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HISTORICAL PERSPECTIVE

HISTORICAL BACKGROUND

Jackie Kalley
Electoral Institute of Southern Africa

An investigation into Swaziland's political development reveals the tension produced by the adoption of a bi-cameral Westminster-style constitution on an African nation ruled by a traditional monarch. The origin of the Swazi people can probably

be traced to the second part of the 18th century when King Ngwane III led a Nguni sub-group across the Lebombo Mountains into the area now known as Swaziland. They coalesced into a homogenous nation by the beginning of the 19th century under King Sobhuza I, who subdued and incorporated into his people large numbers of non-Nguni people. They became known as the amaSwati or Swazis under the rule of his successor, Mswati II, and became a powerful military

force due to the introduction of conscription. This factor, together with diplomatic skills, enabled the Swazi to long retain their independence in an era of colonial domination.

A century later, however, most of the land had been taken over by white migrant settlers, mainly from the Cape Colony. They were granted land rights and mining concessions by the king, Mbandenzi. Although Swazi sovereignty was formally recognised by Great

Britain and the South African Republic, it was under constant threat. This finally culminated in the declaration of a “political dependency” status and, despite protest by the Swazi royal family it was administered initially by Great Britain and later, in 1885, by the Transvaal Republic. On cessation of the Anglo-Boer War, Swaziland was administered through the British High Commissioner in South Africa and in 1907 it was declared a High Commission territory and a resident High Commissioner was stationed in Mbabane. Where it was feasible, administration was operated through a system of traditional authority structures, albeit with reduced powers given their subordination to the British government. The King and Chiefs retained their positions but the King was known as the Paramount Chief and the Chiefs were regarded as salaried officials of the state.

In 1921, the European Advisory Council was established to represent white commercial interests but became a political tool. Both South Africa and Great Britain envisaged the ultimate incorporation of Swaziland into South Africa. Local interests, however, stressed the unique nature of the Swazi people and by the 1940s, the British administration developed a system of indirect rule

through “native authorities” in which the Royal Family was given a seminal role. They emerged as a dominant political force due to their control of access to the land and its concomitant legal and tax powers. Political parties were slow to develop; the Swazi Progressive Association was formed in 1929 but only established itself as Swaziland’s first political party in 1960 when it became known as the Swaziland Progressive Party and was led by Dr Ambrose P. Zwane. A split in the party led him to form the Ngwane National Liberatory Congress (NNLC), with its manifesto pledging to establish universal suffrage and to support Swaziland’s independence under a constitutional monarch. The Swaziland Democratic Party (SDP), led by Simon Nxumalo and later by Allen Nxumalo, was also established; this political activity led the King and his supporters to form their own party, the Imbokodvo National Movement (INM). Given their connections and resources, they soon became a formidable force, winning all the seats in the Legislative Council in the 1964 and 1967 elections. As power became more centralised in the hands of the King, so the role of political parties diminished.

The call for the restoration of Swazi independence began in 1960. It was initiated by the European Advisory

Council in an attempt to establish a Legislative Council. This move was supported by the King, and, in 1963, a Constitutional Conference was held in London which led to the promulgation of a Constitution in the same year. It provided for racially based representation in the Legislative Council and the rural constituencies fell under the control of the traditional chiefs. Political parties were weakened, the position of the royalists and the King were strengthened while the small white community was given disproportionate influence. In the 1964 elections the INM won an overwhelming 85 % victory and wooed several opposition members to its ranks. This victory emboldened them to wrest more concessions from the British government. A further round of constitutional negotiations culminated in a Constitution that served as a basis for independence. By the time that formal independence from Great Britain was granted on 6 September 1968, approximately 56% of the land had been repurchased by the state. Although constitutional issues, electoral processes and a discussion of political parties form the basis of later contributions, a basic outline is presented here in order to place all future developments in historical context.

The Independence Constitution allowed for a Prime Minister responsible to the bicameral parliament and the King (then Sobhuza II) as the Head of State. The pre-independence election had resulted in the unopposed victory of the King's party, the INM, but in the first elections, held from 16 to 17 May 1972, the ruling party won only twenty one (21) of the twenty four (24) seats in the House of Assembly. The remaining three (3) seats were won by the radical NNLC, and given their backing by the labour unions were considered a serious threat to the supremacy of the Dlamini clan. At the end of May 1972, the King, in addressing a meeting commented that the advent of an official opposition was a new development and a legacy from the British colonial administration. By July, a new bill was introduced providing for amendments to the Constitution, including *inter alia*, an increase in the Members of Parliament from six to ten, and an increase in the number of Senators, also from six to ten.

On the 12 April 1973, King Sobhuza repealed Swaziland's Independence Constitution and assumed full judicial, legislative and executive power (Proclamation No. 7 of 12 April 1973). The existence of political parties was cited as the reason for this development as they were not deemed part of

Swaziland's social fabric and had thus created a constitutional crisis. Basic civil rights were denied and all party activity was banned. This was followed by an announcement that the Royal Proclamation of the previous week was only an interim measure and that a Constitutional Commission would choose a constitution pertinent to Swazi traditions and international trends. The Royal Commission was appointed on the country's sixth independence anniversary on 6 September 1975 and presented its findings on 24 January 1975. It was only in March 1977 that the King announced the replacement of the parliamentary system with one based on traditional elements and in October 1978 that the *Tinkhundla*-system was established (The Swazi Administration Order, 1998 (Order No. 6 of 1998). It confirmed the powers of the King and according to this system; the country was divided into 40 electoral districts, each of which elects two representatives to form an electoral college, which then elects the Members of the House of Assembly. All candidates have to be independent of any political party and stand as individuals. The bicameral Parliament (*Libandla*) consisting of a House of Assembly and a Senate was confined to debating government proposals and served in an advisory capacity to the King.

Political parties and campaigning were prohibited. The King, in effect, ruled with absolute power for the ten years before his death in 1982. The new Constitution was never formally presented to the people as required by Swazi custom and the governing constitutional elements comprised the 1973 Proclamation, several subsisting provisions of the 1968 Constitution which had been expressly retained by the Proclamation, and various royal decrees.

Sobhuza's death witnessed a power struggle between the traditionalists and modernists. The Prime Minister, Prince Dlamini was dismissed but refused to accept his dismissal, and in the interim the Kingdom was ruled by the Queen Regent. On the 26 August 1983, fifteen year-old, Prince Makhosetive then at a public school in the United Kingdom, was named as the heir. The prince assumed the title of King Mswati III on 25 April 1986, two years earlier than originally planned and in a move to strengthen his personal authority, he dissolved Parliament one year before schedule and called for new elections. These were held in November 1987. In 1989 he assumed full executive power on the occasion of his 21st birthday.

Pressure built up over several years to modernize

the political system, and in particular to draft a constitution containing a Bill of Rights. Several political groupings emerged, despite the ban on political parties, and have served as a form of opposition to agitate for reform and democratization. These include PUDEMO, the Swaziland Federation of Trade Unions, the Swaziland Youth Congress and the Human Rights Association of Swaziland. An alliance of pro-democracy groups, the Swaziland Democratic Alliance has also been established. Since 1990 anti-government demonstrations and strikes have escalated and in 1996, the King appointed a 30-member Constitutional Review Commission to examine the constitutional system, determine the wishes of the Swazi population regarding a new system of government and to make recommendations on a new Constitution. Its terms of reference (Decree, No 2 of 1996), initially provided that it would draft a new Constitution but these were subsequently amended to the drafting of a report which was completed in August 2001. The Report concluded that “an overwhelming majority” recommended that the system of government based on the *Tinkhundla* must continue, the ban on political parties maintained, the executive powers of the King retained, the position of the traditional advisers to the King strengthened, and that

Swazi customs would take supremacy over any contrary human rights obligations.

This was the background against which the Constitutional Drafting Committee, chaired by the King’s brother, Prince David, was established in 2002. Its mandate stated that the process should be as inclusive as possible, as transparent as possible, as participatory as possible and accountable to the people. These criteria were not met as the proceedings were not made available to anyone other than the members of the Committee, the Attorney-General, several constitutional experts and members of the Secretariat. There was no consultation with the Swazi judiciary. A conference was organised in July 2002, by the Swaziland Council of Churches to debate issues around the process and a fourteen – member committee was appointed to inform the King of their criticisms of the Constitutional Review Commission Report. They were not allowed access to the King.

A draft document was completed by October 2002 but the King and Prince David apparently disagreed on its contents. It was finally presented to the Swazi nation on 31 May 2003.

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SOCIO-ECONOMIC PERSPECTIVE

SOCIO-ECONOMIC PROFILE

Wole Olaleye

*Electoral Institute of
Southern Africa*

Geography and Population

Swaziland is a small landlocked country in Southern Africa, surrounded by South Africa on three sides, with Mozambique to the northeast. With an area of 17,364 km², it is one of the smallest African states. The country is divided into mountainous Highveld in the West, grassy Middle area in the centre and bush and Lowveld in the East. The Climate varies from tropical to near temperate. The Highveld is humid and temperate, with warm wet summers and cold dry winters (down to 5 degrees at night). The Middle area is subtropical, again with wet summers and dry winters. The lower region is dry and hot in summer and with warm winter days and cold nights. Rainfall is sparse in the lower areas. The hottest months are January and February: 15-25 °C; coldest month, June, 5-19°C; driest month, June, 18 mm average rainfall; wettest month, January, 252 mm average rainfall.

