

The South African Institute of International Affairs



Strengthening parliamentary  
democracy in SADC countries

# Swaziland country report

Joshua Mzizi

Series editor: Tim Hughes

THE SOUTH AFRICAN INSTITUTE OF INTERNATIONAL AFFAIRS

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SERIES EDITOR: TIM HUGHES

The South African Institute of International Affairs' Strengthening parliamentary democracy in SADC countries project is made possible through the generous financial support of the Royal Danish Embassy, Pretoria.

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THE SOUTH AFRICAN INSTITUTE OF INTERNATIONAL AFFAIRS

ISBN: 1-919969-12-8

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Swaziland country report*

Please note that all amounts are in US\$, unless otherwise indicated.

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## Acknowledgements

I wish to thank all those who agreed to be interviewed regarding Swaziland's parliamentary system; this study would not have been possible without their valuable contribution and keen interest. I am indebted to Tim Hughes, the South African Institute of International Affairs' project leader, for roping me in so late in the day, and yet patiently encouraging me to press on despite other commitments on his part and mine. It is my wish that through this study, readers will have a clearer view of what is happening politically in Swaziland. Finally, I take full responsibility for the interpretation of all facts about Swaziland used in this study.

## About the author

**Dr Joshua Bheki Mzizi** is a senior lecturer in the Department of Theology and Religious Studies at the University of Swaziland. He holds graduate degrees in Religious Education, Education Administration and Religion. Joshua earned his PhD in Systematic Theology, focusing on Liberation and Political Theologies, at Vanderbilt University, Nashville, United States. He has published widely in the areas of education, human rights, religion, politics and law, and has participated in a number of international and regional cross-disciplinary research projects including: problems of proselytism in the world: legal and theological dimensions; leadership, civil society and democratisation in Africa; democratic governance and common security in Southern Africa; and a global research programme on strengthening democracy through dialogue with political parties.

## Preface

The roots of parliamentary democracy in Southern Africa are spreading and deepening despite operating in sometimes infertile soil. All countries in the Southern African Development Community (SADC) region now operate some form of parliamentary democracy. While a majority of countries exhibit text book constitutional, electoral and parliamentary architecture, the operation of these institutions is highly disparate. Some labour under the threat of civil war, constitutional flux, and monarchical fiat; others have operated consistently and constitutionally for decades. While there is little fundamental region-wide disagreement on the mechanisms for achieving a democratic polity, there is far less agreement on the appropriate powers, role and composition of legislatures; and still less discussion, let alone agreement, on the appropriate relationship between parliaments and 'the people'. Indeed the longevity of some parliaments in Southern Africa is no indicator of their constitutional strength, nor the strength of public engagement with them. Established parliaments can operate in an exclusive and exclusory manner. Established parliaments can also become susceptible to (un)democratic reversals, particularly with respect to a strong executive and single party dominance. Conversely, newly elected parliaments can forge innovative and healthy public participation programmes, thereby strengthening and deepening democracy.

This series of reports forms part of the South African Institute of International Affairs' (SAIIA) three-year research, conference and publications programme examining parliamentary democracy in SADC countries. Its normative objective is to contribute to strengthening parliamentary democracy throughout the region. Specialists in all 13 SADC countries were contracted to conduct primary and secondary research into the state of parliamentary democracy and to make recommendations on how parliamentary democracy might be improved, strengthened and sustained.

Specialists were tasked with researching a number of key themes. The first was to provide a country-specific overview of recent and current constitutional, electoral and parliamentary practice. This included 'nuts and bolts' issues such as the electoral system, constitutional provisions for the executive, legislative and judiciary and party political configurations. The organisational structure of parliament, including assembly rules, the roles and powers of committees, the status of the speaker, whips, members, as well as the functioning of parliament as

an oversight actor, were examined. These questions go, *inter alia*, to the status and credibility of parliament with the electorate.

The second theme was to conduct primary research into provisions for public engagement with parliament. There are two dimensions to this relationship. The first is the mechanisms and modalities parliaments use to convey and publicise their activities to the electorate and civil society in general. These may range from the publication of Hansard to the parliamentary web site. The former serves as a recordal of fact (after the fact), but the latter may also serve to publicise future parliamentary activity and is thus a potentially powerful tool. The more textured research centred on the degree to which parliaments encourage and facilitate the participation of the public in their activities. This may range from the public affairs offices, to the holding of public committee hearings in distant and rural areas.

The other side of the public engagement equation is the channels and practices used by civil society to interact with and lobby parliaments ranging from advocacy, petitions and protests, to oral and written submissions.

Public parliamentary access is often characterised by an 'insider-group' and 'outsider-group' dichotomy. The insider group is typically well-organised and funded, usually with a clearly identified constituency base and infrastructure. Insider groups may be issue specific, or cohere around markers such as class, race, religion and ethnicity. Such groups often develop effective methods and modalities of political mobilisation, support, lobbying, access and influence. Outsider groups, however, are often the mirror images of their more powerful counterparts. They may share common interests, or suffer from a common affliction or practice, but lack the resources and capacity to either mobilise effectively, or lobby for their interests. Outsider groups may be extensive in number and may even represent a numeric majority or plurality of the population, yet still operate on the margins of political and parliamentary engagement.

An important, or potentially important, linkage in this relationship is the media, and thus researchers were tasked with examining and evaluating their role. There may be an operational and political distinction between the parliamentary coverage of state-owned media, a national broadcaster and a commercial operator. Researchers were asked to evaluate briefly the effectiveness of these channels of communication and dissemination.

Finally, after workshopping their findings, researchers were asked to write a set of tightly formulated recommendations for strengthening parliamentary democracy in their respective countries.

We at SAIIA thank Joshua Mzizi for his research and for the application and industry with which he has tackled his work in sometimes difficult circumstances.

This country report will appear in abridged form in a compendium of all 13 SADC country case studies. Its findings and recommendations will be incorporated into a SADC-wide best practice handbook.

Lastly, we should like to express our deep gratitude to Ambassador Torben Brylle of the Royal Danish Embassy in Pretoria for his constant support and that of the Danish government in generously funding this project.

*Tim Hughes*

*SALLA Parliamentary Research Fellow*

# Table of contents

<b>Executive summary</b>	<b>1</b>
<b>1. Introduction and background</b>	<b>3</b>
Efficacy of the traditional past in the modern	3
Royal power consolidation	4
Royal control of parliament	5
Major issues	6
A brief history	7
<b>2. Main features of parliamentary democracy in Swaziland</b>	<b>13</b>
The locus of power	13
The electoral system	14
1978–1992 Phase One	14
1978–1992 Phase Two	19
Tinkhundla philosophy	21
Parliament and the monarchy	24
The case of Mgabhi Dlamini	26
The king's jet saga	27
The 28 November 2002 statement	29
The Marwick Khumalo case	30
General comment	31
<b>3. Parliamentary structures and channels for disseminating information</b>	<b>33</b>
<b>4. Constitutional reform and parliament</b>	<b>37</b>
Old wine in new wine skins	37
The parliamentary status quo	39
<b>5. Conclusion</b>	<b>41</b>



<b>Notes</b>	<b>43</b>
<b>References</b>	<b>47</b>
<b>List of acronyms</b>	<b>49</b>

## Executive summary

Attempting a study of this magnitude in the current political climate of Swaziland has been challenging and indeed encountered a number of drawbacks. First, some interviewees were suspicious and therefore could not trust that the information sought was simply for academic analysis. They feared that its use might land them in some kind of trouble with the state. Second, Swazi society is highly polarised in terms of political ideology.

On the one hand there are the traditionalists who believe that the status quo is both acceptable and desirable. According to traditionalists, dissenters are at best jealous that the Swazi state has managed to survive this long and has defined its own form of democracy, despite world opinion that nothing good could come from Africa's past. The progressives, on the other hand, tend to demonise everything traditional as they make impatient calls for genuine democratisation in line with international norms and standards. Then there are the moderates who see the best in each camp, but decide that nothing, or very little, could be done to change the status quo.

Traditionalists do not see the reason for change. Progressives want change at all cost. Moderates are afraid of change – to be sure, they are more afraid of any disruption that change may bring about than change itself.

This report confirms three major features that underpin the methodological presupposition of the study. The features are:

- the nature and effects of the power of tradition that enkindle and sustain the dominance of the monarchy in all aspects of Swazi life;
- that there are accepted definitions of democracy and ideals which are those that are either systematically imposed by the monarchy on public discourse, or are agreeable to the king and the ruling aristocracy because they do not threaten the survival of the king;
- the major purpose of the existence of the Swazi parliament and indeed all state institutions is primarily to serve the head of state. Hence the monarchy is the principle around which all macro and micro political and economic power displays – including inherent traditional practices – are organised. The rules of all political behaviour thus derive from the king.

The style followed in the report is academic and analytical. Most interviewees requested that they not be acknowledged in the text, and this has been instituted as much as possible. Interviewees included former and current members of parliament (MPs), current parliamentary staff, leaders of civil society groups and two members of the academic community.

# **1. Introduction and background**

## **Efficacy of the traditional past in the modern**

An analysis of parliament and parliamentary democracy in Swaziland requires an understanding of the peculiar historical and cultural exigencies that underpin Swazi life and its political landscape.

This inquiry revealed several critical issues that are discussed at length in the body of this report. The primary motive was to explore the contours of the efficacy of the traditional past in the realities of the modern. In other words, what elements of tradition have been carefully allowed by the ruling aristocracy to spill over into modern systems of governance, and what are the reasons for such choices?

The ideological framework for the current dispensation was built on the power and prestige of the Swazi monarch, Sobhuza II, whose intellect and political prowess were respected by the Swazis of his time.

The following points reveal the sequence of events leading to what this study terms 'royal power consolidation'; a concept that should be understood as either parallel to, or in tension with, democratic consolidation. The methodological scheme of the king involved the following:

- Sobhuza II's philosophical belief that African kings were both leaders and kings. The meaning of this presupposition is that in the traditional past, Africans unquestioningly accepted the dual role of kings as that of rule and reign. Sobhuza thus urged for Africa to return to that 'glorious past' in order to avoid political crises that may result from accepting the kind of democratic rule espoused by former colonial masters of Africa.
- The Swazi king had a council, the Swazi National Council (SNC) with which he worked when dealing ostensibly with traditional matters. During the pre-independence talks, the SNC was drawn to discussing matters of power transition, including constitutional affairs. The British were not comfortable with this arrangement. Despite the fact that the SNC's role was relegated to traditional matters in the independence constitution, there has been a steady and deliberate effort to extend the functions of the SNC to matters of modern governance. This has led to the inevitable conflict of duties between the SNC and parliament on the one hand, and the SNC and the executive on the other

hand. In recent times the effects of such a conflict have been more pronounced on the judiciary, especially on the aspect of the rule of law. The finding of this study is that the all pervading power of the SNC as an unelected body representing no political ideology except the preservation of kingship, has been responsible for the suppression of plural political party democracy in Swaziland.

