



## SWAZILAND

CAPITAL: Mbabane

POPULATION: 1.2 million

GNI PER CAPITA: \$1,240

### SCORES

ACCOUNTABILITY AND PUBLIC VOICE: 1.85

CIVIL LIBERTIES: 2.98

RULE OF LAW: 1.45

ANTICORRUPTION AND TRANSPARENCY: 1.85

(scores are based on a scale of 0 to 7, with 0 representing weakest and 7 representing strongest performance)

*John Daniel*

### INTRODUCTION

There is no tradition of democracy in the Swazi polity. Since its emergence in the early 19th century, the Swazi state's political culture has been authoritarian with power centralized in a hereditary monarchy. The late colonial period and early years of independence introduced an element of choice and party-political competitiveness into the polity but this ended in 1973 with the suspension of the independence constitution and the proscribing of political parties.

Swaziland's political regime is not one of straightforward monarchical domination. It is a complex diarchic one with two distinct but inter-related sets of institutions—those of the Swazi nation (the monarchy and its key advisory institutions, the Likoqo, Libandla, and Tinkhundla) and of the Swazi government, comprising cabinet, parliament, and the judiciary. It was in the latter that Britain vested constitutional authority at independence in 1968. However, then-King Sobhuza II was able to circumvent this dilution of his traditional authority by forming a

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political party—the Imbokodvo National Movement—and contesting and winning all parliamentary seats in two pre-independence elections. Thus, even though not a member of parliament, Sobhuza was able to ensure that the body enacted no legislation of which he did not approve. The king’s domination of the post-independence power arrangement was articulated by the then–prime minister, Prince Makhosini Dlamini, who stated “It is the king, not I, who leads the people.”<sup>1</sup> This is the central principle of Swazi political life, and to challenge it is regarded by the ruling elite (if not by the letter of the law) as sedition.<sup>2</sup>

This period of post-independence one-party rule gave way to no-party rule in 1973 when Sobhuza reacted to an opposition grouping’s winning of 3 seats out of 28 in the first elections held after independence and a successful high court challenge of controversial immigration legislation by abrogating the constitution. A state of emergency was declared (which persists today, more than 30 years later), a detention-without-trial provision was introduced, parliament was dissolved, and all political parties, even the pro-monarchy Imbokodvo Movement, were banned. In an address to the Swazi people, Sobhuza justified his actions by declaring that the independence constitution was incompatible with Swazi tradition as it had “permitted the imposition into our country of highly undesirable political practices, alien and incompatible with the way of life in our society, and designed to disrupt and destroy our own peaceful and constructive and essentially democratic method of peaceful political activity.”<sup>3</sup>

What Sobhuza was targeting as “undesirable” and “alien” was the political party as an institution. His words remain salient today; they essentially inform the view of his successor, Mswati III, and his advisers. They regard political parties as un-Swazi, institutions incompatible with their concept of tradition. Therefore, to concede to the Swazi people the right freely to organize themselves politically would necessitate an ideological paradigm shift on the part of the monarchy as well as open up the possibility of an effective challenge to its continued political and economic dominance.

Since 1973, Swaziland has functioned as a near-absolute monarchy. In 1978, a two-chamber parliament was reconvened with a mix of members nominated by the king (40 out of 90) and elected on a no-party basis. In 1996, the king appointed a constitutional review commission that five years later reported without supporting evidence that the Swazi nation preferred no change to the political and legal status quo.<sup>4</sup> The

king then appointed a group headed by one of his brothers to draft a new constitution. This was unveiled in 2004, proposing a continuation of the monarchy's supreme executive, legislative, and judicial powers as well as the ban on political parties.

In 2002, all the judges of Swaziland's highest court, the court of appeal, resigned in protest at the government's refusal to implement two rulings whose effect would have been to overturn previous state measures. In September 2004, the Commonwealth Secretariat brokered a settlement under which the government agreed to be bound by the orders of the kingdom's courts. As of September 2004 this settlement had not been implemented.

