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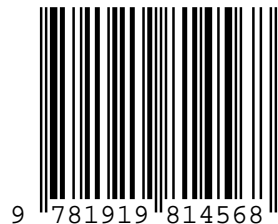
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# SWAZILAND'S STRUGGLE WITH POLITICAL LIBERALISATION



*Edited by*  
CLAUDE KABEMBA

EISA RESEARCH REPORT No 3

ELECTORAL INSTITUTE OF SOUTHERN AFRICA

# SWAZILAND'S STRUGGLE WITH POLITICAL LIBERALISATION



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**ACRONYMS**

AGOA	African Growth and Opportunity Act
ANC	African National Congress
AU	African Union
CRC	Constitutional Review Commission
CSO	Civil society organisation
DFID	Department for International Development
EU	European Union
GDP	Gross domestic product
INM	Imbokodvo National Movement
LHR	Lawyers for Human Rights
MP	Member of Parliament
NCC	National Council of Churches
NGO	Non-governmental organisation
NNLC	Ngwane National Liberatory Congress
NORAD	Norwegian Agency for Development Cooperation
OSISA	Open Society Initiative for Southern Africa
Pudemo	People's United Democratic Movement
SADC	Southern African Development Community
SCOCO	Swaziland Coalition of Concerned Civic Organisations
SDA	Swaziland Democratic Alliance
SFTU	Swaziland Federation of Trade Unions
SPP	Swaziland Progressive Party
Swayoco	Swaziland Youth Congress
UK	United Kingdom
UNDP	United Nations Development Programme
US	United States



# PREFACE

The Electoral Institute of Southern Africa (EISA) has undertaken various initiatives aimed at facilitating the nurturing and consolidation of democratic governance in the Southern African Development Community (SADC) region. One such initiative is the first phase of the democratic consolidation research programme. Covering almost all the SADC countries, this research programme focuses on the following key issues:

- Elections
- Good governance
- Gender and democracy
- Determinants of democratic consolidation
- Electoral systems
- Electoral administration
- Political parties
- Conflict and elections and
- Democratic assistance

This first phase of the project has generated an enormous stock of knowledge on the dynamics of democratic governance in the region, over and above the intricacies of elections *per se*. It has demonstrated beyond any shadow of a doubt that indeed there is more to democratic governance than just elections and electioneering. In a word, with hindsight, it is abundantly clear to us today that an election, in and of itself, does not necessarily amount to democratic culture and practice. Put somewhat differently, an election is not tantamount to a democracy, in the strictest sense of the term. Various other determinants are critical too including, *inter alia*, multipartyism, constitutional engineering and the rule of law, gender inclusivity in the governance process, electoral system designs and reforms, transparent and accountable management of national affairs including elections themselves, responsive and responsible conduct by political parties, constructive management of various types of conflict and the form and content of external assistance for democracy.

As with the first and second monographs that dealt with electoral system reforms in SADC and the process of democratisation in Lesotho respectively, this third monograph explores challenges facing Swaziland in its march towards multiparty democracy. It is descriptive with analytical insights into

the way the *tinkhundla* system works. It reveals the weaknesses of the system and critically refers to all stakeholders involved in the struggle to introduce change to a system that remains highly autocratic in form and substance. This study brings out a body of knowledge on a country that has not received much attention from researchers and academics, compared to other SADC countries. There is no doubt that this monograph would constitute a reference source for academics and policy makers interested in Swaziland politics, as well as for those concerned with democratic transitions on the continent.

On behalf of EISA, I would like to acknowledge with gratitude the invaluable financial support that EISA received from the Norwegian Embassy through NORAD and the Open Society Initiative for Southern Africa (OSISA) for this first phase of the programme, and without which this monograph and subsequent others would not have been possible. I would also like to thank the authors for their enormous contributions to this project. All said and done, the views and opinions expressed in this and subsequent monographs do not necessarily represent an official position of EISA. Any possible factual, methodological or analytic errors in this and subsequent monographs therefore rest squarely on the shoulders of the authors in their own capacities as responsible academics and researchers.

*Denis Kadima*  
*Executive Director, EISA*  
*Johannesburg*

## EXECUTIVE SUMMARY

This research report is part of a wider EISA research project on democratic consolidation in Southern Africa, funded by NORAD and OSISA. By the end of the 1990s national elections had taken place in most SADC countries and many are now in their third round of democratic elections. As a result, attention is beginning to shift from democratic transition to issues related to democratic consolidation within the sub-region.

Despite the progress made, some countries are moving in a slow mode while others, as in the case of Swaziland, have not moved an inch towards an internationally acceptable form of democracy. Except for the period between 1973 and 1978 when there were no elections following the King's repeal of the constitution, Swaziland holds elections periodically. But the freedom to form and participate in political parties as an expression of people's interest and as a mechanism for structuring the electorate's choices is non-existent in Swaziland. Elections take place outside the existence of political parties and are organised in the absence of a constitutional framework. Swaziland is a country where the power of tradition is so pervasive that the two systems – Western democracy and Swaziland's indigenous form of government – more often than not collapse into one. The biggest challenge for Swaziland, it would appear, is in striking a balance between these two forms of governance. There are nevertheless already examples on the continent of good practices to bring about a peaceful and egalitarian society.

Swaziland uses an indigenous electoral system called the *tinkhundla*, mixed with some aspects of Western democracy. Although there is a level of competition between independent candidates during elections, the King and chiefs are said to influence the election process and outcome. Management of these elections also presents serious shortcomings. Despite both international and internal pressure, the King has refused to introduce fundamental changes to the system.

The research critically evaluates six key determinants in Swaziland's political landscape, namely: the electoral system; electoral administration; the non-existence of political parties; and constitutionalism and democratic assistance. Gender is streamlined to ensure that its crosscutting nature is preserved.



Civil society is also discussed as a critical determinant in the birth of a democratic culture.

The study starts from the premise that there is no democracy to be consolidated in Swaziland. It further argues for the need to transform the *tinkhundla* system into a more open, transparent and accountable system of governance, as well as the need to adopt a constitution that informs the conduct of politics in Swaziland. The study uses data primarily gathered during interviews with key stakeholders – that is, political parties, electoral commissioners, civil society and the donor community – in the political process in Swaziland.

The text is both descriptive and analytical. It is concerned mainly with current events and the recent past in Swaziland, but also places events in context by bringing out the distinguishing characteristics of the country's politics, its problems and prospects as well as the principal elements of its political system based on the *tinkhundla*.

## RECOMMENDATIONS

### For the political system:

- A democratic transition would not happen without a constitution that is widely accepted by the people of Swaziland. A new constitution therefore becomes an imperative before Swaziland can have a chance to move the political transformation forwards. At the same time consensus must be reached on key issues, namely, the electoral law and electoral system. These negotiations would have to include all stakeholders, namely, the King, political parties, civil society and citizens. There is no short cut to political transformation. Any process that would attempt to exclude key actors would meet with serious resistance. The new constitution has not been endorsed by most people because it did not emanate from a wider consultation.
- The *tinkhundla* system of organising elections must be changed or amended to ensure a more open, transparent and competitive system that would give the electorate sufficient room to make informed choices.
- As a consequence of the *tinkhundla* system, parliament as an important oversight institution does not have the material means or required capacity to fulfill its triple functions of national representation, legislative output and control of government activity. This results essentially from the lack of a true parliamentary tradition, which itself is a consequence of the King's total control of the executive power and domination that does not allow parliament to acquire the necessary means and mechanisms to operate in a system where powers are separated. There is therefore a need to strengthen and protect parliament from executive interference (the King), as is presently the case.
- Institutional checks and balances must be put in place to ensure that those who hold public office are not above the law – including the King if he wishes to continue as a public servant. The judiciary, the legislature and the police must be reinforced and should play the role expected of them in a democratic society.

**For political parties:**

- Political parties should be accorded a constitutional status and should be regulated by the constitution: their existence should not be denied. This is a sine qua non condition if Swaziland is to transcend the political contradiction within its present system. If the environment remains and multipartyism is denied, the situation is likely to provoke confrontation.

**For the King and politics:**

- The place and role of the King in a future political system must be well determined. While the King would definitely follow the route taken by his Lesotho counterpart who has become a ceremonial King, his role and privileges must be clearly negotiated. The King's traditional role as the father of the nation should not be tampered with. But if the King wants to get involved in politics he must be forced to compete for political power in an open environment. Being a King is a birth privilege and does not translate automatically into political control. As we have seen with other African leaders who have refused to relinquish power, the King is an insecure ruler who fears losing privileges and facing humiliation once he is stripped of his political power. An exit deal for him and his entourage must be part of the deal.

**For election management::**

- There is not doubt that Swaziland needs to reform its election management body (EMB) away from a government towards an independent and impartial body as is the case in most SADC countries.
- Throughout the five years between elections, the electoral office is manned by only two people. All plans and systems necessary for the conduct of elections are consequently structured by a limited workforce. There is therefore a need to increase the future capacity of the independent electoral body, both in human and financial terms.

- Regional election offices need to be created which will be responsible for all election arrangements, including continuous voter registration as well as civic and voter education in the country's four regions.
- Voter and civic education need to be given top priority. The new constitution includes very important rights for the people of Swaziland which previously were not recognised, especially with the introduction of a bill of rights and freedom of association and an increase in the rights of women. These rights, which have a serious bearing on the organisation of elections and representation, would need to be unpacked and explained to the people.

#### **For civil society:**

- CSOs play a critical role in the transformation of societies. The movement of change in other SADC countries was the work of internal forces. Swaziland civil society has for the past decade been unable to exert sufficient pressure on the monarchy to introduce fundamental changes to the system. There is no doubt that the democratisation process would be slow; but it needs a partnership between the state and civil society. The challenge, therefore, is to develop people's participation and awareness in political management. The creation of a democratic society in Swaziland cannot start until and unless there is drastic behavioural change from the Kingdom to create an environment within which civil society can operate and lobby policy actors for a more democratic dispensation. But this would only happen by putting the Kingdom under constant pressure. It is therefore imperative that the capacity of pressure groups is enhanced and that their institutional capacity to play this role effectively and to register meaningful impact is assured.

#### **For gender representation and citizen participation:**

- Within the current system people's participation in the electoral process remains poor and women are by far the least represented in the various

structures of government. A gender-balanced system must be instituted and mechanisms for women's empowerment, such as affirmative action and deliberate legislation to empower women, must be put in place.

- Participation and representation will only happen in a political system that is designed to promote the protection and advancement of citizen's interests, such as protection against the abuse of state power and equality before the law.

**For external support:**

- The SADC region and democratic states in the region must take it upon themselves to help the King to introduce amendments to the political system. When the King of Lesotho threatened to disband parliament in August 1994, the elected presidents of South Africa, Zimbabwe and Botswana banded together to pressure him to uphold democracy. SADC must engage the King and guide the Kingdom in constructive diplomatic dialogue to go through what would be a slow and long road to a democratic dispensation.
- Foreign governments and international organisations (such as the Commonwealth) which support Swaziland financially should exercise continual pressure equal to that applied on other states in the region, to force the leadership to move away from a one-party and autocratic regime towards a more transparent, inclusive and democratic system.

## INTRODUCTION

*... there is nothing more difficult and dangerous, or more doubtful of success, than an attempt to introduce a new order of things in any state. For the innovator has for enemies all those who derived advantages from the old order of things, whilst those who expect to be benefited by the new institutions will be but lukewarm defenders.*

Niccolò Machiavelli, *The Prince*

*... without the king, there is no Swaziland.<sup>1</sup>*

In Swaziland, while things change everything remains the same. For the past decade Swaziland has resisted pressure to transform its political institutions in line with the democratisation reforms that have been sweeping the SADC region since the early 1990s.

As Africa's last remaining executive monarchy, Swaziland is governed by a set of institutions unique on the continent. These institutions, which attempt to blend elements of electoral democracy with the traditional Swazi system of government, derive their legitimacy from appeals to culture. Swaziland has adopted a dual system of governance based on both a traditional law and system, and on a Western legal system of governance.<sup>2</sup> The electoral system used is called the *tinkhundla*. It combines a traditional system with a modern Westminster system. The *tinkhundla* has been criticised for its lack of transparency and accountability.

