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## LEGAL PERSPECTIVE

### THE LEGAL AND INSTITUTIONAL ARCHITECTURE FOR THE SWAZILAND ELECTION 2003

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#### Introduction

Swaziland organised its Parliamentary elections over the period 18-19 October

2003. This political event was preceded by the primary elections held on 19-20 September 2003. This article reviews the legal and institutional architecture that structured these two events with a view to discovering the broader framework for elections in Swaziland and interrogating the possible meanings of that in terms of the prospects for democratic transition in the Kingdom. It is worth stating from the onset that Swaziland is one of a few countries in the

SADC region that has not yet undergone a democratic transition by way of embracing multiparty competition for state power (for further argumentation see Claude Kabemba in this volume). Even at the real risk of repetition of the views in this and the previous *Election Update 2003: Swaziland*, it is important to bear in mind that in Swaziland the following critical conditions informed the 2003 electoral process:

- The country has not had a Constitution since 1973 and just prior to the 2003 elections public debate both in and outside the Kingdom revolved, in part, around whether or not to have a general election prior to a Constitutional referendum; however, it came to pass that the election would come first and as such a Draft Constitution that exists has not as yet been put to its litmus test through a public enquiry regarding both its legitimacy and acceptability; thus, in a nutshell, the election was held under a condition of a Constitutional void, so to speak; not only that; elections in Swaziland do not give room for political competition between and among political parties, but rather the elections are contested by individuals representing various constituencies styled *Tinkhundla*;
- Like the previous recent elections, the 2003 election was governed by three pieces of legislation namely (a) the 1992 Establishment of the Parliament of Swaziland Order; (b) the 1992 Election Order; and (c) the 1992 Voter Registration Order; It is instructive that all the three legal instruments are referred to not as Acts of Parliament, as is the case in a majority of

SADC countries, but rather as Orders for this denotes the overwhelming authority and power of the King whose executive powers by far eclipse the watchdog role of Parliament; thus the King's deliberate political hegemony (more by design than by default) throttles the power of other organs of the state and in so doing thwarts accountability of the executive to the electorate and not to even mention its deleterious effects on checks and balances in the governance process; and

- Again, unlike a majority of SADC member-states, Swaziland does not have an independent electoral commission (IEC) and the election is run by a one-person Chief Election Office; the Chief Election Officer and his deputy is appointed by the King himself and of course answerable to the King; this situation raises a number of key questions including the impartiality of the Chief Election Office as an adjunct of the state machine, accountability of the Office to both the contestants and the electorate as well as the transparency and fairness of the Office as it executes its legal mandate of running and managing elections. All

these issues speak to the legitimacy (or lack thereof) of the Chief Election Office in the eyes of the electorate in playing its presumed role as a fair umpire of the election game and an effective institution for leveling the political playing field.

Thus three broad issues are brought to light in this article, namely that lack of a functioning and living Constitution prohibits fair political play during elections in Swaziland and this is compounded by the fact that political parties still remain banned. Second, the election is governed by King's Orders whose primary thrust is not so much to entrench democratic governance, but rather to ensure and perpetuate the authoritarian dynastic regime in the Kingdom. Thirdly, that even the institutional framework for the management of elections in Swaziland is far from being an independent and impartial player given that it is strongly beholden to the state machine and under strong influences of the King.

#### **Global and Regional Context of the 2003 Election in Swaziland**

Swaziland lives in its own world despite the political winds of change that have swept the SADC region since the early 1990s. Although both the reformed

Southern African Development Community (SADC), through its Organ on Politics, Defence and Security (OPDS) does not recognise any form of unconstitutional regimes, much the same way as do 53 member African Union (AU) and the 54 member Commonwealth club of state led by Britain, Swaziland still operates a fairly authoritarian political system anchored upon traditionalism and governments have been formed in the Kingdom even in the absence of an operating Constitution since 1973. Interestingly, this debilitating political environment has not become a major issue for debate and clear-cut policy positions towards Swaziland in SADC, the AU and Commonwealth. It is worth pointing out that both Zimbabwe and Pakistan have been suspended from the Commonwealth for alleged human rights abuses and other vices emanating from bad governance, yet Swaziland still remains off the hook. In fact, during the recent Commonwealth summit in Abuja Nigeria in December 2003, following a decision taken by the Club to extend Zimbabwe's suspension, the latter simply withdrew its membership from the Club, an unprecedented move thereby throwing the Club into some kind of disarray.