Swazis are a homogeneous group of people with one

common history, tradition and customs. The official languages are English and siSwati. Swazis are very religious people. More than half (55%) of the population belongs to protestant group; Muslim (10%); Roman Catholic (5%); and those that subscribe to the indigenous belief represent 30% of the population. Adult literacy rate – the proportion of population age 15 and over that can read and write is as high as 78.9%¹. Human Development Index (HDI) ranking (2000), ranked Swaziland at 122 out of 173 countries (1 = most developed, 173 = least developed).

The HDI measures a country's achievements in three aspects of human development: longevity, knowledge and a decent standard of living. Longevity is measured by life expectancy at birth; knowledge is measured by a combination of the adult literacy rate and the combined gross primary, secondary, and tertiary enrolment ratio; and standard of living, is measured by GDP per capita².

The population is estimated to around 1.1 million. The country is said to have experienced a steady

increase in population growth from 374 571 in 1996 to 994 000 in 1997³. According to United Nations Population and Development Programme (2002), the population growth rate for 2001 was estimated at 1.83%⁴. The life expectancy at birth for the population stands at 37; 86 years for males and 39.4 years for females⁵. Alarming statistics have recently emerged about the extent to which Swaziland has been affected by the HIV/AIDS epidemic. According to recent UNAIDS statistics, the country is among the hardest hit in Southern Africa, ranking alongside Botswana, Namibia and Zimbabwe. Swaziland has now been added to the list of countries where 20-26% of the population between the ages of 15 and 49 are carrying the virus.

In a 1998 survey, the Health Ministry found that almost 50% of hospital in-patients were HIV-positive. Among tuberculosis patients, the rate is as high as 58% (TB is one of the most common opportunistic infections associated with HIV/AIDS)⁶. The government has now

³ Masuku, M. *Swaziland*. In: Lodge, T. Kadima, D., Pottie, D., eds. *Compendium of Elections in Southern Africa, 2002*

⁴ *CIA World Factbook, 2002*

⁵ *Ibid.*

⁶ *CIA Factbook, 2002*

¹ *CIA World Factbook, 2002*

² *Ibid.*

identified HIV/AIDS as an emergency, requiring priority attention. A National Aids programme was established to coordinate all aspects of the fight against the disease. The government is also working closely with NGOs, recognizing that the scale of the problem obliges all sectors to pull together. In addition, emphasis is put on education and prevention campaigns, designed to increase awareness of HIV/AIDS among youth.

Mbabane and Manzini, which are 40km apart, are the two main commercial centres with estimated populations of 60 000 and 74 000 respectively. These two cities and the area between them form the country's commercial, financial, tourism and manufacturing hub. The Matsapha Industrial Area is the largest industrial park in the country. In addition to this, the cities of Mbabane, Manzini and the town of Nhlangano have industrial parks, all of which are serviced with water, electricity and telecommunications connections. Matsapha is doubling in size through an expansion programme and three regional sites are being developed. One of these, in Mpaka, will become a dry port similar to the one that services the Matsapha Industrial Estate. The other main towns are Big Bend, Mhlambanyatsi, Simunye, Mhlume and Pigg's Peak.

Economic Structure and Outlook

The economy is largely dependently on agriculture (mainly sugar) as the mainstay of economic productivity. Agriculture (8.7% of GDP) which provides inputs for the manufacturing sector has been negatively affected by adverse weather conditions. Sugarcane and maize are two important agricultural crops. Sugarcane is largely grown in irrigated land and has been partially protected from the effects of the regional drought. The manufacturing sector (35.6% of GDP) is expected to have suffered as a result of lower agricultural output. It is the second largest contributor to output after the services sector, which accounts for 43.4% of GDP. Sugar refining and soft drink processing in the manufacturing sector have strong linkages with the agricultural sector. The banking sector is relatively well developed. There are four commercial banks, three of which are foreign owned. The Swaziland Stock Exchange (as a full exchange) opened its doors in 2000. The small exchange has five listed shares. The market capitalisation was about US\$145 million in January 2003.

The economic growth stagnated since 1997 due to adverse weather conditions and disruptions in manufacturing and mining

sectors. Economic growth fell to 2.5% in 2000 mainly due to poor agricultural production attributed to the floods in February 2000. The regional drought has adversely affected the country and the food crisis is affecting about a quarter of the population. The sugar industry remains the backbone of the economy. According to Swaziland Sugar Association data, output represents a quarter of GDP; an eighth of exports; and three-fifths of agricultural production. The long term outlook for the sugar industry is uncertain. The existing European Union and African, Caribbean and Pacific (EU-ACP) Sugar Protocol and the Agreement on Special Preferential Sugar (SPS) will be renegotiated when they expire in 2008. Also, the EU's new Everything But Arms (EBA) initiative will phase out preferential access between 2006 and 2009. Growth for 2001 is expected to improve slightly (figures not yet available). Inflation was 7.5% in 2001, and for 2002 it is estimated to be 10%. During the financial year ending March 2001 public debt stood at E2.12 billion, an increase of 22% from March 2000.

Amongst its budget plans for 2001/02, government allocated E151 million to the Millennium Projects, which include plans for a new international airport, convention centre, hotel and

theme park. The money is intended for feasibility studies, consultancy and land purchase, as the projects themselves are expected to be commercially viable. Most government expenditure continues to be on personnel costs which represent 54.4 percent of the budget, an all time high. Attempts by government to restructure the public sector and privatise are slow and have yet to bring any significant changes. Legislation is promised which will govern the operations of the Swaziland Electricity Board and the Swaziland Posts and Telecommunications Corporation, which is due to be split in two.

The economy of Swaziland is closely integrated with South Africa, through the Southern African Customs Union (SACU), and the Common Monetary Area (CMA). SACU, a customs union linking the country with Botswana, Lesotho, Namibia and South Africa, is one of the most important regional organizations for Swaziland. Revenue-sharing formula provides about 50% of the government's receipts. It is widely expected that income from this source will decline in the medium to long term. SACU revenue is almost certain to decline between 2005/6 when the EU-South Africa free-trade agreement begins to affect

the common revenue pool⁷. Swaziland partially lost its competitive edge as an investment destination when South Africa became a democratic state in 1994.

Swaziland is a member of the Southern African Customs Union (SACU) with South Africa, Botswana, Lesotho and Namibia. This agreement allows a free and, subject to South Africa's import control requirements, virtually unimpeded interchange of goods between contracting countries. Customs and excise duties are paid into a pool, managed by South Africa, from which Swaziland receives a share. It is also a signatory to the treaty establishing the Preferential Trading Area for eastern and Southern African states. Swaziland is a member of SADC (Southern Africa Development Community). Swaziland is not a signatory to GATT but applies GATT rules on a *de facto* basis through the Generalized System of Preferences (GSP). Swaziland also has preferential trade access to North America, Japan and Australia. South Africa is its main trading partner; other export markets are Japan, the UK and other EC countries. Its main imports are general manufactured goods, fuels, lubricants, transport

machinery and equipment. All goods entering Swaziland require import licenses.

The tourism industry could become an important growth area, if the development initiative – Lubombo Spatial Development Initiative (SDI), launched in 1997 between South Africa, Swaziland and Mozambique and other initiatives well supported. High unemployment and poverty levels remain a critical challenge for Swaziland economy. The incidence of HIV/AIDS also continues to cloud the economic outlook of the country with the highest prevalence rate in the region. Although the economic impact of HIV/AIDS on such a small country is difficult to quantify, evidently, the pandemic is both severe and devastating indeed. The economic outlook is highly unfavorable in the face of the recent purchase of presidential luxury jet for King Mswati III in the context of regional drought and food shortage. Anecdotal evidence abounds suggesting that the price and operational and maintenance costs of the jet amounts to a quarter of the country's government budget.

⁷ The Economic Intelligence Unit. *Country Report, Namibia and Swaziland*, November 2001

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CONSTITUTIONAL PERSPECTIVE

CONSTITUTIONAL DEVELOPMENT

***Khabele Matlosa**
Electoral Institute of
Southern Africa*

Defining the Constitutional Crisis

As Swaziland prepares for a general election on the 18th October 2003, it is in order for us to reflect on the country's record of constitutional development to date since its political independence. Much of the informed opinion on Swaziland has now established by any shadow of doubt that this smallest country in country in the Southern Africa region severely lags behind in terms of constitutional engineering towards a multi-party democratic dispensation. To be sure, only three Southern African Development Community (SADC) member-states have not yet upheld multiparty democratic governance and these are Angola, the Democratic Republic of Congo and Swaziland. In all fairness, almost all the SADC member states have embraced multi-partyism and have undergone a transition from authoritarian rule of the yesteryear with the exception of those three countries that are still struggling to institutionalise democratic governance. Whereas many

of the vexatious problems bedeviling democratic transitions in Angola and the DRC has much to do with protracted violent conflict in these countries, in Swaziland democratic transition is compounded by a different set of problems.