In the Kingdom the monarchy exercises an extraordinary degree of control over Swazi society. The King holds complete executive authority over state institutions – the judiciary, the legislature and the security forces. He also controls both the electoral process and the media. In addition to his powers as executive of the government, the King is the *Ngwenyama* (Lion) – the head of Swaziland's traditional leadership structures. Through the chiefs, the *Ngwenyama* controls the Swazi National Lands on which many rural Swazis earn their living. He also controls a large portfolio of economic assets 'in trust for the Swazi nation'.<sup>3</sup>

The British left Swaziland with a constitution when they pulled out in 1968, but the present King's father annulled this constitution in 1973 and banned political parties in the process. While at the local level 'hereditary chiefs oversee and act as the guardians of the community, nationally, the King, the Queen Mother and their network of royal and other advisers dominate the political system and public life: in practice they are the government – a government which the people cannot change, even though there are direct elections'.<sup>4</sup>

The monarchy has so far endured the wave of political liberalisation. In recent times pressure from below and from above to force the King to introduce political reforms has increased. Civil society and banned political parties continue to demand democratic reforms. Recently, and under pressure, the King commissioned a review of the constitution. The commission has already completed its work, but major differences between the traditionalists and reformists on the content of the constitution have put a stop on the way forward.

The absence of consensus on the constitution is at the heart of the political crisis facing Swaziland in its attempt to find new prescriptions for the state. For the past five years Swaziland has been dominated by inconclusive efforts at finding appropriate strategies and mechanisms for balancing the demands of a modern society and the privileges bestowed upon those owing their political position to a traditional system centred upon the monarchy.

#### *DEMOCRATIC CONSOLIDATION: CONTEXTUALISATION*

Originally, the term 'democratic consolidation' was meant to describe the challenge of making new democracies secure, of extending their life expectancy beyond the short term, of making them immune to the threat of authoritarian regression, and of building dams against eventual 'reverse waves'. Today, however, the concept is used in terms of the context and goals one has in mind. This suggests that democracy remains a disputed term. The literature on democratic theory offers multiple definitions that range from a minimalist concern with election procedures to sweeping requirements for socio-economic equality. Analysts also do not agree on the reasons underlying the consolidation of democracy. The most widely accepted criteria for identifying a country as democratic have been put forward by Robert Dahl – 'civil and political rights plus fair, competitive,

and inclusive elections'.<sup>5</sup> Countries that show these characteristics are usually referred to as 'liberal democracies'. But we have come to recognise in the literature borderline cases that possess some, but not all, of liberal democracy's essential features. These democracies fall somewhere between democracy and authoritarianism. Andreas Scholar calls them semi-democratic regimes or electoral democracies.

Most Southern African countries have recently emerged from an authoritarian regime to embrace electoral democracy. The challenge in the SADC region and on the rest of the continent has been how to sustain the electoral democratic culture. Electoral democracies describe a specific type of democracy – one that manages to hold (more or less) regular, inclusive, clean and competitive elections. Despite having in principle adhered to the condition of liberal democracy, many states in the region have not successfully provided the material benefits of democracy to their people, and many more have not made further inroads away from autocratic behaviour. In Swaziland, elections are held outside party competition. There is also no legal instrument that regulates the rules of the game. Since 1973 Swaziland has been operating without a constitution. Swaziland is the only country in SADC that is not committed to multiparty democracy. Even the Democratic Republic of the Congo's transitional arrangements commit the country to multiparty democracy. It is the case of Swaziland that, correctly so, puts analysts on their guard not to reduce all aspects of democracy to electoral process. If this were so, Swaziland would be considered more democratic than any other SADC country (perhaps with the exception of Botswana) based on the fact that it has managed to hold many elections. The environment within which elections are organised and how the game is played are not only important but necessary for any electoral process to be seen as democratic. Further, governance issues (such as service delivery), human rights issues, citizen participation, corruption and civil society issues, to mention just a few, are considered critical in determining whether a country is democratic or not. This study therefore does not look simply at elections in Swaziland; it goes further to analyse how the entire electoral system based on the *tinkhundla* affects overall governance issues in the country.

This study is an evaluation of the Swaziland political system and an exploration of the challenges facing the Kingdom in its efforts to move



towards multiparty democracy. The study is divided into six sections. The first part deals with the historical background of the country and the second critically examines the *tinkhundla* system and evaluates the effectiveness of the Electoral Office by assessing the administrative capacity, provision and level of electoral staff efficacy and the financial sustainability of electoral administration. Section three assesses the impact of a no-party system on democracy, while section four looks at the constitutional process in Swaziland. The fifth section identifies major civil society groups in Swaziland and their contribution to efforts to transform Swaziland and the last section analyses donor intervention in Swaziland's transformation process.

Donors have played a key role in the democratisation process in the other SADC countries and they are expected to be a key player in Swaziland's transformation towards a more open and transparent system. It is important to understand, for example, why donor pressure has not succeeded in forcing the King to introduce fundamental changes to Swaziland's political system. While normative assessments of the effects of democratic contingency tied to foreign aid upon recipient states abound in the literature, a weakness is that there is a lack of critical analysis grounded in rigorous empiricism. Better explication of the actual pressure for political reform generated from the foreign policy of donor states is required. There is no doubt that 'the democratisation process has stimulated debate about the causal and the relative significance of this factor'.<sup>6</sup>

## **1 HISTORICAL BACKGROUND**

Until independence in 1968, Swaziland was administered as a British protectorate in a similar manner to Basutoland (Lesotho) and Bechuanaland (Botswana).<sup>7</sup> The independent constitution provided for a Westminster-style parliamentary democracy. British control of the Kingdom was not an obstacle to the expansion of traditional institutions. During the British administration, traditional institutions were maintained with reduced authority of the King and his chiefs, who were under the control of the British administration. The royal family still held its pivotal role in this system.<sup>8</sup> Political parties in Swaziland only came into existence in the 1960s before the pre-independence elections (1964 and 1967) in which the royalist party – the Imbokodvo National Movement (INM)<sup>9</sup> won almost all the seats in the legislative council.

But even as early as 1956, King Sobhuza II proposed that the political administration be decentralised through the formation of the *tinkhundla* system, for administrative and political reasons. The King had also expressed strong reservations about the formation and role of political parties,<sup>10</sup> fearing that it would create political conflict among a culturally homogeneous group of people, as well as creating a group of self-seeking political leaders and sectional interests.<sup>11</sup> This was in line with the culture of a one-party state that was prevalent on the continent. The King was in support of the formation of a national congress that would look after the interests of all people.

The period after independence was characterised by various attempts on the part of King Sobhuza II to eradicate any form of resistance among progressive elements within political party formation, who believed that the role of the King within Swazi politics should be that of a constitutional monarch. This was the role accorded to the King within the independence constitution, even though no law could be passed in parliament without such law going through and being approved by the King and his advisory council.

The first post-independence election of 1972 opened up a new form of political struggle between the royalists and the opposition party, when an attempt was made to cancel the election results, which brought back three opposition political party<sup>12</sup> members into parliament. The INM then challenged the citizenship of one Ngwane National Liberatory Congress (NNLC) elected Member of Parliament (MP) from the Mpumalanga constituency, Thomas Bhekindlela Ngweni, who was deemed to be South African. This resulted in a long and unsuccessful court battle between the opposition party (NNLC), the INM<sup>13</sup> and the King. As a final political solution to silencing any form of opposition to the powers and privileges of the King, King Sobhuza II in April 1973 suspended the 1968 constitution and issued a royal decree declaring political parties illegal on the basis that they were disruptive to national unity. In a motion passed by parliament in 1973, political parties were accused of introducing an alien mode of political life:

... particularly undesirable political activities, bordering on the subversive [which are] completely foreign to, and incompatible with the normal and peaceful way of life of the citizens of our country.

The motion was passed unanimously ... and called on the king to devise ways and means of dealing with the crisis. Members of parliament then proceeded to the king's kraal at Lobamba, where King Sobhuza II announced officially that the Constitution would be suspended. In announcing the suspension of the Constitution, the king argued that it had facilitated the intimidation to Swaziland of highly undesirable political practices alien to, and incompatible with, the way of life of our society.<sup>14</sup>

In the same year the King appointed a royal constitutional commission (1973) to investigate what kind of political system would be suitable for Swaziland. The final recommendation of the commission on the appropriate and effective political system for Swaziland was a no-political party system with a House of Assembly and a Senate based on the *tinkhundla* system, complemented by the Swazi National Advisory Council. The *tinkhundla* system effectively shifted political sovereignty to the monarch instead of to the people through a national constitution. This effort formed part of a series of reactions from Swazi royalists to the perceived threat and imposition of the September 1968 Independence Constitution by the British. According to Prince Matsebula, 'the Constitution was a legacy of colonialism, when we were robbed of most of our land, and we were treated as second-class citizens in our own nation'. But one of the underground political party's, the NNLC, has a different view on the reason for the banning of the constitution: 'The only reason for banning political parties was that [the] conservative[s] were scared to their bones [of] mulitpartyism...'.<sup>15</sup>

Formal opposition to the system began in the 1980s, exacerbated by the death of King Sobhuza in 1982 and the subsequent power struggle inside the royal house that saw the inauguration of Mswati III in 1996. Pressure on the monarchy for reform from student and labour groups mounted with the end of apartheid and the transition towards democracy throughout the region during the early 1990s. After 1996, the King appointed a Constitutional Review Commission (CRC). Many respondents described the constitutional review process as a delay tactic, or as an effort to diffuse pressure by co-opting the drive for reform. The commission reported after five years, but it was disbanded and the King appointed a new commission to come up with a new constitution. The new constitution has been completed but is still to

be approved. For the past three decades since 1973 Swaziland has been organising elections without a constitution.

## **2 ELECTORAL SYSTEM AND ELECTION ADMINISTRATION**

The first impression one gets when Swaziland is discussed is that of a country with no principles upon which leaders are chosen. This is not totally correct. Swaziland has an electoral system that it uses to elect parliamentarians. Despite the fact that most political power in Swaziland is vested in the monarchy, the Kingdom does hold regular parliamentary elections through the *tinkhundla* system, which is a major source of division in Swazi society. Swaziland also has an equivalent of an electoral commission which organises and administers elections. Suffice to say that when in 1973 the King repealed the 1968 constitution, it left a vacuum in terms of the organisation of elections as there was no electoral law under which to conduct elections. From 1973 to 1978 there were no elections in Swaziland. After the MPs elected in 1972 retired, the King exercised all legislative, executive and judicial powers. The current electoral system was used for the 1993 and 1998 elections. For previous elections, including those held in 1978, 1983 and 1988, primary elections were conducted through public queuing. In each constituency, four candidates were nominated, and each voter was expected to pass through a gate next to his preferred candidate. Winners of the primary elections formed an electoral college, which proceeded to elect the House of Assembly. Candidates were not allowed to campaign. In response to complaints about the problems caused by the indirect nature of the process and the lack of secret balloting, government conducted a review of the electoral system in 1992. The review resulted in legislation that established the system, currently in place.

### **THE TINKHUNDLA SYSTEM**

The establishment of the Parliamentary Order of 1978 introduced a new system – the *tinkhundla* – which was a move away from the Westminster system. The *tinkhundla* system is designed to facilitate the integration of the traditional and the modern systems of government. It allows for the election of parliamentary representatives from specific constituencies through a three-stage election system, thereby creating a bicameral parliamentary system

constituted by the House of Assembly and the House of Senate. Under the *tinkhundla* system each chiefdom, village or 'recognised community' is expected to nominate candidates for parliament and for the position of *indvuna inkhundla* at a public gathering. The *inkhundla* is the second level of government, with local councils that administer its affairs.

