



Institute for Security Studies

# SITUATION REPORT

## SWAZILAND'S NON-PARTY POLITICAL SYSTEM AND THE 2013 *TINKHUNDLA* ELECTIONS

### Breaking the SADC impasse?

The Kingdom of Swaziland is widely recognised as an absolute monarchy and a non-party state where executive authority lies in the king as the head of state, governing with his Advisory Council and traditional advisers.<sup>1</sup> The monarchical political system is a stark departure from the policy framework of the Southern African Development Community (SADC), which considers democracy and popular participation to be part of the imperatives of economic development and human security.<sup>2</sup> The Swaziland 2005 constitution, whose democratic legitimacy is contested because the constitution-making process was highly defective, effectively vests legislative power in the king, Mswati III, who can veto all legislation approved by parliament. This is a major weakness of the *tinkhundla* constituency model, since even an elected legislature cannot override the veto.<sup>3</sup>

Royalists have generally opposed calls for democratic change, using anti-terrorism and sedition legislation to detain and harass dissidents.<sup>4</sup>

In fact, royal opposition to multipartyism is so fervent that the minister of foreign affairs, Mathendele Dlamini, and the king's private secretary, Sam Mkhombe, were dismissed from their posts in 2011 for attempting to revive the once-ruling political party – Imbokodvo National Movement (INM) – to assuage calls for political reform.<sup>5</sup>

As Swaziland's 2013 *tinkhundla* elections approach, old debates have resurfaced about the intrinsic and substantive value of these elections to the popular choice of leadership and the consolidation of democratic governance, peace and political stability. In light of the country's deteriorating governance and human development standards, an election should not be an end in itself, but a means to societal transformation with regard to pluralistic politics and participatory governance.<sup>6</sup> Although Swaziland is classified as a lower-middle-income country, income distribution is highly skewed, with an estimated 70 per cent of the total population of one million living in abject poverty.<sup>7</sup> The agricultural sector plays a vital role in the sustenance of livelihoods, although 69,9 per cent of people living on land held in trust by the king are vulnerable to food insecurity.

Awareness has been growing of Swaziland's poor economic and political governance, particularly the weaknesses in the country's non-party *tinkhundla* political system. This system was initially created through the promulgation of the Establishment of the Parliament of Swaziland Order of 1978. Under this system, elections of public representatives to the House of Assembly take place in two phases. The first one entails the election of candidates through a public gathering at the village level under a local chief. For the second phase the candidates are elected within an *inkhundla* (the singular of *tinkhundla*).<sup>8</sup> Many of the development challenges facing Swaziland have been highlighted in various research reports preceding 2002, while donor support has been in decline since that date.<sup>9</sup> This has been attributed to donor anxieties regarding low government capacity and the poor implementation rate of development programmes; divergent ideas on governance issues and reform; and conditionalities built

into aid packages that are considered too stringent by the Swazi government.<sup>10</sup> Public dissatisfaction in 2012 has been exacerbated by the government's failure to heed demands from the unions for reduced royal expenditure and a pro-poor budget. As the country gears up for the next elections in 2013, government authorities have rejected calls by pro-democracy formations for the harmonisation of legal provisions that permit democratic political party organisation and contestation in elections. Against this backdrop, a repeat of the political polarity and violence preceding and subsequent to the 2008 elections cannot be ruled out. Equally, in future, there are likely to be increased acts of resistance against the *tinkhundla* political system.<sup>11</sup>

*Tinkhundla* elections can essentially be defined as 'organised certainty', since they reproduce the prevailing political status quo in Swaziland. The ruling regime enjoys an unchallenged monopoly over state resources, and elections have increasingly become arenas for competition over patronage and not policy.<sup>12</sup> This has underlined observers' historic criticism of Swazi elections. For example, the 2003 election observation report of the Commonwealth Expert Team (CET) questioned the elections' credibility because they resulted in 'a Parliament which does not have power', indicating a predictable reconfiguration of power because of the ban on political party participation. Similarly, most, if not all, external observer mission reports in 2008 underscored the need for political plurality and recommended that the government compromise on 'sections of the constitution that create conflict between government and civil society'.<sup>13</sup> The reports made specific mention of the lack of registration and participation of political parties in elections and governance structures that 'seems to undermine the legitimacy of the political process and also enabling unnecessary social and political conflict and unrest that endangers the stability of the state and the well-being of society'.<sup>14</sup> As it stands, only pro-royalist party-like entities such as Sive Siyinqaba are allowed to participate in elections, albeit on an individual basis. This basically leaves unchallenged the political and economic monopoly of the regime.

The three key demands of the pro-democracy groups in Swaziland, also flowing from previous elections, are direct representation, universal suffrage, and measures to guarantee the implementation of political rights and freedoms. While a complete overhaul of the system was not expected ahead of the 2013 polls because of the lack of a critical mass behind the pro-democracy movement, some change in the political status quo was expected. International calls for reform were anticipated and it was hoped that the Swazi government would be incentivised by economic imperatives to restore its credibility through demonstrating commitment to improving governance and development. Past critique of the dubious credibility of the 2008 elections was predicted to propel Swaziland to try

and comply with the wide spectrum of international and regional obligations relating to democratic governance to which it has acceded, but which it has not domesticated. The primacy of Swazi traditions over modern forms of democratic governance has featured most prominently, despite tacit commitments from the Swazi government to address the anomalies. But it remains questionable whether the government perceives demands for democratic values and their expression to be in the wider national interests or an implausible reality.