At the very heart of Swaziland's daunting challenges for establishing a democratic transition in Swaziland is the enormous tension and, at times, violent encounter between the traditional and modern institutions of governance. Put somewhat differently, Swaziland's constitutional dispensation is caught between the rock and the hard place; an executive monarchy dominates overwhelmingly the entire spectrum of the governance arena and has effectively asphyxiated modern forms and institutions of multiparty democracy. This is the essence of the constitutional crisis in the Kingdom of Swaziland. As one informed local authority in Swaziland poignantly stated "the biggest challenge that faces the Swazi political community is how to strike a balance between the forces of democracy and the demands of monarchism. There cannot be a monolithic view on these matters. Yet, if proper balance can be attained, the question of power distribution in the Swazi political economy

would have been answered."¹

Thus, Swaziland's constitutional crisis can be summed up in three interconnected, albeit distinct, ways. First it underlines a fierce struggle over limited resources in a small enclave economy between the royalist elite on one hand and the modern institutions of democracy and this becomes even more pronounced when the palace feels pressure for democratisation both from endogenous and exogenous forces. The monarchy controls almost all the key sectors of the Swazi economy, through the all-powerful royal corporation styled Tibiyo Taka Ngwane thereby enjoying much leverage over the entire governance project in the country much to the chagrin of the democratic forces. Second, this crisis also brings into sharp relief the power struggle between the two forces for the control of the state machinery especially the executive, the legislature, the judiciary, the bureaucracy and the security establishment. It should be noted that, in fact, hegemonic control of the state machine by the monarchy has ensured and perpetuated its unfettered

¹ Mzizi, J. Leadership, Civil Society and Democratisation in Swaziland, 2002

dominance of the governance arena to date. Third, this crisis also exposes the ideological divergence between the monarchy and its allied chieftainship who espouse steadfastly the ideology of tradition and 'uncontaminated' Swazi culture which often times is perceived as a perfect anchor to a unique Swazi 'democracy' in contradiction to a western-type liberal democracy. In contrast, various democratic forces in Swaziland have argued over the years, and to this day, that Swaziland can (and in fact should) uphold its distinctive culture, but embrace, at the same time, a democratic multiparty governance more along the lines of a constitutional monarchy as the case is in, say, Lesotho, for instance.

Therefore the constitutional crisis in this tiny Kingdom can best be explained with reference to a triangle of conflict between the monarchy and modern institutions of governance elaborated above comprising struggles over (a) resources, (b) state power, and (c) ideological world-view. There is no gainsaying that in terms of resources, power and ideological orientation of the governance project, the monarchy exercises unfettered political hegemony and has thus entrenched a dynastic authoritarian regime which to date remains unmoved by

democratic waves around the country. Thus, Swaziland remains an island of autocracy in a sea of democratic transitions in Africa as a whole and Southern Africa in particular. Lodge *et al* sum up the political dilemma of Swaziland in the following words:

The king enjoys unfettered executive and legislative powers. As a consequence, the cabinet and parliament play only a subordinate role in the country's political life. The King appoints a cabinet headed by a prime minister for the day-to-day running of the country. The cabinet is fully accountable to the King who can dismiss it at will. A parliament consisting of elected and appointed members plays a minimal legislative role. Parliament is subordinated to the monarch, who can overturn its decisions. Its main function is not so much to legislate, but rather to initiate and debate policy issues, subject to the King's approval².

We should hasten to add that over and above the executive and legislative powers, the King also enjoys judicial powers and has full control over the bureaucracy and the security establishment in the country. This, thus, completes the extent of the enormous powers of

² Mzizi, J. Leadership, Civil Society and Democratisation in Swaziland, 2002

Swaziland's executive monarchy since its entrenchment through the Royal Proclamation of 1973. This brief expose, in a nutshell, represents a sketchy definition of the constitutional crisis in Swaziland and as we write this Election Dossier, prospects for democratic transition in this country remain a distant mirage.

Constitutional Engineering: A Bumpy Road to Democracy

As mentioned previously, at independence, Swaziland achieved its political freedom from British colonial administration, like other African countries like Lesotho and Botswana. As the case was in these two countries, Swaziland was expected to embrace a Westminster constitutional arrangement designed to institutionalise a constitutional monarchy along the lines of Lesotho, although the King was accorded much more extensive power in comparison to Lesotho, a situation that did not at all prevail in Botswana. The result was, thus, a Westminster-style constitution "providing for a 24-member House of Assembly and a 12-member Senate, composed of chiefs. Investing the King with extraordinary powers, this was no ordinary Westminster-style constitution, for it

empowered the King to nominate one-fifth of the House of Assembly and half of the Senate as well as the Chief Justice and the Prime Minister”³.

However, the initial attempts to institutionalise a constitutional monarchy, the hegemonic hold of the monarch notwithstanding, were dashed when King abolished the independence constitution in 1973. This was done by King Sobhuza II through a Royal Proclamation dated the 12th April 1973 in which the King proclaimed:

- That the constitution has failed to provide the machinery for good government and for maintenance of peace and order;
- That the constitution is indeed the cause of growing unrest, insecurity, dissatisfaction with the state of affairs in our country and an impediment to free and progressive development in all spheres of life; and
- That the constitution has permitted the importation into our country of highly undesirable political practices alien to, and incompatible with, the way of life in our society and designed to disrupt and destroy our own peaceful and constructive

and essentially democratic methods of political activity. Increasingly this element engenders hostility, bitterness and unrest in our peaceful society⁴.

According to Mzizi, “the Swazi monarch then assumed all executive powers previously granted by the constitution to the Prime Minister and the Cabinet. From that day onwards, the King has been able to act wholly at his own discretion, consulting whomever he wishes, not bound by law” This proclamation also banned political parties including any political activities in Swaziland – a situation that still prevails and has greatly helped to entrench the unfettered political hegemony of the monarchy and the royal elite at large as the King essentially rules in his own accord with advice from such advisory agencies as the *Libandla* and the *Liqoqo*.⁵

In effect, therefore, the immediate aftermath of independence witnessed a steady erosion of democratic culture and practice in Swaziland as the monarchy deliberately sought to amass

all the powers and in the process throwing constitutional rule in disarray. This *status quo* of dynastic authoritarianism remains a norm under the reign of King Mswati III in present-day Swaziland.

Current Efforts Towards Constitutional Reforms

Let it be emphasised that even as Swaziland has been holding elections, fairly regularly and in the light of the forthcoming election in October 2003, Swaziland still has no working constitution. It was only in 1996 that King Mswati III made an attempt to put in place several mechanisms for constitutional review and reform processes. These initiatives by King Mswati III were due mainly to pressure that had been building steadily since the democratisation wave in Africa in the early 1990s exerted by various local non-state actors and external forces. Local civil society groups had begun to mount pressure principally through protest politics and lobbying for democratic change. These internal pressures for democratic transition were also complemented by diplomatic exhortation on the Swazi monarchy by several regional states especially the presidents of Botswana, South Africa, Mozambique and

³ Lodge, T., Kadima, D. and Pottie, D. eds. *Compendium of Elections in Southern Africa, 2002*

⁴ Mzizi, J. *Constitutional Developments in the Kingdom of Swaziland, 2002*

⁵ International Bar Association. *Striving for Democratic Governance: An Analysis of the Draft Swaziland Constitution: Report, 2003*

Zimbabwe⁶. An emergency meeting of the presidents of these countries and a representative of King Mswati III led to the appointment of a 30-member Constitutional Review Committee (CRC) by the King “to examine the constitutional system, determine citizens’ wishes regarding a future system of government and to make recommendations on a new constitution. This process took five years”.⁷

It worth noting, though, that numerous civil society organisations in Swaziland have criticised the King’s constitutional reform process on a number of grounds including the following:

- The intended end-product of the review process and the entrenched interest of the monarchy in controlling the whole process;
- The nature of the appointment of the members of the CRC;
- The lack of information and civic education on the whole constitutional review process;
- The Terms of Reference for the CRC;

- The method of work of the CRC;
- The nature of composition and representativeness as well as the leadership of the CRC;
- Mode of submissions to the CRC especially the fact that group representations were disallowed.

Thus, various civil society organisations including the banned, but fairly active opposition party – the People’s United Democratic Movement (PUDEMO) – have expressed their lack of confidence in the process and its outcome. In consequence, not only have these forces boycotted the constitutional review process, but they have also not shown any enthusiasm for general elections to date.

It is worth noting that while the CRC was chaired by Prince Mangaliso Dlamini, a brother to King Mswati III, the Chairman of the Constitutional Drafting Committee (CDC), which was established in early 2002, was Prince David, yet another brother to King Mswati III. That the Judiciary, the Executive and the Legislature were neither consulted and that the judiciary in particular played no role in the review and the drafting process is instructive of the political intrigues that have marred the constitutional engineering in Swaziland. Be

that as it may, CDC finally presented its draft constitution to the nation on 31st May 2003. However, a clear-cut method of the adoption of the new Draft Constitution is yet to be determined and clarified and indeed “this is a crucial matter to be addressed, if the constitution is to gain democratic legitimacy”.⁸ Against this backdrop, to what extent, then, is the constitutional review a panacea to Swaziland’s badly tarnished democratic credentials?