In addition to a crisis over the rule of law, Swaziland is confronted by a human disaster of epic proportions in the form of one of the highest—and possibly the highest—HIV/AIDS prevalence rates in the world. According to the Swazi Ministry of Health, the rate in 2002 for adults aged between 15 and 49 years was 38.6%. For those in the age brackets 20–24 and 25–29, the rates were 45.4% and 47.7% respectively. By 2004, it was estimated that one in two Swazis in their twenties would be HIV positive. In the period 1980–2005, life expectancy for Swazis almost halved from 60 years of age to 34. By 2010, it is projected that it will have fallen to 27 years of age. Furthermore, by then it is estimated that 12 percent of the population—some 120,000 children—will have been orphaned.

## ACCOUNTABILITY AND PUBLIC VOICE – 1.85

Politically, Swaziland is an absolute monarchy with effective executive, legislative and increasingly judicial powers vested in the king although there is a partially elected but thoroughly subordinated parliament.

Parliamentary elections are held every five years. These are conducted in terms of a traditional *tinkundhla* system: Candidates run only as individuals and not as representatives of any party or grouping. The number of candidates per constituency is limited to three, and their nomination is subject to a local screening process. This is conducted in public by the local chiefs in the area by a show of hands. The franchise is open to all adults over the age of 18, and votes are cast by secret ballot. No cases of fraud and intimidation were reported in the elections of 1998 and 2003.

Despite the democratic form of this electoral process, it does not conform fully to the now widely accepted “free and fair” criteria for democratic elections. First, the ban on party political activity limits the range of political choice. So too does the local screening process, which inevitably has the result that the majority of candidates are linked, or sympathetic, to the royalist power structure. Finally, balloting is for only 55 of the 95 parliamentary seats. This means that 42 percent of legislative seats are nominated, mostly by the king himself. Thus, even in the unlikely case that a majority of elected members turn out to be reformists, their capacity for change would be neutralized by the nominated bloc of royalist-aligned members of Parliament. According to the Economist Intelligence Unit’s (EIU) 2004 Country Profile of Swaziland, “the ban on political parties and the boycotting of elections by progressive groups mean that political debate in parliament is inconsequential.”<sup>5</sup> There are no effective campaign finance laws. Under current circumstances, therefore, a change in power in Swaziland is very unlikely. Given that the executive branch of government, in the form of the monarchy, conceptualizes itself as not being subject to statutory laws, there are obvious limitations on the capacity of the judicial and legislative branches to oversee the executive branch (see “Rule of Law”).

Recruitment into the civil service is largely by merit, and a high proportion of public servants hold university degrees and/or appropriate technical qualifications. At entry level, women applicants appear not to be discriminated against, and a high proportion of upper-level civil servants are women with distinguished academic records. This is offset by the fact that the top posts in the civil service tend to be filled by males regarded by the traditional authorities as politically reliable. These are often princes of the dominant Dlamini clan.

Civil society in Swaziland is neither strong nor well developed. This is not because the government makes it especially difficult for this sector to operate. Civil groups are able to comment upon and attempt to influence policy and legislation. They are not subject to onerous registration requirements. Nor is there evidence that their funders are subject to state pressure. The disability they face is the overwhelming political apathy of the Swazi majority and the continued internalization of a political culture that demands of the Swazi people unquestioning subservience to the wishes and whims of the traditional royalist and chieftancy authorities.

The position is quite different in regard to the media. Freedom of speech and of the press in Swaziland is not legally protected, and the government has frequently acted against the media especially to discourage critical coverage of the royal family. This has included closing down newspapers and magazines and detaining and then harassing journalists and broadcasters. There are two daily newspapers in Swaziland, one of which is government owned. The state has a monopoly over television and radio ownership. In 2003, a censorship policy for the state-owned Swaziland Broadcasting and Information Services was imposed to prohibit the dissemination of negative information about the government. Libel laws and detention have been used by the government to intimidate journalists. The state is more tolerant in the realm of cultural expression, in part because this is not a particularly active area of expression and also because what there is largely reflects traditional values.