The lack of discernible multilateral pressure on Swaziland in the past has been ascribed to its relative geo-political insignificance; there have also been assumptions that external policy makers, including those in the SADC region, have acceded to the government's rejection of

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demands for democratic change. The exception was in 1996 when South Africa, Mozambique and Zimbabwe held an emergency meeting to press the king to institute a constitutional review process. On the ground, very few foreign embassies, if any, have attempted to connect with advocacy groups and/or the Swazi government. More recent and significant bilateral dialogue initiatives include the seemingly deadlocked negotiations on the R 2.4 billion-conditioned aid package from South Africa, initiated in August 2011.<sup>15</sup> This was to assist the Swaziland government, whose economy is deeply intertwined with that of South Africa, avert a liquidity crisis. The secondary objective was to help Swaziland improve on 'democracy, human rights and good governance, credible and effective leadership, and development of a strong civil society and respect for universal human rights and the rule of law'.<sup>16</sup> The current status of the agreement, its political premise and implementation modalities remain unclear. The Swazi government has mostly been reluctant to publicly engage on the matter, or acknowledge the governance and political dimensions to its liquidity crisis, which then makes economic reform as challenging as outright political reform.

While the electoral system alone is not a panacea for addressing political and governance problems in Swaziland, it does bring to the fore debates on the degree of institutionalisation of democratic governance in the country and SADC obligations in this respect. What are the regional

requirements for democratic elections and how does the *tinkhundla* system measure up? To what extent can the *tinkhundla* system be a means through which democracy is achieved? This situation report focuses on the interplay between the *tinkhundla* political system and Swaziland's regional and international obligations on democracy and elections. It highlights some of the laws in the country's 2005 constitution that hinder political participation in electoral processes and the prospects for improving the protection of fundamental freedoms and human rights, and reforming the country's political system in order to embrace the ideals of democracy and good governance. It then examines the role of SADC in this regard.

## Swaziland's elections tend to promote pro-regime parliaments, thus maintaining the patronage system of the state

The first section of the report provides an overview of the Swazi political landscape, while the second discusses the *tinkhundla* political model and reflects on the feasibility of the system and its institutions to become potential catalysts for political liberalisation. The third section unpacks the domestic discourse on political party participation in elections. The fourth section deals with relevant binding regional and international protocols that Swaziland is signatory to and how these can help in the country's political liberalisation process. The last section recommends some of the measures that SADC can take to contribute to Swaziland's political inclusivity, human rights promotion and socio-economic progress in the short to longer terms.

### SWAZILAND'S POLITICAL LANDSCAPE

Swaziland became a constitutional monarchy at independence in September 1968 under King Sobhuza II and held its first post-independence elections in 1972. The country's dual system of governance – the parliamentary and the traditional system, based on the *tinkhundla* – run in parallel. These two systems have deeply shaped the present pattern of national political processes, including electoral laws and development policies. On 12 April 1973 King Sobhuza abrogated the constitution and transformed himself from a formal constitutional monarch, with relatively broad executive powers, into an absolute executive monarch.<sup>17</sup> The institutional legacies of the non-party state

were established in 1973 by this proclamation; this system continues under the leadership of the current king, Mswati III. As the ruling monarch, King Mswati, advised by the *Liqoqo* (Advisory Council), appoints the prime minister (currently Barnabas Sibusiso Dlamini), who is the head of government, from the legislature.<sup>18</sup> The political influence of the Advisory Council is paramount, especially in terms of the struggle for power in the royal family. Established in 1983 by a decree, it is powerful and highly influential. It consists of traditionalists, including some long-time government functionaries and associates of King Sobhuza II.<sup>19</sup>

Constitutional provisions allow King Mswati to select the cabinet, two-thirds of the senate, ten of 65 members of the House of Assembly, many senior civil servants, the chief justice and other justices of the superior courts, members of commissions established by the constitution, and the heads of government offices. Legislation passed by parliament requires the king's consent to become law. King Mswati appoints the cabinet from among members of parliament (MPs), on the advice of the prime minister. This partly explains the perception that the House of Assembly has more political legitimacy than the Senate, given that the lower house is elected while the upper house is appointed.

From the early pre-independence period there has been resistance to the royal hegemony, which became more active in the 1970s. Baloro refers to the activism in the years preceding independence of political parties formed by the 'Swazi petite bourgeoisie', whose preoccupation was to secure a constitutional monarchy in which the powers of the king would be substantially diminished.<sup>20</sup> Generally, there are two overarching political views on democracy: the one that is underscored by the entrenchment of the powers and prestige of the monarchy, and the other based on the idea of popular sovereignty. The latter will not exist until people have a choice among different political parties.

The idea that Swaziland is a justified exception to the political plurality concept is premised on presumptions that its traditional and cultural structures are incompatible with or alien to modern practices of democracy. A similar argument has been made in Arab authoritarian regimes, specifically that Islamism contradicts and is inhospitable to democratic forms of government. In both cases, the practice of frequent parliamentary elections leads to a decrease in their democratic value in society. Lust-Okar has mostly observed this in parliaments that lack control over policy making, such that elections serve as arenas for competition over access to the state's resources, reducing them to 'competitive electioneering'. It is in this context that Swaziland's elections tend to promote pro-regime parliaments, thus maintaining the patronage system of the state.<sup>21</sup>

Between 1973 and 1996 agitations for democratic reforms from civil society interest groups were on the increase. Initially they were given impetus by the 1973 decree that banished party political activity, in

effect multipartyism, and by default strengthened labour mobilisation. In recent years the country's governance landscape has been characterised by a lack of transparency and accountability, factors that are exacerbated by the repression of political opposition and civil society. Ahead of elections in 2013, the government has failed to address the concerns of pro-democracy activists about popular sovereignty and political equality.

The Swazi political profile in 2012 comprises labour unions, political formations and underground movements, with a long history of collaboration.<sup>22</sup> These include, among others:

- The Ngwane National Liberatory Congress (NNLC), formed on 12 April 1963 as a pan-Africanist party
- The People's United Democratic Movement (PUDEMO) and its youth wing, the Swaziland Youth Congress, currently listed as 'specified entities' under the Suppression of Terrorism Act<sup>23</sup>
- The Swaziland People's Liberation Army, also listed under the Suppression of Terrorism Act
- The Swaziland Communist Party and Swaziland National Progressive Party
- Sive Siyinqaba, established on 2 April 1996 as a pro-monarchy group, which includes government officials, with some currently serving as MPs
- The Swazi Federation of Trade Unions (SFTU), whose mandate accommodates human, political and economic rights
- The Trade Union Congress of Swaziland (TUCOSWA), a union amalgamation
- The Swaziland Coalition of Concerned Civic Organisations (SCCCO), which was launched on 2 January 2003 by SFTU, churches, the Law Society, the Coordinating Assembly of NGOs, associations and unions
- Civil society organisations: the National Constituent Assembly and Lawyers for Human Rights
- The Inhlava Party (previously the Inhlava Forum), established in 2006, with MPs in its membership

The country's political society can be divided into four different groupings based on royal/traditional, political and class cleavages that include progressives, radical democrats, ultra-conservatives, and traditional moderates.