Review of Substance of the Constitutional Engineering and Its Implications for Democracy

The proof of the pudding lies in the eating; so it is with the new draft Swaziland constitution. Its actual meaning for democracy lies both in its substance and content as well as the way in which it will be adopted and implemented in the final analysis. However, anecdotal evidence suggests that first, it would be an uphill struggle to turn this new document into a national legal framework for democratic governance in Swaziland and second, it would be difficult to have it adopted as a collective constitutional vision for the small Southern African kingdom. A cursory glance at the substance and implications of the draft document vividly illustrates

⁶ Lodge, T., Kadima, D. and Pottie, D. eds. *Compendium of Elections in Southern Africa*, p. 326

⁷ International Bar Association. 2003. *Striving for Democratic Governance: An Analysis of the Draft Swaziland Constitution: Report*, p. 4

⁸ *Ibid.*, p. 5

this awkward political predicament.

This brief review rotates primarily around (a) the role of the monarchy, (b) the role of the executive, (c) the role of the legislature, (d) the role of the judiciary, (e) the role of the civil service and (f) the role of the security establishment.

Although, the draft constitution does not say this in so many explicit words, it essentially entrenches absolute or executive monarchy as introduced after the 1973 Royal Proclamation. This is certainly the principal thrust of the draft supreme law of Swaziland. In respect of the prescription of the Draft Constitution on the monarchy, it is abundantly evident that this constitutional framework simply protects and extends the already embedded political hegemony of the monarchy in Swaziland. For instance, the Draft Constitution prescribes that the King is the:

- Commander-in-chief of the Defence Forces;
- Commissioner-in-chief of the Police Forces; and
- Commissioner-in-chief of the Correctional Services

The simple implication of this arrangement is that more and more power is currently being centralised in the monarchy through firmer

control over the security institutions.

In regard to executive authority, the Draft Constitution states that executive authority is vested in the King as Head of State, including the right to:

- Assent to and sign bills;
- Summon and dissolve Parliament and cabinet;
- Receive foreign envoys and appoint diplomats;
- Issue pardons, reprieves or commute sentences;
- Declare a state of emergency; and
- Confer honours.

Although the King exercises these powers on the advice of the cabinet, he has ample room to undertake these functions on the basis of his own discretion without reference to any advice where a disagreement is real or apparent. This is hardly surprising, given that both the cabinet and the Prime Minister are appointees of the King himself on the basis of his Advisory Council.

As is the case with executive authority, the Draft Constitution prescribes that supreme legislative authority is vested in the King. Essentially therefore, executive and legislative power is fused together in the King on one hand, and the cabinet and the Parliament whereas when the die is cast, real power in fact lies with the King. The nature of the legislature has not been fundamentally

changed by the Draft Constitution. First, the legislature is still constituted on the basis of the *Tikhundla* system and thus has not been opened for political competition by parties as these institutions remain banned. Second, the composition of Parliament is still a preserve of the King. Of the 30 Senators, 20 are appointed by the King and of 70 members of the House of Assembly, 10 are appointed by the King. According to the expert opinion of the International Bar Association, "there are no stipulations as to whom the King must consult when making these appointments. Therefore, of the 100 Parliamentarians, almost one-third are not democratically elected.

Only in respect of the judicial powers does the Draft Constitution state that this is the sole preserve of the judiciary. Thus, the Draft Constitution does provide for some modicum of judicial independence from the omnipotent power of the King. Furthermore, in this vein, the Draft Constitution states clearly that "in the exercise of the judicial power of Swaziland, the judiciary, in both its judicial and administrative functions, including financial administration, shall be independent and subject only to this constitution, and shall not be subject to the control or direction of any person or

authority.”⁹ This proposed independence of the judiciary is to be ensured by the establishment of an autonomous Judicial Service Commission. However, the catch comes with the composition and manner of appointment of the Commission. According to the Draft Constitution states that the Commission shall consist of the following:

- The Chief Justice, who shall be the chairman (sic);
- Two legal practitioners of not less than seven years practice and in good professional standing to be appointed by the King;
- The chairman (sic) of the Civil Service Commission; and
- Two persons appointed by the King.¹⁰

Part of the key functions of the proposed Judicial Commission is essentially to be an advisory agency for the King on a number of issues including the King’s exercise of his powers of disciplinary control of various persons and the appointment, discipline and dismissal of the Director of Public Prosecution and other public officers.

Like all other organs of the state, the public service or the bureaucracy will remain

under the tight grip of the palace control and direction including the Public Service Commissions. In terms of the functions of the commissions, they shall:

- inspect government offices;
- examine official documents, books or other records;
- obtain information and advice from any public officer or other government servant; and
- to do all such things, including the taking of evidence on oath and the administration of oaths as are incidental or conducive to the exercise of the functions that service commission¹¹.

In sum, therefore, the Draft Constitution of Swaziland does not seem to advance a democratic course in that country. All it seeks to do is simply to provide a constitutional plank upon which the executive monarchy and its political hegemony would be firmly anchored. It should be remembered that this dynastic system of governance has suffered a severe legitimacy crisis since the 1973 constitutional changes prompted by King Sobhuza II. It seeks to place, through constitutional fiat, the key institutions of government such as the executive, the legislature, the executive, the security

establishment and the public service under the firm grip of the palace through a modicum of constitutionalism. Yet, in fact, if the Constitution does become a supreme law in Swaziland, what we would have is basically an existence of a constitution without constitutionalism. In other words, the existence of a supreme law, no matter how imperfect, without advancement of the rule of law and democratic governance, is rendered virtually meaningless.

Conclusion

By way of conclusion, a few pointed observations are in order. First, the current constitutional engineering is not likely to advance Swaziland’s prospects for democratic transition. If anything, it essentially provides a constitutional anchor to a dynastic oligarchy which is the principal author of the current constitutional crisis in the country. Consider, for instance, the recent public statements made by King Mswati III during the Easter weekend religious observation while addressing about four hundred (400) pastors at Engabezweni royal village 25 km east of the capital, Mbabane, in which he re-affirmed a doctrine of Divine Right of Kings through explicit reference to the Bible. The event was hosted by the League of Churches under an interesting theme entitled

⁹ Draft Constitution of the Kingdom of Swaziland, 2003. p. 81

¹⁰ *Ibid*, Article 160 Section (1), p. 90

¹¹ *Ibid*, Article 177 Section (2), p.101

“Disadvantages of Multi-party Democracy”. King Mswati III asserted that “although the whole world is preaching democracy, it does not mean we have to follow them.... Democracy is not good for us because God gave us our own way of doing things.”¹² Concurring with the King, Reverend Khayeni Khumalo observed that “a king links a country with God. A president cannot communicate with God because God does not know how he (sic) was installed. Presidents are power hungry people who are like rapists, they break in and rule. They are imposed. Many presidents are going to hell, together with their people no matter how many they are.”¹³ Reverend Mkhuluza Zwane corroborated the King’s and Reverend Khumalo’s statements by noting that “there is no single verse in the Bible which says that there should be a president ruling a country. When people are given the right to choose, they always choose evil. There are people who are sponsored to dethrone you, Your Majesty, and these are the people who advocate for democracy.”¹⁴ Second, the constitutional engineering, in any case, seeks merely to legitimise the already centralized governance regime in Swaziland which, to all intents and purposes, rotates

around the King and his lieutenants within the political scheme of things in the small Kingdom. This is the case despite pretences towards decentralisation through the *Tikhundla* system of rule as it were. Third, the constitutional arrangement is unlikely to end the protracted tensions and conflicts between the traditional and modern institutions of governance and resolve the imperatives for democratic change and the popular struggles around this. If any thing, quite frankly, anecdotal evidence points to a likely intensification of the conflict and the popular struggle to which the dominant dynastic elite is likely to respond with the invigorated wrath of the law enforcement agencies whipping popular forces into line. Fourth, it remains debatable whether or not it is therefore prudent to have had a general election before resolving the constitutional question. In metaphorical terms, this may sound like a nightmarish chicken and egg paradox; but this much more complex than that, for it suggests in fact that what we are witnessing the Swaziland is essentially a clear case of proverbial cart pulling the horse. Fifth and finally, then, it is only fair to surmise that the election of October 2003 may not make much of a fundamental difference to Swaziland’s political landscape for it is aimed to maintain the *status quo ante*. This may explain in part why

there is little international interest in the event, even in terms of simple election observation, by the hordes of observers who often flood a country holding an election, as was vividly demonstrated in the 2001 election in Zambia and the 2001 parliamentary and 2002 presidential elections in Zimbabwe.

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POLITICAL PERSPECTIVE

THE STRUGGLE FOR POLITICAL POWER IN SWAZILAND

Claude Kabemba
Electoral Institute of
Southern Africa

The political environment in the Kingdom of Swaziland has been highly conflict-ridden. It is marked by tension between the monarchy one hand and civil society and banned political parties on the other. The King has been under serious pressure from the pro-democracy forces to transform the political system away from the *Tinkhundla* system.