#### *Recommendations*

- All political offices should be opened to free and competitive elections under an independent election commission. The ban on political parties should be lifted, and all candidates should have the opportunity to campaign openly.
- The government should take all necessary steps to ensure that the draft constitution currently under consideration is consistent with Swaziland's international and regional human rights treaty obligations, and a vigorous and independent legal reform process should be instituted to facilitate such incorporation into domestic law.
- Ongoing training should be provided to all state officials on the professional and other implications of these obligations.
- An enabling environment should be created for the vigorous expression of views and opinions by, inter alia, freeing the press and broadcast media from all forms of censorship, as well as through the creation of an independent media authority to ensure a non-partisan state media.

#### **CIVIL LIBERTIES – 2.98**

Swazi law does not prohibit the use of torture, and there have been credible reports in recent years of the use of torture by security officials. While the Prison Act provides for the prosecution of officials suspected

of torture or degrading treatment, there have been no reports of any such cases being mounted. Prison conditions are on a par with basic international standards. However, a lack of basic hygiene and unsafe sexual practices contribute to the spread of HIV/AIDS among prisoners. By contrast, conditions in pre-trial detention facilities are overcrowded, a fact exacerbated by the introduction of non-bailable provisions for a range of offenses (see "Rule of Law").

No members of the political opposition or activists have been killed in Swaziland in recent years. While repressive, political life in Swaziland since the 1973 declaration of a state of emergency has not been characterized by high levels of brutality and terror. The exception to this was the period 1981 to 1989, when the Swazi security forces actively collaborated with the South African security forces, and in some cases participated in, the killing and abduction of South Africans engaged from Swaziland in the struggle against apartheid.<sup>6</sup>

Swazi law prohibits arbitrary arrest and detention, and the government generally respects these prohibitions. There is currently no provision for detention without trial for a period beyond 48 hours. No evidence suggests that the state does not protect its citizens from abuse by private or non-state actors. On the other hand, citizens do not have effective means to petition for the redress of their rights.

In March 2004 Swaziland acceded to four core international human rights treaties, including the UN Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW). With one of the poorest international human rights treaty records in sub-Saharan Africa, Swaziland seemed in the view of most commentators to be attempting to mend its negative human rights image internationally. No attempt has been made to incorporate CEDAW's provisions into domestic law, nor is one expected. This is because many of the convention's provisions would undermine key tenets of Swazi law and custom.

Men and women clearly do not occupy equal status in Swazi society. Women are subordinate in both civil and traditional marriages. Wives are treated as legal minors, although women married under civil law can attain the status of an adult through a signed pre-nuptial contract. In the absence of such an agreement, women generally must have the permission of their spouses to open bank accounts, acquire passports, travel abroad, purchase land, and undertake a host of other acts

that men take for granted. In terms of customary law, Swazi men can practice polygamy while women cannot. While not common, there are cases where young Swazi teenage girls—many of them still school-going—are forced into marriages with members of the royal family, the king included. One of Mswati's more recent marriages involved the abduction in 2002 of a teenage schoolgirl from her home.

There is a long history of violence directed against women and girls in Swaziland. The disproportionately high incidence of HIV/AIDS among Swazi women (by contrast with that of Swazi males) reflects their generally unequal status socially and their disempowered sexual status in particular. There are no reports of trafficking in women and children, although it may occur given that evidence does exist of a trade in children in particular in South Africa. The proposed draft constitution for Swaziland advocates a prohibition of discrimination on grounds of gender. In an analysis of the draft, Amnesty International stated that this was too weak and too general a position and that what was required was "a clear prohibition on the grounds of sex and marital status."<sup>7</sup> Only in this way could girls and young women be protected sufficiently against such abuses as forced marriages.