The basis of the *tinkhundla* system is that parliamentarians are elected outside of the political party system. Under this new system the Kingdom is divided into 55 constituencies, or *tinkhundla* (singular: *inkhundla*), and each *inkhundla* is further divided into several chiefdoms. The election process occurs in three stages: first, each chiefdom (or designated urban community) nominates between four and 10 candidates at a public gathering. In the second stage, called primary elections, each chiefdom chooses by secret ballot the candidate who will represent it at the *tinkhundla* level. Finally, the candidates chosen in the primary elections compete in secondary elections at the level of the House of Assembly. The candidate receiving the most votes represents the *inkhundla* in the National Assembly. The National Assembly comprises 55 members elected through the *tinkhundla* system and 10 King's appointees. The Senate comprises 30 members; 10 appointed by the King and 20 selected by the House of Assembly. The King's appointments to the Senate are intended to be representative of different sectors of Swazi society. Appointees to the Senate in the 1998 elections included a lawyer, a businessperson, a member of the royal family, a priest and representatives of racial minorities, among other categories.<sup>16</sup> According to some, royal appointees are considered more influential in Swazi politics than elected representatives.<sup>17</sup> The election process works in such a way that the electoral officer<sup>18</sup> asks those present at the gathering to nominate three candidates of their choice by show of hands. The first hand to be raised is given the privilege of nominating the candidate. Each *inkhundla* is represented by five to 10 communities. The number of nominees allowed in each nominating area is between four to six names, with a maximum of ten names. Each nominee is obligated to secure the endorsement of 15 voters in order to be considered eligible for primary and secondary elections by ballot. This process is then repeated for other nominees. Although there is a provision for disallowing persons with a serious criminal history from nomination, the criteria used by the electoral officer for deciding on the 'best' hand among those raised for electing a candidate for nomination is vague.

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. 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.

#### *ELECTORAL OFFICE – POLITICAL CONTROL AT ITS BEST*

Swaziland's elections have been managed since 1993 by the National Electoral Office, composed of a chief electoral officer and a deputy electoral officer, both appointed by the King. The office exercises essentially the same functions as the Independent Electoral Commission in most SADC countries, but its members are appointed by the King and are accountable to him. The capacities of the Electoral Office are restricted by its limited resources. For example, because of a lack of staff, voter registration is not on-going, but is conducted prior to each election.<sup>19</sup> This simply means that a fresh voters' list must be compiled before each national election.<sup>20</sup> The office has no regional offices and during election time it uses civil servants.

Progressive forces argue that traditional leaders and royal appointees exercise too much control over the electoral process. Elections at the *inkhundla* level are managed by a royal appointee, the *indvuna yenkhundla*, whose job is to 'supervise the activities of each *inkhundla* and to see to it that all the functions of the *inkhundla* are duly performed'.<sup>21</sup> At the chiefdom level, candidates cannot call their own political meetings; only the chief has the authority to call a meeting.<sup>22</sup> Further, voter registration occurs in each chief's kraal. A representative of Lawyers for Human Rights (LHR) believes that the presence of traditional leaders at voter registration venues discourages the participation of voters with progressive view points. It is for this reason that calls are being made for a 'neutral' venue.<sup>23</sup>

#### *LOW VOTER TURNOUT*

The National Electoral Office has the primary responsibility for conducting a voter education campaign across the country. However, this office has failed



to undertake comprehensive voter education due to a lack of financial and human resources. For the 2003 elections it only managed to put notices in Swaziland's two national dailies, the *Times of Swaziland* and the *Swazi Observer*. The office also failed to capitalise on the use of radio and television to inform the public on election regulations and procedures.

What is interesting is the similarity of results for the 1993, 1998 and 2003 elections. In 1998, 119,845 of the 198,445 registered voters participated in the election – a turnout of just over 60%. This turnout was much like the 61% participation rate recorded in 1993. Only about half of the eligible voters were registered, indicating that only 30% of eligible adult voters participated in the election.<sup>24</sup> In 2003, out of a possible 400,000 potential voters, only 228,950 (57%) registered. According to Stephen Rule, during the 1998 elections there was a wide variation in participation rates between chiefdoms during the nomination stage. Attendance ranged from over 2000 in some large constituencies to less than 30 in others (in three chiefdoms). Rule notes that there was a 'distinct lack of interest in and enthusiasm for the electoral process in Swaziland'.<sup>25</sup> 'There are a number of possible explanations for the low turnout. It may have had to do with the boycott,'<sup>26</sup> but the fact that the Swaziland Federation of Trade Unions' (SFTU's) call to boycott the elections was announced only one week before 1998 election discounts any possible impact of that action on the low registration rate. The Electoral Office laid most of the blame on heavy rains, and discounted the importance of the boycott. In 1993, when a similar level of participation was registered, there was no rain. The Commonwealth report of the 2003 elections notes the same pattern. There were long queues at several stations, although there were none at all at others.<sup>27</sup> Low voter turnout during elections may reflect recognition of the fact that, given the limited power of parliament, elections are of little consequence in the eyes of the electorate.

What is fascinating is that despite the low turnout, in 2003 only seven of the 55 previous parliamentarians were re-elected, and several ministers failed even to be nominated. One possible explanation for this extraordinary turnaround is that a certain percentage of the population is actively engaged in the political process and is concerned with its outcome. They may have been unhappy with the performance of government, and the turnover suggests that the system allowed them to hold their representatives accountable.

Both the 1998 and 2003 elections were held after a particularly intense period of confrontation between the government and civil society. The SFTU, the People's United Democratic Movement (Pudemo), the Swaziland Youth Congress (Swayoco), and the NNLC all boycotted the elections because of the government's failure to respond to demands for political liberalisation. Despite intense criticism from the progressive organisations, the elections have always been peaceful and without any major disturbances.

In 1998, the Electoral Office's report pointed to several logistical difficulties which forced five losing candidates to challenge the election outcome in court. One challenge by Michael B Dlamini, was even successful. The ability of the High Court to rule in favour of this candidate and to eventually grant him his seat in parliament, suggests that Swaziland's judiciary does have the ability to intervene successfully in the electoral process, albeit in matters of little consequence to the palace. The Electoral Office further noted that the period of preparation for the elections was too short to allow for adequate training and civic education, for the demarcation of boundaries between *tinkhundla* and for polling divisions.

A critical observation of the Swaziland elections is the dominance of males during the primary election phase, with a number of incidents demonstrating that the opinions of women receive less consideration than those of men.<sup>28</sup> The position of women in Swazi society is also reflected in the fact that of the 624 candidates selected to run in the secondary stage in the 2003 elections, only 56 were women.<sup>29</sup> Women comprised six out of the 65 members of the final parliament (or just 4.2%), which is the lowest percentage in the SADC region.<sup>30</sup>

### **3 DEMOCRACY WITHOUT POLITICAL PARTIES:<sup>31</sup> CONTRADICTION OR CONGRUOUS?**

Swaziland is a very peculiar state in Southern Africa, for two obvious reasons: it is the only remaining state governed by an absolute monarch and the only state in which political parties<sup>32</sup> remain banned by royal decree. The political impasse in Swaziland revolves around the difference between the traditionalists (royalists) and the pro-democracy groups. The solution to the impasse, according to the pro-democracy group, lies in complete



liberalisation of politics through multiparty electoral competition. But the traditionalist defenders of the *tinkhundla* system maintain that the unity and cultural survival of Swaziland – a homogeneous group of people with the same history, tradition and customs – depends on a traditional system of politics which can then incorporate a Western system of government.

After three decades of domestic (student organisations, labour movements, NGOs, underground political formations, etc.) and international pressure, the Swaziland government remains defiant to the liberalisation of political parties. In an effort to maintain political legitimacy of the regime, King Mswati III embarked on a series of new reforms hailed by many actors as a positive step in the right direction. This included the immediate termination of Prime Minister Jameson Mbilini Dlamini, who was perceived to be halting the process of political liberalisation. He was replaced by Prince Sibusiso Dlamini as prime minister, who is regarded more as a sympathiser of the progressive pro-political liberalisation group.<sup>33</sup>

The political impasse in Swaziland raises pertinent questions regarding the nature of democracy and whether or not a state could be regarded as democratic without political parties. Further undermining the electoral process is the fact that only candidates who emerge from the primary elections are allowed to campaign and there are no independent candidates. Invariably, there are divergent views on the issue. Those who support the current political regime in Swaziland argue that democratic states around the world have different democratic constitutions. They argue that the constitution of the United States (US) provides for a powerful chief executive in the presidency as well as for a powerful legislature in the Congress; and each of these are rather independent of the other. By contrast, most European countries prefer a parliamentary system in which the chief executive, a prime minister, is chosen by parliament. ‘...Swaziland is a unique system of democracy...’<sup>34</sup> and Swazis themselves are divided on the issue. According to Queen Motha: ‘...it will take more than 50 years before you find political parties in Swaziland ... Swazi’s do not believe in parties ... not because of the king ... we have seen what parties do around the world to people ... they cause disunity and violence among people...’<sup>35</sup> Political parties are blamed for divisions in society caused by party affiliation; they are said to impose a structure that allows elections to be dominated by those who derive influence from wealth

or high status. This, they argue, violates Swazi tradition, which allows everyone, regardless of status, to contribute on an equal basis to matters of local and national interest. Traditionalists claim that political parties open the way to political corruption through the funding of certain political groups by foreign powers and the 'buying' of votes by interest groups with the necessary financial means.

No matter how democracy is perceived or defined in Swaziland, one fact remains: a democratic system requires intermediary groups (i.e. political parties) between the state and society, as well as institutional mechanisms for the articulation and advocacy of diverse views and policy preferences. The challenge for Swaziland is to determine whether individuals elected through the *tinkhundla* system without an aggregated constituency mandate/interest and national policy preferences, represent an appropriate and efficient institutional mechanism for mediating between the state and the people.

#### DEFICIENCIES OF THE TINKHUNDLA SYSTEM

##### ***Total absence of accountability: Major criticism against the tinkhundla***

In a society where 85% of the population live in rural areas that are strictly controlled by the chiefs, who represent the extension of absolute power vested in the King over his subjects, such a system has an inherent predisposition towards bias and favouritism. In a party system, however, where the rules of intra-party procedures and norms are entrenched, such anomalies are easily not a feature. Political leadership development is a serious deficiency within the *tinkhundla* system. Political parties are not only agents through which political leadership is developed and sustained but they act as providers for a meaningful choice of leadership for the people. They also act to attract and channel effective political representation.

The classical definition of democracy does not include political parties; it is the 'people' rather than parties that lie at the heart of democracy. But the capability and disposition of the monarchy to be undemocratic in its operational features as a system necessitate the participation of political parties in politics. There is general consensus among different scholars about the important role and need for political parties as an essential component of democracy. Crotty maintains that democratic government is unlikely and

may not be possible in the absence of competitive political parties. Orderly government, much less a democratic polity, cannot exist without some form of stabilised party representation. Dix is of the view that the prospect of democratic survival depends much on political parties and Lipset describes political parties as indispensable in any political process. There is no supplement for political parties in a democracy, especially in a society where civil society<sup>36</sup> agencies are weak, lack human and financial resources, and are subject to victimisation, harassment and brutality at the hands of the monarchy. Political parties are more action orientated and have more comprehensive programmes that deal with a wide range of social, political, economic and cultural issues.

One of the key features of any democratic system is mass and full participation of citizens (not 'subjects', as they are commonly referred to in Swaziland) through various social formations and /or political parties in the nation's democratic processes. Parties in these processes provide a wider representation that extends beyond fielding candidates for contestation in elections within constituencies. They help motivate political participation and integrate people into the democratic political system. Most importantly, they provide an avenue for articulating and aggregating political preferences and interests. The *tinkhundla* system does not provide adequate and equal opportunities for citizens to place questions on the national agenda or for expressing reasons for endorsing a particular political outcome over another. It presumes that participation and representation will happen through a system that was not designed to promote the protection and advancement of citizens' interests. Citizens' rights – such as protection against the abuse of state power, equality before the law,<sup>37</sup> the freedom to form and participate in political parties as an expression of the people's interest and as a mechanism for structuring the electorate's choices – are non-existence. All these rights remain the constitutional prerogative of the King. Lack of participation and representation of people within the *tinkhundla* system makes the system undemocratic.

Under the *tinkhundla*, elected representatives in parliament do not represent any political preferences or ideological interests. 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. Neither are they agents for ensuring coherent government and the exercise of control over administration. Public demands are understood and articulated through the monarch and the National Advisory Council, which comprise the King's appointees. According to Mario Masuku:

'...What is needed in Swaziland is a system that allows for participation in the process, which is possible, but the leadership and authority in Swaziland came up with a self defined position on the nature of democracy in Swaziland ...'.<sup>38</sup>

The absence of political parties in Swaziland further contributes to the erosion of government accountability. Swaziland is a democracy where the head of government / state (King) is not elected by the people or accountable to the people. One of the most important functions carried out by parties in polity is to keep the government accountable by providing means of accountability. Although political accountability takes place both at the horizontal and vertical levels,<sup>39</sup> political parties act in facilitating government accountability at both levels; 'with political parties controlling the government, it is clear who is responsible for the government's action...'.<sup>40</sup> Having highlighted the important role of political parties in politics and governance, it is important to observe that there can be no democracy without political parties. It is true that there are different forms of democracies, just as there is no precondition for democracy, only a willingness on the part of a nation's political elite to attempt to govern by democratic means.