- *Progressives* believe that political parties can co-exist with the monarchy, and thus support a move towards a constitutional monarchy buttressed by a parliamentary system (following the Lesotho model) with greater political and economic rights. Proponents include the SFTU, churches and some political formations.
- *Radical democrats* comprise political formations mostly frustrated with the lack of political will to reform who

reject the monarchical political status quo and call for radical changes to government based on the concept of popular sovereignty.

- *Ultra-conservatives* include chiefs, traditional leaders, government officials and members of the *Liqoqo* who view the monarchy as an exclusive preserve, without compromise. They are very nationalistic, and promote and support the maintenance of the *tinkhundla* system.
- *Traditional moderates*, while supporting the legitimacy of the *tinkhundla* system, support minimal, albeit gradual, political change and are open to political dialogue. Mostly their voice is muted, fearing a backlash from the royal family.

Ultra-conservatives, also referred to as traditionalists, tend to preserve and entrench the Sobhuza conception of the rule and supreme reign of the monarchy. Traditional moderates, on the other hand, view absolutism as unsustainable in the longer term and even dangerous for the continued existence of the monarchy itself, hence the imperative to respond to modern democratic processes. But the existence of subjective uncertainty among the population regarding political change also creates a degree of apathy, consequently leading to some ambivalence in challenging the monarchical order.

Despite the tussle between monarchism and the demands of democracy, there is still implicit support for both the monarchy and its *tinkhundla* political system among the majority of the population, predominantly in rural areas. This implicit support needs to be further interrogated. Past research highlighting the pillars of support for the regime in Swaziland, while useful, may also undermine the country's history and the value of the traditional institution as the epitome of Swati values and identity. But from the research, it is worth highlighting the following:

- *Traditional control of rural governance institutions:* By traditional law and custom, chiefs (appointed by the king) have the power to decide who lives in the chiefdom, and evictions due to internal conflicts, alleged criminal activity or opposition to the chief have occurred. Traditional courts generally serve the chiefs. Although the courts have limited civil and criminal jurisdiction, they are authorised to impose fines of up to 100 emalangeni and prison sentences of up to 12 months.<sup>24</sup> While these rulings can be appealed in the High Court or the court can allow them to be heard by the Commission on Human Rights and Public Administration established in 2009, the crown can overrule the commission.
- *Biased discourse on culture and resistance:* Royal controls, checks and balances have mostly stifled political discourse. Questioning or criticising the monarchy or related structures is equated to being 'unSwazi'.



- *Control of the Tibiyo TakaNgwane, the economic institution that accompanies the tinkhundla*: This is the closed, largely secretive, mega entity that accumulates wealth for the monarchy. Through it, patronage and nepotism are believed to be rewarded.<sup>25</sup>

## THE TINKHUNDLA ELECTORAL SYSTEM, 1978–2013

Questions regarding the character of Swaziland's *tinkhundla* system concern its utility in promoting democracy and the degree to which it is a form of institutional electoral engineering benefiting the incumbent by giving it legitimacy while invalidating the opposition. This is because the *tinkhundla* system did not originally constitute part of the

### Restrictions on political parties sending representatives to the House of Assembly remain

electoral system, but was established in a rash manner. The post-independence elections of 1972 were conducted according to a bloc vote system as provided for by the 1968 Swaziland Independence Order.<sup>26</sup> Basically, these elections were based on a multiparty system, with the participation of the monarchist party, i.e. the INM, and with the NNLC as the opposition. The country was delimited/divided into eight constituencies, from which three members were selected to the House of Assembly. The three candidates in each constituency with the highest votes won the legislative seats. The growing support for the NNLC in the 1972 elections, which gave it three seats in the legislature, alarmed King Sobhuza and the leading royals.<sup>27</sup> This led to the banning of multipartyism through Proclamation No. 7 of 12 April 1973, which outlawed political party-based elections. This denoted royal recognition of the significance of parties in offering and structuring electoral choice, on the one hand, and its fear of the monarchy losing power, on the other. Both attitudes survive to date.

The *tinkhundla* system therefore was first used in the 1978 House of Assembly elections where chiefdoms were grouped together, as determined by the king, to make 40 *tinkhundla* (constituencies).<sup>28</sup> The king created an Electoral Committee and appointed its members to supervise the elections. Voters were not registered, the ballot was not secret and the voting process was public in the presence of the chiefs. The method was that voters would elect members to an Electoral College (passing through a gate designated according to their candidate of choice), and

each *inkhundla* would send the two winning candidates to the House of Assembly. The king could overturn election outcomes at his discretion. He further nominated ten additional members directly to the House of Assembly.

The 1992 elections were markedly different, for two reasons. Firstly, changes made to the electoral system led to an influx of donor aid into the country and increased outside interest in the elections. Secondly, the secrecy of the ballot was restored, voter registration was introduced, and the Electoral Committee was replaced with a chief electoral officer and a deputy appointed by and answerable to the king. This forms the genesis of the current two-step process of primary and secondary *tinkhundla* elections to be used in the 2013 election of members of the House of Assembly using the first-past-the-post system for a five-year term, as in the 2008 elections. The first phase constitutes the nomination of candidates in public meetings in each *inkhundla*, who compete with one another. The second phase sees candidates competing and campaigning for election as *inkhundla* representatives to the House of Assembly on election day.<sup>29</sup> Another important development was the promulgation of the 2005 constitution, which established the Electoral Boundaries Commission as the election management body.