Legislation and general practice in Swaziland are not sensitive to the needs of people with disabilities. While all new government buildings must provide ramps and easy-access facilities to disabled persons, no attempt has been made to convert existing public buildings for this purpose.

Given that Swaziland is largely homogeneous ethnically, issues of ethnic discrimination or disadvantage do not arise. Nor is there any sustained record of religious disadvantage. While there is no formal legal provision for religious freedom in Swaziland, the government generally respects freedom of religion in practice and respects the rights of non-believers and the beliefs of minority religious groupings. The one exception is the Jehovah's Witnesses, against whom state action has from time to time been directed. For example, in June 2003 a teacher and three school pupils were expelled from a primary school on grounds of their membership in this faith. New religious groups must register with the government, and state permission is required for the construction of religious buildings. There is no record of refusals in regard to these two requirements. On occasion, however, prayer meetings have been disrupted or banned because they were considered political gatherings.

Freedom of association is not guaranteed in Swaziland and is actively restricted. Police permission is required and routinely refused for meetings and demonstrations of a political nature. Where such gatherings or marches do occur, they are invariably broken up by force with the use of tear gas, baton charges, rubber bullets, and water cannons. Despite this antipathy to gatherings of a political nature, the government does respect the right to form and join trade unions. This has, however, not protected trade unionists from state action; the detention and general harassment of pro-democracy trade-union leaders is common.

#### *Recommendations*

- The provisions of the CEDAW treaty should be incorporated fully and without any qualifications into Swazi domestic law. In addition and as a means of strengthening the law, the government should accede to both the Optional Protocol of the CEDAW so that Swazi women can lodge complaints with the UN treaty-monitoring body established under the Protocol and to the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa.
- Measures need to be taken to strengthen the rights of Swazi children, particularly to ensure that they are freed from all forms of violence, including sexual violence and corporal punishment in schools and homes.
- Citizens should have the right to form political and other associations in support of their interests.
- Laws requiring prior permission for meetings and protests should be repealed, and the use of force against peaceful demonstrators should be banned.

#### **RULE OF LAW – 1.45**

Swaziland operates a dual court system comprising traditional courts, in which presiding chiefs apply customary law, and a Roman-Dutch system of magistrate courts, a high court, and a Court of Appeal. The latter is not a permanent body but one currently staffed by retired South African judges that convenes in Swaziland two to three times per year. All judges, including those from South Africa, are appointed by the king, and their appointments are not subject to parliamentary approval or



scrutiny. In the late 1990s Prime Minister Sibusiso Dlamini unilaterally scrapped the commission originally set up to make recommendations for judicial appointments and replaced it with a special committee on justice composed of certain cabinet ministers, the attorney-general, the director of public prosecutions, the commissioner of police, heads of the security services, the chief justice, and some palace advisers—all these officials are appointed by the king and are consequently subject to dismissal by him. Its brief goes well beyond judicial appointments and involves close scrutiny of the workings of the entire justice system. It meets weekly; hence the widespread popular reference to it as the “Thursday Committee.” According to Amnesty International, this group has very intrusively and broadly interfered with judicial decisions.<sup>8</sup>

The coexistence of two legal traditions with fundamentally different conceptions of rights lies at the core of the political crisis that has afflicted Swaziland since the early 1970s. It began with the declaration of a state of emergency in 1973, which was triggered in part by the fact that the high court had acted to overturn the legislative will of parliament, which functioned then as the handmaiden of the monarchy. Its latest manifestation took the form of the 2002 resignation en bloc of the appeal bench, stemming from the monarchy’s refusal to implement decisions with which it did not concur.

The political and legal crisis stemming from this action on the part of the monarchy severely compromised the independence of the judiciary and threw the administration of the judicial system into disarray. Throughout the 2003–2004 reporting period Swaziland remained without a court of appeal. This resulted in a continued violation of the rights of those favored by the court’s November 2002 decisions (see the concluding paragraph of this section for fuller details of these two cases), as well as those of numerous individuals whose civil and criminal cases were at the appeal stage and therefore could be neither heard nor concluded. In one case, the imposition of a death sentence was being appealed.