- Political parties were banned in 1973 in the name of traditional tendencies and sensibilities. The Swazi monarch accused parties of being divisive, demagogic and retrogressive. The independence constitution was repealed in 1973 in what could be termed a 'royal coup' on parliament. The terms of the coup were carefully camouflaged as the 'will of the Swazi people'. It is essential to underscore that in 1973 the king assumed all legislative, judicial and executive authority which he exercised with a self-appointed Council of Ministers accountable only to himself.

### **Royal power consolidation**

Whereas the major underlying agenda since the 1978 political reforms right up to the current constitutional process has been to systematically position the power of the monarchy above everything else, the motivating or precipitating factor has been to render political party activity sterile, redundant, irrelevant and criminal. The royalist agenda has yielded the Tinkhundla system of government as an alternative to a party political system. The philosophy is based on the assumption that:

- Tinkhundla practice develops from a traditional process of grassroots consultation.
- Tinkhundla transcends all social divides.
- In adopting new concepts of democracy while accommodating centuries-old customs and traditions, the Tinkhundla system encourages economic development while maintaining and promoting the tradition and cultures which are so highly valued in Swaziland.

The ultimate goal of the Tinkhundla system is to decentralise power and government administration. To date Swaziland has a total of 55 Tinkhundla centres which serve as electoral constituencies for MPs. The MPs are elected on a non-party ideological basis. To be sure, all contesting candidates are urged by

the chief electoral officer (CEO) to disclose their developmental goals, and not discuss politics when delivering their campaign speeches. In addition to the 55 MPs, the king appoints ten into the House of Assembly. The House elects ten into the Senate, and the king appoints 20.

It is important to point out that as an alternative to political party systems, the Tinkhundla system has been entrenched through decrees since 1978 and selected public opinion gathered by the royal commissions on reforming Tinkhundla since the late 1980s up to the current Constitution Bill. The Swazi nation was never at any time afforded an opportunity to debate whether or not they want the system.

The mandate of the Tinkhundla Review Commission (TRC) in 1992 was to consult the nation on how to reform the system, yet advocates of political parties boycotted the exercise. The same happened with the Constitutional Review Commission and the Constitution Drafting Committee.

### **Royal control of parliament**

This study has revealed that through the Tinkhundla system, the king has exercised absolute power over the executive, judicial and legislative arms of government. Whatever token of power these purport to enjoy is at the discretion and largesse of the king. The king may summon the cabinet for any matter at any time, and may dissolve parliament without being subjected to providing reasons. The king may refuse to assent to a bill passed by both chambers of parliament until it lapses.

The case of the Dipping Chemicals Bill piloted by the minister of agriculture in the Fifth Parliament of Swaziland is a case in point. The king was reported to have said something to the effect that 'his pen will run dry' when called upon to sign that bill. The minister of agriculture had met with fierce opposition from cattle owners who claimed that all cattle in Swaziland technically belonged to the king. There was therefore no need for government to levy individual cattle owners. Besides the levy was too high and would have reduced the number of cattle per homestead substantially had it been introduced. The king decided to listen to this popular view about the bill. The current standing orders are silent on what parliament should do when the king decides to stall a bill.

Another recent example of the king's control of parliament and display of power through the SNC is the forced retirement of two duly elected speakers of the House of Assembly on grounds that they had fallen out of royal favour. The king simply applied pressure that the two should be removed, and was not obliged to give reasons.

A further example is the premature dissolution of the Seventh Parliament five months before the next election. The term of a Swaziland parliament is five years. Elections usually take place during the months of October and November. When the king retired the Seventh Parliament on 30 May 2003, it effectively meant that the MPs lost five months of their salaries and benefits – something that was viewed as vengeful even by some former MPs. Coincidentally, the Seventh Parliament had twice attempted to pass a vote of no confidence in the prime minister, who was not only a king's appointee to the House of Assembly but also the king's choice for the position of prime minister.

Additionally, the Seventh Parliament had stalled a controversial royal project which would have seen the king owning an expensive private jet. The king had felt very strongly about owning this facility. In fact a huge deposit had been paid to the manufacturer by the government, thereby diverting without authorisation funds officially earmarked for certain projects. The total cost of the jet was reported to be R500 million and government paid a deposit of R28 million. Recovering the deposit seems to be a tall order despite several interventions by the current House of Assembly asking the minister of finance to recover this money. The minister's response had been that 'government is working hard on the matter'.

## **Major issues**

The study discusses three major issues which explain the absence of parliamentary democracy in Swaziland. Whereas it should be recognised that Swaziland has a parliament, questions on how or whether it is a functioning parliament can best be explained in the manner the whole political economy is arranged.

MPs have to see themselves more as development officers than as politicians tasked with the responsibility of making laws for this country. In the process, the propensity to always please the ruling aristocracy during the discharge of their duties has its own effects on the performance of MPs, especially those elected into the House of Assembly. The three issues this study has established are as follows:

- The banning of political parties was the beginning of a long journey that is oftentimes marred with controversy and other times meeting with conflictive situations that cause internal disarray to the ruling aristocracy. The Swazi king desires to have a political system that would be suitable to him, supportive of all his initiatives, and totally dependent on his generosity and prestige. In order to consolidate his power, the monarch has been hiding under the

veneer of ideological slogans that tie together in a questionable fashion the ideals of a false democracy, a stage-managed method of consensus rule, and the general deception that the will of the people determines all political initiatives and processes of change.

- The Tinkhundla parliament has progressively demonstrated that it is weary of royal control. This puts the king's agenda at great risk in the foreseeable future. While tensions between parliament and the monarch continue to be intriguing, political party advocates have not been silent and the international community's interest in Swazi affairs may exacerbate the situation, if not now, certainly in the future.
- Underlying this political contestation is the question of what ought to triumph – tradition or modernity. The answer this study motivates should not lie with what triumphs ultimately, but whether the two camps – tradition and modernity – are willing to engage with each other on essential issues and take common positions, making equal sacrifices as far as possible and debunking unworkable archaic ideals that have been heretofore used only for ideological reasons.

### **A brief history**

A great deal has been written about Swaziland's political system since 1968 when the kingdom attained independence from Great Britain. What stands out as a defining feature of the socio-political scenario, extending as it does to controlling or superintending the traditional superstructure, is the institution of the monarchy.<sup>1</sup>

In modern terms Swaziland has been defined as an absolute monarchy state due to the way political power, and ordinary power generally, is exercised. Traditional understandings of absolutism dismiss such modern notions on the strength that any traditional authority in the Swazi context has checks and balances in the form of various councils that advise the ruler on all matters. No chief or king is allowed to make rules capriciously or pronounce policies that have not been vetted by the councils.

Whereas this functionary role of councils is important for ensuring that the king does not make bad decisions and be seen to rule with unbridled authority, it is the manner in which the councils are put together in modern day Swaziland that distorts the overall picture.

The most important council during colonial times was the Swazi National



Council (SNC) which was a nationwide assembly consisting of the Ngwenyama (paramount chief), the Indlovukazi (queen mother), and all adult male Swazis. By definition this council represented all chiefdoms on an equal basis. It had a smaller working committee called *Bandlancane* (Swazi National Council Standing Committee – SNCSC) whose duty was to attend to all urgent matters that were tabled before the king from time to time. The SNCSC was thus a major policy-making body that worked with the king on all matters pertaining to Swazi law and custom.

Membership to this smaller committee was not permanent. Prominent citizens were appointed on a rotational basis, and they were not remunerated for the services rendered. The role of the SNCSC shifted dramatically when King Sobhuza II used this committee to discuss matters of power transfer from the British to the Swazi.<sup>2</sup> The colonial government might have thought that it was the duty of the British to determine the mode of power transfer, but instead Sobhuza II used the council to counter the British and emphasise that the Swazi king had the majority support of his nation on the independence question.<sup>3</sup>

Swaziland's independence day might not have been delayed had the British simply negotiated the terms of independence with King Sobhuza II and his council without prejudice. Instead of doing this, the British advocated giving power on a contested multiparty basis. This demand was not well-received by Sobhuza II who felt that the British were questioning not only his popularity, but also the inherent authority he had over the Swazi nation. King Sobhuza II based his argument on archaic forms of African democracies which unfortunately could not be verified or scientifically analysed.<sup>4</sup>

Having been forced by the insistence of the British to allow parties to operate in Swaziland, Sobhuza II formed his own party, the Imbokodvo National Movement (INM) in 1964. The king's party won all seats during the legislative council elections held in the same year, and subsequently won with an overwhelming majority the independence elections of 1967. Hilda Kuper records Sobhuza's speech made on the first National Flag Day, 25 April 1967:

*This is a day of rejoicing ... It is the tradition of all African Kingdoms that their Kings are leaders as well as Kings. It is also true for Swaziland. Now rightly or wrongly some people have mistaken this dual capacity as a dictatorship. I would like to assure you here and now that the King both leads and is led by his people. I am my people's mouthpiece ... There can be no peaceful progress without cooperation and unity of the people; if the people are divided into camps and go to the extent of undermining one another, such a state is doomed to catastrophe no matter how good*

*and wise the leader may be. Demagogues of the world too often under the cloak of liberty and democracy have successfully undermined the spirit of unity and cooperation in the nation and have set one group against another in the interest of gaining a brief day of power for themselves. When they succeed, they trample upon the very fundamental rights which it is our duty to protect.<sup>5</sup>*

The Swazi king was clearly attacking multiparty politics, arguing that it was the major cause for the destabilisation of African kingdoms as the young African democracies were taking root. Sobhuza II was vehemently opposed to the concept and practice of one-man-one-vote<sup>6</sup> ostensibly because if those who have been so voted into power felt that all traditional authority should be either streamlined or debunked, then the continued existence of the institution of the monarchy and the unlimited power and authority it enjoyed under Swazi law and custom would be at stake. He repeated this notion on 12 April 1973 on the day he repealed Swaziland's independence constitution. After accusing the constitution of having failed to ensure good governance and the maintenance of peace and order, and that the constitution had impeded free and progressive development in Swaziland, King Sobhuza II further charged:

*... that the constitution has permitted the importation into our country of highly undesirable political practices alien to, and incompatible with the way of life in our society and designed to disrupt and destroy our own peaceful and constructive and essentially democratic methods of political activity. Increasingly this element engenders hostility, bitterness and unrest in our peaceful society.<sup>7</sup>*

Kuper justifies the Swazi king's repeal of the independence constitution and the taking over of all executive, legislative and judicial authority on the grounds that since it was not a military coup, it was rather an:

*... effort to turn nominal political independence into full sovereignty under a leader who had proven his wisdom and moral courage over the years, a man ready to listen to all sides before making a decision, a King who was not a tyrant, a King inspired by ideals of the best in a traditional African monarchy in which there was interplay of councils and the King the mouthpiece of the people.<sup>8</sup>*

Kuper's interpretation of the intentions of the Swazi king may border on genuine

academic speculation since she does not indicate the fact that when Sobhuza II gave himself all powers necessary for governance, he was actually in the camp of all dictators. The major reason for repealing the independence constitution was to deal a death blow to multiparty politics in Swaziland. He succeeded in doing so by using extralegal (unconstitutional) methods to disband an elected parliament and ban political parties, and crudely impose himself as the final authority in literally all matters in the Kingdom of Swaziland. The powers that Sobhuza II used to make such sweeping and far-reaching changes could only have come from the amorphous Swazi law and custom.<sup>9</sup>

The fact that Sobhuza II had involved the SNCSC in the pre-independence discussions – the talks that paved the way for Swaziland's Westminster model of parliamentary democracy and governance – did not please the British high commissioner. Such a practice was viewed to be much against the norm that the British had imposed across British Africa; namely, that traditional leaders were to be in charge only of matters that were regulated by customary law and tradition.