Restrictions on political parties sending representatives to the House of Assembly remain and candidates will run only as individuals and not as representatives of parties or groupings. Critically, what also remains is the fact that participation in the traditional system of governance and politics is predominantly done through chiefdoms. Chiefs continue to exist as custodians of traditional law and custom, report directly to the king, and are responsible for the day-to-day running of their chiefdoms and for maintaining law and order.<sup>30</sup>

## POST-2008 TINKHUNDLA ELECTORAL SYSTEM EVALUATION

Although the functional role of parties is contingent on the nature of a particular political system and their institutionalisation, various studies underscore their centrality in a democratic system. This includes the aggregation of political interests; giving voice and articulation to the interests of the electorate; providing a policy basis and link to the representational process; offering an efficient mechanism for organising interests, cooperation and oversight among individual legislators; as agents in negotiating public policy in the legislature; and ensuring accountability, among others.<sup>31</sup> Paradoxically, the notion of *tinkhundla* was to fulfil some of the aforementioned aspects of pluralism by making them 'centres for community development' planned and implemented by the people living in those centres under the leadership of their respective chiefs.<sup>32</sup> In reality, political participation in the

*tinkhundla* system is mediated by the chiefdoms to which voters owe allegiance.

Some of the major deficiencies of the *tinkhundla* electoral system, particularly from the 2008 elections that followed the promulgation of a new constitution, highlighted the need to expand the franchise and increase people's political and democratic rights.<sup>33</sup> A number of ambiguities in the constitution on civic and human rights and the lack of a political culture conducive to institutionalising democratic governance were largely to blame. How the *tinkhundla* electoral model is linked to other fundamental rights and their promotion is inconsistent at best. The following irregularities in both law and practice can be highlighted:<sup>34</sup>

- *Freedom of expression, which includes freedom of the press and other media:* Although guaranteed by section 24 of the Constitution, the king may waive these rights at his discretion. The government does circumscribe these rights, particularly in cases of criticism of the monarch that is considered seditious. The law empowers the government to ban publications if they are deemed 'prejudicial or potentially prejudicial to the interests of defence, public safety, public order, public morality, or public health'. This is typified by habitual self-censorship on the part of the media especially concerning political issues or the royal family.<sup>35</sup> This freedom is also restricted by discretionary application of the 2008 Suppression of Terrorism Act.<sup>36</sup> Moreover, there is no legislation that provides for an express right of citizens to access information held by the state.
- *The freedom of association clause:* This is regulated inconsistently. While the law requires police consent to hold public meetings, marches or demonstrations, authorities have the discretion to withhold permission for meetings believed to be sponsored by political affiliations.
- *For political parties,* the constitution provides for *freedom of association*, but does not categorically address how political parties can operate and contest elections. The constitution underlines that candidacy for public office is based on individual merit, thereby blocking competition based on political party affiliation. Political organisations face resistance from chiefs in holding *tinkhundla* meetings, since they have to obtain permission from the regional authorities.
- *The Freedom of Association and Protection of the Right to Organise Convention* is undermined by the selective application of the 1963 Public Order Act and the 2008 Suppression of Terrorism Act, which are used to justify the use of pre-emptive and violent force by police and security forces against peaceful demonstrations.<sup>37</sup>

Election observation missions accredited by the Electoral Boundaries Commission in 2008 comprised national teams

from Botswana, Zimbabwe and Zambia; and eight external missions, i.e. the African Union (AU), the Electoral Institute of Southern Africa, the CET, the Pan African Parliament, the US embassy, SADC, the SADC Electoral Commissioners' Forum and the Japanese embassy. The consensus among most teams was that the elections failed to meet regional and international standards.<sup>38</sup> Various legal, procedural, and human rights-related violations and deficiencies inherent in the *tinkhundla* model were flagged, including:

- *Lack of respect for political rights, specifically the right to take part in a government:* banned political parties were not allowed to register or sponsor candidates of their choice.

## There is a lack of meaningful choice between different parties

- *Unacceptable administration measures:* although ballots were cast in secrecy, they were traced by registration number to voters. Some citizens were reportedly advised that if they did not register to vote, they would no longer receive government services.
- *The lack of the principles of legitimacy and inclusivity in the formation of a government:* the *tinkhundla* system is predisposed to producing a minority or monolithic government, limiting broad representation of different political forces in the legislature.
- *The lack of the right of citizens to change their government:* there is a lack of meaningful choice between different parties, as would be manifested in party politics and unrestrained political participation.
- *A system that greatly favours incumbent candidates:* since candidates campaign on individual merit, the incumbent is likely to convince voters of his/her capacity to deliver services to them. Normally, these are *tinkhundla* proponents. Parochial concerns rather than national ones have mostly dominated successive Houses of Assembly.<sup>39</sup>
- *The propensity to bias and manipulation:* cases in point included the screening of candidates at the local level, which ensures that the majority of the nominated candidates who run for elections are sympathetic to the royal structures; and the bribing of voters with food, entertainment, money and public celebrations, as well as the use of threats or intimidation. Voters are not driven by partisan loyalties and they do not necessarily believe that the candidates will make any real difference if voted to power.<sup>40</sup>

- *Limited impact on government policy and administration:* the model produces pro-regime parliaments and fails to produce a genuine and reasonably effective parliamentary opposition. In fact, it can be argued that the 2003 and the 2008 elections produced little, if any, parliamentary opposition.

## POLARISED DEBATE ON MULTIPARTYISM

Mzizi has emphasised the need for multifarious debate on the parameters for change in Swaziland, particularly the role of tradition in Swazi society, the balance between democracy and monarchism, and ways of defining the operational mechanisms for representative dialogue.<sup>41</sup> The nature of political dialogue in Swaziland, specifically the debate on inclusive democracy, has historically been characterised by a campaign promoting tradition and its supremacy. From the 1990 models of national dialogues – the so-called ‘People’s Parliament’ convened by King Mswati to discuss the *tinkhundla* system in view of its review – the commitment to appreciating inputs from civil society groups by royalist structures has been in question. A case in point is the Constitution Review Committee (CRC), whose chairman was reported to have declared its findings four months preceding the completion of its hearings. The committee concluded that ‘an overwhelming majority of the nation recommends that political parties must remain banned. They do not want political parties in the kingdom’.<sup>42</sup> The current inclination to defend the *tinkhundla* system originated from the belief that the Swazi mass position on political parties has already been ascertained through consultations flowing from the 1992 Tinkhundla Review Commission and the 1996 CRC. The CRC conclusions reinforced those in 1992, adding that the minority that recommends that political parties must be unbanned was an insignificant one.