What the last three decades of Swazi political life have revealed is that in any clash between the two legal systems, it is the view of the Swazi king and his advisers that the law of custom prevails. What this means politically is that even in this age of democratization, an unelected and unaccountable monarchical order refuses to accept any constitutional or legal limits to its rule—a modern manifestation of the ancient notion of the divine right of kings. The primary casualties of

this ideological worldview have been the Swazi democratization process, the rule of law, the administration of justice, and perhaps above all, the economic and social development of the people.

The collective body of judges—local and expatriate—that has since 1968 served in the high and appeal courts of Swaziland have developed a strong reputation as able and competent judicial officials. This applies also to the current serving justices. While many local judges have lacked the experience and seniority of most of their foreign colleagues, they have all been trained legal practitioners with appropriate graduate qualifications in law. The good reputation of the Swazi bench is based not solely on the fact that it has always attempted to apply the law fairly and consistently but also on the fact that it has strongly resisted attempts by the state and traditional authorities to influence decisions through intimidation. In a July 2004 report on Swaziland, Amnesty International cited numerous instances of the abrogation of the rule of law by the government. These included “the repeated ignoring of court rulings, interference in court proceedings, intimidating judicial officers, manipulating terms and conditions of employment to undermine the independence of the judiciary, the effective replacement of the Judicial Services Commission with an unaccountable and secretive body . . . and the harassment of individuals whose rights had been upheld by the courts.”<sup>9</sup>

According to the “saved provisions” of the 1968 independence constitution, a high court judge can be removed from office only on grounds of an “inability to perform the functions of his office, whether arising from infirmity of body or mind or any other cause or for misbehaviour.”<sup>10</sup> This provision is supposed to be invoked only after the chief justice has requested the king to investigate the conduct of the judge in question, which must occur through a tribunal appointed by the king. None of these requirements had been met when in April 2003 Justice Thomas Masuku was “transferred” from the high to the industrial court. This *de facto* removal from the bench was challenged in the high court by the Swazi Law Society. During the course of the hearing on the matter, counsel for the government stated that the government “can be pushed around [only] a certain point.”<sup>11</sup> Despite this implied threat, the high court ruled in May 2004 that the dismissal of Judge Masuku was unlawful and reinstated him in his post.

In the past decade, the presumption of innocence until proven guilty, a cardinal legal principle, has been undermined in Swaziland through the

passage in 1993 (with subsequent amendments) of the Non-Bailable Offences Order. According to this legislation, Swazi courts are prohibited from granting bail to persons charged with one or more so-called scheduled offenses. These include murder, rape, robbery, and offenses referred to in public order and anti-subversion laws. In 2001, the appeal court struck down the order, describing it as “draconian” and “inconsistent with the presumption of innocence and an . . . invasion of the liberty of the subject.” In the face of this rejection, the government issued decree Number 3 of 2001 reimposing the provisions of the 1993 order. Challenges to this decree were launched by two pre-trial detainees denied bail, resulting in November 2002 in a second appeal court’s ruling striking down the legislation. In response, the then–Prime Minister Sibusiso Dlamini announced that the act would remain in force and that all government agencies had been instructed to ignore the appeal court’s ruling. Significantly, he described their judgment as an attack on the powers of the king.

Citizens have the right to independent counsel of their choice. For most Swazis, however, this is a nominal right, given that 40 percent of them are living below the poverty line, and 34 percent of the potential labor force are unemployed. There is no state system of legal aid for those unable to afford counsel.