The British authorities, on the advice of their constitutional lawyers who were working on the independence constitution, thought that when Swaziland reached the stage of having a parliament, the SNC would be rendered redundant, for according to Kuper:

*... To them it [the SNC] was a symbol of a dual system in which the traditional structure served as an obstructive shadow government. However, at every constitutional discussion Sobhuza's men insisted that the SNC be continued and receive recognition. Its function continued to be defined as dealing with all matters regulated by Swazi law and custom. With the approach of independence it continued to serve as the 'cultural watchdog' of a Parliament confronting new issues and passing new legislation.<sup>10</sup>*

Under the Miscellaneous (Chapter XIII) Section of the independence constitution<sup>11</sup> the SNC was confined to advising the King "... on all matters regulated by Swazi law and custom and connected with Swazi traditions and culture ...".

In the immediate years following the attainment of independence, the Swazi monarch did not work with the SNC on matters that pertained to governance. Furthermore, when Sobhuza II abrogated the independence constitution in 1973, he did not make mention of the SNC in his infamous proclamation. There was therefore no effective interference of the SNC in matters of modern governance in the period after 1968.

When King Mswati III revived by decree the SNC in 1996, it was obvious that he was responding to unrelenting calls for the democratisation of Swaziland made by the progressive and labour forces in the kingdom.<sup>12</sup>

The SNC was decreed into existence simultaneously with the Constitutional Review Commission (CRC). The latter was tasked with coming up with the supreme law of Swaziland in two years. The terms of reference of the CRC made it clear that it was expected to make its report to the king. Group submissions were not permitted, and commissioners served only in their individual capacities. But the fact that the commissioners were handpicked by the king – albeit from a cross-section of Swazi society comprising progressives and conservatives – made the exercise look more like a royal project than a national assignment. For this reason, the few progressively minded commissioners pulled out, citing personal reasons. Others stated boldly that they wanted to represent their constituencies' interests in the commission, but since that could not be guaranteed, for them, there was no point in serving in it.

## 2. Main features of parliamentary democracy in Swaziland

### The locus of power

The above background is necessary for it explains where real power derives in the Swazi political landscape. Since 1996 the Swazi king has ruled with the SNC whose duties and functions far transcend those enshrined in the independence constitution. The SNC is no longer an institution for adult males alone and adult females are now also included. Matters that are dealt with by the council are no longer limited to those pertaining to Swazi law and custom. The king may refer any matter to the council as he deems fit. The SNC is a remunerated body that works full-time, and is arguably closer to the king than the cabinet. What the British constitutional lawyers feared – that the SNC would be a 'shadow government' that would disrupt the operations of the executive – has become a reality in the past nine years in the Kingdom of Swaziland.

This study has investigated the extent to which the Swaziland parliament operates. In other words, does the parliament execute its functions freely and indeed within the limits of conventional democratic ideals as it serves the needs of the electorate?

In the event that the Swaziland parliament encounters problems, questions have to be asked about what the institution of kingship conceives to be the role of parliament in the context of royal hegemony, and contrast these royal expectations with those of the electorate. When these questions are probed further, it will be revealed that the real constraints experienced by the Swaziland parliament have to do with power relationships.

The Swazi monarchy had been on a steady, systematic ideological campaign of placing the power of the monarchy above everything else in the Swazi establishment since 1973. The royal interference with the operations of all three organs of government in recent times is indicative of the real intentions of kingship *vis-à-vis* the power of tradition over the modern system of government.

It is important to realise that the strategy used by the present king in consolidating his power over Swazi affairs has involved the SNC. The comments of Bekithemba Khumalo on the constitutional reform processes of Swaziland are germane also to the larger picture of royal power consolidation:

*... we have seen that the scope and process of constitutional reform in Swaziland is at the discretion of the king. We have also seen that there is*

*a clear preference for individuals who identify with the monarchy in terms of political orientation or status. Might this fact explain why ruling elites always wind up with a post-reform system which is more amenable to their interests ... More importantly, however, political orientation and status play an even greater role in the interpretation of the scope of the mandate. These factors might explain the reluctance of some members and the willingness of others to construe the mandate either narrowly or broadly. What is clear from the profile of the members of the commission is that they could not be said to represent the political diversity which is characteristic of the population of Swaziland.<sup>13</sup>*

## **The electoral system**

### *1978–1992 Phase One*

Following the repeal of the independence constitution on 12 April 1973, the Swazi king detailed a Royal Constitutional Commission (RCC) whose terms of reference, according to Kuper, directed the commission:

*.... To enquire into the fundamental principles on which the Kingdom of Swaziland's Constitution should be based, having regard to the history, the culture, the way of life of Swaziland, and the need to harmonise these with modern principles of constitutional and international law.<sup>14</sup>*

The RCC never compiled a public report, nor was its *modus operandi* open to the public. Despite the fact that Khumalo argues that it would be dangerous to infer that the developments which took place in 1978 were a result of the recommendations of the RCC of 1973, there is reason to believe that King Sobhuza II crafted the Tinkhundla system of government on the advice, directly or indirectly, of this commission.<sup>15</sup>

On the surface, the mandate appears innocent; that the basic principle to be used when dealing with matters of tradition and modernity was that of accommodation or harmonisation. In practice the extent of accommodation depends on a number of factors.

First, the interpretation of tradition is fluid and dynamic. In Swaziland, the final authority on matters traditional or customary is not the common citizen or any ordinary chief whenever it has to be determined what tradition holds on a particular point. In the majority of cases, such authority on the meaning of tradition rests with the institution of the monarchy.

Second, the fact that Chapter II of the independence constitution on the Bill of Rights was not saved suggested that the king had a problem with the bill, despite the fact that it was consistent with international law. The major task was to harmonise the Bill of Rights with certain provisions in the not yet codified Swazi law and custom.

It was the Constitutional Review Commission (CRC)<sup>16</sup> that captured the real intentions of the ruling aristocracy insofar as the Bill of Rights was concerned:<sup>17</sup>

*The nation recommends that rights and freedoms which we accept must not conflict with our customs and traditions as the Swazi nation. Agreements with other states and international organisations which deal with rights and freedoms must be submitted to the nation (at Tinkhundla) before such agreements become law in the Kingdom. The nation must know what those rights are. The nation must be taught about agreements which the Kingdom concluded with other states and international organisations.*

The Establishment of Parliament Order of 1978 was the first post-1973 legislation that introduced the Tinkhundla system of government into mainstream Swazi politics. The concept of Tinkhundla as local constituencies aimed at harnessing development efforts was expanded to include that of Tinkhundla as centres for the election process.

In a sense Tinkhundla were to be both centres of local development and political constituencies. The conflict between development and politics was completely overlooked by the architects of the system, perhaps because it was thought that Swazis would not concern themselves so much with political matters as with bread and butter issues.

In the 1978 legislation voters were to elect members of an Electoral College in an open ballot. As soon as the members of the college were elected, they were whisked into seclusion where they would deliberate on who to vote into the House of Assembly. This system was open to abuse as it was revealed that the members of the college were thoroughly schooled by the managers of the electoral process, away from the public eye and away from the press. The criteria used in selecting the candidates for parliament were known only to the Electoral Committee, which was itself appointed by the king and tasked to superintend the election process throughout. According to section 4(d) of the King's Order-in-Council No. 23/1978, the Electoral Committee was to supervise Swazi elections paying particular regard to traditional practices at meetings. Constitutional scholar John Baloro questioned the democratic nature of this practice in the following terms:

*Swaziland's unique system of political participation has been criticised on a number of grounds. Even though it may claim some pretensions to authority or tradition, it is clearly undemocratic. In the overwhelming majority of cases, the electorate does not know the candidates they choose to constitute the electoral college. In so far as election to the House of Assembly and the Senate is indirect, the members of parliament and senators do not feel accountable to any particular constituency.... The absence of party-political discussion and activity does not augur well for the development of [a] properly thought out socio-political agenda for scrutiny by the electorate.<sup>18</sup>*

The innovations brought about by the 1978 Order were designed to be an alternative to party politics which were condemned for being divisive and foreign to the Swazi way of governance.

Tinkhundla-based elections were considered as fair since candidates who stood for election would not influence voters by virtue of their wealth or status. Swazi tradition, it was argued, allowed everyone to contribute on an equal standing to matters of local and national significance.<sup>19</sup> Political corruption, whereby candidates would receive foreign funding for staging political campaigns and eventually end up 'buying' voters, would be eliminated under Tinkhundla. The aim of Sobhuza II was to introduce "... an alternative form of government which would blend Western democracy with Swaziland's own traditional style of democracy, involving the Kingdom's chiefs ... The people of Swaziland favoured a parliamentary system, but rejected the existence of political parties".

It was observed elsewhere that Tinkhundla were defined even in 1978 as zones in rural and peri-urban areas where various developmental projects were centralised. It was further argued that:

*The developments after 1978 necessitated delimitation of these zones both in size and function to include serving as political constituencies. A single Inkhundla may comprise various chiefdoms. The Establishment of the Parliament of Swaziland Order No. 23 of 1978 could not be read outside the context of the 1973 King's Proclamation to the Nation. It was its extension geared to giving some semblance of democracy to a regime of law that prohibits all democratic reforms. The 1978 Order in essence established a system of parliamentary representation without political parties.<sup>20</sup>*

Despite the fact that political parties continued to be proscribed in 1978, King



Sobhuza II did return partial legislative powers to parliament and restored an executive cabinet and an independent judiciary. The king could still make laws by decree and orders-in-council. He had authority to assent to all laws passed by parliament. In other words, the king continued to be above parliament.

However, the crafting of the electoral system in the absence of a national constitution had serious drawbacks. First, the King's Proclamation to the Nation of 1978 continued to take the place of the supreme law of Swaziland. According to paragraph 14(1) of the Establishment of Parliament Order of 1978: "This Proclamation is the Supreme law of Swaziland and if any other law is consistent with this Proclamation, that other law shall, to the extent of the inconsistency, be null and void".