King Mswati appointed a Constitution Drafting Committee of 15 members in December 2001. Political opposition perceived this as an attempt to delay a transition to democracy, because amid the drafting of the new constitution the government authorised passage of the Internal Security Act of June 2002 that stipulated harsh penalties for participation in political activities. In November 2003 the Constitution Drafting Committee presented the draft constitution to the king. It was promulgated in July 2005 after some minor changes and came into effect in February 2006. After nine years of planning the final product was not substantively different. The power of the king in every sphere of governance was maintained, except for the removal of his right to govern by decree. The new constitution also saw the addition of an extensive Bill of Rights. Measures to improve the representation of women in parliament were also included. The constitution, however,

did not mention political parties at all and subsequently pro-democracy organisations universally rejected the promulgated constitution.

With respect to the omission of political plurality, the intention of the drafters of the constitution was either deliberate or based on an implicit understanding that the constitution would be amended in due course.<sup>43</sup> Even the latter logic is relatively questionable, since the omission poses undue limitations on people’s right to freely choose their representatives, in violation of Articles 25 and 84 of the same constitution. Indeed, at the polls, voters could simply exercise their right to choose between either an independent candidate or a political party representative. The inclusion of the clause guaranteeing freedom of association therefore smacks of ambiguity and uncertainty about political party participation in Swazi politics. An argument made by Swazi government officials is that despite laws allowing for and regulating the registration and functioning of political parties, political formations exist and operate in the country, as enshrined in section 58(1) of the constitution. Parties like Sibahle-Sije and the National Liberation Conference are said to be ‘represented’ in parliament, having fielded independent candidates in previous elections on individual and not party tickets.

The lack of land ownership rights for rural populations and general economic insecurity further restrict political participation.<sup>44</sup> Because the majority of the population resides in rural areas directly controlled by chiefs, many warn that the current political environment and dispensation are not ripe for initiating dialogue free of real and perceived political interference. A major hindrance to soliciting impartial rural political input is the land tenure system, whereby the Swazi National Land, constituting about 60 per cent of the total land area, is held in trust by the king, and is controlled and allocated by chiefs according to traditional arrangements.<sup>45</sup> Of the combined total of Swazi National Land purchased, approximately 75 per cent is controlled by chiefs, 9 per cent by the Ministry of Agriculture and Cooperatives, 4 per cent by Tibiyo and 3 per cent by the National Trust Commission, while the remaining 9 per cent is leased. The efficacy of traditional dialogue mechanisms like the Sibaya or the Swazi National Council should therefore be measured in this context.

The Sibaya is provided for by the constitution to serve as a mechanism for civic-government engagements. Under Chapter XIV of the constitution, which defines the roles of traditional institutions, the Sibaya is described as the highest policy and advisory council (Libandla) of the nation. It is constituted by *bantfwabenkhosi* (princes and princesses), the *tikhulu* (chiefs) of the realm and all adult citizens, gathered at the official residence of the *ndlovukazi* (queen mother) under the chairmanship of the *iNgwenyama*, who may delegate this function to any official. The meetings can be convened annually or intermediately ‘on pressing

and controversial national issues'.<sup>46</sup> The mechanism has been condemned as superficial, unrepresentative, and counterproductive, since participation and discussions are pre-empted by government representatives coordinating and choreographing its deliberations. Individuals expressing differing viewpoints are known to have been immediately classified as enemies and their privileges invalidated in the process.<sup>47</sup> The utility of the Sibaya in its current form may therefore be superficial and negligible in debates about political pluralism and nation building. Issues of inequality and subjective views on democratic values and human rights held by the public are mostly discussed within a rigid framework.<sup>48</sup>

## PRO-DEMOCRACY NETWORKS AND COLLECTIVE ACTION

Various organised pro-democracy networks in the country have emerged in recent years, the older ones being the SCCCO, the Coordinating Assembly of NGOs and the Swaziland United Democratic Front (SUDF). The Swaziland Democracy Campaign (SDC) was launched in 2010 with South African union solidarity partners and serves as an external lobby mechanism, while the Swaziland Democracy Movement (SDM), which evolved from the SUDF in 2008, is domestically oriented. Because of its heterogeneity, with the participation of various labour unions, associations and political formations, the SDM is both organised and informal, and can be oriented towards the broader goal of democratising the political system, although some entities aim at specific and narrow policy reforms.<sup>49</sup> The various networks have embarked on a number of dialogue processes, i.e. 'talks about talks', which sought to define the mechanisms for inclusive civil society–government dialogue; scenario planning, which discussed the country's future political and economic governance and its requirements; and the Mass Mobilisation Campaign, which addressed the imperative of the SDC building critical mass across society.

