one Region.

(4) Where alteration to the boundary of an inkhundla or the creation of a new inkhundla is approved, the King shall, not later than six months before the dissolution of Parliament, by proclamation in the Gazette, declare the new boundary or inkhundla to be effective at the next dissolution of Parliament or so soon thereafter as may be convenient for the next general election.

Report on tinkhundla boundaries.

21. (1) The Commission shall submit the report on Tinkhundla boundaries to the King at least nine months before the dissolution of Parliament.
- (2) The report on the boundaries shall state among other things–
- (a) whether any alteration is necessary to the boundary of any inkhundla ;
 - (b) whether any new inkhundla should be established;
 - (c) whether any existing inkhundla should be abolished or merged with another;
 - (d) the proposed boundaries of the affected inkhundla or tinkhundla;
 - (e) any other recommendation or observation.

Local government areas.

22. (1) The Kingdom of Swaziland shall be divided into as many local government areas as the Commission may from time to time recommend to Parliament.
- (2) In defining boundaries of local government areas, the Commission shall–
- (a) take into account existing chiefdom areas;
 - (b) redraw Tinkhundla boundaries as may be necessary;
 - (c) integrate urban and rural areas where necessary; and,
 - (d) take into consideration–
 - (i) the population, the physical size, the geographical features, the economic resources or potential, the existing or proposed infrastructure of each area;
 - (ii) the possibilities of facilitating the most rational management and use of the resources and infrastructure of the area with a view to ensuring that a local government area is, or has the potential of becoming economically self-sustaining.
- (3) The boundaries of chiefdom areas may be changed subject to section 115 of the Constitution.
- (4) A town or city may be divided into two or more areas of local government.
- (5) Local government areas may be rural or urban or partly rural and partly urban.
- (6) Subject to the recommendations of the Commission, Parliament may abolish a local government or alter the boundaries of a local government area.

Administration of local government areas.

23. (1) A local government area shall be administered by an elected or appointed, or partly elected and partly appointed council or committee as Parliament may prescribe.

(2) Subject to re-election or re-appointment, the term of appointment of a council or committee shall be the same as that of a member of Parliament.

PART V

MISCELLANEOUS

Funds of the Commission.

24. (1) All funds appropriated to the Commission shall be under the control of the Commission and disbursed by an officer or staff seconded by the Accountant General or employed by the Commission after consultation with the Accountant General.

(2) Administrative expenses of the Commission, including salaries, allowances and pensions payable to or in respect of persons serving in the Commission and all monies required to defray the expenses that may be incurred in the discharge of the functions of the Commission shall be a charge on the Consolidated Fund.

(3) The Commission may receive for its work funds and other donations from local and international persons or bodies.

Books of account and audit.

25. (1) The Commission shall keep proper books and other records of account in respect of receipts and expenditures of the Commission in accordance with acceptable principles of accounting and the Financial Management and Accounting Regulations made under the Finance Management and Audit Act, 1967.

(2) The accounts of the Commission shall be audited annually by the Auditor General or by independent registered auditors appointed by the Auditor General.

(3) The expenses of the audit shall be paid out of the funds of the Commission.

(4) The audited accounts of the Commission shall be part of the annual reports of the Commission to be tabled before Parliament.

Privilege of communication.

26. A person shall not in any legal proceedings be permitted or required to produce or disclose any oral or written communication between—

(a) the Commission, a member or employee of the Commission and the Government, a Minister or any officer of the Government; or,

(b) any members or employees of the Commission,

in the exercise of or in connection with the exercise of the function of the Commission unless a judge of a superior court orders otherwise.

Legal representation.

27. (1) The Commission may request the Attorney General or with the approval of the Attorney General, instruct any legal practitioner to provide advice or legal representation to the Commission in any matter or legal proceedings before any court or tribunal in which the Commission is involved.

(2) A person appearing in person or by counsel before the Commission or a committee of the Commission or any person or body conducting an inquiry or investigation on behalf of the Commission shall appear at their own expense unless that person is a witness called by the Commission in which case the expenses of that person shall be borne by the Commission.

Rules.

28. (1) The Commission may make rules for the better carrying out of the functions of the Commission under this Act.

(2) Notwithstanding the general power under subsection (1), the Commission may make rules—

- (a) prescribing, subject to the laws governing voter registration and conduct of elections, the procedures for registration of voters and conduct of elections;
- (b) prescribing the manner of resolution of certain disputes arising out of voter registration or conduct of elections;
- (c) prescribing the procedures for the determination and review of tinkhundla boundaries;
- (d) prescribing, in consultation with the Minister responsible for local government, the procedure and manner of determining and reviewing boundaries of local government areas;
- (e) regulating the conduct of civic and voter education;
- (f) prescribing periods within which certain matters or activities relating to elections or boundaries are to take place;
- (g) prescribing any matter in connection with elections and boundaries.

Regulations

29. The Minister may make regulations providing for any matter which—
- (a) is required or permitted to be or may be prescribed under any provision of this Act; and
 - (b) the Minister may consider necessary or expedient to prescribe or to regulate in order to achieve the objects of this Act.

SCHEDULE
(Under section 4)

OATH OR AFFIRMATION OF ALLEGIANCE

I,..... do swear (or solemnly affirm) that I will be faithful and bear true allegiance to King, his heirs and successors, according to law.

So help me God. (To be omitted in affirmation).

OATH OR AFFIRMATION FOR DUE EXECUTION OF OFFICE

Ido swear (or solemnly affirm) that I will well and truly serve King....., his heirs and successors, in the office of (here insert the description of the office) and I will do right to all manner of people according to the law without fear or favour, affection or ill will.

So help me God. (To be omitted in affirmation).