### ***Weak citizen participation***

Leaving aside the absence of political parties in Swaziland and the fact that parliament is nearly powerless before an unelected executive, a number of problems remain with the *tinkhundla* electoral system that undermine 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.

The government and the Electoral Office have both entered into civic education campaigns designed to encourage voters to 'look for quality'; that is, to choose the most qualified representative rather than the one who is familiar, or the 'nice guy'. The Electoral Office argued in its 1993 report, and again in 1998, that 'an endeavour should be made to explore and introduce a system of more or less proportional representation to avoid or eliminate the obvious feudal elements whereby chiefs with many followers uncompromisingly won the elections'.<sup>41</sup> These recommendations do not, however, appear to be under serious consideration by either the government or the King.

Supporters of the current system allude to citizen participation in decision making as a positive aspect of the system, despite criticism. The claim of the Swazi monarchy to being a democratic institution depends on the ability of the King and his advisors to represent the interests of the Swazi nation, albeit without any precise way of measuring those interests. The monarchy does have a number of ways of gathering information from the public. These include consultations with cabinet, consultations with individuals who come in person to speak to the King at his residence (in principle, all Swazis are entitled to meet with the King), as well as official information-gathering efforts, such as the CRC. The difficulties with the CRC's fact-gathering methods are discussed above, but the monarchy did make an effort to consult with the wider public before introducing the draft constitution. On 8 July 2003 the King met with a range of civil society and business elites in an event called the National Dialogue, to solicit opinions. Traditionalists see these efforts as sufficient to ensure that the monarchy remains an institution that is accountable to the interests of the Swazi nation.

### ***Tinkhundla creates and maintains a weak parliament***

The relative calm surrounding Swaziland's elections and the lack of any major problems may be a consequence of the fact that there is very little at stake. Because the competitors are individuals and not parties, large social

groupings are not in a position to make trouble over the outcome of an election. In the eyes of some traditionalists, this is one of the primary benefits of a no-party system, and compares favourably with the turmoil surrounding elections in other countries in the region, such as Lesotho. For many progressives, however, the strengths and weaknesses of Swaziland's electoral system and administration, as outlined above, are decidedly beside the point. Far more important, they argue, is the fact that the elected representatives form an 'inferior parliament',<sup>42</sup> entirely subordinated to the interests of the palace. As it stands, more than one in three MPs is appointed by the King. The King may decline to sign laws passed by parliament, and he may issue decrees and proclamations that can become law without the consent of parliament. Finally, the King may dissolve parliament and rule in concert with only a council of ministers, which he has done before. For these reasons, the major progressive organisations – including Pudemo, Swayoco, and the more moderate NNLC – have resolved once again to boycott the 2003 elections. Progressives criticise the involvement of international observers in previous elections, arguing that to declare Swaziland's elections 'free and fair', whether or not they proceed peacefully and according to the law, is to give democratic legitimacy to a fundamentally undemocratic process.

### ***Tinkhundla creates weak governance***

An official of the European Union (EU) in Swaziland describes governance in the country as 'very poor'. Moreover, he describes this poor governance as a direct consequence of the tension inherent in Swaziland's dualistic political system. The quality of a political system is judged on its ability to contribute to good governance, security, prosperity and the other social goods to which a society aspires. In Swaziland views are divided, not surprisingly, on government performance. Two camps, as is now common in Swaziland, can be identified.

The first camp is that of the traditionalists, who are supporters of the status quo. They argue that Swaziland's political system has been more successful than others in the region. Swaziland is a middle-income country where per capita income and rates of economic growth have historically outperformed other economies in the region. Swaziland compares particularly well with Lesotho, South Africa's other tiny neighbour. Lesotho's economy is far less developed and its turbulent, frequently violent, political history reflects

conflict between political parties. Traditionalist Swazis also point to intra-factional violence in Kwazulu-Natal and Mozambique as evidence of the damage that political parties and competitive political systems can do.

The second camp, the reformists, are against the current political dispensation. They argue that there are a number of aspects of Swaziland's political system that appear to be contributing to poor governance, particularly in recent years, and that these problems appear to be getting worse. In November 2002 the King also authorised the purchase of a jet for himself at a cost of US\$45 million, despite ongoing food shortages and the fact that parliament specifically rejected the purchase.<sup>43</sup>

#### *The King: Weak consideration for the rule of law*

The most serious royal misstep in recent times was in February 2003, when the King disregarded a Swazi court decision which had found that he had acted illegally in removing two chiefs. This action and the King's public statements thereafter led to the resignation of all six Appeal Court judges, and the High Court's refusal to hear cases to which the government is a party. The judicial crisis remains unresolved and is a major point of tension between Swaziland and international donors. This decision reflected a serious disregard for the rule of law.

While Swaziland has lived in stability and even relative prosperity for some time without the structures normally associated with democracy, doubts about the rule of law present an immediate and grave threat to the Swazi economy. In response to this disturbing trend, Swazi business groups combined with labour, teachers, NGOs and church organisations formed the Swaziland Coalition of Concerned Civic Organisations (SCOCO). On 2 January 2003, the SCOCO released a declaration stating that it was 'concerned with the disastrous state of affairs prevailing in the country, breakdown in the rule of law, deepening bad governance, deteriorating economic environment, [the] growing threat to the country's trade privileges, i.e. GSP and AGOA, the absence of convincing political direction, [and the] attendant fear and uncertainty to the social and business environment'. This lobby group, comprised entirely of legal organisations that are integral to Swazi society, cannot be ignored.



The manipulation of the judiciary by the monarchy, particularly in recent months, and the monarchy's various attempts to curtail the judiciary's independence has provoked much concern among in-country donors on the issue of the independence of the judicial system and its usefulness. According to the EU, the rule of law has deteriorated a great deal in the past couple of years; so much that the EU's current focus is to reverse this disintegration by airing these concerns with the government via formal dialogue. As a result, there is continuous political dialogue to discuss how these blockades to the judiciary can be dissolved and to monitor the political situation closely, to ensure that fundamental human rights and the rule of law are upheld. Such regular engagement and political dialogue is made possible by a recently established committee set up by the government, with assistance from the EU. The committee consists of the Swazi Minister of Foreign Affairs and Trade, who is its co-chair, as well as the ministers of Finance and Economic Planning and Development, the local president of the EU (the British High Commissioner) and the Head of Delegation of the European Commission. The committee discusses essential and fundamental elements (as defined in Article 9 of the Cotonou Agreement) and monitors the political situation closely to ensure that the rule of law and other fundamental freedoms and human rights are upheld.

The deterioration of the rule of law has been observed by others, such as the LHR, as a major challenge to Swaziland's political future. These groups are calling for some type of redress. The LHR noted that there is an urgent need to advocate for a bill of rights in the constitution dealing with the rule of law. A representative of this group has been quoted as saying that 'currently, courts in Swaziland are highly influenced by the executive'. The process to date as supported by the LHR has included a submission of a bill of rights, engaging and consulting others, and producing principles they believe should underpin the reform process, especially regarding Swaziland's rule of law.

### ***Control of policy formulation and implementation by the King***

In Swaziland, the cabinet and the bureaucracy do not have the political power to implement policies. Policy implementation is frequently interrupted in-process by the monarchy, or halted even before it begins. As an example, the EU's five-year spending plan in Swaziland – which was agreed upon in 2002



between the agency and the government over a period of one year – was interrupted at the last moment by the palace. A new plan was agreed to only nine months later. An EU representative stresses that this is a common occurrence that harms governance in Swaziland at all levels. These difficulties have led to ‘haphazard financial management’, increasing budget deficits and government cash-flow crises.

Rod Alence argues that democracy contributes to improved governance and reduced corruption in developing countries by increasing the constraints on executive power. In the absence of such constraints, democracy appears to do little to improve the quality of governance.<sup>44</sup> Traditionalists in Swaziland debate the precise definition of democracy, arguing that the Swazi system *is* in fact democratic.

Leaving aside the particulars of that argument, Swaziland’s recent deterioration in governance may reflect the fact that the system includes no checks on the executive authority of the monarchy. While the two chambers of parliament are actors in the legislative process and the Swazi nation does, through various channels, have the opportunity to communicate with the King, none of these actors are ‘veto players’ on political decisions.

Are the monarchy and society consistently subject to the law in Swaziland? The main limitation to the rule of law is represented by the power and dominance of the King over all institutions in the country.

### ***Poor service delivery***

The inadequate delivery capacity of government administration has its roots in Swaziland’s unusual dual political system. The unclear and sometimes overlapping roles and responsibilities of both the traditional authorities and the government, and the inadequate synergies between both sets of institutions have greatly contributed to the underperformance of public services. Extensive allocation of donor money has therefore been directed at reviewing the civil service, with a view to proposing reforms as well as to strengthening the capacity of the civil service as it now stands. Before certain services can be organised, donors recognise that some skills limitations currently exist within government administration.

#### **4 CONSTITUTIONAL REFORMS: CONTINUITY OR A BREAK WITH USUAL PRACTICES?**

While there are universal ideals that underpin the struggle for democracy everywhere, democracy's forms are as various as the struggles through which it is won. Countries' constitutions across the globe are marked by these differences. Democracy is distinctive from country to country. In Uganda, political competition is allowed but not through political parties. The Swiss celebrate communal rights rather than individual rights; in Great Britain there is no separation of power, which is cherished in the US for the preservation of liberty. Given this diversity among countries, Swazis should be given the opportunity to look into their history and culture to produce a form of democracy that best suits them.

The Swazi monarch's resistance to introducing a Western democracy has been weakening in recent years. Since the late 1990s, the King has commissioned two constitutional reviews. The recommendations of the first review in 1996 were disregarded; in fact, no new ideas or propositions came out of that commission. The King appointed another committee in 2002 to draft a new constitution. But how far has the monarch gone to give the people of Swaziland space to express their views regarding the type of democracy they want? Has the consultation process for a new constitution been open enough to guarantee that the views of everybody have been incorporated in one way or another? The simple fact of drafting a constitution would not create democracy in Swaziland. It is democracy as viewed by the people that should create the constitution. But do the Swazi people know exactly what kind of democracy they want and has civil society in the country articulated this clearly?

##### *THE 1996 CONSTITUTIONAL REVIEW COMMISSION*

Under pressure from progressive forces inside Swaziland and from the international community, the King appointed a Constitutional Review Commission in 1996. The CRC's mandate was to survey Swazis' options regarding a future political system for the country. Swazis were encouraged to make submissions to the commission in person or in writing. Group submissions were prohibited. The process was, however, criticised for being controlled from the palace. Only a few people managed to make sub-

missions,<sup>45</sup> and these were mostly from rural areas, which was the focus of the commission. A level of intimidation was also observed during submissions. The fact that submissions were recorded on audio- and videotape might have prevented some individuals from challenging the system for fear of reprisals. Furthermore, the media was not allowed to monitor the process. The lack of transparency in the CRC's work forced four commissioners to resign before the process was concluded. These included Pudemo President Mario Masuku and Institute for Democratic Leadership Executive Member Jeremiah Gule, who cited fundamental disagreements with the commission's approach.

Sensing that changes to the *tinkhundla* system were unlikely, reformists lowered their expectations. They were prepared to tone down their demands away from the reform of the electoral system and the position of the King and be satisfied with minimal changes, such as the repeal of the 1973 decree banning political parties, the restoration of freedom of association and the election of the prime minister by parliament instead of being appointed by the King. This would have been sufficient to propel Swaziland on a trajectory for peaceful transformation. However, this did not happen. The CRC report released in 2001<sup>46</sup> supported the status quo. It stipulated that the executive powers of the King must be maintained, his control of land and minerals should remain unchanged, political parties must remain banned, and matters regulated by Swazi law and custom 'should continue to be so regulated'.