The current political crisis in the country is obviously traceable to the 1973 proclamation in which the King declared that:

Now, therefore I, Sobhuza II, king of Swaziland, hereby declare that, in collaboration with my cabinet ministers and supported by the whole nation, I have assumed supreme power in the kingdom of Swaziland and that all legislative, executive and judicial power is vested in myself and shall, for the meantime, be exercised in collaboration with a Council constituted by my cabinet ministers.

The new Constitution still to be adopted maintains 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." 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 Constitution does not specifically address the King's power to legislate by decree, it also 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". 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. The new Constitution continues to make Parliament no more than an advisory body to King Mswati, who may make or decree law rejected by Parliament or promulgate laws without parliamentary participation. Pro-democracy groups have called Members of Parliament "rubber stamps" whose lack of legislative independence and any real power have made them redundant.

But traditionalists who support and want the continuation of the current system argue that the Swazi system is in fact democratic. Leaving aside the finer subtleties 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.

There is no doubt that in Swaziland the king enjoys considerable executive, legislature and judiciary powers. He has the power to

decide unilaterally when it suits him to interrupt the executive, to dissolve Parliament and to make court decisions null and void. Swaziland has a dualistic political system. 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 before it even begins.

Although political parties are banned, they have remained active and continue to challenge the monarchy. They have been banned since April 1973 when the King suspended the Constitution. The argument used was that they were disruptive to national unity and were accused of introducing in Swaziland an alien mode of political life. Political parties are blamed for division within society in party affiliation and for imposing a structure that allows elections to be dominated by those who derive influence from wealth or high status. Political parties are also accused of opening the door to political corruption, 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, that a democratic system requires intermediary groups

- political parties - between the state and society as well as institutional mechanisms for the articulation and advocacy of diverse views and policy preferences.¹ The challenge for Swaziland is to determine whether individuals elected through the *Tinkhundla* system without aggregated constituency mandate/interest and national policy preferences represent an appropriate and efficient institutional mechanism for mediating between the state and people. Parties provide avenues 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 and for expressing reasons for endorsing a particular political outcome over another. Under the *Tinkhundla* elected representatives in parliament do not represent any political preferences and ideological interest. Representatives do not represent any popular demands or source of major political information and interpretation on which national demands are based but rather represent localized (community) issues. In fact elected representatives in Parliament do not act as conduits through which peoples’ demands are filtered and aggregated into

national development programmes, or as agents for ensuring coherent government and exercise of control over administration. Public demands are understood and articulated through the monarch and its national advisory council, who are the King’s appointees. It presumes that participation and representation will happen through a system that was not designed to promote the protection and advancement of citizens’ interest. Citizens rights such as protection against the abuse of state power, equality before the law, freedom to form and participate in political parties as an expression of peoples’ concerns, as well as a mechanism for structuring the electorate’s choice, are non-existent. All these rights remain the constitutional prerogative of the King.

The absence of political parties in Swaziland further contributes to the erosion of government accountability.² One of the most important functions carried out by parties in polity is to keep the government accountable. Although political accountability takes place both at the horizontal and vertical levels, political parties act in facilitating government accountability “...with political parties controlling the government, it is clear who is responsible

¹ See *Swaziland’s Struggle with Political Liberalisation*. EISA Research Report, 2004

² *Ibid.*

for the government's action..."³

Civil society in Swaziland dealing with issues of governance and democracy is diversified. It includes student organisations, labour movements, and NGOs. The major groups include the Swaziland Federation of Trade Unions (SFTU), The Swaziland Youth Coalition (SWAYOCO), and The National Council of Churches (NCC). Civil society together with underground political parties such as the people's United Democratic Movement (PUDEMO) and The Ngwane National Liberators Congress (NNLC), have been pushing for change. Since in 1997, pro-democracy forces organised themselves into the Swaziland Democratic Alliance (SDA). This body is seen as filling the role the United Democratic Front (UDF) 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 have been weak owing to the lack of coordination. But in recent time, especially this year, they have coordinated their activities efficiently, thus

³ Dalton, R. and Wattenberg, M., 'Unthinkable Democracy: Political Change in Advanced Industrial Democracies', In Dalton, R. and Wattenberg, M. (eds), *Parties without Partisan: Political Change in Advanced Democracies*, 2000

increasing pressure on the King more than ever before. But the government has remained recalcitrant and has not opened up the political market place for free competition. Thus, the key demands of the pro-democracy forces include the following:

- A democratically elected constituent assembly to draft a legitimate constitution for the country;
- The unbanning of political parties; Removal of all political hostilities, free trade union organisation, free media and the independence of the judiciary;
- Unconditional release of all political prisoners; and
- Restoration of women's dignity and an end to the abuse of women in the name of culture.

The political confrontation reached its peak in early 2002 when a disturbing train of events pushed the Swaziland democratic movement to call for national strikes, the dissolution of Parliament and the resignation of the Prime Minister.

The King has been sensitive to this pressure and it has pushed him to introduce the limited reforms contained in the new Draft Constitution. These include the immediate dismissal of Prime Minister

Jameson Mbilini Dlamini, who was perceived to be halting the process of political liberalisation, and his replacement by Prince Sibusiso Dlamini as the Prime Minister, who is regarded more as a sympathizer of the pro-democracy forces.⁴ Even here, the change is still being questioned: why is the head of the executive, the Prime Minister of Swaziland always a Dlamini? While public office in general is a preserve for members of the Royal Family and their friends to the total exclusion of the majority of the people. This might be the reason why the King, after dissolving his cabinet, in preparation for the coming general election, appointed Paul Shabangu as interim head of state. Swaziland's Parliament's law of October 1992 make provision for the cabinet to be dissolved prior to election, but this has been done only once before. This was the case in 1993 demonstrating that the King's decision is law. Normally the cabinet is dissolved to give ministers sufficient time to campaign for the elections and stop them from abusing their office, power and position to obtain necessary votes. In Swaziland one needs to be elected to become a minister.

One major problem evident in Swaziland is the total

⁴ Dlamini, K. *Political Change: Swaziland's Future in the Balance*, 1997.

disregard for the rule of law by the monarchy. The deterioration of the rule of law has been observed by the Lawyers for Human Rights as a major challenge to Swaziland's political future, calling for some redress. The most serious royal error in recent time was its disregard, in February 2003 of a Swazi court decision, that had found that the King had acted illegally when he removed two chiefs. The Prime Minister Sibusiso Dlamini asked the court to ignore two appeal judgments which challenged the supreme power of the King. This situation forced many High Court judges and the entire Court of Appeal bench to resign and many others refused to conduct the business of the courts. The threat to the independence of the justice system and interference in its work by the government on behalf of the king was seen as demonstrating the King's unwillingness to introduce change into the political system. The tension between the Attorney General and the Prime Minister forced the former to leave the country under pressure, for defeating the ends of justice. This situation forced the democratic movement in Swaziland to call for national strikes, the dissolution of Parliament and the resignation of the Prime Minister. This confrontation added pressure to already strained relationships following unsatisfactory

constitutional reforms. The main limitation to the rule of law is represented by the power and dominance of the King over all institutions in the country.

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. The manipulation of the judiciary by the monarchy in particular in recent months and its various attempts to curtail its independence has provoked much concern on the issue of its dependence and usefulness among the in-country donors. The reaction against what is perceived as an attempt to weaken the justice system also came from the Parliament. Here a group of MPs threatened to step down or force the king to dissolve Parliament if the Prime Minister was not replaced. This demonstrates that in Swaziland, while the King has all the powers, the other members of government do not necessarily have the power they pretend to have. A critical look, however, might suggest that MPs were already at the end of their term with elections looming. They had nothing to lose by challenging the Prime Minister.

The Swaziland Coalition of Concerned Civic Organizations has since began calling for the King

to intervene to return to the rule of law and ensure that there is dialogue between government and civil society organisations which have been expressly excluded from the constitutional reform process. Without a firmly entrenched democratic Constitution, the country would continue to have the propensity for abuse of power and political instability.

Political instability was also demonstrated when pro-democracy forces exposed the lawlessness of the royal leadership during the Global 2003 Smart Partnership International Dialogue. Civil society in Swaziland continues to draw its strength from regional partners by organising activities together with attending regional events where they use the opportunity to present the situation in their country and call for sustained pressure on the kingdom. The contact is organised with the South African Congress of Trade Unions (COSATU). For the first time a major involvement in Swaziland politics came from the South African trade unions through COSATU. COSATU obtained permission from a magistrate's court in South Africa to protest against the holding of the Global Smart Partnership summit in the country whilst the people of the country were suffering from the harshness of the royal regime.

The 2003 elections have already attracted several international bodies. The Commonwealth has sent a team to observe the registration exercise as early as July 2003. The team, which comprises justice Hilary J Mkhate, Commissioner, National Electoral Commission of Tanzania and William A Sage, Deputy Chief Electoral Officer, Alberta, Canada also visited the different registration centres throughout the country. The Commonwealth has also previously been to Lesotho, Nigeria, and Sierra Leone to observe the registration process. But civil society and political parties have criticised the Commonwealth for legitimising a process that Swazis have rejected. In a very contradictory move, several leaders of the banned political parties are standing as candidates for Parliament in the coming elections, and have progressed to stand for the parliamentary elections. These include Dlamini, president of the banned political party, Ngwane National Liberatory Congress (NNLC), one of three prominent progressives who have advanced into the line-up for next month's general elections. Also elected as run-off candidates from their districts were NNLC chairman Jimmy Hlophe, and NNLC member Boniface Mamba.