In recent years prosecutors and state judicial officials have in some cases been subjected to political pressure. For example, in late 2002 the mother of an 18-year-old schoolgirl whom King Mswati wished to marry claimed that the girl had been abducted from the family home and petitioned the high court to order that she be restored to the mother’s custody. While the matter was pending, considerable pressure was exerted on the judges of the high court. This included a meeting between the chief justice and his two fellow judges and the attorney-general accompanied by the chiefs of the army, police, and prison services at which an instruction from the palace to discontinue the hearing or resign was conveyed to the judges. Their refusal to withdraw from the case resulted in a letter from the attorney-general in which they were informed that unless their resignations were submitted, the attorney-general’s office had been instructed “to submit the relevant instruments for your removal from office.” Amnesty International described these acts of intimidation as illustrative of how difficult it was in Swaziland “to protect the internationally recognized human rights of women and

girls, particularly where their rights were violated by unaccountable authorities and in a context of longstanding discrimination and subordination of women.”<sup>12</sup>

The chief justice (a foreign national) lodged a complaint stating that the attorney-general’s letter amounted to a threat to and interference in judicial functions. The director of public prosecutions (another foreign national) then charged the attorney-general with sedition and attempting to defeat the ends of justice. The Thursday Committee, meeting in emergency session, instructed the director to withdraw the charges. His refusal resulted in several acts of intimidation, including his being twice locked out of his office, as well as a burglary of his office in which video footage showed that the attorney-general had participated. On persisting with the case, the director was then charged in regard to an alleged misdemeanour that had occurred some years earlier. At this point he resigned and left the country. Three months later, the chief justice followed suit. The case against the attorney-general lapsed.

The above events illustrate both the anarchic and the politicized nature of the administration of justice in Swaziland. While some public officials and ruling party actors are charged before the courts, cases are brought selectively and usually only involve those who fall foul of the traditional authorities. All Swazis do not experience an equal application of the law despite the best efforts of the Swazi high and appeal courts.

Any civilian state control of the security services by the judicial and legislative branches of government is ineffective, as the services essentially function as an enforcement arm of the traditional authorities in the executive branch. They consequently do not refrain from interfering in the political process. They are, however, free from the influence of non-state actors.

The issue of property rights in Swaziland is complex. There is a dual land system with distinct freehold and leasehold sectors. This roughly corresponds with the urban–rural divide of the country. For those with freehold rights, all residents of the country have an equal right—though obviously not an equal capacity—to property ownership. This sector operates under normal market conditions, and the state adequately enforces and protects property rights and contracts. A very different situation prevails in the communal leasehold sector, in which the majority of Swazi citizens reside. In these areas, land cannot be bought and sold, and the tenure rights of the occupants are dependent on the goodwill

of the chiefs who administer the land on behalf of the king. This situation can be manipulated for political and other reasons; there is a long history in Swaziland of the precarious nature of tenure rights being used as a means to pressure or discipline the commoners resident in the leasehold sector. In short, those who do not with their chiefs' orders can have their land taken from them and forcible eviction of families or whole communities is not uncommon.

The most politically significant case in recent years involved 120 residents of the KaMkhweli and Macetjeni communities who were forcibly evicted from their homes by the police in October 2000, along with their chief, when they refused to accept the appointment of one of the king's brothers as their new chief.<sup>13</sup> The evictees have on several occasions taken their case to court, and in all but one instance their right to return to their homes has been upheld. Finally, in November 2002, the court of appeal made such an order, and the government publicly stated it would not obey. This led to the resignation of the appeal bench. In its ruling the court also upheld an earlier high court decision to jail the commissioner of police for contempt because he had not implemented earlier rulings allowing the residents to return to their homes. This order has never been implemented, and the commissioner in question is still in office.

#### *Recommendations*

- An urgent commitment is required on the part of the executive to respect and protect the independence and impartiality of the judiciary by, inter alia, stating in public its resolve henceforth to respect and implement the judgments of the courts of Swaziland.
- Steps need to be taken to restore the presumption of innocence to judicial and administrative practices by restoring to the courts the discretion to decide on matters of bail.
- The government must ensure in law and in practice that all residents of Swaziland are protected from forced evictions from their homes.