The movement's reform campaigns have included calls for sanctions on and cultural boycotts of Swaziland. These, however, have lacked traction, often because of internal disputes about the strategies to be employed and insufficient international support. More elaborated proposals include the Manzini Declaration/Sidla Inhloko produced on 18 July 2009 that presented political reform demands and listed successive events that would lead to a multiparty democracy; and the Swaziland Civil Society Indicative Transition Plan, which detailed a vision for a political transition.<sup>50</sup> The documents envisaged a negotiated transition comprising a national convention facilitated by SADC or some other agreed negotiator/guarantor; the establishment of an inclusive transitional authority; constitutional reform; the holding of multiparty elections;

and the establishment of a new government. The plan advocated a constitutional monarchy in which the Swazi monarchy 'does not wield any significant executive powers'. It referred to 'the failure of the Tinkhundla experiments' and described the *tinkhundla* system as being the bedrock of the Swazi system of autocratic governance devoid of accountability; as a tool for entrenching economic mismanagement and corruption, poverty and inequalities; as perpetuating the systematic exclusion of women from all socio-economic and political institutions; and as causing the continuous closure of political space and the criminalisation of public assembly through the Sedition and Subversives Activities Act of 1938, the Public Order Act of 1963 and the Suppression of Terrorism Act of 2008.<sup>51</sup>

The transitional plan was a detailed and useful blueprint for reform that could be revisited at an appropriate political interval

While the plan recognised 'that [the] majority of the Swazis would not readily accept a transitional arrangement in a complete absence of the monarchy', it detailed four components of the transition: (1) a national convention; (2) the establishment of a transitional authority; (3) constitutional and legal reforms; and (4) the holding of multiparty elections leading to the establishment of a new government. The national convention would create a representative transitional authority with a less than two-year life span leading to free and fair multiparty elections. As such, the interim authority would usher in a constitution reform process.<sup>52</sup> Each of these components foresaw an inextricable role for SADC mediation and dialogue facilitation.

The transitional plan was a detailed and useful blueprint for reform that could be revisited at an appropriate political interval. But the rhetoric of revolution or government overthrow prior to the expiration of its mandate could be seen as seditious or even an act of treason in terms of current legislation. Other significant flaws were procedural, for instance, considerations relating to the review of the constitution could be overlooked. Ordinarily, a joint sitting of parliament and/or a national referendum can make general amendments to the constitution. Entrenched clauses can only be amended by a two-thirds majority of a joint sitting of parliament, while especially entrenched clauses require a three-quarters majority and the approval of a national referendum.<sup>53</sup> However, the king has the right



not only to assent to bills, but also to withhold his consent. These include bills amending the constitution. Moreover, should the government propose a referendum on political parties in the near term, would a rejection of this not be perceived as disingenuous? An apparent limitation in the transitional document lay in its own self-proclamations, in that it inferred a process in motion (the use of ‘transition’) in terms of which the idea of reform was assumed to be agreeable to the leadership. The pro-democracy groups had previously mooted a memorandum of understanding between the government and civil society to detail a consensus proposal. But it is unlikely to happen, especially if a transition is articulated as a *fait accompli*. What happens to traditional leaders and *tinkhundla* structures during the mooted transitional period was also undefined.

Moreover, the move toward an election boycott

## The boycott failed to remove the veneer of legitimacy of the government

campaign has not been widely shared, and otherwise reflects political expediency. This may explain the lack of details on whether the objective of the boycott was to enforce political concessions or wholly delegitimise the elections. There has been a difficult balancing out of conflicting demands within the SDM, coupled with limited broad-based public support for political system reform, especially in rural areas. The boycott strategy itself could become counterproductive, given misconceptions of the strategy and its being seen as obstructionist. Indeed, PUDEMO’s boycott drive in 2008 suffered from this, was characterised by violence and eventually led to the organisation’s banning through the 2008 Suppression of Terrorism Act.

The boycott also failed to remove the veneer of legitimacy of the government and did not much affect perceived support on the ground for the *tinkhundla* political structure. While choosing to boycott elections guarantees maintenance of the status quo as well as victory for the ruling political/monarchy regime, electoral boycotts can only have an effect if they interact with other more important contextual factors.<sup>54</sup> The decision not to participate in elections can often create frustration and damaging internal tension. In fact, the TUCOSWA merger may be problematic in future since the two central unions (the Swazi Federation of Labour and the SFTU) have a history of rivalry.<sup>55</sup> Any failure by these groups to use boycotts effectively will without doubt work to the advantage of the government. The challenge is how best to challenge *tinkhundla* elections’ lack of democratisation from within. The significance of

these pro-democracy networks in collective action cannot be denied, however.

## INTERNATIONAL AND REGIONAL DIMENSIONS OF THE TINKHUNDLA SYSTEM

SADC characterises good governance and democratic systems to include constitutionalism, legitimacy, accountability, transparency, participation by civil society and the rule of law.<sup>56</sup> The interrelated challenges of establishing good governance with an enduring system of democracy in Swaziland are rooted in history, law and tradition. That the Swazi government’s *tinkhundla* version of tradition and democracy fails to incorporate the demands and norms of modern democratic governance, and that the government is party to numerous international conventions, declarations and treaties aimed at promoting democracy and protecting human rights are not new. According to the United Nations (UN) Universal Periodic Review report, Swaziland needs support, *inter alia*, in the alignment of national laws with international human rights conventions and the constitution.<sup>57</sup> As the obligations are not self-executing, the question concerns the practical choices for their domestication for the Swazi government and the responsibilities of international and regional bodies in this regard. The legal challenge has been that neither universal nor regional human rights instruments contain any formal obligation to enact electoral legislation.

The AU Charter on Democracy, Elections and Governance (ACDEG), which came into force in January 2012, does change the prevailing status quo with its established legally binding framework on democracy; human rights; and the conduct of transparent, free and fair elections. With respect to democratic culture and electoral practice, it underlines the strengthening of political pluralism and tolerance, and the recognition of the role, rights and responsibilities of legally constituted political parties, including opposition political parties, which should be given a status under national law.<sup>58</sup> But AU members must accede to the charter to give practical effect to this commitment. Swaziland signed the charter in 2008, although the move is symbolic because it has not ratified it, thus nullifying prospects for accession and domestication.<sup>59</sup>

On the international front, countries are expected to internalise and domesticate core UN human rights instruments. Swaziland’s obligations include those laid down in:

- The International Covenant on Civil and Political Rights, which the country acceded to on 26 June 2004;
- The Convention on the Elimination of All Forms of Discrimination against Women, acceded to on 25 April 2004

- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, acceded to on 25 April 2004
- The International Covenant on Economic, Social and Cultural Rights, acceded to on 26 June 2004
- Eight core International Labour Organisations (ILO) conventions ratified by Swaziland<sup>60</sup>