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ELECTORAL PERSPECTIVES

SWAZILAND'S ELECTORAL PROCESS

Shumbana Karume
Electoral Institute of
Southern Africa

The *Tinkhundla* System

In several previous elections, Swaziland's electoral system and its associated institutions have come under the spotlight. It is no different on this occasion; the general elections in Swaziland are set for October 2003 and are expected to proceed even though the majority of demands, largely from within the Kingdom and the international community have gone unnoticed. As has been discussed in the other sections of this Dossier, much of the attention Swaziland receives, typically in this pre-election period is dominated by the demands from the pro-democracy forces in Swazi civil society upon the ruling monarchy to introduce political reform. The most momentous modification demanded regards the abolishment of the current electoral system otherwise known as the "*Tinkhundla*" system which has been rejected by many groups for lack of democratic credentials. The *Tinkhundla* system is the electoral system operating in Swaziland today - the Kingdom uses it to elect its parliamentarians by holding

regular parliamentary elections under a no-party dispensation.

The *Tinkhundla* system as it stands does have principles, though far from sufficient, upon which leaders in Swaziland are chosen. As previously explained, the system was, in fact designed to replace the Westminster model and to facilitate the integration of the traditional and the modern system of government. This provides a reason for its deficiency in embodying a complete spectrum of democratic principles. Leaving that aside, a full description of how the *Tinkhundla* actually functions reveals a system that has been operating purely for the basis of providing a semblance of public representation in Parliament. To reiterate, Parliamentary representatives are initially elected from specific constituencies or *Tinkhundla* through a three stage electoral process. There are a total of 55 constituencies (*Tinkhundla*) in the Kingdom of Swaziland, and each constituency is further divided into several chiefdoms. The first stage of the process entails public nominations of candidates usually between 4-10 in each chiefdom. The 2003 nominations took place on the 23-24 August, and the primary elections; the second stage in the process followed

a week later. Technically in this stage, each chiefdom chooses the candidate who will represent it at the *Tinkhundla*/constituency level, by secret ballot. The elected candidate in the primary elections is then expected to compete in the secondary elections, after they have been dutifully introduced to the constituents. The election process ends with those candidates receiving the most votes representing the constituency in the National Assembly.

The elected parliamentary representatives conclude the process by becoming members of the bicameral parliamentary system constituted by the National Assembly and the Senate. The National Assembly is constituted from the 55 members elected through the *Tinkhundla* and ten King's appointees. These members then elect 10 members to the Senate which consists of 30 members in total; the rest of which are appointed by the King. Public representation is also dutifully administered at the local level through a local council, also known as the *Inkundla* - the second level of government. The electoral system described above has been operative since 1993 and, including this year's elections, would then have covered the past three elections.

Prior to this, elections were conducted under a slightly different system. After the repeal of the Constitution in 1973, which had provided for a Westminster-style parliamentary democracy, Swaziland experienced a five year hiatus during which period no elections were held until the establishment of the Parliament Order in 1978¹. In the absence of any electoral laws, the Parliament Order was introduced without much opposition. It was this Order that ushered in the unique traditional electoral system commonly known as the *Tinkhundla*. Elections under this system were conducted on a non-party basis at the primary elections stage through public queuing - each voter wishing to voter for a particular nominee queued behind their favorite candidate who normally would be sitting at a gate, and the counting officer counted the voters as they each passed the gate². Winners of these elections would then form an Electoral College from which the House of Assembly was constituted. Their only responsibility, once elected was to select 40 members from the public to make up the Parliamentary numbers. The obvious shortcomings of this system, most notably the lack of a secret ballot, necessitated a review; and this resulted in the

establishment of the current system through a number of minor legislative amendments. These were the Parliament Order no.2 of 1992, the Election Order no.2 of 1992 and the Voters Registration Order no.3 of 1992³. Needless to say, the system currently in place has its own limitations; the most serious of which, given the variation in size of the constituencies, is that usually the candidate from the largest constituency wins the secondary elections. Moreover it lacks accountability, it is non participatory and it is the least competitive form of representation in both Parliament and government.

Election Administration

The Electoral Commission

The management of elections in Swaziland has been entrusted to the Election Office since 1992, and is under the charge of a chief Electoral Officer known as the Umphatsi Lukhetfo. He is responsible for the overall supervision of elections and preparations of all electoral documents and officers under his jurisdiction. The Umphatsi Lukhetfo, for example, is assisted by the Deputy Electoral Officer, whose position, at present, remains vacant. The chain of command then passes to a recently established

Secretariat, and finally, not necessarily in this order, electoral officers, registration officers, returning officers, presiding officers, counting officers and polling officers make up the organisational structure. There is one considerable difference from other regional electoral commissions and that is its top leadership is always appointed by the King and remains accountable to him. These are the Chief, Deputy Electoral Officers and the head of the Secretariat, who then appoint the rest of the officers from the ranks of the public service. The electoral and registration officers are mostly principal secretaries from various government ministries, and the presiding officers' professional background is that of school headmasters and government department heads.

The Elections Office underwent organisational restructuring during 2002 and earlier in 2003 to enable it to carry out its activities more efficiently. A number of propositions for this endeavour were formulated; for instance it was proposed that regional election officers be appointed with the responsibility for all the election arrangements including continuous voter registration, civic and voter education in all the four regions of the country. Officials responsible for such an undertaking have already been seconded from

¹ Lodge, T., Kadima, D., Pottie, D., eds., 2002

² *Ibid.*

³ *Ibid.*

the government ministries. As a legal requirement, there are, of course, other officers who assist in the conduct of elections with diverse responsibilities; from returning officers to presiding officers, and counting and polling officers. In addition to this, a Secretariat comprising three positions was created as part of the overhauling exercise to support the Chief Electoral Officer on a permanent basis. These are the Head of Secretariat for Elections, Elections Officer and the Information and Education Officer.

The capacities of the electoral officers are usually restricted by limited resources; and furthermore, relying on officers who are temporarily employed from the ranks of senior civil servants play a role in preventing the proper conduct of elections in Swaziland. As one would expect, the use of civil servants who are normally seconded three months prior to an election has its limitations. Essentially, the Electoral Office is manned through-out the five years before the elections by only two people; all plans and systems necessary for the conduct of elections are consequently structured by a limited workforce. In response to this obvious skills gap the Election Office offers a two-day training programme that begins once

the entire electoral staff has been recruited.

Voter Registration

About a quarter of the one million population of Swaziland are eligible to vote, and this is more or less reflected in the recently compiled Voters' Roll. The voters register had a total of 228,616 voters, of which 109,258 are males and 119,352 are females. Arranged by region, the figure stands as follows:⁴

Hhohho	61, 999
Lubombo	44, 424
Manzini	63, 638
Shiseweni	58, 555

The registration is open to any citizen of Swaziland who is the age of 18 and older. There are certain factors as specified under the Voters Registration Order of 1992 that may disqualify a voter. A person, for instance is not entitled to vote if he/she is judged insane. The registration is undertaken in each of the constituency where a voter is allowed to register in any one of the *Inkhundla*. It must be noted that to register in a constituency, a person must have resided in that constituency for a continuous period of three months.

Method of identifying potential voters differs in the rural and urban areas. In rural areas, chiefs with the assistance of other community elders verify the identity of registrants. In urban areas, a range of identity documents such as passports, national ID and birth certificates are presented by registrants as legitimate proof of Swazi nationality. Once all the particulars of a potential voter have been accordingly registered, a certificate of registration which is valid for five years from the date of registration is then issued to the registrant.

The registration process did experience some minor complications; for instance there were some delays due to staff shortages. A two week extension had to be given to the processes which had initially been allocated a month beginning 23 June ending 20 July 2003. As a result, the Elections office did not make the Voters' Roll available to the public on time for display at either regional administration offices, sub regional offices or the Electoral Officer's Office. In terms of the Voters Registration Order of 1992, the voters register is required to be open for public inspection to allow voters to verify it by objecting "to the inclusion, retention, restoration, addition or removal of any

⁴ Press Statement from the Elections office – 18th September 2003

name in the voters list”.⁵ The roll was only made accessible to the returning officer in each *Inkhundla* (constituency) and supposedly the public on 18 September 2003.

In addition, there have been reports that some people have registered in wrong places, and have been refused transfer, and, as a result many have instituted civil court action. Although according to the Elections Office, transfers have been made for those voters who applied for their names to be transferred to where they will be voting. Many of the court cases are still pending, and this is likely to lessen the voters’ presentation in certain constituencies. This indicates how challenging a task registration has been for the Elections Office. In general, however, reports that assessed the voters’ registration process, concluded that the overall registration process was implemented in an efficient manner by the Elections Office.