### **ANTICORRUPTION AND TRANSPARENCY – 1.85**

Corruption is endemic and pervasive in Swaziland. This is especially true in the monarchy and the institution of the Swazi nation where expenditure is lavish and rarely accounted for. For example, in recent years, the king has sought state funds to purchase an executive jet for

his personal use. In June 2004, he announced a decision to construct new royal palaces for his 10 wives and 2 fiancées at a cost of \$14 million. In April 2004 he spent \$600,000 on a party in the national stadium to celebrate his 34th birthday. This occurred at a time of severe strain in the economy prompted by a fourth consecutive year of drought; some 40 percent of Swazis are living below the poverty line, and a similar percentage is living with AIDS. The EIU in its 2004 country profile noted that “most corruption seems to emanate from the traditional system of government, with its in-built nepotism and cronyism.”<sup>14</sup>

Corruption in Swaziland is not a result of excessive bureaucratic regulations or registration requirements. It stems, rather, from the undemocratic nature of the political order. For example, in the mid-1990s the Swaziland Development and Savings Bank went bankrupt largely because a series of large loans to members of the royal family and chiefs were never repaid. No action was taken against the loan defaulters nor were the funds recovered.

The Swazi economy is a capitalist one. Foreign investment is sought and encouraged, and there are few controls on the repatriation of profit. There is, however, considerable state involvement in the economy in the form of royalist-controlled investment corporations. The largest of these is the Tibiyo Take Ngwane Fund. At independence, control over Swaziland’s mineral rights and royalties were vested in the Swazi nation and not the government. To administer the concession, the king established Tibiyo. Headed by a board whose majority are princes (male relatives of the king) and answerable only to the monarchy, Tibiyo pays no taxes, is not required to publish an annual statement (although it has done so for the last 10 years), and is not answerable to parliament. According to the EIU, “Tibiyo is a controversial institution that has some high-profile equity holdings in Swaziland, ostensibly made in the national interest, although some people have made accusations that its revenue is appropriated by the royal family.”<sup>15</sup>

Over the years, Tibiyo has developed into a major corporation and a source of wealth for the royal family and those close to it, as well as a means to rapid upward mobility. Funds were initially used to buy back freehold land from non-Swazis, much of which was developed into royally owned maize and dairy estates. Tibiyo then moved into the retail sector, establishing butcheries, liquor stores, and taxi routes. Ultimately,

the fund generated sufficient capital to begin acquiring equity (usually in the range of 40 percent to 49 percent) in practically every foreign company active in the economy. These have included huge agro-industrials in the sugar, timber, citrus, and fruit processing industries, large wholesalers, and banking, mining, manufacturing, and tourist companies. In this way, Tibiyo has spread its net into all sectors of the economy, establishing a solid partnership with foreign capital, the dividend payments from which have become Tibiyo's largest source of revenue. It has also been the means by which the Swazi aristocracy has acquired for itself a considerable material base in the modern economy, complementing their control of the traditional agrarian sector, which is achieved through its monopoly over the right to allocate and withdraw land tenure rights. In other words, the Swazi aristocracy—the royalist lines within the Dlamini clan—is not just a privileged elite but a modestly wealthy capitalist class for whom a regime change, or even a significant democratization of the system, could have negative consequences.

The state does not enforce effective legislative or administrative processes either to promote professional integrity or to prevent and detect corruption. No adequate financial disclosure procedures prevent or minimize conflicts of interest among either public officeholders or those in the private sector. No asset register exists to record the business and other interests of, or gifts to, public officials.

Tax collection is efficient and accountable in the formal (that is, outside the institutions of the Swazi nation) sector of the economy and in regard to ordinary citizens/commoners. Swaziland has no independent auditing office such as an auditor-general or ombudsman. Bribes are not necessary to gain admission to higher education, although in some cases pressure was applied successfully on the authorities of the University of Swaziland to admit members of the royal family lacking the necessary admission criteria.