The essence of the proclamation was that, first, Swaziland was in a state of emergency due to the constitutional crisis of 1973. Second, full legislative power continued to be vested in the king. Paragraph 14(2) emphatically stated: "The King may, by Decree published in the Gazette, amend or repeal this Proclamation and he may notwithstanding Section 60 of the Establishment of the Parliament Order, 1978 or any other law by Decree, make, amend or repeal that law". Third, in the event that the incumbent king (Sobhuza II) died, there was likely to emerge a strong third force posing to do things in the name of the monarchy. This was experienced in the post-1982 period following the demise of Sobhuza II.

A body that was alleged to have been created by Sobhuza II in his latter days, the *Liqoqo* – whose function was mainly to assist Queen Regent Dzeliwe Shongwe during the minority years of Crown Prince Makhosetive – announced in a *Government Gazette* that its name was the 'Supreme Council of State'.

Starting by amending the Sedition Act of 1938 to the Sedition and Subversive Activities Amendment Act, 1983, the *Liqoqo* ruled with terror, making new policies and even deposing Queen Regent Dzeliwe Shongwe who had grown to be suspicious of the intentions and activities of the *Liqoqo*.

Booth explains that traditionally *Liqoqo* was an important advisory body to the ruling king. The role of this body, just like that of the SNC, was comparable to a modern parliament. That is why, as pointed out above, it was reasoned that when the Westminster parliamentary system took root in the Swaziland establishment, all these traditional structures would be rendered obsolete. Booth writes:

*... Those were times when communications were slow and vital issues were not as numerous, complex, or rapidly developing as they are now. From independence to the early 1980s, the national Parliament became the forum for debate over modern issues of governance. During the interregnum after Sobhuza's death, however, events have turned the*

*liqoqo into the main policy making body, with Parliament's powers correspondingly diminished.*<sup>21</sup>

The crises in governance that followed Sobhuza's death were a result of the centralisation of power on the monarchy – an institution that was not immune to abuse and manipulation by power mongers. The *Liqoqo* made a number of self-serving laws outside the precincts of parliament, literally undoing the leadership structure Sobhuza II had left in place.

It has been observed elsewhere that "... (t)he country was reaping the fruits of Sobhuza II who had by example, weal and woe, taught that political power was sweetest in the absence of opposition".<sup>22</sup>

The first phase of the Tinkhundla system of government was marred by controversy. The portfolio minister in charge of this new innovation believed in its perfection simply because Sobhuza II had willed that Swazis be governed in this way. Meanwhile a number of voices, some of which were traditionally in support of the system, remembered that the late king had said Tinkhundla was an experiment. It was up to the Swazis to see how this experiment worked, and where it lacked efficiency Swazis would be free to perfect it in due course.

One of the imperfections was that voters could not elect someone directly to parliament. The Electoral College worked behind the scenes, as pointed out above, obviously under heavy royal supervision, in order to ensure that MPs ultimately chosen by the college also had royal approval. This, therefore, was not a people's parliament but a royally inclined one.

The clout of royalty, coupled with the amendments effected on section 144 of the repealed constitution redefining an act of parliament as inclusive of an order-in-council, and the *Liqoqo* as "... the King's Advisory Council which shall consist of Members appointed by the King to hold office at his pleasure in accordance with such terms and conditions (including emoluments and allowance) as he may determine and whose function it is, to advise the King".

The second imperfection was that the system was an open ballot arrangement. Candidates for the Electoral College were selected at the whim of traditional leaders or chiefs where they were available in each chiefdom, and not subject to question by the public. The candidates did not have to campaign nor espouse any political or developmental aspirations.

Electing political leaders in this fashion was thought to be closer to Swazi traditional practices than to the rigours of an open multiparty election. Sobhuza II had condemned the whole notion of campaigning as suspicious and dishonest. He did not accept the fact that a man or woman could stand up and declare that he or she was fit for a particular public office.

### 1978–1992 Phase Two

By the mid-1980s when the second election under the Tinkhundla system was due, complaints about the system had been voiced from many sectors of Swazi society. The open corruption and abuse of power and privilege alluded to above were obvious and already conspicuous. The minister in charge of the system had grown very unpopular.

When King Mswati III ascended to the throne in April 1986, two of his major challenges entailed revisiting the powers and functions of the *Liqoqo*. The activities of the *Liqoqo* had caused enough consternation and fear, especially when it deposed a substantive head of state with whom it had serious disagreements. Mswati III abolished the *Liqoqo* and replaced it with a Central Committee.

The second challenge was to reform the Tinkhundla system of government so that it conformed to modern democratic ideals, even so without compromising Swazi tradition and practices. King Mswati III appointed the Tinkhundla Review Commission (TRC) in 1992, stating clearly that he wanted the TRC to report to him directly on its findings. He exercised the powers vested in him by the King's Proclamation to the Nation of 12 April 1973. The TRC was to operate in camera, and "all submissions made to the Commission and all reports made by the Commission to me shall be confidential and may not be disclosed to anybody until further notice".<sup>23</sup>

The TRC produced an 88-page document<sup>24</sup> which was neither clear nor forthright on the programme of action. It did not spell out what the king should do with its contents, nor was there any scientific argument on the TRC's methodology to justify why its findings and recommendations should be accepted as legitimate and representative of public opinion.

When the king received the report, he cherry-picked certain recommendations and left out others which would have set Swaziland on a new path.

Among the recommendations that King Mswati III ignored was 8(a) which said that Swaziland should have a written constitution that would entrench the monarchy, enshrine a bill of rights, and restore the independence of the judiciary.

The TRC did not make a positive recommendation on the return of multiparty democracy in Swaziland, except to say that the idea should be tested in the near future.<sup>25</sup> The commission endorsed the following powers of the king:

- The king's powers to appoint some members into the House of Assembly and the Senate.

- The power to appoint a prime minister.
- The power to appoint a cabinet on the advice of the prime minister.
- All executive authority should vest in the king.

The TRC introduced and endorsed the concept of gradual democracy in Swaziland's political reform process in the following terms:

*... The Commission is fully aware that its recommendations may not go far enough in certain respects rightly or wrongly believed by some to be fundamental to the question of democracy and the transparency of government. The Commission believes, in line with the nation's political maturity, that if democracy is to be firmly rooted on Swazi soil, it must be introduced gradually, otherwise chaos might break loose. No doubt, the Report of the Commission will not please everybody. It is hoped, however, that the Report will meet the immediate political and developmental aspirations of a broad spectrum of the Swazi public of the 1990s, and, hopefully, beyond.<sup>26</sup>*

The concept of gradual democracy in a sense is a delaying technique. At its core is the fear of change itself alluded to above, especially the fact that those who are beneficiaries of the current state power might lose their significance and grip when genuine democratic ideals take root. Gradual democracy also gives the drivers of change the latitude to manipulate and manoeuvre the process of change to their advantage.

The international community, unfortunately, tends to believe the state authorities when they say that the process of change is taking place. The Swazi monarch is on record to have said on the throne that Swazis should not be hurried as they craft their future. The ideological use of gradualism thus receives the support of the head of state.

The TRC's report gave rise to the Establishment of the Parliament of Swaziland Order, 1992.<sup>27</sup> The context of the order had already been progressively crafted by a series of legislation since 12 April 1973. It suffices to say that the underlying purpose of these laws is to ensure that:

- the 1973 King's Proclamation to the Nation remains the supreme law of Swaziland;
- political parties remain banned as per the provisions of decrees 11, 12 and 13 of the 12 April 1973 Proclamation;

- the king's executive authority should remain as provided for in section 69 of the Establishment of Parliament of Swaziland Order, 1978;
- all matters regulated by Swazi law and custom should continue to be so regulated; and
- the Tinkhundla system of government "... Under the Regional Councils Order, 1978 and the declaration of Swaziland as a no-party State under the King's Proclamation of the 12th April, 1973 are hereby re-affirmed".<sup>28</sup>

### *Tinkhundla philosophy*

The architects of the Tinkhundla system of government refined the concept of Tinkhundla after the TRC report and the 1992 Order. While observing that the primary function remains that of being an electoral system, Tinkhundla is unique in the sense that it develops from a traditional process of grassroots consultation and discussion. The candidates are first elected in their own local communities by people who know them.

Tinkhundla is also a system that transcends all social divides, including ideological divisions in that it allows

*... (i) individuals who have earned the trust and respect of their peers – and regardless of their social status or wealth – to compete on an equal basis in their own constituencies for election. Those elected represent their communities on local authorities, at regional level, and ultimately in Parliament.<sup>29</sup>*

Additionally, the Tinkhundla system aims at decentralising power and government administration so that state services are closer to the people who also should have the political power to ensure that such services are efficient and meet the needs of all the people concerned.

*In adopting new concepts of democracy while accommodating centuries-old customs and traditions, the Tinkhundla system promotes economic development, while maintaining and promoting the traditions and cultures which are so highly valued in Swaziland.<sup>30</sup>*

Briefly stated, the following are fundamental characteristics of the Tinkhundla system as envisaged by its architects:

- Tinkhundla harmonises Swazi cultural norms and values with modern ideals of democracy.
- It negates the abuse of power.
- While decisions are taken by consensus, the opinions of minorities are respected.
- It promotes political and social stability, harmony and peace.
- It unites the Swazi people in that socio-economic status is not material to any candidate's running for political office.
- It is against the imposition of minority wishes upon the majority.
- It is the nerve centre for all regional developmental efforts, coordinating, as it does, all grassroots initiatives and national developmental efforts.
- It ensures that elected candidates coming from local, regional and national levels are not influenced by party political ideologies.

The 1992 Order introduced the secret ballot mechanism at both primary and secondary elections. Campaigning is controlled and limited. The CEO allows candidates to campaign under his supervision. Candidates are supposed to base their campaign promises on developmental needs, not political ambitions. Currently, there are 55 Tinkhundla centres. Following a rigorous primary and secondary election each inkhundla produces a winner who then goes to the House of Assembly. The king appoints ten into the House, with the attorney general becoming an *ex officio* 66th member of the House.

The Senate consists of 30 members. The House of Assembly elects ten, while the king appoints 20.

The 1992 Order says nothing about gender balance. Section 14 of the Order, sub-sections (3) and (4) talks about the inclusion of chiefs, princes and princesses and people of special interests that should be appointed by the king to the Senate. However, with the Southern African Development Community (SADC) principles on elections now recommending a 30% women's representation, there was tremendous effort by the king to include a substantial number of women among his appointees into both Houses in 2003.

The Eighth Parliament of Swaziland has a total of 18 women. The king nominated two into the House of Assembly and seven into the Senate. Four were elected by the House of Assembly into the Senate, and five had won in their Tinkhundla constituencies.

Electoral fraud and the buying of voters were rampant in the October 2003 election. Some cases were taken to court and fresh elections had to be called. In a case that involved the former minister of justice, the High Court found him guilty of electoral fraud in that he had tampered with the lawful procedures for

voter registration.<sup>31</sup> Instead of disqualifying the guilty candidate, the CEO allowed him to run again. He won the re-election with a landslide, despite the adverse court record. These developments were not anticipated by the architects of the system who had painted an over-romantic picture of Tinkhundla as a flawless, grassroots representative Swazi democracy.