## REGIONAL INSTRUMENTS AND DEMOCRATISATION IN SWAZILAND

The debate over which political systems should be regarded as democratic has largely been settled in the AU and SADC instruments to which Swaziland is a state party. In the context of elections and democratic governance, these include the AU Constitutive Act; the African Charter on Human and People's Rights acceded to by Swaziland on 15 September 1995, which contains explicit guarantees of free political participation without interference (Articles 2, 8, 10, 13 and 19); the Organisation of African Unity/ AU Declaration on the Principles Governing Democratic Elections in Africa; and the ACDEG, which came into force in February 2012. In several of its decisions on Swaziland, the African Commission has mostly condemned the country's political/electoral system, emphasising the interconnectedness of the right of citizens to participate in the government of their country and freedom of association as guaranteed under its articles. Accordingly, the Swazi ban on political parties constitutes a violation of the African Charter on Human and People's Rights.<sup>61</sup>

As a member of SADC and a member state holding elections, Swaziland is required to take 'necessary measures to ensure the implementation of the above principles, in accordance with the constitutional processes of the country'. It is bound by:

- *The SADC Treaty*, which states that 'human rights, democracy and the rule of law' are principles guiding the acts of SADC member states (Article 4); and commits member states to 'promote common political values, systems and other shared values which are transmitted through institutions, which are democratic, legitimate and effective' (Article 5).
- *The SADC Protocol on Politics, Defence and Security Cooperation*, which underscores 'the development of democratic institutions and practices in state parties and observance of universal human rights as provided for in UN and AU conventions', and guides the mandate of SADC electoral observation missions.
- *The Strategic Indicative Plan for the Organ (SIPO) on Politics, Defence and Security Cooperation (OPDSC) 2010–2015*, reflecting the implementation framework of the SADC Protocol, which emphasises political pluralism for democratic consolidation in the region.

- The principles governing democratic elections aim at enhancing the transparency and credibility of elections and democratic governance, as well as ensuring the acceptance of election results by all contesting parties.
- *The 2004 Declaration on Principles and Guidelines Governing Democratic Elections*, which provides the principles for conducting democratic elections, including the full participation of citizens in the political process; freedom of association; political tolerance; equal opportunity for all political parties to access state media; equal opportunity to exercise the right to vote and be voted for; and the independence of the judiciary and the impartiality of electoral institutions.<sup>62</sup>

In several of its decisions on Swaziland, the African Commission has mostly condemned the country's political/electoral system

Progress on issues relating to political governance and the observation of elections should take place through the SADC Electoral Advisory Council (SEAC) and the Regional Early Warning Centre, which should ideally provide an oversight and monitoring role in the period between elections.

## Enabling SADC structures

- *SADC National Committees (SNCs)*: SNCs are supposed to serve as the interface between member states and the SADC Secretariat in Gaborone. Despite scepticism over their functionality, SNCs, comprising government, civil society organisations and the private sector, could support multi-stakeholder policy input at the national level, as well as in the formulation of SADC policies and strategies. National steering committees with substructures drawn from their members are supposed to operationalise SNCs. The SNC in Swaziland is yet to be created, preventing physical and institutional linkages between Mbabane and the SADC Secretariat, as well as structured communication and liaison with government, the SDC and other relevant stakeholders. Hypothetically, the structure could complement the national dialogues and Sibaya.
- *SADC Regional Early Warning System (REWS)*: This is a conflict prevention, management and resolution mechanism linked to existing SADC human rights and human security frameworks, reinforced by early warning

units in each member state. The REWS emphasises prevention rather than intervention and encourages SADC to provide assistance to states in building capacity to exercise this responsibility. But progress towards its operationalisation has been sluggish. Reports are that National Early Warning Centres have only been piloted in South Africa, Botswana and Angola, while other member states are yet to follow.<sup>63</sup> Seemingly the REWS is loosely framed and, operationally, warning is separated from early response. Notwithstanding the systemic gaps, for Swaziland it could create greater synergy between Swaziland and the SADC Organ; provide the political imperative for domestic dialogue; and avert complex threat scenarios, including humanitarian ones.

## The Swazi government has a tendency to commit itself to international obligations but defer their domestication

- *The SEAC*: Established in terms of Article 9.2 of the SADC Treaty, the SEAC is mandated to advise and assess the progress of member states on issues relating to political governance and the observation of elections. It is administratively assisted by an electoral support unit located at the OPDSC Directorate and has an early warning function in the following areas: undertaking pre- and post-election mediation; facilitating the application and review of SADC principles and guidelines governing democratic elections in member states; and providing information and advisory services to SADC election institutions. The implications of its operationalisation in Swaziland could be very significant. But SEAC members are appointed by SADC member states and Swaziland is yet to commit firmly to sending its representation to the structure.
- *The Mediation, Conflict Prevention and Preventative Diplomacy Mechanism* composed of a Panel of Elders, Mediation Reference Group and Mediation Support Unit is presently under construction. It is envisaged to bolster preventative diplomacy capabilities in various ways.<sup>64</sup>

### Some considerations

- Firstly, the question is how best to evoke SADC subsidiarity and the options of action open to the organisation to influence democratic reform in

Swaziland. For the most part, subsidiarity in the SADC region has proved to be a limiting principle that protects regimes rather than populations. This is increasingly being challenged by institutions like the African Commission on Human and Peoples' Rights, which undertook a mission to Swaziland in August 2006, and attempted to draw SADC and the AU into the Swazi reform debate after the adoption of the country's constitution in 2005. The commission recommended that SADC and the AU should support the process of law reforms, and capacity and institutional building to ensure that the institutions established under the new constitution function properly.<sup>65</sup> SADC inaction has a crippling effect on prospective AU, UN or other international types of diplomacy.