For the commission, the recommendations were a true reflection of the opinions expressed by most submissions. It states that there was 'almost unanimity on these matters' from citizens' submissions. The claim of unanimity is impossible to verify as the CRC failed to produce statistics to support its findings. It recommended, however, that 'there be regular referenda every five years on some of the topics of the new constitution so that the constitution satisfies the changing needs of the nation'. Because the commission was created by the King and was heavily weighted with royalists, very few people expected it to introduce any significant reductions in the King's powers. It was on the basis of the CRC's recommendations that the King appointed a committee to draft a new constitution in 2002.

Despite the frequency with which some Swazis proclaim the conservative nature of their society and the public's general satisfaction with the political

system as it exists, a full analysis of the direction of the country requires a more precise understanding of public attitudes. Unfortunately, public opinion surveys in Swaziland are rare. The limited data available does, however, seem to undermine the traditionalists' claims that the vast majority of Swazis are satisfied with the political status quo.

In 1997, the Helen Suzman Foundation conducted a survey of seven African countries. In the survey, Swazis gave a very negative assessment of their government's performance. Seventy-six per cent felt that the government had fulfilled few or none of its promises in the past – this was the worst assessment of any country other than Lesotho (which recorded 78%) and at least 10 percentage points higher than any other country. Fifty-two per cent of the Swazis surveyed said that traditional leadership should have only ceremonial powers, while 12% felt that it should be abolished. Thirty-two per cent said traditional leadership should have increased or the same powers as now. This was the weakest endorsement of traditional leadership of any country surveyed.

The patterns of support recorded were in fact the opposite of what would be expected: 74% of rural people thought the influence of traditional leadership should be reduced or abolished (with 21% wanting the same or an increase in power), compared to 40% of urban people (60% of whom wanted an increase or the same).<sup>47</sup>

It can be argued that the establishment of a 31-member CRC was appointed with one aim: to draft a new constitution that would be suitable for the Kingdom of Swaziland and to consider and provide for appropriate provisions and entrenchments for the monarchy and other Swazi traditional institutions.<sup>48</sup>

#### *THE DRAFT CONSTITUTION – NEW SPIRIT BUT THINGS REMAIN THE SAME*

The constitution drafting committee was headed by a Swazi diplomat and member of the royal family, Prince David Dlamini. The committee produced a draft constitution in May 2003; just a few months before the general elections. As expected, however, the draft constitution proposes few substantive changes to the structure of Swazi politics. It is therefore unlikely

to satisfy the demands of the radical progressive forces, and if it is adopted without major changes (as appears likely), it may spark a new period of political instability in Swaziland.

### *The power of the King maintained*

The document entrenches the King in his position of executive and fails to provide a clear enumeration of his powers. Before listing the powers of the executive, the draft constitution simply states:

The King in his capacity as Head of State has authority, in accordance with this Constitution or any other law, *among other things* to ... assent to and sign bills ... summon and dissolve parliament ... receive foreign envoys and appoint diplomats ... issue pardons, reprieves or commute sentences ... declare a state of emergency; and ... confer honours. (emphasis added) <sup>49</sup>

The inclusion of the phrase ‘among other things’ prevents the enumerated powers from being interpreted as the limits of the King’s authority. Therefore, while the document does not specifically address the King’s power to legislate by decree, it does not appear to specifically prohibit it. It also places the King securely above the law, stating:

The King shall be immune from ... suit or legal process in any civil cause in respect of all things done or omitted to be done by him in his private capacity; and ... being summoned to appear as a witness in any civil or criminal proceeding. <sup>50</sup>

While Swaziland is not the only country where a monarch enjoys legal privileges, the Swazi King’s status as the executive makes these privileges remarkable.

### *No change to the electoral system*

The draft constitution does not introduce changes to the electoral system or to the administration process. The draft constitution, as it now stands, makes no major changes to the *tinkhundla* electoral system, although it does change the status of the Electoral Office to an Elections and Boundaries Commission. The head of the commission will still be appointed by the King, now in

consultation with a minister for constitutional affairs. The Swaziland draft constitution states that: 'The system of government for Swaziland is a democratic, participatory, *tinkhundla* based system.'<sup>51</sup>

The social engineers of the *tinkhundla* system remain adamant about the need to ban political parties for the proper functioning of society. Political parties are considered incompatible with the Swazi political system. The incompatibility argument was the same argument advanced by the royalist-dominated INM parliament of Swaziland in 1973, which suspended the September 1968 constitution and banned political parties. This argument remains the major reason given today for the lack of political party participation in Swaziland's democracy.

### *No change to a confusing dual legal system*

The draft constitution makes numerous references to Swazi law and custom. Swazi law and custom is an entirely separate legal system, which predates colonisation and has in the past been transmitted orally. Swaziland has a separate court system to administer Swazi law and custom, which has jurisdiction in cases involving particular issues and which include only indigenous Swazis. An effort is currently under way, supported by the United Nations Development Programme (UNDP), to codify Swazi law and custom. The preamble to the draft constitution states that it is: '...necessary to blend the good institutions of traditional law and custom with those of an open and democratic society...' <sup>52</sup> The constitution appears, however, to leave the parallel legal systems in place.

### *POSITIVE ASPECTS OF THE NEW CONSTITUTION*

Despite the essentially conservative nature of the draft constitution, there are a number of aspects in which the progressives can take some consolation. These include:

### *Introduction of a bill of rights and freedom of association<sup>53</sup>*

This bill of rights differs significantly from, for example, the bill of rights submitted to the commission by the LHR. Nonetheless, the enumeration of individual rights can be seen as a starting point to a much more open society. In addition, the constitution does not specifically ban political parties. In fact, the bill of rights guarantees freedom of association, and a later section

(although it is part of a section specifically designated as unenforceable in court) makes reference to 'political and civic associations aspiring to manage and direct public affairs,' stating that such organisations 'shall conform to democratic principles in their internal organisations and practice'. Pudemo President Mario Masuku argues that, because political parties were banned in 1973, any new constitution must specifically revoke this decree. The existence of a constitution that guarantees freedom of association might, however, open a new avenue to progressive activities, whereby reform could be pursued through the courts.

### *Representation of women to increase*

Authoritarian attitudes towards women in Swaziland are woven into most Swazi social fabrics. There have been calls to address the way women are treated in Swaziland and the new draft constitution makes provision for increasing the representation of women in politics. It mandates that half of the King's appointments to the legislature must be women, and that if the proportion of women elected to parliament is less than 30%, then the newly seated parliament must elect one additional woman from each region. The changes will lead to the election or appointment of 19 new women to parliament and are intended to bring Swaziland closer to the SADC target of 30% of women in parliament. If, however, women continue to be elected through the *tinkhundla* system in the same proportion as they are now, Swaziland will be left several seats short of this target.

### *Rights of women addressed*

The constitution also addresses the rights of women. It states:

women have the right to equal treatment with men and that right shall include equal opportunities in political, economic and social activities ... A woman shall not be compelled to undergo or uphold any custom to the which she is in conscience opposed.<sup>54</sup>

This provision would appear to allow women the opportunity to contest in court the legal and economic disadvantages to which they are currently subjected.

The above points have allowed some moderate progressives and several



donors to view the constitution as, if not ideal, at least a step in the right direction. An official from the EU in Swaziland – the foreign donor that formally supported the process – called the draft constitution, ‘probably the only possible document. It goes too far from the traditionalists, and not far enough for progressives. There are a number of areas that should be improved upon’.

## **5 THE RISE OF A COORDINATED CIVIL SOCIETY**

The ‘third wave’ of democratisation that swept much of the African continent, dislodging entrenched authoritarianism in many African countries was influenced primarily by Western financial pressure and the fall of communism. But the real pressure came from within the continent itself, especially from CSOs. This civil society initiated and exerted pressure on reluctant regimes until they gave in.

Despite the political hegemony of the King, various forces in Swazi civil society are agitating for political reform and have dismissed the draft constitution. These forces range from church and business organisations, whose approaches have focused on dialogue and incremental change, to trade unions pressuring the government with strikes, to illegal political parties and student organisations advocating for political transformation, through violence if necessary.

### *CIVIL SOCIETY’S POSITION ON CONSTITUTIONAL REFORMS*

Opposition within the pro-democracy group registered several complaints against the constitutional drafting process. Part of their concerns relate to the special provision given the King’s decree to exclude the civil society formations from the process. In their view, this is tantamount to reinforcing and deepening the division that exists between the state and citizens. A source within the LHR stated that:

representation before the commission was based on individual submission ... all members of the commission are all king’s appointee ... the meeting took place at the *tinkhundla* level (constituency or chiefdom level) ... there was no media coverage of the event [...] even the state media was not allowed to cover



the event as it unfolded and no statistics were provided to show how many people really gave statements. In the chiefdoms, members of the king's constitutional review committee ... were provided with a list of themes ... people were given 15 minutes to make submissions ... 15 minutes to present on all the topics ... submissions were refused from those regarded as progressive members of the society ...<sup>55</sup>

Despite debate from civil society about how to engage the draft constitution, prominent voices from the palace have described the constitution as essentially a finished product, with only minor details left to be dealt with. There does not appear to be a publicly available plan for moving forward with the document, or a settled procedure through which it will be adopted.

Since in 1997, progressive forces have organised themselves into the Swaziland Democratic Alliance (SDA). Masuku believes that this body should ultimately serve the function carried out by the United Democratic Front during South Africa's liberation struggle, unifying all of the pro-democracy forces under a single banner and directing them according to a shared vision. The pro-democracy forces in Swaziland, however, have not yet reached this level of coordination, remaining somewhat disorganised. According to Jeremiah Gule: 'Some of the fights we are having with the state, we should not be having with them. We're having them because we have no shared vision as civil society... [we need to know] where are we going and why?' One commentator describes Swaziland's progressives as, 'crippled by a lack of charismatic leadership and poor grass-roots communication'.<sup>56</sup>

A participant in an SDA-aligned organisation argues that while the banned political parties are 'fairly democratic', there is still a need to do 'a lot of work. Certain people want to believe that they 'own the struggle' ... this is a sign of political immaturity. These organisations need to do a bit of growing up'.<sup>57</sup> According to Denis Venter of Africa Consultancy and Research, the loose organisation of the SDA has given affiliated organisations the opportunity to pursue separate agendas as well as the collective, pro-democracy agenda, but this may have resulted in 'a lack of coordination at critical points in the campaign, causing opportunities to be missed or messages to be confused'.<sup>58</sup>

Difficulties within the progressive movement are compounded by the superior strength of its political opponents in the palace. The King retains the loyalty of the security forces, as well as thousands of traditional warriors.<sup>59</sup> The monarchy, through its traditional leadership structures, also controls a large portion of the country's economic assets, including land. Even a large and well-organised resistance movement would not challenge the level of political hegemony that the Swazi monarchy holds. The SADC community and the African Union (AU) are becoming increasingly concerned over the ongoing tension in Swaziland. President Joaquim Chissano of Mozambique, who is also the AU Chairman, and former presidents Ketumire Masire and Kenneth Kaunda of Botswana and Zambia respectively, have visited Swaziland to meet with the King on the political situation in his Kingdom following three days of demonstrations organised by the Congress of South African Trade Unions and the Swaziland Solidarity Network at the Oshoek border post.<sup>60</sup>

#### *REVIEW OF DEMOCRATIC FORCES OPPOSED TO THE CURRENT SYSTEM*

The following groups dismiss totally the draft constitution. They argue that it contains nothing new and serves merely to codify and entrench the system as it currently exists.

#### *The Swaziland Federation of Trade Unions*

Perhaps in response to events occurring in South Africa and the rest of the region, the mid-1990s saw an increase in the energy and momentum of Swaziland's progressive forces. The pressure for democratisation reached its peak in a series of strikes during 1996 and 1997, organised by the Swaziland Federation of Trade Unions (SFTU). At times during the mid-1990s pressure for reform in Swaziland seemed so great that some commentators predicted that transformation was immanent. In the words of one: 'The feudal government in the Kingdom of Swaziland is fighting a losing battle against the increasing democratic tidal wave that is currently buffeting the country. Nevertheless, it appears ready and willing to dig in its heels in a last ditch attempt to survive with its absolute monarchical style of government'.<sup>61</sup> In the end, however, the strikes seriously damaged the credibility of the labour movement in general and the SFTU in particular. Although the strikes were economically damaging, they were unable to force meaningful concessions

from the government, which was able to counter the strikes with the threat of force from the security forces.