Future prospects indicate that the Tinkhundla system will continue to be the norm of Swazi politics. It is essential to realise that its development as an alternative to political party systems has been entrenched by decrees since the 1978 Order. Introduced with a litany of imperfections in 1978, Swazis were expected to accept Tinkhundla without question largely because the system had gained the favour of the king.

The efforts of King Mswati III in 1992 were to reform the system, not to replace it. Accusations against Tinkhundla and the royally managed processes of reforming them have been vigorously criticised by the underground political movement, the People's United Democratic Movement (Pudemo). Pudemo, whose written *modus operandi* sounds more revolutionary than what the movement does on the ground, believes that:

*... There are unchanging principles for our movement which can be summed up as follows: First, the emancipation of the people can only be the act of the people themselves. Second, the emancipation of the people means the destruction of the tinkhundla system of government and its replacement by the institutions of a democratic system. Third, the economic and gender disparities created and perpetually regenerated by [the] tinkhundla regime can only be overcome by the creation of a new and democratic system, meaning [a] total breaking with the prevailing ideas in society.<sup>32</sup>*

It is unfortunate that when the Tinkhundla system is criticised by the progressive elements, the institution of the monarchy is not spared. This is due to the fact that the Tinkhundla system is viewed as forming a strong bastion of resistance to democratic change by appealing to sensibilities of protecting the institution of the monarchy. It can be safely argued that the monarchy has indeed used the system to both perpetuate its political power and ward off any elements that call for Swaziland's return to multiparty democracy.

The Swaziland Youth Congress (Swayoco), a youth wing of Pudemo, recently issued a strongly worded statement which indicates that the movement does not accept the Tinkhundla system, and by extension suggests markedly waning support for the monarchy:

*We have characterised the real enemy as being the Tinkhundla regime. In essence, Tinkhundla is a semi-feudal and neo-colonial system comprised of three constituent components: traditional aristocracy; comprador bourgeoisie; and international capital. We are struggling against Tinkhundla's capitalism, which is a unity of parasitic elements of capitalist exploitation secured by imperialism on the other hand [sic], and backward, primitive and oppressive elements of feudalism. In this regard the institution of the monarchy is an agent of imperialism, responsible for the creating [sic] of juicy conditions (cheap labour) for the maximum profitability of workers ...*<sup>33</sup>

The Constitution of the Kingdom of Swaziland Bill, 2004, which is currently under discussion by the parliament of Swaziland, has entrenched a number of provisions found in the King's Proclamation to the Nation of 12 April 1973 as well as subsequent decrees that were crafted to strengthen the royalist dispensation of post-1973. One of the entrenched clauses is section 80 titled 'System of government'. The bill states as follows:

*The system of government for Swaziland is a democratic, participatory, tinkhundla-based system which emphasises devolution of state power from central government to tinkhundla areas and individual merit as a basis for election or appointment to public office.*

The eventual inclusion of this clause in the constitution bill marks the victory of the ruling aristocracy, the triumph of tradition and the ideological defeat of multiparty political practices in Swaziland; the fact that the Swazi king is in favour of the Tinkhundla system makes any debate to the contrary untenable.

## **Parliament and the monarchy**

*Through the tinkhundla, the monarch exercises absolute power over the executive and legislative arms of government and appoints the prime minister, who then appoints the cabinet, which is subject to the King's approval. In accordance with the new constitutional provisions the king, among other things, could summon and dissolve parliament at any time. The power to make legislation does not lie with the elected representatives but with the Swazi National Advisory Council [sic]. A bill has to be accepted, amended or rejected by other structures, the Senate or the Advisory Council, before it gets to the King to be made into law.*<sup>34</sup>



The Seventh Parliament of Swaziland took office in 1998 at the height of the most intense industrial action by the country's labour force. During the period of its tenure it had several clashes with the executive and the monarchy. The head of government that had been appointed in 1996 was reappointed in 1998. A new standing committee of the SNC was appointed and duly gazetted with the same mandate as the one before: that the king may refer any matter to the SNC for advice.

The net effect of this liberalisation of functions of the SNCSC was that it could interfere with literally anything that had to do with governance in the name of the king. Matters requiring attention under Swazi law and custom, especially the ever rampant chieftain disputes, remained within the purview of the SNC.

The Swaziland Administration Order of 1950 was amended by order-in-council in the interim period by a Council of Ministers that ruled with the king between the dissolution of the Sixth Parliament and the election of the Seventh Parliament. Although current constitutional law recognises the said amendments as 'an act of parliament', it was obvious that there was a calculated intention to avoid parliament when passing the amended law. The reasons could only be political.

When the head of government was first appointed in 1996, he correctly perceived the SNC's role and proximity to the king as a hindrance to government's operations, including the regular consultations government makes with the king. However when he was serving as head of government in the Seventh Parliament he had to make a political choice on where to place his allegiance: parliament or the SNC?

The power of the SNC was derived from the proximity with the king and the open-ended nature of its functions in state affairs. Whereas King Mswati III may have seen the dangers of giving too much power to an advisory body like the *Liqogo* and the Central Committee, his political inclinations and trust tilted heavily toward the SNC, a body solely appointed by him and paid for from the Consolidated Fund. By putting his trust in this body, the Swazi king alienated his cabinet from the issues they were supposed to deal with as government.

As a consequence of the SNC's role in governance and the king's intention to be in charge of the judicial system, a secret committee called the 'Thursday Committee' was given the mandate to deal with sensitive judicial matters. It was this body more than the SNC and the cabinet that became a major policy making entity. Since it operated without any legal basis, its policies had to be crudely enforced through the legitimate structures. But that state of affairs could not afford to abide for too long before it boomeranged.

The cabinet was divided and soon the ripple effect reached the legislature.

The prime minister of the day survived no less than two attempts to have him unseated through a parliamentary vote. The fear parliament had was that the 1992 Order, while allowing parliament to exercise its vote of no confidence on the head of government or any cabinet minister, also allowed the king to dissolve parliament in the case of the former. Section 51(3) of the 1992 Order gives the condition for the removal of a prime minister as: "Provided further that the King shall not remove the Prime Minister from office on the ground that a vote of no confidence has been passed in him or the Government unless three days have elapsed since such vote was passed and the King has decided not to dissolve Parliament under Section 31(1)."

Below are five examples of the king's efforts to take total control of the Swazi parliament and thus weaken it to his advantage. Each of the cases ignited considerable controversy, placing Swaziland in the spotlight of world news. The question that constantly troubles an investigation of this nature is: if the Swazi monarch indeed detests political parties, are the reasons advanced that parties are foreign, corrupt and disruptive genuine at all? A related question is: provided that the Tinkhundla system is poised to upset the monarchy, what alternatives can the king offer to the Swazi people?

The position taken by this study is that the Tinkhundla system of government was systematically imposed on the Swazi nation because the king saw it as the only viable way of consolidating royal power in the absence of an official opposition. The commissions that were detailed to review Tinkhundla and come up with Swaziland's constitution worked with an uncompromising royal agenda, namely, that absolute power must remain with the king. But the commissions were to make it seem that it was the Swazis who wanted the king to have unlimited power.

### *The case of Mgabhi Dlamini*

Mgabhi Dlamini, an avowed traditionalist, was elected speaker of the House of the Seventh Parliament in 1998. During the *Incwala* (feast of the first fruits) season of 1999/2000 he was caught with an amount of kraal manure that he had taken for ritual purposes from the national cattle byre at the traditional headquarters. Dlamini tried to explain that he had taken the manure on the advice of his 'prophet-healer' who had interpreted a dream he had had about an impending calamity to befall the royal household. According to him, the substance was going to be used to avert that misfortune. He had thus taken the cattle manure in good faith, and in the interest of the survival of the Swazi monarchy.

What started off as an innocent and insignificant mistake by a high-profile

public figure was blown out of proportion by the press, alluding to the fact that the speaker of the day wanted to use black magic on royalty. The international press also focused on Swaziland, overplaying the 'theft' of manure to scandalous proportions. Mgabhi Dlamini's intentions were questioned, his story was doubted, and the suspicion that as speaker he could be tempted to use black magic to consolidate his power did not make his case any better.

The king, through the SNC, resolved that Dlamini should not continue as speaker. The problem was that as an elected official, only the House of Assembly could remove him from the position after passing a vote of no confidence. Mgabhi Dlamini had done nothing in parliament that could justify a vote of no confidence.

Meanwhile mounting pressure was exerted on the executive to ensure that Dlamini step down from the position. A cabinet team was sent to persuade him to tender his resignation. He complied after he was assured that his salary and benefits would continue to be paid as before. Government failed to keep its promise and Dlamini's salary and benefits were reduced to that of an ordinary MP. He challenged government in court, lost in the High Court, and won a settlement of over R350,000 in the Court of Appeal.

Dlamini had indeed breached certain traditional norms by his act and for this he was found guilty and fined five herds of cattle, but since his case had annoyed the king he was declared unfit to be speaker of parliament. The House did not question or object in any significant fashion to the way Dlamini's case had been handled. The MPs proceeded to elect another speaker.

### *The king's jet saga*

In the last year of its life, the Seventh Parliament of Swaziland learned through press reports that the Swaziland government was in the process of purchasing a private jet for the king at a cost of over R500 million. This project had not gone through parliament for approval, yet it was reported that the Minister of Works and Transport Senator Titus Mlangeni had entered into a deal with the manufacturer on behalf of government and a deposit of R28 million had been paid. The manufacturer had followed the client's specifications for extra fittings on the aircraft and the product was almost complete when the press heard of it. Parliament had to act swiftly because of the sensitivity and gravity of the matter.

A parliamentary probe was conducted to ascertain the extent of the deal and how it had been devised. The probe established that indeed the jet project was undertaken by the Swaziland government with direct instructions by the king. The SNC, which was divided over the issue, was involved in the discussions. The result was that the aircraft had been identified, priced and a deal entered into with the

manufacturer. The parliamentary commission established that the head of government personally instructed the minister of finance to employ unorthodox financial procedures to divert properly allocated funds to finance the deposit of the 'royal project'.

As government was pursuing the deal, there were other underhanded activities regarding the sale of another aircraft that had fallen into disuse in Swaziland because of economic considerations and its age. The questionable deals involved the minister of works and transport who apparently had also written legal instruments to the manufacturer, committing government to the sale without the knowledge of the attorney general. The commission recommended that the minister concerned be impeached and finally retired from public office.

Furthermore, parliament voted to stall the project despite desperate attempts by government to sway the issue, arguing that it would be more expensive to cancel the deal with the manufacturer than to go ahead with the project. Meanwhile, all economic expert advice obtained had indicated that the project was not viable. Swaziland's economy was too fragile to sustain it, let alone the high parking and service fees when the aircraft was not running. Government came up with a pathetic excuse that the jet would be leased and hence make some money during the time that the king was not using it.