Other than the courts, victims of corruption have no means to pursue their rights or seek redress. Allegations of corruption directed at members of the royal family and other figures in the traditional sector (like chiefs) are rarely investigated—and even more rarely acted upon. There is no legal environment to protect whistle-blowers. While for some years in the 1990s the press gave extensive, even gleeful, coverage to allegations of scandal, the state crackdown on the media in recent

years has effectively silenced it, with journalists and editors largely succumbing to self-censorship.

The public has little access to state information, and no legal mechanisms facilitate it. The process of awarding government contracts and tenders is public, but it is susceptible to corruption.<sup>16</sup> The executive budget-making process is not transparent, although parliament does exercise a watchdog role over the budget and government expenditure. It has at times undertaken this function to good effect by reining in, for example, reckless spending on the part of some government ministries. The government does provide an enabling environment for the distribution of foreign assistance.

### *Recommendations*

- An independent auditing watchdog in the form of an auditor-general's office should be established, as well as an independent complaints directorate in the form of an ombudsman's office.
- Legislation should be enacted to guarantee the public's right to both official state information and their individual personal records held by the state.
- The Tibiyo Fund and other such royalist-controlled private corporations should be converted into public corporations and required to operate in terms of relevant company laws. This would include subjecting their financial records to public scrutiny as well as rendering them taxable.

### NOTES

<sup>1</sup> See Johnson Vilane and John Daniel, "Swaziland: Political Crisis, Regional Dilemma," *Review of African Political Economy* 35 (May 1986).

<sup>2</sup> A leader of an opposition grouping, Mario Masuku, was charged with sedition in 2000 after calling in a public speech for the relegation of the Swazi monarch's position to that of a constitutional or symbolic one. After several months on bail, Masuku deliberately broke his bail conditions in order to be arrested. This was to force the judicial/political authorities to decide whether to try him or drop the charges. They tried him. Up until this point in time, they had resorted to repeated postponements rather than going to trial and presenting what in legal terms was a flimsy case. It took nearly a year for the case to come to trial. The end result was an acquittal.

<sup>3</sup> Cited in Vilane and Daniel, p. 56.



- <sup>4</sup> The Constitutional Review Commission's *Final Report on the Submissions and Progress Report on the Project for the Recording and Codification of Swazi Law and Custom* (Mbabane: 2001) contained numerous vague and unsubstantiated assertions, such as, "the nation recommends that rights and freedoms which we accept must not conflict with our customs and traditions as the Swazi nation"; and "an overwhelming majority of the nation recommends that political parties remain banned."
- <sup>5</sup> *Country Profile: Swaziland* (London, Economist Intelligence Unit [EIU], 2004), 6.
- <sup>6</sup> In 1981, King Sobhuza II entered into what was then a secret security agreement with the government of apartheid South Africa under the terms of which South African security forces and their agents were given an unfettered right to undertake operations against opponents of the apartheid. Throughout the 1980s, the South African forces conducted numerous cross-border incursions into Swaziland resulting in the deaths and abductions of numbers of South Africans and some Swazis.
- <sup>7</sup> See *Swaziland: Human rights at risk in a climate of political and legal uncertainty* (London: Amnesty International [AI], 2004), 11.
- <sup>8</sup> AI, 20.
- <sup>9</sup> *Ibid.*
- <sup>10</sup> At the time of the suspension of the independence constitution in 1973, King Sobhuza decided that some of its provisions would remain in force. These, which included provisions for the appointment of judges, became known as the "saved provisions."
- <sup>11</sup> *Ibid.*, 33. Soon after making this statement, the lawyer in question sent a letter of apology to the Registrar of the High Court in which he stated that he had acted under pressure from his clients, who were people in positions of authority over him.
- <sup>12</sup> *Ibid.*, 28, in regard to both quotes used in this paragraph.
- <sup>13</sup> A full account of this case has been provided in AI, 36–63.
- <sup>14</sup> *Country Profile* (EIU), 14.
- <sup>15</sup> *Ibid.*, 18.
- <sup>16</sup> *Ibid.*, 14.