### *The People's United Democratic Movement*

Besides the SFTU, there are a number of other organisations advocating, in various ways, for democratic reform in Swaziland. The organisation advocating perhaps the most sweeping and rapid change is the People's United Democratic Movement (Pudemo). Pudemo was created in 1982 and took advantage of the growing dissent and rivalry over the throne following Sobhuza's death, to mobilise the people against the *tinkhundla*.

Pudemo advocates the immediate adoption of multiparty democracy and a constitutional monarchy wherein the King has ceremonial responsibilities, but no executive powers. It argues that the transition to such a system cannot occur under the leadership of the present government, and that a transitional structure akin to South Africa's Transitional Executive Council would be necessary. Pudemo has previously boycotted parliamentary elections and intends to continue doing so. Because Pudemo is a banned organisation, its membership or exact levels of public support as well as its degree of internal democracy, are difficult to determine. Pudemo President Mario Masuku argues, however, that together, Swaziland's progressive organisations represent 'the masses of the people'. On 1 May 2003, Pudemo issued a statement that its membership had been authorised to respond to government force with force. Pudemo argues that the constitution can only be taken as a starting point, and what is necessary now is a constituent assembly focused on incorporating the views of all sectors of society.<sup>62</sup> Masuku argues that he has 'met [with the] authority and leadership, which said there will never be multiparty democracy while [Mswati III] is in control. Is there any need for dialogue when a stand has been taken?'<sup>63</sup>

While Masuku asserted that the statement of use force was not intended to convey the beginning of an 'armed struggle' of the kind used by the African National Congress (ANC) in South Africa, he said he would not be surprised if violent confrontation erupted between Pudemo members and government forces. He said that Pudemo must form a defence council so that the 'gains of our revolution can be defended'.<sup>64</sup> Some Swazi moderates argue that Pudemo's willingness to entertain the idea of violence undermines its

credibility among ordinary Swazis. One MP who is also critical of the government and the *tinkhundla* system argues that: 'If you are talking war to people who have been peaceful, they will not vote for you. Pudemo is talking war.'<sup>65</sup>

### *The Swaziland Youth Congress*

The Swaziland Youth Congress (Swayoco) also advocates sweeping and rapid change to Swaziland's political system. The youth movement, which is historically urban, has attempted to reach out to rural areas. It intends to boycott the October 2003 elections and advocates a strategy of mass action to dislodge the present government. Swayoco leader Kenneth Kunene said that, along with peaceful mass action, struggle through combat was one of the pillars of the organisation and that combat would be initiated at the appropriate time. On 6 June 2003, Swayoco members dispersed pamphlets announcing their intention to mount an armed resistance to the government. In a separate statement, Swayoco Information Secretary Sandile Phakathi said that: 'Government does not possess a monopoly on violence. We will fight fire with fire.' On the same weekend, firebombs were thrown at police barracks and the police arrested members of 'political organisation'. The government responded by putting the police on alert and organising roadblocks on major highways.<sup>66</sup>

### *The Ngwane National Liberatory Congress*

The Ngwane National Liberatory Congress (NNLC) is another political party that, while advocating multiparty democracy, is considered more moderate in its approach than Pudemo. The NNLC is Swaziland's oldest existing political party and the only one besides the now disbanded INM to have held a seat in parliament prior to the repeal of the 1973 constitution. The party was dormant for more than a decade before it was revived. While it is still re-establishing itself, the NNLC claims to have about 10,000 members, primarily among labour. It is closely aligned with the SFTU. On the subject of violence, the NNLC has not aligned itself with Pudemo's statement on the use of force.

As an organisation that is still trying to build itself, the NNLC now advocates a policy of dialogue. According to one NNLC official, however, circumstances may change in the future. 'If the state is a bully,' he says, 'tactics will have to be different.'<sup>67</sup>

*The National Council of Churches*

Besides the labour unions and the illegal political parties, other legal organisations exist that associate with the progressive movement and which advocate various degrees of reform in the Kingdom. One such organisation is the National Council of Churches (NCC), which represents Swaziland's 10 'mainline' Christian denominations. A representative of the NCC states that the organisation makes no deliberate effort to associate itself with the banned political parties. The NCC has not, for example, specifically endorsed a boycott of the elections. However, the Council is also not 'afraid to get [its] fingers burned'<sup>68</sup> by involving itself in politics.

An NCC representative concedes that both the leaders and the congregations of churches affiliated to the Council are divided in their political orientations and many may not agree with the Council's positions on political matters. This posture contrasts with Swaziland's two other church umbrella bodies, the Swazi Conference of Churches, which represents evangelical sects, and the League of African Churches, which represents more traditional congregations. Both organisations try to be apolitical. The Christian churches in Swaziland therefore cannot be seen as universally progressive.

As an example of political activity, the Council of Swaziland Churches organised a conference of Swazi civil society organisations in July 2003 titled, 'Engaging the Draft National Constitution'. Many of the delegates at the conference stressed that the constitution must be seen only as a draft, requiring significant alteration. Jeremiah Gule, one of the commissioners who resigned, stressed that the final constitution must clearly state that the citizen is sovereign, which the current draft fails to do. While encouraged at the inclusion of a bill of rights and a human rights commission, Gule would like to see the Human Rights Commission strengthened.<sup>69</sup>

**6 DONOR ASSISTANCE AND POLITICAL REFORMS IN SWAZILAND**

Common wisdom argues that most political reforms on the African continent occurred because donors used their financial muscle as a stick to force change. It seems, however, that such pressure has failed to yield fruits in this small and poor Kingdom, despite the fact that governance remains the highest donor priority and is a major plank in all their activities, next to HIV / AIDS

projects. The question worth asking is: What has been the impact of donor support on the democratisation process in Swaziland?

#### *WEAK DONOR PRESENCE*

In regional terms, donor presence in Swaziland is by far the weakest. The Kingdom has the fewest diplomatic missions; the United Kingdom (UK) is the only European country with diplomatic representation in Mbabane.<sup>70</sup> This weak presence might simply mean that Swaziland is not a priority on most donors' agendas. However, this has been offset by the coordination of donor activities, such as the EU, the Department for International Development (DFID) and the UNDP. But as in other SADC countries, the focus of donor assistance varies from donor to donor.

With donors winding down in favour of a more regional approach, the EU remains the largest multilateral donor in Swaziland. The EU provides aid to Swaziland under the Cotonou Agreement, as specified in articles 8, 9, and 96 with a focus on good governance, respect for human rights and the rule of law. The indicative allocation of the EU to Swaziland for 2000–2005 is approximately 31 million euros. EU assistance for the period 1996–2000 largely concentrated on building institutional capacity through extensive financing of the constitutional review process. The EU also has a Civic Education Commission that provides funding directly to government as well as to the NGO sector. Its current activities focus on concerns it has about Swaziland's rule of law, human rights and its position on the role of women. Swaziland has yet to accede to key UN conventions including the Convention against All Forms of Discrimination against Women (CEDAW). However, the draft constitution's recognition of women's rights might be the result of such donor intervention.

Like the EU, the British bilateral programme through the DFID also significantly engages in governance issues. Its financial support has, however, reduced progressively and remains less so among the main donors at about £1 million a year.<sup>71</sup> This includes support for a range of NGOs such as the LHR and the Swaziland Non-Governmental Organisation Coalition (CANGO). The British focus more on civic education, for which they have drafted a comprehensive programme. This programme attempts to diversify the work of NGOs in the area of civic education and is not only focused on

the constitutional review process.<sup>72</sup> There have been no structured civic education programmes in Swaziland to date. The trend has been that each implementing NGO proposes its own content, which occasionally undergoes changes as recommended by the interested donor. The DFID generally assists in a process that is all embracing and all encompassing. In addition to direct spending, the DFID works with other donors in the processes of constitutional reform, civic education programmes and national dialogue. The British / DFID currently leads the recently started political dialogue programme on behalf of the EU. It contributes about half-a-million pounds a year through the EU programme, and also contributes to the work of other multilateral agencies in Swaziland.<sup>73</sup>

The UNDP is working on a number of democracy projects that look at ways of harmonising the traditional and Western governance systems. In particular, it is currently supporting the Codification of Swazi Law and Custom project, which involves the integration of Swazi law and custom with common law. Its main governance interventions are in defining the responsibilities of various institutions and strengthening capacity for service delivery. This component entails capacity building for decentralised governance, constitutional reform and the justice delivery system. The UNDP is determined to maintain its neutrality during programme implementation. As a UNDP representative affirmed: 'The idea is to create a democratic environment in an unbiased way ... let the players play and we will support them only if it is in line with our mandate of democratic governance.'

The US has no regular bilateral aid programme with Swaziland. Whatever aid it provides is allocated through the American embassy, with a total commitment of just over \$1 million during the past five years.<sup>74</sup> Other channels of US money are usually through various international agencies such as the National Democratic Institute. The US's involvement and leverage is mainly through the African Growth and Opportunity Act (AGOA). This is an eight-year trade and investment policy towards Africa, providing preferential market access to the US, especially for clothing and textile products.

The next largest donor after the EU is the Republic of China (Taiwan). Swaziland has continued to maintain good diplomatic relations with Taiwan,



which provides significant aid funding and other investment related advantages, largely through Taiwanese investment associated with the implementation of the US's AGOA. Most respondents were of the view that Taiwanese generosity centred on Taiwan's need for recognition. As one donor representative pointed out: 'Taiwanese assistance is not totally free money; when promoting democratic ideals Taiwan usually has a strong political slant.'

In general, donor presence in Swaziland is weak. The current total external assistance by multilateral and bilateral donors stands at below five per cent of gross domestic product (GDP). Some donors believe it will remain low because 'it [Swaziland] is a middle income country, and it is relatively prosperous with a GDP per capita of approximately \$1300'. Other less benign reasons cited for this decrease are divergent ideas on governance and reform issues, low government capacity and a shift of interest to other countries in the region.<sup>75</sup>

#### *FOREIGN FUNDING OF SWAZI ELECTIONS*

Modifications made to the electoral system in terms of the new elections order and the registration order of 1992<sup>76</sup> attracted a generous amount of donor interest to Swaziland's 1993 elections. Five countries are officially recorded as having provided financial assistance, namely, the Republic of China, South Africa, Germany, the UK and the European Community. This support, however, dwindled or came to a virtual halt in subsequent elections. The entire bill for the 1998 election was borne by the government. The chief electoral office requested and received a budget of 12 million euros, five million short of the final cost.

The tendency for the donor community to exclude itself from funding the electoral process could be attributed to the fact that donors see no value in the elections and concentrate instead on funding the Constitutional Review Commission.

#### *Funding of the constitutional review process*

Contrary to popular belief, the constitutional review process was a clear attempt by the government and the monarchy to appease its critics, especially after the 1993 and 1998 legislative elections which failed to distil popular



dissent that had emerged in early 1991 in protest to the King's rejection of multiparty democracy.

Assistance for the constitutional review process was disbursed directly to the Ministry of Justice and Constitutional Affairs, where the Constitutional Drafting Committee was located. Donors also funded the 2001 report that concluded the Commission's review, as well as the subsequent Constitutional Drafting Committee – a successor of the Constitutional Review Committee. The Commonwealth Secretariat and credible international figures such Judge Richard Goldstone, provided advice to both committees.

Unlike forces opposed to the process, donors are not outright dismissive of the outcome. Despite its obvious flaws, donors are confident that both the review process and the end product offer some promise to the dysfunctional political system in Swaziland. 'The new constitution is still rife with problems', they openly admit. 'During the review process many sectors were excluded, especially civil society. Everybody has doubts about the correctness and unbiasedness of the review process of the constitution.' Opponents of the draft constitution have levelled much criticism at donors for taking this view. In their defence, however, they believe that the draft constitution provides a safe balance – as observed by the remark that 'the constitutional review process has gone too far for the traditionalists but not far enough for the progressives'.

The next steps for the draft constitution are clearly laid out; at least the measures donors intend to pursue next in this course. The aim at present is to look at the draft constitution and to determine if it meets the Harare Declaration – an area most donors, specifically the British, are pushing for. The Commonwealth has provided two constitutional experts to review the draft and to ascertain whether it is in line with the guidelines set out in the Harare Declaration.