There was, however, ample national and international pressure on parliament to arrive at a prudent resolution on the matter. Ultimately, parliament stopped the project. The damaging conclusion of all stakeholders was that the Swazi king was on a spending spree, spoiling himself with luxury items when his country faced escalating poverty and the damaging effects of HIV/Aids.

This case was significant in the sense that the Seventh Parliament was aware that King Mswati III wanted the aircraft. To vote against the sentiments of the king under normal circumstances would have been unthinkable in times past. Furthermore, parliament had already made history by removing a cabinet minister who was not only a king's appointee into Senate, but also a royal appointee into cabinet. The king would certainly not be pleased by such a move, despite the fact that the jet project was condemned by all, including the most ardent of royal supporters. Those who differed with the majority voices in both houses of parliament were clearly the ones who through political short-sightedness risked being labelled political opportunists who had seen a chance of aligning themselves with the already embattled king at a time when he needed any kind of support.

When King Mswati III unceremoniously dissolved the Seventh Parliament in May 2003, five months before the next election, there was wide speculation that he was hitting back at the parliament that had not supported his project. The MPs

were devastated by the dissolution, with most complaining that they had been financially compromised.

### *The 28 November 2002 statement*

In the year 2000 government evicted two chiefs and their followers in the Lubombo Region who seemed to be resisting their deposition and the eventual recognition of a senior brother to the king as chief of the two areas.

The law used was the Swaziland Administration Order, 1998 (as amended) which had removed matters dealt with under Swazi customary law from the jurisdiction of the courts. The evicted chiefs took the matter to court, arguing that they had been denied natural justice when they were refused an audience to see the king after his council had told them to recognise the new chief. (It is customary practice for anyone to meet with the king and 'thank' him for pronouncing a decision on one's matter.)

In a series of rulings by the High Court, the justices found that indeed the evictions were unlawful and that the evicted families should be allowed to return to their homes. Government lodged appeals and the court rulings had to be stayed until the next sitting of the Appeals Court. The Court of Appeal agreed with the High Court that the evictions were extra-legal. But government would not allow the evicted families to return to their homes. The matter returned to the Court of Appeal in its November 2002 sitting, whereupon the judges issued a final judgment on the case; namely, that the evictees should return, and that the commissioner of police and deputy regional commander for the Lubombo Region be incarcerated for contempt of court.

The head of government, obviously acting on instructions of the Thursday Committee, issued a statement on 28 November 2002 spelling out government's position on the matter as follows:

- The Court of Appeal had acted on foreign influence and, therefore, unprofessionally when issuing the judgments. It had demonstrated a level of ignorance of the intricacies of Swazi law and custom, and had thus compromised the country's entire jurisprudence.
- The Court of Appeal had undermined the authority of the king, hence its ruling had wide constitutional implications.
- Government was not going to abide by the Court of Appeal's ruling on this matter and the status quo shall continue as before.

This response outraged the Court of Appeal justices who, as a result, took a decision to resign *en masse*. The immediate consequence was that Swaziland was plunged into its worst history of the collapse of the rule of law. For the next two years there was no Court of Appeal in Swaziland.

A diagnosis of the whole situation indicates that it was the king who insisted that since he had ordered the eviction of the two chiefs and their followers, no court could overturn his decision. But because the king cannot enforce a decision of this nature using traditional structures, he hauled in government to effect the evictions. Parliament, however, had nothing to do with the matter because it had been handled the traditional way, according to Swazi law and custom.

This conflict in Swaziland's jurisprudence was long coming, but the ruling aristocracy had probably not anticipated that it would eventually lead to a stand-off between traditional authority and the judiciary, with government caught in the middle of the fray. The intentions of the king, however, remain clear and stubborn – that Swazi law and custom, and by extension traditional authority, should be supreme to all structures of modern governance.

### *The Marwick Khumalo case*

Marwick Khumalo, an MP from the Lobamba Inkhundla, was elected unanimously as speaker of the House in October 2003. He was duly sworn in and immediately started performing duties of his office. In November 2003 all MPs were summoned to the traditional headquarters at Ludzidzini Royal Residence to introduce themselves to King Mswati III and the Queen Mother. Khumalo was introduced as speaker of the House. The purpose of these introductions, which were taking place for the second time since the coming into force of the 1992 Order, remains a mystery as they are not provided for in law. However, it is safe to assume that since they take place before the appointment of a cabinet, it may be an opportunity for the king to meet each of the 95 MPs, to familiarise himself with them and to establish whether or not they would be fit for cabinet.

Cabinet was duly appointed and the king went into seclusion in observance of the annual *Incwala* ceremony. In January 2004 rumours emerged that King Mswati III would not officially open the Eighth Parliament of Swaziland unless Marwick Khumalo step down as speaker. The reason for this was unclear, but was rumoured to involve matters of a private nature.

Indeed, by February 2004 there was no indication of when parliament was going to open, and by the end of that month the issue had become politically volatile; some MPs were sensing that the king was interfering unfairly with their choice of speaker over a matter that had nothing to do with parliament. Others

felt that their careers as MPs were hanging in the balance since the king might decide to dissolve parliament if the matter was not resolved to his satisfaction.

Marwick Khumalo, who had vowed never to step down, was in the end pressurised into resigning by a special committee composed of traditionalists. The team comprised former members of the SNC, some of whom had been appointed by the king into the House of Assembly. After putting up some resistance – which was received with mixed feelings by the public – Khumalo eventually stepped down in a special session of parliament, citing the king as the major cause of his resignation.

Khumalo is reported to be negotiating a secret package estimated to be not less than R1 million. This matter was leaked to the press in the last quarter of 2004 probably because there was a serious dispute over the taxation of the package. Soon after Khumalo's resignation, preparations for the opening of parliament began in earnest, albeit belatedly.

Once again the will of the king had been imposed on parliament. The House elected a new speaker and continued with business as usual.

### *General comment*

The above cases demonstrate that in Swaziland's quest for democratic rule, the monarchy has a deeper agenda. The banning of political parties was the beginning of a long journey that is sometimes unclear, and often conflictive, causing disarray even within the ruling aristocracy itself. The Swazi king wants a political system that would be suitable to him, supportive of all his initiatives, and totally dependent on his largesse and generosity.

In order to achieve this, the monarchy has to hide under the veneer of ideological slogans that tie together in a strange way the ideals of a false democracy, a stage-managed concept of consensus rule, and the general deception that the will of the people determines all political initiatives and direction of change in Swaziland.

Mgabhi Dlamini's election as speaker of the Seventh Parliament had been widely accepted in traditional circles. But when he was perceived as a weak speaker who could not control an otherwise vibrant (or at least noisy) parliament, an excuse had to be found to oust him from the position.

What the architects of Dlamini's fall had not realised was that he was going to be the government's worst enemy and would not support anything questionable that touches upon the monarchy.

This is the same for the Marwick Khumalo case. While his vibrancy and political maturity is a cut above the rest in the current parliament, the treatment

he received cannot make him a blind supporter of government or royalty, despite the fact that he has a strong royal connection.

When the king overturns the decisions of parliament and threatens MPs with dissolution, he is signalling that he is above parliament and can stage a coup against parliament if his will is not carried out. The current statute would allow him to do as he pleases because even the laws that are the cornerstone of parliament are passed through decrees, which he alone has the power to alter as he wishes.

The defiance staged by the king through the notorious Thursday Committee over the Court of Appeal judgments was in a sense a coup against the judiciary, and a direct statement that the concept of the independence of the judiciary cannot exist in the context of a monarch whose strivings for absolute rule are inherent and historical.

Underpinning this political dynamic is the question of what should triumph: tradition or modernity? The answer should not lie with what triumphs ultimately, but whether the two camps are prepared to engage each other and agree to focus on essential issues and take common positions, making equal sacrifices where possible and debunking unworkable or archaic ideals where they are found.



### 3. Parliamentary structures and channels for disseminating information

This study established that the major emphasis in official discourse is that the role of an MP is to be a development officer. The architects of the Tinkhundla system were careful to downplay the political role of an MP ostensibly because that domain is dangerous and unpredictable. When the 1992 Electoral Order was promulgated, it was clear that the campaign process had to be controlled and superintended by the CEO. Apart from the fact that the campaign period is limited, the candidates are strictly warned to focus on matters of development.

While this tendency may not necessarily be counter-productive, the campaign speeches are invariably full of false and sometimes ridiculous promises. As part of the programme of voter education, campaign speeches are often played on radio. In the last election candidates promised voters such things as building bridges and stadiums, motivating government to pay community policemen and -women, feeding the elderly and the destitute, etc. These promises were made by people who have no idea of how the country's budget is drawn up, and the promises were forgotten soon after their election to office.

There is no defining criterion for 'qualification' as a development officer, just that one has been elected into parliament. The case of the appointed MPs and senators is even more nebulous. Conversely, a voter has no way of telling if indeed he or she is voting for the right 'development officer' or a wrong one from the controlled campaign speeches. Kabemba rightly observes that political preferences and ideological interests are taboo under the Tinkhundla system.

*Representatives do not represent any popular demands, nor are they a source of major political information and interpretation on which national demands are based. Instead, they represent localised (community) issues. Elected representatives in parliament do not act as conduits through which people's demands are filtered and aggregated into national development programmes ... Public demands are understood and articulated through the monarch and the National Advisory Council, which comprise the King's appointees.<sup>35</sup>*

Another major factor that contributes to the ineffectiveness of the Tinkhundla system is that there is no minimum literacy requirement for an MP. This was devised as a means to allow anybody to stand for election.

Swaziland's parliamentary system, though biased towards traditional practices, is still heavily Westminster in style. The regional and international parliamentary forums to which the Swaziland parliament affiliates conduct their business in English, French or Portuguese. This puts an unlettered MP at a great disadvantage. The major problem is when bills are tabled in parliament. Bills are written in legalistic language which is very difficult to translate into the local vernacular. Even for those who are able to read, many may not fully understand what a certain bill is about: only about 20% of the 65 members of the House are known to contribute meaningfully in any debate. This creates general apathy and division between the educated and vocal MPs and those who are always silent and thus seldom covered by the press.

The third factor which this study established is that a number of aspiring MPs see going to parliament as an employment opportunity. This partly explains why in the last election, voter bribery and cases of interference with voter registration were rampant. A few cases were taken to court, but due to lack of evidence the election results stood.<sup>36</sup> During the course of the Seventh Parliament the remuneration package for MPs was substantially improved, and this may explain the euphoria and heightened interest in going to parliament by some candidates in the last election.

The fact that one may earn easy money for five years as an MP and never be recalled by one's constituency encourages slovenly behaviour among many MPs. This led to a popular submission to the CRC that voters should reserve the power of recall should they not be satisfied with the performance of their MP. The submission made it into the Constitution Bill, but was adamantly rejected by the House of Assembly. The Senate approved it, perhaps because senators are not accountable to the public by virtue of their appointment. The matter is pending, awaiting the king's decision about the way forward on the constitutional impasse.