- The second question is how to encourage and support countries' self-execution of treaties and their updating by the SADC Secretariat on the status of the ratification and domestication of legal instruments and protocols. The Swazi government has a tendency to commit itself to international obligations but defer their domestication, claiming contradictions with Swazi law and custom.<sup>66</sup> In principle, section 61(1) of the Swazi constitution emphasises Mbabane's foreign policy obligation to promote and respect treaties and international law.<sup>67</sup> The SADC approach fails to serve as an adjunct of domestic policy regulation, since the lack of legal enforcement makes such treaties/protocols optional, voluntary and non-binding. In fact, SADC has largely failed to challenge the Swazi government's insistence that the political structure should maintain its uniqueness. This passive approach implies de facto support of the *tinkhundla* political regime and undermines moves to substantively reform its procedures for the transfer of power.
- The third question is how to enforce the SADC election guidelines. Since they do not constitute a treaty and are not legally binding, the guidelines are rendered ineffective in the promotion of democracy and good governance. Nonetheless, international law and regional normative frameworks pertaining to democracy hold that the nature of electoral and political rights and the legal requirement of the effective and efficacious carrying out of obligations entail particular responsibilities for states, i.e. to take steps to implement the necessary legislative and institutional framework in regard to electoral administration and political parties. It also underscores the creation of a climate conducive to political competition, including the absence of violence, opportunities for the discussion and the dissemination of political views and platforms, and confidence building through cooperation across the political spectrum. These are also particularly matters for state action, either on the state's own initiative or together with other political

actors.<sup>68</sup> SADC election-oriented capacity building should encompass laws governing all aspects of the electoral and political cycles.

SADC capacities for the continuous assessment of the status of member states in ratifying or acceding to existing legal regional instruments are not well defined; neither are the mechanisms to ascertain the efficacy of domestication. SIPO II has recommended that the SADC Secretariat develop a database for all AU and UN protocols and conventions, and establish the ratification status of these instruments throughout SADC. However, the SADC Directorate would have the responsibility to encourage the domestication of these regional, continental and international provisions.

## CONCLUSION

In 2012 only three countries in Africa lacked multiparty constitutions: Swaziland, Eritrea and Somalia.<sup>69</sup> Whether democracies are heavily presidential or primarily parliamentary as far as the exercise of power is concerned, their democratic bona fides depend on their being competitive and allowing the fair contestation of elections to public office. The political history of Swaziland from the 1990s demonstrates some fluctuations in the monarchy's resistance to political reform. While the domestic imperatives for electoral system reform generally and the democratisation of the monarchy in particular have permeated the political landscape, they have been managed by a variety of domestic political and cultural tools, albeit unsuccessfully.

The dual challenge of developing a tradition of free, fair and democratic elections and consolidating democratic institutions over the long term in Swaziland needs to be addressed. To achieve this, election obligations and legal instruments that seek to promote representative democracy should be understood and implemented. This will not only strengthen the confidence of the people in the government's commitment to democratic transformation processes – as it inconsistently underlines – but also act as an expression of its own goodwill to SADC and international partners that it can be trusted to progressively move towards a more democratic equilibrium. Meanwhile, pro-reform movements in Swaziland single out South Africa as having strategic leverage on Mbabane because of its dominant position in the Southern African Customs Union, and there are expectations that Pretoria should continue to push for democratic and accountable governance.<sup>70</sup> However, assistance to and support for democratic governance are pointless without support for economic development and capacities to deliver education, health care and other essential aspects of the country's infrastructure. Poverty and underdevelopment remain

Swaziland's greatest challenges and are at the core of many of the country's political and social problems.

A proactive role for SADC in supporting Swaziland's capacity to organise for democratic change should ultimately be moderated from a public diplomacy standpoint, while privately keeping up the pressure. SADC preventative diplomacy simply remains an enduring idea and little more. As the country prepares for its 2013 elections, early intervention by SADC based on cooperation will help shape the scope for its future activities in the Swazi democratisation agenda. It is likely that the best initial tool for SADC would be diplomacy, since its legal instruments are treated as optional and not binding on member states. For instance, there are no mechanisms to hold to account member states breaching SADC election principles and governance guidelines. The need for a visible diplomatic role by SADC in this regard, with the objective of reducing the

## SADC could deploy a mission to consult with the Swazi government on the political and security situation

risk of contagion of social unrest related to the shortcomings of Swaziland's *tinkhundla* political model, is crucial. At the very least, SADC could deploy a mission to consult with the Swazi government on the political and security situation, especially following the violent government clashes with demonstrators, and to identify where SADC can assist. This may provide the opportunity for SADC to support domestic capacities that truly institutionalise the promotion of both human and political rights that are consistent with regional, continental and international obligations; at the moment these suffer from both lack of genuine political will and complacency in implementation. Except to make public pronouncements consistent with SADC protocols, the AU and UN would mostly defer to SADC in the event that there is political agitation.<sup>71</sup> I therefore propose the following interventions by SADC in Swaziland over the course of its 2013 electoral cycle and beyond:

- *Constructive diplomatic dialogue*: This may include the use of the good offices of African missions and diplomats in Swaziland to facilitate positive cooperation between the government and pro-democracy groups. The role of South Africa – which is currently negotiating a politically conditioned loan with Swaziland – will be most instrumental.

- *Deployment of a SADC Swaziland fact-finding mission by the Organ*: This should evaluate the conflict dynamics and develop a conflict vulnerability assessment specific to Swaziland to improve the efficiency of any interventions, due to the peculiar nature of the country's political regime.
  - *Sufficiently early deployment of the SADC election observer missions*: This should pay attention to the general legislative and institutional framework for governance and democracy, factors in the political economy relevant to elections and democratic outcomes, and the political and democratic culture, among other things.
  - *Support for the domestication of SADC declarations into enforceable law*: This should include the harmonisation of clauses restricting political competition, and freedom of association and assembly, among others. The scope for developing a partnership with the UN Development Programme should be explored, in particular with regard to existing programmes on governance and the strengthening of institutions identified under the UN Development Assistance Framework for Swaziland for the period 2011–2015.
  - *Participation in local dialogues*: SADC representation in these mechanisms will help strengthen their credibility, since Sibaya has been critiqued for failing to encourage meaningful and constructive dialogue. SADC can help to safeguard the impartial nature of Sibaya engagement and ascertain how the government can be encouraged to engage in civic education on human rights and democracy.
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