### *Donors caught between a rock and a hard place*

Donors are to a degree caught between a rock and a hard place. This suggests that they occupy a middle ground between the two extreme forces in Swaziland: the traditionalists and the progressives. The relationship between the progressives and donors seems rife with tension and suspicion – a

sentiment expressed more by the modernists than by donors themselves. Progressives do face a certain degree of resistance from the donor community, as noted in a hard-line remark made by a donor that: 'We are in fact urging the progressives to demonstrate that they have real popular support before official, formal engagement can directly be established with us.' As an afterthought, however, this remark was quickly diluted with a note of encouragement to the progressives to continue their challenge to royal rule. The government and the monarchy, on the other hand, have adopted a distinctly conservative stance in their dealings with the international donor community. 'The Swazi government is very strict and is quick at informing donors when they feel they are interfering', noted a donor. Ostensibly there is only so much that donors can say or do to influence the establishment's intentions and to help hasten constitutional reforms and multiparty elections.

This attitude has created much scepticism among the progressives. They believe that donors were overly cautious and took a backseat in the reform process. Donors also approved and legitimised both the review process and the draft constitution, despite its obvious shortcomings. 'Many donors put money into a process that never delivered,' remarked a respondent. More damaging is the belief that donors are directly or indirectly supporting the status quo and reinforcing the bridge or further driving a wedge between the progressives and the establishment. The Pudemmo president is particularly concerned that '[donor] support is legitimising a government that is otherwise oppressive'.

In defending these accusations, donors maintain that the culture of Swaziland has lost sight of reality. 'When it comes to modernising the system democratically there's a real blockage from the level of the traditional system'; imperfections in the current governance rules exist and entrench the powers of the King. On the other hand, donors argue that the current system does provide some basis or minimum principles of democracy and good governance. More specifically, there have been improvements to the electoral process: 'At least there are secret ballots and the process is not open to too much manipulation.' Donors believe that it is 'better to have a set of rules no matter how imperfect, than nothing at all'. Importantly, the views cited by donors in their defence deal more with the nature and progression rate of reforms than with the inherent imperfections of the system. Donors would

like to see reforms being made in an orderly fashion and they regard the adoption of the constitution as a first step in that direction. They are concerned, however, that no real agenda is being followed by either the establishment or the progressives. 'There is a lot of basic work that needs to be done first', asserted one donor representative. Many other issues still need to be resolved, such as the draft constitution which needs to be debated fully. Donors believe that these democratic principles should be part of a blueprint for reform, but how it unfolds is 'the prerogative of the country' – although their active involvement in this process is indeed essential.

A further justification in taking this position, donors argue, is that their influence over the system needed to occur within certain limits and timeframes – but the timescale might be too short to carry out the process of disseminating the draft constitution, to undertake the adoption process of the constitution and to see the results from the donor-led political dialogue. Clearly a priority task for donors currently operating in such a politically charged atmosphere is to persuade both the traditionalists and the progressives that only a combination of well-timed reforms and a willingness to accommodate change can bring about the necessary dosage of political change.

#### *DONORS' FUTURE OPTIONS: CARROT AND STICK APPROACH NEEDED*

Meaningful changes to Swaziland's political system are likely or even necessary in the future; most of which have been specified in the draft constitution. However, the question that begs attention here is what future processes or specific role donors intend to pursue with respect to advancing tangible or substantial political reforms in Swaziland. Donors say they will continue to pressure for reforms, but most donors have reservations and little hope that the establishment will allow full inclusivity of the political dialogue, and that any reform will for now invariably be skewed by the government's view. On the other hand, donors are hesitant to pursue draconian tactics or to consign stringent aid conditions. Their future governance strategies are hazy, as a result of the people's uncertainty to accommodate change. Donors question the willingness of the people to contribute to these changes as well as their acceptance of any subsequent reforms. In the meantime, donors' immediate focus will be to emphasise political dialogue and to undertake regular engagement forums with all actors inside the

Kingdom that are working towards a negotiated settlement informed by the draft constitution. On the part of SADC, not much change in dialogue direction is expected, as implicitly expressed by the modernists. Generally, SADC will remain cautious and will continue to use its security arm – the SADC Organ on Politics, Defence and Security – as it has on several occasions, to urge the monarchy to move forward with political reforms.

Donors will use the carrot and stick strategy, though minimally, if they remain dissatisfied with the progress of reform. The US has warned Swaziland that it could lose trade benefits through the AGOA preferential trade treatment if the King does not re-establish the rule of law. US threats of action have mostly consisted of removing Swaziland from the list of eligible beneficiaries of the generalised system of trade preferences. Threatening market access, which is vital for sugar, textile and clothing exports, seems to be the most popular act of threat exploited by the US. This action is, however, less influential than imagined and therefore calls for other direct measures. Progressives have protested that donor threats to discontinue their contributions are often inconsistent and insufficient. In most cases their bark happens to be worse than their bite.

Turning up the volume on the tools of suasion might be a central element of the EU's future strategy in sustaining reforms in Swaziland. The EU has made it clear that if the situation remains the same 'it will have some serious consequences', with the discontinuing of aid becoming a real possibility ultimately.

## CONCLUSION

The King's reluctance to introduce fundamental changes is driven by personal survival; he uses the cloak of tradition to avoid instituting a multiparty electoral system. The synergy between the modern and traditional systems that the *tinkhundla* was supposed to create has not yet happened.

Political pressure continues to build up, especially since the release of the draft constitution (May 2003), which does not include any provisions for multiparty democracy. The draft constitution does, however, provide for the protection and promotion of fundamental rights and freedoms, but

invariably fails to guarantee the right of an individual to form and join a political party of his/her choice.

Swaziland's radical progressive forces are becoming increasingly impatient and the government's attempts to install a conservative, royalist constitution may add momentum to their movement towards violent confrontation with the state. At the same time, Swaziland progressive forces have not yet demonstrated an ability to mobilise the masses and have offered no proof that the majority of Swazis favour radical reforms. While the need for political transformation is quite obvious, the greatest threat to the future stability of Swaziland's current system might come from the continued deterioration of the quality of governance.

The popularity of the monarchy is being undermined not only for its reluctance to change the *tinkhundla* system, but more so because of government's failure to deliver on the social needs of the population. Government's inability to deliver services could also find its roots in the *tinkhundla*, reinforcing the call for changing the political system towards a more transparent and responsible government.

Donors have played a key financial role in supporting the constitutional review process. Tension exists, however, between donors and reformists on the one side, and donors and conservatives on the other. In the former case, donors are accused of not doing much to oppose an undemocratic system in Swaziland. In the latter case, donors are accused of interference in Swaziland's internal affairs. According to the CRC's report, the EU 'placed stringent conditions on its assistance in such a way as to direct and control the whole constitutional process. The Commission was forced to reject their financial assistance rather than submit the project to outside domination. This was history repeating itself'.<sup>77</sup>

**POSTSCRIPT: OBSERVATIONS OF THE 2003 ELECTIONS**

Swaziland's 2003 national elections were held in the context described in this monograph. Once again, the *tinkhundla* system was used and political parties could not campaign. A disobedience movement and boycotts from the reformists was therefore put in motion.

The adoption of the draft constitution, which was ready at the time of the elections, was delayed. This went against the wishes of many Swazi people. If the new constitution was used, it would have made a difference regarding, for example, the position of women. The new constitution attempts to elevate the position of women and could have resulted for the first time in the mobilisation of different groups of opinion.

Much of the attention received by Swaziland in 2003 – typically in the period preceding the elections – was dominated by demands from the progressive forces in Swazi civil society upon the ruling monarchy to introduce political reforms.<sup>78</sup> The greatest modification demanded involved abolishing the *tinkhundla* system, which has been rejected by many groups for its lack of democratic credentials. Despite calls to boycott the elections by the progressive movements, the elections took place and some opposition leaders stood as independent candidates, creating dissension among opposition groups.

**List of respondents**

Obed Dlamini

*Swaziland Democratic Alliance*

Kenneth Kunene

*Swaziland Youth Congress (Swayoco)*

R Thwala

*Independent Electoral Commission*

Hon. Sen. Queen Motha

*Member of Parliament*

Hon. Marwick Khumalo

*President of Parliament*

Thulani Maseko

*Lawyers for Human Rights*

Ntombi Nkosi

*Ngwane National Liberatory Congress (NNLC)*

Mr Lokkas

*European Union*

I.B Dlamini

*People's United Democratic Movement (Pudemo)*

British High Commission

Muzi Masuku

*Council of Swaziland Churches*

## NOTES

- <sup>1</sup> A view expressed by Prince Sobandla Dlamini – King Mswati III's brother and Minister of Home Affairs.
- <sup>2</sup> United Nations Development Programme, Swaziland: System of Governance <http://undp.org.sz/governance.htm>.
- <sup>3</sup> The king's corporate conglomerate Tibiyo Taka Ngwane has extensive investments in agriculture and industry.
- <sup>4</sup> Report of the Commonwealth Expert Team on the Swaziland National Elections, 18 October 2003, p3.
- <sup>5</sup> Robert Dahl, *Polyarchy: Participation and Opposition*, New Haven, Yale University Press, 1971.
- <sup>6</sup> Jessica I Vener, Prompting democratic transitions from abroad: International donors and multipartyism in Tanzania. *Democratization*, 7(4), 2000, p137.
- <sup>7</sup> T Lodge, D Kadima & D Pottie (eds), *Compendium of Elections in Southern Africa*, Electoral Institute of Southern Africa, Johannesburg, 2002, p322.
- <sup>8</sup> Ibid.
- <sup>9</sup> The name of the party, INM, was used because the King was not in support of the concept of political parties.
- <sup>10</sup> During the 1960s, Swaziland witnessed the formation of numerous political parties such as the Swaziland Progressive Party (SPP – founded in July 1960 and led by John Nquku), the Swaziland Democratic Party (SDP – established in 1961 under the leadership of Simon Sishayi Nxumalo), the Mbandzeni National Convention (MNC – founded in 1962 and led by Dr George Msibi), and the Ngwane National Liberatory Congress (NNLC – under Dr Ambrose Zwane).
- <sup>11</sup> H Kuper, *Sobhuza II: Ngwenyama and King in Swaziland*, Gerald Duckworth & Co, London, 1978. Cited in S Rule, *Elections in Swaziland, October 1998*, EISA, Johannesburg, South Africa, 1998.
- <sup>12</sup> The NNLC won one constituency in the election, which translated into three parliamentary seats.
- <sup>13</sup> The capturing of eight constituencies by the INM meant that it was able to send 28 representatives to parliament.
- <sup>14</sup> R Levin, Swaziland's *Tinkhundla* and the myth of Swazi tradition, *Journal of Contemporary African Studies*, 10(2), 1991.



- 15 Quote by Dlamini Obed, Chairperson of the NNLC – an underground political movement. Obed is a member of the royal family and was prime minister from 1989 to 1993.
- 16 Interview, Senator Queen Motha, 26 June 2003.
- 17 Interview, Thulani Masek, Lawyers for Human Rights, 25 June 2003.
- 18 The chief electoral officer is also appointed by the King. He is accountable to the King and not to the citizens of Swaziland. M Masuku, Swaziland, in: *Compendium of Elections in Southern Africa*, op cit.
- 19 Interview, Robert Thwala, Chief Electoral Officer, Swaziland National Electoral Office, 25 June 2003.
- 20 The registration contains the names, addresses, gender, chiefdom and registration number of all registered voters.
- 21 S Rule, *Elections in Swaziland*, Electoral Institute of Southern Africa, October 1998.
- 22 Interview, Maxwell Khumalo, Elected MP, 26 June 2003.
- 23 Interview, Thulani Maseko, Lawyers for Human Rights, 26 June 2003.
- 24 Kingdom of Swaziland, Report on the Election of Members of the House of Assembly, May 1999.
- 25 Ibid.
- 26 Rule, op cit.
- 27 Commonwealth Swaziland Election Report, 2003.
- 28 Rule, op cit.
- 29 Kingdom of Swaziland, Report on the Election of Members of the House of Assembly, May 1999.
- 30 Women in National Parliaments, compiled by Inter Parliamentary Union, < [www.ipu.org/wmn-e/classif.htm](http://www.ipu.org/wmn-e/classif.htm) > 31 May 2003.
- 31 **In this paper, political parties are viewed as associations of citizens, through which citizens seek to influence the affairs of the state, thereby helping to attain democracy.**
- 32 INM; NNLC, led by Obed Dlamini; Pudemo, led by Mario Masuku; Swaziland National Front (SWANAFRO), led by Elmond Shongwe; Swaziland Progressive Party (SPP), led by JJ Nquku; and Swaziland United Front (SUF), led by Matsapa Shongwe. With the exclusion of the INM, these political parties continue to operate with an increasing degree of openness despite harassment, intimidation and detention without trial suffered at the hands of the state by leaders and card-carrying member of the parties.