On the whole, MPs have very little interaction with the public, save on developmental issues. Even so, the level of interaction depends on the type of MP elected; otherwise constituencies have no power over the MP they elect.

Arguably the most difficult aspect of the Swazi parliament is its relationship with the king. This study indicated earlier that the king wants to be above parliament. This may sound misleading as by virtue of being head of state, a king is presumed to be above the three arms of government; namely, the legislature, judiciary and executive. The definition of 'above', however, does not mean that in normal practice a king may arbitrarily interfere with the operations of these organs.

Since Swaziland is building its constitution on a legacy of decrees and proclamations, the term 'above' is understood or interpreted literally by the ruling

aristocracy. The consequences are that parliament will always be dwarfed by the power and prestige of the king, and will hesitate to take decisive positions on potentially volatile issues because the king may decide to dissolve it.

Second, a king may abuse his status and order any of the organs of government to carry out his wishes that may be outside the law. This happened in the case of the jet saga. In another case involving the king's men who pick young girls 'for royal duty',<sup>37</sup> the attorney general was pressured to intimidate the justices of the High Court to drop a high profile case where a mother was seeking an order against the abductors of her minor child. The director of public prosecution led charges of contempt of court against the attorney general, but the police would not serve the attorney general with the summonses. Instead, the director of public prosecution was intimidated and forced to resign by the Ministry of Justice and Constitutional Affairs. The backdrop of the unfolding events was the direct interest the king and the Thursday Committee had in what was going on.

Finally, it is important to note that according to the Constitution Bill, section 107, "(a) the supreme legislative authority of Swaziland vests in the King-in-Parliament; (b) the King and Parliament may make laws for the peace, order and good government of Swaziland". In other words, the king remains a law maker in Swaziland. He is at the same time on par with parliament in this function, and above parliament in that he retains his powers of assent.

The concept of 'king-in-parliament' is new. It is yet to be defined and operationalised. If it means that the king would no longer pass laws by decree, a question must be raised as to why the supremacy of parliament should be subsumed to the king's powers. Another factor that should not be ignored is that the king has certain constitutional and inherent powers over the same parliament. MPs and senators take the oath of allegiance to execute their duties, paying allegiance to the king, his heirs and successors, while the king's oath shall be in accordance with Swazi law and custom.<sup>38</sup> Section 5(4) of the bill states that:

*The King and iNgwenyama has such rights, prerogatives and obligations as are conferred on him by this Constitution or any other law, including Swazi law and custom, and shall exercise those rights, prerogatives and obligations in terms and in the spirit of this Constitution.*

The Constitution Bill, unfortunately, avails powers to the King that are not known, which goes to prove that the institution of the monarchy will continue to be one of intrigue and a source of confusion in Swaziland's politics.

## 4. Constitutional reform and parliament

### Old wine in new wine skins

Swaziland's bi-cameral parliamentary system has all the trappings of a working democracy, stifled only by the direct involvement of the king in the making of laws for the country. It is important to quote in detail the provisions of section 41 of the Establishment of the Parliament of Swaziland Order, 1992 to illustrate the dynamics of how laws are made in Swaziland.

The findings of this study confirm that the control of parliament by the Swazi monarch is premised on the understanding that the king's powers to legislate are both equal to and above those of parliament. The reason for this was expressed clearly by one former MP who said that it was important for the king to safeguard his position at all times. If laws could be passed by parliament without the king's final say, assent or consent, there is a likelihood that laws which may threaten the survival of kingship would be passed.

To be sure, the Constitution Bill excludes the House of Assembly from discussing matters that are regulated by Swazi law and custom. Only the Senate – which comprises two-thirds royally appointed individuals – and the Council of Chiefs<sup>39</sup> may discuss bills, the content of which may have anything to do with matters regulated by Swazi law and custom. On the equality-cum-supremacy of the king over parliament, the 1992 Order clearly states:

*41.(1) The power of the King and Parliament to make laws shall be exercised by Bills:*

- (a) passed by both chambers of Parliament;*
- (b) in the cases mentioned in Section 42,43 and 44(3) passed by the House, and;*
- (c) in the cases mentioned in Sections 44(2) and 45 passed in a joint sitting of the Senate and the House, and assented to by the King under his signature.*

*(2) Subject to Section 45, when a Bill has been presented to the King for assent in terms of subsection (1) he shall under his signature notify that he assents or withhold assent:*

- (a) in the case of an Appropriation Bill forthwith, and*
- (b) in the case of any other Bills within thirty days.*

*(3) When a Bill which has been duly passed is assented to by the King it shall there upon become law and the Attorney General shall forthwith cause it to be published in the Gazette as a law;*

*Provided that no such law shall come into operation until it has been so gazetted.*

*And Provided further that the King and Parliament may postpone in whole or in part the coming into operation of any such law and make laws with retrospective effect in which cases a reference thereto shall be made in the laws as published in the Gazette.*

*(4) All laws made by the King and Parliament shall be styled "Acts of Parliament" and the words of enactment shall be "ENACTED by the King and the Parliament of Swaziland."*

The above section of the 1992 Order has been included almost verbatim into the 2004 Constitution Bill under sections 107, 108, and 109. Section 109(1) underscores the role of the king in law making as follows: "A bill shall not become law unless the King has assented to it and signed it in token of that assent."

Notwithstanding the prior role of both houses of parliament before a bill is sent to the king, it is noteworthy that the Constitution Bill stresses that a bill can only become law once the king has so signed it.

Both the 1992 Order and the Constitution Bill are out-growths of the king's legacy of legislation by decree. There is a veiled attempt to put the king on a par with parliament in the law-making process as briefly stated above. In fact, according to section 118(1) of the Constitution Bill the king may act in his discretion to refer a bill back to both houses of parliament.<sup>40</sup> There is no law that subjects the king to obey the decision of parliament. This status quo is not likely to change in the near future because the current mentality that is impressed upon all legislators is that they are servants of the king.

For example, in the case of the former speaker of the House, Marwick Khumalo, the president of the Senate pleaded with the king on the opening of the first session of the Eighth Parliament of Swaziland to forgive Khumalo and accept him as a prodigal son.

On 18 February 2005 on the occasion of the opening of the second session of the Eighth Parliament, the Senate president remarked on the impasse with regard to the Constitution Bill. The House of Assembly and the Senate had not agreed on a number of clauses in the bill. The president said to the king that everything was in his hands and that parliament would obey the king's decision. The president explained in an interview on Swazi radio on 21 February 2005 that

he had meant that the king would follow the law and refer the disputed clauses to a joint sitting of the two houses of parliament. Despite this though, there is no such law that compels the king to so decide when a constitutional matter is under dispute.

### **The parliamentary status quo**

The Swazi parliament has a tentative calendar regulating its meetings and sittings. This calendar excludes the date for the occasion of the state opening of parliament, which is set by the king in consultation with the prime minister and parliament's presiding officers.

The popular opinion of the parliamentary staff is that the House of Assembly, by virtue of its composition as a representative House, has more powers than the Senate, especially over financial matters. The members of the Senate naturally would not agree with this perception ostensibly because two-thirds of them are appointed by the king. But the fact that the Public Accounts Committee and Finance Committee are located in the House of Assembly confirms the superiority of the House over the Senate on matters financial.

The following committees are found in either chamber: Standing Orders Committee; House Committee; Government Assurances Committee; Sessional Committee; and Portfolio Committee.

Except for the Government Assurances and Portfolio committees, the rest have been part of parliament since independence. The Swazi parliament also has ad hoc or select committees that are set up to investigate certain issues. The jet issue that troubled the Seventh Parliament discussed above was referred to a select committee that made recommendations to the House resulting in the impeachment of the former Minister of Works and Transport Senator Titus Mlangeni and the eventual position taken by parliament to stall the jet project.

MPs do not have offices, but there are meeting rooms where committees hold their meetings, and internet and e-mail facilities are situated in the library for use by MPs.

Parliament publishes its activities through, *inter alia*, Hansard, committee reports and press interviews. The Public Relations Department does hold press conferences on topical issues pertaining to parliament. This office is also available to respond to queries and questions emanating from the press. It tries to be proactive in giving out information to the public via the press whenever the need arises. Members of the public are free to come to parliament to listen to debates. The Public Accounts Committee holds open sessions and these are usually popular, especially when the committee probes government ministries on their

expenditures. On the whole, the national radio and television stations do carry parliamentary debates and matters from time-to-time when parliament is in session. The print media also report freely on the goings-on in parliament. The press has a special gallery in both chambers.

Commenting on the role of the media in parliamentary affairs, the clerk of parliament said that the media keeps MPs on their toes by reporting on the issues that MPs raise in parliament so that the electorate may be informed about how their representative is handling parliamentary business. Furthermore, by reporting on the activities of MPs, the media influences the electorate on whether to return or replace MPs at the next election. The media also reports on any misconduct, which is important considering that MPs occupy an important public office.

The Swazi parliament is funded through the Consolidated Fund, hence the government's accounting and financial rules and regulations apply to parliament. Parliament is a member of the SADC Parliamentary Forum, Commonwealth Parliamentary Association and the Pan-African Parliament.

Bills passed in 2004 include the:

- Appropriation Bill, 2004 (Bill No. 1 of 2004);
- Industrial Relations (Amendment) Bill, 2003 (Bill No. 13 of 2003);
- African Development Bank Loan Bill, 2004;
- Urban Government (Amendment) Bill, 2003;
- Liquor Licensing Bill, 2003;
- Criminal Procedure and Evidence (Amendment) Bill, 2004;
- Competition Bill, 2003;
- Income Tax (Amendment) Bill, 2004;
- Finance Management and Audit (Amendment) Bill, 2003; and
- Constitution of the Kingdom of Swaziland Bill, 2004.

## 5. Conclusion

The troubling question is whether any good can come out of the Swazi parliament. Considering that Swazi politics is deficient, could the Swazi parliament at least demonstrate some measure of democratic practice and thereby provide hope that these elements of democracy may some day bring about substantive change in the political economy of Swaziland? There is, however, fear that the new wine skins may burst and that the TRC-termed 'gradual democracy' may remain a pipe dream.

If we believe that the means justify the ends, and that the absence of democracy in the total picture of the Swazi political landscape cannot yield any democratic tendencies in any of the various organs of state, then we should redefine parliament in terms of the king's extension and consolidation of his powers. This is the conclusion this study has established. The Swazi nation's political aspirations are predetermined and carefully harnessed around the ambitions of the king.

It is germane to conclude this report by quoting *The Swazi Observer* of 14 April 2005 which carried a screaming headline, 'Budget debate a waste of time'. The paper reports the following:

*Debating the national budget is a waste of time, Senator Matoni Ngom'yayona Gamedze said yesterday. Senator Gamedze said it was a waste of time because all government ministries exceeded their budgets. The senator said there was no compliance with budgetary control measures, saying parliamentary input was being neglected by the ministries. He wondered why the lawmakers were being called upon to debate the budget because their suggestions were being disregarded. He called upon Minister of Finance Majozi Sithole to do something to control over-expenditure. Some ministries exceeded their budgets by 300% while others exceeded by 200% ...*

While one appreciates that most MPs ask pertinent questions during the annual Appropriations Bill debate, there is always a sense of urgency to pass the bill due to the proximity of government's fiscal year end; and the bill usually goes through without any changes. This is but one example of what many perceive as the rubber-stamp function of the Swazi parliament, a description MPs love to hate.