Voter Education

The Election Office instituted a nation wide voter education programme. It used the state’s radio and television facilities to advertise the elections. Pamphlets and booklets were also distributed informing

⁵ Report of the Commonwealth Expert Team on Voter Registration in Swaziland 14-18 July 2003

people on all the different stages of the elections; these ranged from the registration, nominations, campaigning to the voting phase for both primary and secondary elections. Pamphlets, now currently in use are meant to educate citizens in acknowledging the aspiring MPs as they campaign. The pamphlets also inform the populace of the processes in which the Elections Office is currently engaged. The Elections Office also used dramatisations in the communities to explain the election processes. They hired an acting group to carry out plays which depicted how to register, how to vote, who is eligible to vote and other necessary details.⁶ Several NGOs, however, charge that the content of their voter education is narrow and not well structured – ‘usually their programmes are not very detailed and do not engage voters that voting is about issues. It’s a process that’s clouded in secrecy and exclusion’.⁷ According to CANGO, the local media has reflected a populace that has not been adequately educated on election issues; insinuating that the Elections Office voter education programmes may not necessarily succeed in encouraging voters to vote in

⁶ Information given by Ms. Mawane Sithebe, Electoral officer at the Elections office

⁷ Comments from a member of CANGO (Coordinating Assembly of NGOs), Swaziland

large numbers and on appointing appropriate candidates.

Some NGOs announced that it has been difficult for them to conduct voter education, especially at the community level due to the sensitive nature of the exercise; as a result generally, voter education has been very scanty. For instance, civil society organisations played no role in educating and mobilising voters to register. For most of the local NGOs voter education has been a sporadic exercise as the Constitution has diverted attention from the elections⁸. Issues related to the elections have been sidelined and instead, NGOs through an Elections Support Network, have engaged people on constitutional issues as it provides a larger framework for instituting political reform. Some NGOs even advocated the postponement of the general elections until public consultations on the Draft Constitution had been completed. Generally it is felt among the NGO community that the provision of education on electoral rights and election related issues appears to be

⁸ Pro democracy groups in Swaziland have begun a process of drafting an “alternative constitution” to counter the current government draft. It’s been charged that the constitution process has been exclusionary in nature and consequently the draft constitution is not representative of all Swazis.

the responsibility of the Election Office.

Electioneering

Campaigning in Swaziland is allowed, save for a few restrictions placed on the process. It is only independent campaigning that is prohibited; meaning that permission to campaign and hold meetings of a political nature has to be sought from both the constituency headman and the Electoral Office. In addition, once permission has been obtained, candidates are chaperoned to their respective chiefdoms to campaign. This is done by the returning officer for the *Tinkhundla* who takes the candidates to various chiefdoms to meet the community and discuss issues of local concern with the community. Campaigning commenced on Monday 22 September and was completed on 17 October 2003, the day before the general elections.

Because candidates have no party platforms to follow, they usually woo voters with promises of clinics, roads and employment generating projects. Most of the recent campaign promises however, have focused largely on HIV/AIDS related issues. Female candidates for example have promised to establish a parliamentary section for children, orphans and one that will concentrate on HIV/AIDS matters.

Another popular subject reflected in the campaigns promises focuses on the concerns pro-democracy forces have voiced around the deterioration of the rule law in Swaziland. Essentially candidates localise their campaign to suit their constituency; in the end, due to the type of governance structures operating in Swaziland, candidate promises are restricted to issues around living conditions.

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REVIEW OF PREVIOUS ELECTIONS IN SWAZILAND

Khabele Matlosa
Electoral Institute of
Southern Africa

Introduction

As in all other African countries that experienced colonial rule, electoral politics came with the introduction of political independence. This is not surprising, for colonial rule, was, by its very nature an authoritarian form of governance which did not draw its legitimacy and credibility from the ballot (consensus and free choice) but rather from the bullet (coercion and imposition). Thus, like elsewhere in Anglophone Africa, the British colonial administration in Swaziland relied upon the twin strategies of repression (to coerce the indigenes into submission) and accommodation (to placate the traditional authorities to comply with colonial interests). This is the stark reality that confronted Swaziland under the British protection as it was then called, for Botswana, Lesotho and Swaziland were regarded as British Protectorates and as such not perceived as colonies in the strictest sense of the term. However, in terms of the actual *modus operandi* of the

distinction between a colony and a protectorate was more academic than real. The common denominator of the two was that elections were not a feature of the formation and removal of government during that time throughout the African continent. Swaziland was not an exception to this general rule of thumb which marked the continent's colonial history. Thus, it is fair to observe that elections are a fairly recent phenomenon in Africa, dating, as it were, only as far back as the 1960s.

Party Politics in Swaziland

At the heart of electoral politics is the existence of political parties that, in turn actively participate in the political system and in the process, contest for the control of state power.

According to the *Encyclopedia of Democracy*, "political parties are groups or organisations that seek to place candidates in office under a specific label. Parties are among the most important organisations in modern politics. In the contemporary world, they are nearly ubiquitous; *only a small percentage of states do without them*"¹ (my emphasis). Among the small percentage of states that do not operate a multiparty democracy is the Kingdom of Swaziland since the banning

of political parties through a Royal Proclamation of April 1973. This remains a daunting challenge for all the stakeholders that are involved in one way or the other in the governance arena of the country. It thus goes without saying that parties are part of many ingredients that make up a functioning democracy; conversely, where parties do not exist or are dysfunctional, a system in that particular country, as a rule, suffers severe democratic deficit as well a legitimacy crisis of rule. Political parties play a central role in the shaping and further development of a political system as a whole and the legislature in particular. A political party mobilises votes premised upon a particular type of political interest and ideology with the ultimate goal of assuming the reins of government and controlling state power. Thus, political parties aggregate and represent social interests, provide a structure for political participation, act as a training and recruitment ground for local and national leadership and political parties "contest and seek to win elections in order to manage government institutions."²

After contesting elections, political parties then represent their specific constituencies in the legislature and provide leadership for the effective

¹ *Encyclopedia of Democracy*, 1995, p. 925

² Policy Dialogue on Legislative Development, 2002

functioning of the executive organ of the state. In essence, therefore, political parties play an important role within the Parliament “in shaping the relationship between the executive and the legislature and in prioritising the legislative agenda.”³ Having made this point, it goes without saying, therefore, that a democratic governance system gains more strength through existence and activities of political parties both within and outside of the Parliament. Political parties influence the legislature in more ways than one, such as:

- Whether a legislature exists at all or has any meaningful powers;
- The relationship among political parties in the legislature;
- The legislature’s relationship with the executive; and
- The legislature’s internal organisation, stability and dynamics.⁴

In general, therefore, political parties are central not only to the way in which the executive and the legislature become more effective in driving the governance project, but also in terms of deepening democratic governance itself. To borrow, once again, from the *Encyclopedia of Democracy*, “students of political parties have commonly associated them

with democracy itself. Democracy, it is argued, is a system of competitive political parties. The competitive electoral context, in which several political parties organise the alternatives that face the voters, is what identifies contemporary democracy. *Non-party states are predominantly traditional dynasties (such as Saudi Arabia) and a few military regimes; their numbers have declined in recent years*”⁵ (emphasis mine).

Included among the declining species of non-party states is, obviously, the Kingdom of Swaziland dating as far back as the early 1970s. This suggests that Swaziland still faces an enormous challenge of transition from dynastic authoritarianism towards a firmly party-based democratic governance.

Noteworthy within the context of Swazi politics is that, in comparison with other parts of Africa, political parties emerged fairly late, for reasons that have not yet become clear to this author. We can only surmise that the preponderance of the traditional institutions and the hegemony of the royal power may have been so overwhelming that there has, over time, been little, if any, space for party political

activity in Swaziland. Whereas the general trend in Africa has been that political parties emerged as early as the 1910s with the African National Congress (ANC) in South Africa established in 1912, for instance, in Swaziland political parties were only established in the 1960s, about eight (8) years before political independence Swaziland, therefore has no record of decolonisation movements that mounted pressure upon colonial administration for political independence, which following decolonisation, then transformed into political parties (ruling and opposition). Lodge et al remind us that “*although it articulated political views, the Swazi Progressive Association (SPA) founded in 1929, did not transform itself into a political party until 1960 when it became the Swaziland Progressive Party (SPP), the country’s first political party. The career of its leader, J.J. Nquku, had included journalism and teaching. Dr. Ambrose P. Zwane who had completed his medical studies in South Africa, was the party’s secretary general. Having graduated from Fort Hare College (later Fort Hare University) and the University of Witwatersrand in South Africa, Zwane was no stranger to politics.*”⁶

³ *Ibid.*

⁴ <http://magnet.undp.org>

⁵ *Encyclopedia of Democracy*, 1995, p. 924

⁶ Lodge, et al, 2002, p. 323

To examine party development in more detail, typical of factional politics in much of the African continent, the Swaziland Progressive Party (SPP) experienced a split leading to the establishment of the Ngwane National Liberatory Congress (NNLC) in 1962 under the leadership of veteran politician, Dr. Ambrose Zwane. The NNLC, in some sense, adopted a fairly radical political posture espousing pan-Africanism and advocating for political independence of Swaziland under a constitutional monarchy embracing universal suffrage, as Lodge goes on to say. Another party established at approximately the same time was the liberal Swaziland Democratic party (SDP) a little on the right of the NNLC ideologically and “led by Simon Nxumalo and later by Dr. Allen Nxumalo. A handful of white liberals joined the SDP.”⁷