- <sup>33</sup> K Dlamini, Political change: Swaziland's future in the balance, *Indicator SA*, (14)1, 1997.
- <sup>34</sup> Interview with Robert D Thwala, Chief Electoral Officer of Swaziland National Electoral Office, 25 June 2003.
- <sup>35</sup> Interview with former senator Queen Motha and Member of Parliament (1998–2003).
- <sup>36</sup> Larry Diamond enumerated eight functions that civil society plays in a democracy. Some of these are: (1) providing a basis for limiting the state power and checking the operational abuse of power; (2) supplementing the role of political parties in stimulating political participation, increasing the political efficacy and skill of democratic citizens by promoting an appreciation of the obligations as well as the rights of democratic citizenship; (3) serving as an arena for the development of other democratic values such as tolerance, moderation, a willingness to compromise and respect for opposing viewpoints; (4) creating channels other than political parties for the articulation, aggregation and representation of different interests; (5) helping to generate a wide range of interests that may cross-out, and thus mitigate, the principal polarities of political conflicts; and (8) disseminating information to help citizens to pursue their interests.
- <sup>37</sup> The King in Swaziland has immunity under the proposed draft constitution against suit or legal process in any civil cause in respect of all things done or omitted to be done by him in his capacity; and being summoned to appear as a witness in any civil or criminal proceeding.
- <sup>38</sup> Interview with Pudemo President Mario Masuku, 4 July 2003.
- <sup>39</sup> O Guillermo & S Philipe, *Transition from Authoritarian Rule: Tentative Conclusions about Uncertain Democracies*, Baltimore, MD, Johns Hopkins University Press, 1986.
- <sup>40</sup> R Dalton & M Wattenberg, Unthinkable democracy: Political change in advanced industrial democracies, in: R Dalton & M Wattenberg, (eds), *Parties without Partisan: Political Change in Advanced Democracies*, Oxford, Oxford University Press, 2000.
- <sup>41</sup> Kingdom of Swaziland, Report on the Election of Members of the House of Assembly, May 1999.
- <sup>42</sup> Interview, Thulani Maseko, Lawyers for Human Rights, 26 June 2003.
- <sup>43</sup> BBC News, <[www.news.bbc.co.uk/2/hi/africa/2446443.stm](http://www.news.bbc.co.uk/2/hi/africa/2446443.stm)>.

- 44 Rod Alence, Contemporary African experience on the interface between institutions and governance. Presented at, Strengthening democracy through NEPAD: The role of civil society, 27 May 2003, Johannesburg, South Africa.
- 45 Owing to time constraints, no more than 30 people were able to make submissions in each constituency. Interview, Thulani Maseko, Lawyers for Human Rights, 26 June 2003.
- 46 The commission received a two-year extension of its mandate, adding weight to claims that the review process was focused on delaying and diffusing demands for change.
- 47 The organisation that conducted the poll, the Helen Suzman Foundation, is a well known advocate of liberal democracy. Any bias in the data would therefore be in favour of progressive positions. However, bias should be reflected in all seven countries surveyed. The comparison with six other countries in the region would therefore seem to undermine the traditionalists claim that Swazis are particularly conservative or particularly attached to their traditions, as compared to other peoples in the region.
- 48 R Dalton and M Wattenberg, op cit.
- 49 Draft Constitution of the Kingdom of Swaziland, 2003.
- 50 Ibid.
- 51 Section 80 of the Draft Constitution of the Kingdom of Swaziland – system of government.
- 52 Draft Constitution of the Kingdom of Swaziland, 2003.
- 53 *Section 15 of the Draft Constitution of the Kingdom of Swaziland – protection and promotion of fundamental rights and freedoms.*
- 54 Draft Constitution of the Kingdom of Swaziland, 2003.
- 55 Interview with representatives of Lawyers for Human Rights – an NGO working in the field of human rights and democracy education in Swaziland, 26 June 2003.
- 56 D Venter, Swaziland, *The Political Outlook*, Africa Consultancy and Research, Pretoria, 30 June 2000.
- 57 Interview, Swaziland National Council of Churches, 27 June 2003.
- 58 D Venter, op cit.
- 59 Africa Confidential, December 2000.
- 60 Swaziland Protests End in Rally <[www.allafrica.com/stories/20030817008](http://www.allafrica.com/stories/20030817008)>.

- <sup>61</sup> A Onapide, Overhauling the Feudal Regime in Swaziland, *Contemporary Review*, 269, 1571, December 1996.
- <sup>62</sup> Interview, Mario Masuku, Pudemmo President, 27 June 2003.
- <sup>63</sup> Ibid.
- <sup>64</sup> Ibid.
- <sup>65</sup> Interview, Maxwell Khumalo, elected MP, 26 June 2003.
- <sup>66</sup> *Times of Swaziland*.
- <sup>67</sup> Interview, NNLC, 26 June 2003.
- <sup>68</sup> Interview with a NCC member, 2003.
- <sup>69</sup> Interview with Jeremiah Gule at the Council of Swaziland Churches conference, Engaging the Draft National Constitution, 28 June, 2003.
- <sup>70</sup> In total, the Kingdom is host to approximately six embassies or high commissions and seven consular offices. Multilateral organisations such as the World Bank, the UNDP, the World Health Organisation and the EU are also active in Swaziland.
- <sup>71</sup> DFID assistance to Swaziland was £3.1 million in 1999/2000 compared to £1.5 million in 2000/2001. Swaziland–European Community, Country Strategy Paper and National Indicative Programme for the period 2001–2007.
- <sup>72</sup> Interview with British High Commission to Swaziland.
- <sup>73</sup> DFID strategy paper for Southern Africa, October 2002.
- <sup>74</sup> Swaziland–European Community, Country Strategy Paper and National Indicative Programme for the period 2001–2007.
- <sup>75</sup> Ibid.
- <sup>76</sup> Prior to 1992, the choice of who should become a public representative was the sole responsibility of the elite within the Electoral College. But the change to legislation ushered in a dispensation through the establishment of Parliament of Swaziland Order 1992 (EPSO 1992), Voter Registration Order 1992 (VRO 1992) and Election Order 1992 (EO 1992). These amendments indirectly shifted the power of electing public representation through the Electoral College to the people.
- <sup>77</sup> Final Report, Swaziland Constitutional Review Commission, 2003.
- <sup>78</sup> K Shumbana, Post-mortem of the Swaziland General Election of 2003, in: *Swaziland Dossier No 2*, Electoral Institute of Southern Africa, 2002.

## EISA PROFILE

The Electoral Institute of Southern Africa (EISA) is a not-for-profit and non-partisan non-governmental organisation which was established in 1996. Its core business is to provide technical assistance for capacity building of relevant government departments, electoral management bodies, political parties and civil society organisations operating in the democracy and governance field throughout the SADC region and beyond. Inspired by the various positive developments towards democratic governance in Africa as a whole and the SADC region in particular since the early 1990s, EISA aims to advance democratic values, practices and enhance the credibility of electoral processes. The ultimate goal is to assist countries in Africa and the SADC region to nurture and consolidate democratic governance. SADC countries have received enormous technical assistance and advice from EISA in building solid institutional foundations for democracy. This includes electoral system reforms; election monitoring and observation; constructive conflict management; strengthening of parliament and other democratic institutions; strengthening of political parties; capacity building for civil society organisations; deepening democratic local governance; and enhancing the institutional capacity of the election management bodies. EISA is currently the secretariat of the Electoral Commissions Forum (ECF) composed of electoral commissions in the SADC region and established in 1998. EISA is also the secretariat of the SADC Election Support Network (ESN) comprising election-related civil society organisations established in 1997.

### **VISION**

Realisation of effective and sustainable democratic governance in Southern Africa and beyond.

### **MISSION**

To strengthen electoral processes, democratic governance, human rights and democratic values through research, capacity building, advocacy and other strategically targeted interventions.

## **VALUES AND PRINCIPLES**

Key values and principles of governance that EISA believes in include:

- Regular free and fair elections
- Promoting democratic values
- Respect for fundamental human rights
- Due process of law / rule of law
- Constructive management of conflict
- Political tolerance
- Inclusive multiparty democracy
- Popular participation
- Transparency
- Gender equality
- Accountability
- Promoting electoral norms and standards

## **OBJECTIVES**

- To nurture and consolidate democratic governance
- To build institutional capacity of regional and local actors through research, education, training, information and technical advice
- To ensure representation and participation of minorities in the governance process
- To strive for gender equality in the governance process
- To strengthen civil society organisations in the interest of sustainable democratic practice, and
- To build collaborative partnerships with relevant stakeholders in the governance process.

## **CORE ACTIVITIES**

- Research
- Conferences, Seminars and workshops

- Publishing
- Conducting elections and ballots
- Technical advice
- Capacity building
- Election observation
- Election evaluation
- Networking
- Voter / Civic education
- Conflict management
- Educator and Learner Resource Packs

## **PROGRAMMES**

EISA's Core Business revolves around four (4) main programmes namely (a) Conflict Management, Democracy and Electoral Education; (b) Electoral Political Processes; and (c) Balloting and Electoral Services and (d) Research and Publications.

### **CONFLICT MANAGEMENT, DEMOCRACY AND ELECTORAL EDUCATION**

This programme comprises various projects including voter education, democracy and human rights education; electoral observation; electoral staff training; electoral conflict management; capacity building; course design; citizen participation.

### **ELECTORAL AND POLITICAL PROCESSES**

This programme addresses areas such as technical assistance for electoral commissions, civil society organisations and political parties; coordination of election observation and monitoring missions; working towards the establishment of electoral norms and standards for the SADC region; providing technical support to both the SADC-ECF and the SADC-ESN.

### **BALLOTING AND ELECTORAL SERVICES**

The programme enhances the credibility and legitimacy of organisational elections by providing independent and impartial electoral administration,

management and consultancy services. The key activities include managing elections for political parties, trade unions, pension funds, medical aid societies, etc.

#### **RESEARCH AND PUBLICATIONS PROGRAMME**

The EISA research and Publications programme comprises various projects focusing mainly on research and analysis as well as information dissemination. The current research projects include democracy consolidation, electoral systems design and reforms, gender and elections, use of state resources during elections and intra-party democracy. All the projects cover the entire Southern Africa (SADC) region specifically and Africa as a whole. The publications programme involves regular production of the following: books, journal, occasional papers, election updates, election handbooks, research reports, country profiles, election talk.

#### **EISA'S SPECIAL PROJECTS INCLUDE:**

- Rule of Law, which examines issues related to justice and human rights;
- Local Government, which aims to promote community participation in governance ; and
- Political Parties, which aims to promote party development at strategic, organisational and structural levels through youth empowerment, leadership development and development of party coalitions.

#### **EISA'S SUPPORT SERVICES INCLUDE:**

- Library
- Information and Communication Technology (ICT).

#### **EISA PRODUCTS**

- CD-ROMS
- Conference Proceedings
- Election Observer Reports
- Newsletters
- Voter education manuals
- Election database



## **GOVERNANCE STRUCTURE**

### **Patrons**

EISA's patrons are His Excellency Sir Ketumile Masire, former President of Botswana and the instrumental broker of the peace negotiations that ushered peace and reconciliation in the Democratic Republic of Congo in 2002 and Mr. Cyril Ramaphosa, a key negotiator during the political transition to democratic governance and majority rule in South Africa in 1994 and a businessman of standing in the new South Africa.

### **BOARD OF DIRECTORS**

EISA has an International Board of Directors comprising the following:

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**JUSTICE ANASTASIA MSOSA** Judge of the Supreme Court of Appeal in Malawi 1992-1997 and judge of the High Court of Malawi 1993-1998 and Chairperson of the Electoral Commission of Malawi in 1994

**MS. DREN NUPEN** Former Executive Director of EISA

**DR. GLORIA SOMOLEKAE** A senior lecturer at the University of Botswana and currently a senior policy analyst of the Kellogg Foundation

**MS. ILONA TIP** Senior Advisor, Department of Conflict Management, Democracy and Electoral Education at EISA