## Notes

- 1 It is contended, after Hobbes's theory, that the state was the symbol of virtue and the duty of public power was to maintain order. The commonwealth is instituted to maintain an asocial peace between equals in a universe that reason knows only as a matter in motion. It is thus argued that: "Hobbes's *Leviathan* principle supported the divine nature of kings, who are answerable only to God. It would appear that it is this Hobbesean mentality that underpins Swaziland's conception of traditional authority and then, in turn, complicates the concept of national security ... The purpose of Parliament, and indeed of all state institutions, is to serve the head of state, and therefore, the state. The monarchy, in this regard, becomes the principle and the rule." (See Mzizi JB, The dominance of the Swazi monarchy and the moral dynamics of democratisation of the Swazi state, *Journal of African Elections*, 3(1), June 2004, p 113.
- 2 See Matsebula JSM, *A History of Swaziland*, Longman, Cape Town, 1988. Matsebula traces the role of the Swazi National Council from the days of King Mbandzeni in the late 1800s. During that time every adult male was a member of the SNC. But when special cases had to be attended, a smaller committee of the SNC would be set and make recommendations on behalf of the SNC.
- 3 The results of the plebiscite of May 1964 on whether Swaziland should adopt a multiparty system or not were as follows, according to Matsebula (ibid, p 240) – against political parties: 124,218; for parties: 162. But the British insisted that elections should be fought on political party lines. We agree with Nhlanhla Friction Dlamini who argues that the result of the referendum was predetermined owing to the symbols of the Lion and the Reindeer that had been used. The Lion, which is the symbol of royal power in Swaziland, stood for the rejection of political parties, while the Reindeer, with its multi-horned ugly appearance stood for those who supported party-politics. Dlamini notes: "Due to the low level of literacy at that time one is forced to come to the conclusion that the people were not aware of what they were voting for." See Dlamini NF, Sobhuza II: Power Centralization and the Establishment of National Peace and Stability. BA project, University of Swaziland, 1994, p 10.
- 4 Matsebula (op cit) believes that Sobhuza II's major concern was the creation of a united Swazi community where "... Governing powers in Africa should work in a way that would not estrange one section of the community from the other. The *ngwenyama* (king) emphasised his strong conviction that each race should keep its identity, customs and institutions....", p 233.
- 5 Kuper H, *Sobhuza II: Ngwenyama and King of Swaziland: The Story of an Hereditary Ruler and His Country*, Africana Publishing Company, New York, 1978, p 29.
- 6 Halpern J, *South Africa's Hostages: Basutoland, Bechuanaland and Swaziland*, Penguin Books, Maryland, 1965, p 341.
- 7 The King's Proclamation to the Nation, 12 April, 1973 s. 2(c).
- 8 Kuper H, op cit, pp 336–337.

- 9 Wanda BP, The shaping of the modern constitution of Swaziland: A review of some social and historical factors, *Lesotho Law Journal*, 6(1), 1990. Wanda says: "The legality of the king's action in repealing the Constitution, prompted and fueled by a resolution of Parliament, is questionable ... the resolution of Parliament advising the King to repeal the Constitution was neither necessary nor adequate in itself; at best the resolution was only evidence of the subordinate status of the legislature in relation to the position of the King, and affirmative of the King's underlying claims that his powers and authority proceeded not from the Constitution, but outside it."
- 10 Kuper H, op cit, p 292.
- 11 Swaziland Government, Constitutional Law Act 50/1968, The Constitution of the Kingdom of Swaziland, S. 135.
- 12 It is very likely that Mswati III took a leaf from his father's book. Sobhuza II had worked with an SNC to consolidate his power and safeguard royal control from the supposed machinations of the British and the encroaching pan-African spirit championed by the political party advocates.
- 13 Khumalo B, The politics of constitution-making and constitutional pluralism in Swaziland since 1973, *UNISWA Research Journal*, 10, December 1996, p 8.
- 14 Kuper H, op cit, p 338.
- 15 Khumalo (op cit, p 5) argues that since the report was never made public and possibly because it cannot be located, "... Consequently, the significance of this Commission cannot be properly and fully determined in the absence of any final documentation of its conclusions and recommendations. Certainly, there are no grounds from which it can be inferred that the changes brought about in 1978 were a result of the activities of the Commission."
- 16 Swaziland Government, *The Constitutional Review Commission Report*, 2001, p 83.
- 17 However, despite the fact that the CRC's terms of reference expected the commission to review any legislation, decree or proclamation which has a bearing on constitutional and human rights, there is very little indication that the commission took seriously the Bill of Rights in the independence constitution, or concerned itself with regional and international conventions and protocols to which Swaziland is party. (See also Mzizi JB, Leadership, civil society and democratization in Swaziland, in Bujra A & S Buthelezi (eds), *Leadership, Civil Society and Democratisation in Africa: Case Studies from Southern Africa*, DPMF, Addis Ababa, 2002, pp 181-183.
- 18 Baloro J, The Human Right to Free Association and Assembly and Multi-party Democracy: A Study of the Law and Practice in Swaziland. Unpublished paper presented at the 14th Southern African University Social Science Conference, University of Namibia, 11 October 1991.
- 19 See Swaziland Government, *A Unique Approach to Democracy: The Kingdom of Swaziland's Tinkhundla Representative System of Government*, nd, p 3.
- 20 Mzizi JB, Leadership, civil society and democratisation, op cit, p 176.
- 21 Booth AR, *Swaziland: Tradition and Change in a Southern African Kingdom*, Westview Press, Colorado, 1983, p 46.
- 22 Mzizi JB, Voices of the Voiceless: Toward a Theology of Liberation for Post-Colonial Swaziland. PhD dissertation, Vanderbilt University, Nashville, Tennessee, 1995, p 185.
- 23 Section 2, Decree No.1 of 1992.

- 24 Swaziland Government, *The Tinkhundla Review Commission Report*, Mbabane, 1992.
- 25 Ibid, 8(k).
- 26 Ibid, p vi.
- 27 King's Order-in-Council No. 1 of 1992.
- 28 King's Proclamation No. 1 of 1981, para.8.
- 29 Swaziland Government, *A Unique Approach to Democracy*, op cit, p 5.
- 30 Ibid.
- 31 See *The High Court of Swaziland, Rogers Matsebula and Nine Others vs. Magwagwa Mdluli* (1st Respondent) and *Robert Thwala* (2nd Respondent) Civil Case No. 2498/2003 where according to the judgment of 22 October 2003 Justice SB Maphalala ruled: "In the circumstances of this case, there were serious irregularities which have tainted the voters' roll itself, undue influence, candidates have been denied access to a polling station; the election laws have not been complied with, in these circumstances taken cumulatively I have no alternative but to declare the election void. In the premise, the primary election in the area under examination, in the interest of all concerned is to start *de novo*."
- 32 See Pudemo, *Political and Strategic Perspectives*, section 3.
- 33 *The Times of Swaziland*, 29 December 2004, p 17.
- 34 Kabemba C (ed), *Swaziland's Struggle with Political Liberalisation*, EISA, Johannesburg, 2004, p 9.
- 35 Ibid, pp 14–15. Arguing that the aspect of Swaziland being a non-party state does not necessarily translate into a participatory arrangement, Kabemba observes: "... a number of problems remain with the *tinkhundla* electoral system that undermines its ability to contribute to the creation of an accountable and representative parliament. The most serious problem is the fact that the candidate from the largest constituency nearly always wins the secondary election. Constituencies vary widely in size, and because candidates have no party platforms to stand on, it appears that many Swazis simply vote for the candidate most familiar to them. The medium-term challenge while Swazis are looking at other forms of electoral systems, therefore lies in making the *tinkhundla* system more participatory."
- 36 *Henry Mfanufikile Dlamini vs. Henry Mfanasibili Dlamini*, Civil Case No. 2717/03. Justice Maphalala ruled that the applicant had failed to prove his case for the relief sought.
- 37 The Swazi king is famous for occasionally selecting young girls for marriage. The term 'royal duty' is used to describe cases where these girls are taken by so-called abductors.
- 38 The Constitution Bill of the Kingdom of Swaziland, Section 13. Taking oath of office on grounds of Swazi law and custom deviates from the known international norm whereby heads of state declare to protect and abide by the constitution. Section 2(2) states that: "The King and iNgwenyama and all the citizens of Swaziland have the right and duty at all times to uphold and defend this Constitution." One would expect all oaths to therefore put the constitution at the centre as the supreme law of the land rather than paying allegiance to a ruling dynasty or the amorphous Swazi law and custom.
- 39 Section 116(5) and (6) reads: "A bill shall not be presented to the King for assent in terms of subsection (4) unless the Senate so resolves by two-thirds majority of all Senators. The provisions of this section apply to a bill which, in the opinion of the

presiding officer would, if enacted, alter or affect: (a) the status, powers or privileges, designation or recognition of the *Ngwenyama*, *Ndlovukazi* or Prince Regent; (b) the designation, recognition, removal, powers, of chiefs or other traditional authority; (c) the organisation, powers or administration of Swazi (customary) courts or chiefs/courts; (d) Swazi law and custom, or the ascertainment or recording of Swazi law and custom; (e) Swazi nation land; or (f) *Incwala*, *Umhlanga* (Reed dance), *Libutfo* (Regimental system) or similar cultural activity or organisation."

- 40 Section 118 records in full as follows: "(1) Where a bill, having been passed by both chambers of Parliament sitting separately, is presented to the King for assent, the King, acting in his discretion, may by message refer back such provisions of the bill as the King may indicate, for consideration at a joint sitting of the Senate and the House in accordance with the provisions of the First Schedule. (2) Where the bill referred to in section (1): (a) is passed within sixty days of the message, the bill shall again be presented to the King for assent; or (b) is not passed as provided in paragraph (a), the bill shall lapse. (3) This section does not apply to a bill certified under section 113(1), 114(1), or a bill for a law to amend this Constitution or a bill which has been passed at a joint sitting of the Senate and the House."

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## **List of acronyms**

CEO	Chief electoral officer
CRC	Constitutional Review Commission
INM	Imbokodvo National Movement
MP	Member of parliament
Pudemo	People's United Democratic Movement
RCC	Royal Constitutional Commission
SADC	Southern African Development Community
SNCSC	Swazi National Council Standing Committee
SNC	Swazi National Council
Swayoco	Swaziland Youth Congress
TRC	Tinkhundla Review Commission

SAIIA's strengthening parliamentary democracy in SADC countries project is made possible through the generous financial support of the Royal Danish Embassy, Pretoria



ISBN: 1-919969-12-8

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