Let us not forget that the Swaziland political landscape has always been a contested terrain in which the two major protagonists have locked horns in a fierce conflict over the monopoly of the country’s political system namely the monarchy and the chieftainship, on the one hand and the modern political institutions such as political parties and civil society organisations on the

other. So, it came to pass that the monarchy would respond to the early proliferation of parties in Swaziland by establishing a counter-force in the form of the Imbokodvo National Movement (INM) in 1964, the same day of the pre-independence Legislative Council election and just four years before independence itself. Hatched in the palace, the INM was, and still is, the most conservative political party which essentially espouses traditionalism within which state power and the governance process is centralised in the monarch and implemented largely through the King’s scions. Although a latecomer in the political game in Swaziland, the INM quickly became not only a political force to reckon with, but also a dominant force that was able to exert its weight and entrench its hegemony within the political economy of the country since its formation to this day. As Lodge et al refresh our memories, “*thanks to its substantial resources and wide-ranging connections, the INM became a formidable force. In the pre-independence elections of 1964 and 1967 it won all seats in the Legislative Council. However, as more power became concentrated in the hands of the King, the role of political parties diminished.*”⁸

Political parties were effectively banned through a Proclamation by H.E. King Sobhuza II dated 12th April 1973 and duly made public by Attorney-General Mr. David Cohen on the 16 April 1973. The Proclamation prescribed, among other things, that:

- The Constitution of the Kingdom of Swaziland which commenced on the 6th September 1968 is hereby repealed;
- All political parties and similar bodies that cultivate and bring about disturbances and ill-feelings within the Nations are hereby dissolved and prohibited;
- No meetings of a political nature and no processions or demonstrations shall be held or take place in any public place unless with the prior written consent of the Commissioner of Police; and consent shall not be given if the Commissioner of Police has reason to believe that such meeting, procession or demonstration, is directly or indirectly related to political movements or their riotous assemblies which may disturb the peace or otherwise disturb the maintenance of law and order; and
- Any person who forms or attempts or conspires to form a political party or who organises or participates in any way in

⁷ *Ibid*

⁸ *Ibid*

any meeting, procession or demonstration in contravention of this decree shall be guilty of an offence and liable, on conviction, to imprisonment not exceeding six months.⁹

The 1973 Royal Proclamation outlined above was further affirmed and reinforced by Decree No. 2 of 2001, signed into law by King Mswati III. However, although generally political parties are banned and prohibited from actively engaging in politics in Swaziland, political formations that exist today in the country are:

- The Imbokodvo National Movement (INM);
- Ngwane National Liberatory Congress led by Obed Dlamini;
- Peoples' United Democratic Movement (PUDEMO) led by Mario Masuku;
- Swaziland National Front (SWANAFRO) led by Elmond Shongwe;
- Swaziland Progressive Party (SPP) led by J.J. Nquku;
- Swaziland United Front (SUF) led by Matsapa Shongwe

Despite the existence of the above parties, elections in Swaziland are not party based. The next section highlights the outcome of previous elections in

Swaziland as part of the overall backdrop to the forthcoming elections in October 2003.

Snapshots of Previous Elections

Swaziland organised and held its first Legislative Council elections on 23-25 June 1964 in which three (3) political parties took part namely (a) the INM; (b) the NNLC and (c) United Swaziland Association (USA). The latter was a political formation representing the interests of big business especially white settlers. According to Lodge et al, "the INM emerged victorious with a landslide majority of 85%. The NNLC came second scoring 12% and the ...USA... won all the seats allocated to whites" (2002:323). The INM "received 79 683 (85.5%) of votes on the National Roll (as opposed to the European Roll, on which the United Swaziland Association won all seats). The NNLC won 12.3 percent, the SDP 1.4 percent and the SPP ... only 0.7 percent."¹⁰ So, as we observed earlier on, the newly formed INM was able to win an election with a landslide majority and was thus comfortably ready for the pre-independence election contest. The pre-independence election was held on 19-20 April 1967. Contesting this election race were the following parties:

the INM, the NNLC, the SPP and a new party – the Swaziland United Front (SUF). The election was once again comfortably won by the INM which grabbed all the 24 parliamentary seats leaving the other contestants out in the cold, stranded and bewildered. The INM won a total valid votes of 191 160 (79.4%) and the NNLC managed to garner 48 744 votes (20.2%), while a few smaller parties together shared about 1000 votes. Given the serious deficiencies of the First-Past-The-Post (FPTP) electoral system that Swaziland operates, the INM won all the seats in parliament and the NNLC did not get even a single seat despite the fact that the party had the support of about 20% of the total votes. So it was that following this election, Swaziland was granted independence with the reins of state power firmly in the hands of the royalist INM.

The first election following independence was held on 16-17 May 1972 and a total of five (5) parties battled it out the control of state power namely the INM, the NNLC, the SPP, the SUF and a splinter group, the NNLC-Samketi. As would be expected flowing from the previous elections, the INM once again trounced the other parties securing 78.3 percent of the total valid votes and 21 out of 24 parliamentary seats. However, the unusual

⁹ Government of Swaziland, 1973

¹⁰ Rule, 1998, p. 2

happened this time round: the NNLC gave the INM the run for its money by claiming three seats. As Lodge et al put it poignantly despite the INM's landslide victory "the main opposition party, the NNLC, realised its dream of being represented in the National Assembly by winning the remaining three seats."¹¹ The NNLC won 18.2 percent of the total valid votes and three seats. The three NNLC candidates who won the votes in their constituencies were Zwane, Ngwenya and Masilela.¹² However, immediately following the election a major controversy erupted in which the citizenship of Thomas Ngwenya was seriously questioned precipitating a constitutional crisis that led not only to his deportation to South Africa, but King Sobhuza II found in this incident a good opportunity to throw the independence constitution out of the window and jettison multipartyism and thereby entrenching firmly aristocratic mode of governance. He then proceeded to declare a state of emergency and banned political parties. This culminated in the abolition of the independence constitution as outlined earlier – a status quo that prevails to this day.¹³

The next election was held on the 27 October 1978

under the new *Tinkhundla* system. As previously described, Swaziland is divided into forty (40) *Tinkhundla* "whose voters each had to elect two representatives to an electoral college. The two elected in each *indvuna inkhundla*. The Electoral College then elected 40 members of parliament from a list of 60 nominees. The 40 were complemented by a further 10 nominees of the King. The 50 people then elected 10 Senators, who in turn were complemented by another 10 nominees of the King."¹⁴ In this and the subsequent elections namely the 1983 election, the 1987 election, the 1993 election and the 1998 election all of which were conducted on the basis of the *Tinkhundla* system, no political parties contested the elections. However, the electoral process has been dominated by the aristocratic elite, further entrenching the hegemony of the monarchy and the chieftainship as it were. The latest election was held on the 27th October 1998 on the basis of the 1992 Elections Order which essentially entrenches further the *Tinkhundla* system. The table below depicts the number of voters registered in each of the four districts and the number of votes cast and the number of elected MPs. A total number of 119 845 (60% of registered voters) voters cast their vote

and according to Rule (1998) this number represented a paltry 30% of eligible voters. This suggests that voter apathy is rather high in Swaziland. Whereas the election returned 55 MPs the additional 10 MPs were appointed by the King.

Conclusion

Given the above record of electoral politics in Swaziland, it is evident that the country's political system is fraught with enormous problems of representation, inclusivity and consequently legitimacy of rule. The electoral system used in the country has (is still and will in the foreseeable future) continue to ensure the overbearing political hegemony of the royalist forces. Not only that; the electoral process itself also solidifies the dominance of only one force at the exclusion of other key forces in the governance process. Under these conditions, it is fairly easy to predict that even in the forthcoming election in October 2003, the royalist forces are bound to consolidate their unfettered hold on power. In a nutshell, there are no prospects for a vibrant electoral contest as other parties have called for the boycott of the process given their lack of confidence in the whole event

¹¹ *Ibid*, p. 328

¹² *Ibid*, p. 3

¹³ Lodge *et al.*, 2002; Rule, 1998.

¹⁴ Rule, 1998, p. 3

District	Reg. Voters	Votes Cast	% of Poll	MPs elected
Lubombo	37 609	20 564	54.7	11
Hhohho	57 198	17 340	65.3	14
Manzini	53 634	32 531	60.7	16
Shishelweni	50 004	29 410	58.8	14
Total	198 445	119 845	60.4	55

Source Rule, 1998

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ABOUT EISA

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

THE EISA RESEARCH TEAM

Dr. Khabele Matlosa is the Senior Advisor-Research Department.

Claude Kabemba, is a Programme Manager-Research Department.

Shumbana Karume, a Research Fellow-Research Department.

Wole Olaleye is a Research Fellow-Research Department.

Dr. Jackie Kalley the Senior Librarian and Publications Officer-Research Department.

Sydney Letsholo is a Research Assistant in the Department.

© The Electoral Institute of Southern Africa (EISA)
2nd Floor The Atrium 41 Stanley Ave Auckland Park · PO Box 740 Auckland Park 2006
Tel 27-11-4825495 Fax 27-11-4826163
Email publications@eisa.org.za URL <http://www.eisa.org.za>

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