The writer poses the legal framework problem in Swaziland in the broader

sense depicted above in order to suggest that in today's globalising world issues of democratic governance and human rights have increasingly become international issues that seem to transcend questions of sovereignty even though state sovereignty, in and of itself, cannot be wished away as such. Thus, quite obviously the quest for democratic transition in Swaziland should, *ipso facto*, be cherished not only by concerned Swazi people, but also by the international community as organised in such formations as SADC, AU and the Commonwealth. It is highly possible that small geographic size, landlocked status and lack of a robust resource endowment makes Swaziland invisible to large multilateral inter-state organisations. In the next section, we review the legal and institutional environment for the 2003 election in Swaziland and pose a complex question whether or not this environment creates an enabling condition for democratic transition.

#### **The Legal and Institutional Framework for the Swaziland Election in Perspective**

Since the suspension of the Independence Constitution in 1973, Swaziland still does not have a Constitution and is ruled by royal decrees.<sup>1</sup>

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<sup>1</sup> Lodge et. al, 2001

Only recently, the King appointed a Commission to work on a new Constitution and a draft dated March 2003 does exist. The draft has not yet been subjected to a national referendum to turn it into a national Constitution as yet and it is not yet clear when the draft would be put to a public scrutiny which is its ultimate litmus test. It is worth noting that the Draft Constitution of the Kingdom of Swaziland (as it is called) rather than providing an opportunity for the opening of the political marketplace for competition and a window for democratic transition, attempts to entrench dynastic rule behind the façade of institutionalised liberal democracy. Thus, despite the attempt to institutionalise governance in Swaziland through emphasis on the key role of the critical arms of the state such as the legislature, the executive and the judiciary, in the final analysis the Draft Constitution still centralises actual power within the Office of the King and the King's Advisory Council.

Whereas the King wields enormous powers as an executive monarch, the King's Advisory Council forms the hub of government. The King's Advisory Council is appointed for a period of five (5) years by the King himself as *Ngwenyama* and is chaired by the Senior Crown Prince (*Umntfwanenkhozi*

*Lomkhulu*) also appointed by the King. The main mandate of the Council is to advise the King on “whatever issues or matters on which the King may seek advice”<sup>2</sup> This centralisation of dynastic rule is entrenched behind a veneer of political opening in which the Draft Constitution itself upholds a Bill of Rights in Chapter IV. Further more, the Draft Constitution seems to recognise the central role of such key organs of state as the legislature, the executive and the judiciary as well as the supportive institutions as the bureaucracy or public service, yet even in the case of all these important institutions of governance, the King still reigns supreme in the process stamping the political hegemony of the dynastic elite. Swaziland operates a bi-cameral legislature; the National Assembly (lower house) and the Senate (upper house). Of the total of 65 legislative seats, the King appoints 10 members and the Attorney-General (the King’s appointee) is an ex-officio Member of Parliament. Of the total 30 members of the Senate, only ten are elected by the National Assembly and the rest are appointed by the King representing chiefs, *bantfwabenkhosi* and special interests<sup>3</sup> The King appoints the Prime Minister often

<sup>2</sup> Draft Constitution of the Kingdom of Swaziland, 2003, p. 6

<sup>3</sup> The Establishment of the Parliament of Swaziland Order, 1992, p.6

from the royal family and the current Prime Minister following the October 2003 election is Prince Themba Dlamini (former Chairperson of Tibiyo Taka Ngwane a royal investment corporation whose total net assets stood at E420 million in 1996). The King appoints members of Cabinet from both Chambers of Parliament upon recommendation of the Prime Minister and the Draft Constitution proposes that half of the Cabinet be constituted by members of the elected lower house. The current Cabinet is as follows:

1. Rt. Hon. Prime Minister: Mr. A.T. Dlamini
2. Hon. Deputy Prime Minister: Mr. Albert Shabangu
3. Minister for Natural Resources and Energy: Hon. Mfomfo Nkabule
4. Minister for Agriculture and Cooperatives: Hon. Mtiti Fakudze
5. Minister for Finance: Hon. Majozi Sithole
6. Minister for Public Service and Information: Hon. Themba Msibi
7. Minister for Foreign Affairs and Trade: Hon. Mabili Dlamini
8. Minister for Housing and Urban Development: Hon. Mrs Dumsile Sukati
9. Minister for Education: Hon. Constance Simelane
10. Minister for Enterprises and Employment: Hon. Lutfo Dlamini
11. Minister for Tourism, Environment and Communication: Hon. Mrs Thandi Shongwe;
12. Minister for Public Works and Transport: Hon. Elijah Shongwe
13. Minister for Health and Social welfare: Hon. Chief Siphon Shongwe
14. Minister for Economic Planning and Development: Hon. Rev. Absalom Dlamini
15. Minister for Home Affairs: Hon. Prince Gabheni
16. Minister for Justice and Constitutional Affairs: Hon. Prince David

Evidently, the King and the royal house aim to consolidate its power and political hegemony even by the manner in which Cabinet is composed. Quite obviously, the Cabinet of sixteen (with only two women) is dominated mainly by the dynastic elite and headed by a Prince. The dilemma that this approach faces is that then Cabinet is composed of largely unelected individuals who may not necessarily have the popularity among the electorate which is required for legitimacy of government. A good example of this paradoxical

dilemma is demonstrated vividly by the result of the 2003 election itself whereby only one (1) out of seventeen (17) Cabinet members won the election. That is not the full story though. Further more, although one opposition leader of the Ngwane National Liberatory Congress (NNLC) and former Prime Minister, Dr Obed Dlamini, stood for elections as an individual and not representing the NNLC and won a constituency in Manzini, he does not feature in the Cabinet. In fact Obed Dlamini's participation in the election race has raised a number of questions from keen observers of the Swaziland political scene. First and foremost why he decided to contest the poll while political parties still remain banned? Why he contested the poll while the trade union and human rights alliance (Democratic Alliance) had decided to boycott the election? What does he hope to achieve in a Parliament heavily dominated by the King? Some have even argued that there is little that Obed Dlamini could change under the circumstances and that the best of his achievement would simply be to press for unbanning of political parties.<sup>4</sup> and one may also add that all that Obed Dlamini could also try to achieve would be a national

Constitution for Swaziland through Parliament under the leadership of the new Speaker, Mr. Marwick Khumalo and consequently followed by a national referendum. However, such a process would have to dovetail somehow with the process already initiated by the King and just how that happens still remains a million dollar question. So there are essentially three (3) basic elements of the Swaziland executive branch of government following the 2003 election namely (a) power consolidation by the royal house, (b) exclusion of opposition voices in the Cabinet and (c) marginalisation of women propelled by patriarchal ideology and traditionalism (regarding this latter point, see Jackie Kalley in this volume).

The King dissolves both the legislature and the executive just before elections and appoints an interim head of government and prior to the 2003 election government was dissolved and a former police commissioner, Mr. Albert Shabangu (currently the deputy Prime Minister), was appointed by the King as interim head of government until a new government was formed following the election race. Compared with both the legislature and the executive, the Draft Constitution seems to provide much scope for autonomous powers of the judiciary from the King. In

the current scheme of things, however, the King exercises powers that have sufficient weight to reverse decisions or judgements emanating from the judiciary.

Three pieces of legislation that are central are in respect specifically of elections are the 1992 Establishment of the Parliament of Swaziland; the 1992 Elections Order; and the 1992 Voter Registration. The first Order elaborates on the qualifications for membership to Parliament, the form and composition of Parliament, the powers of Parliament, procedures for parliamentary proceedings as well as prorogation and dissolution of Parliament. It further prescribes the form and composition as well as powers of Cabinet. The 1992 Establishment of the Parliament of Swaziland Order provides that "the King may at any time prorogue or dissolve Parliament."<sup>5</sup>

The 1992 Elections Order sets out the law that governs the manner in which elections are conducted in Swaziland. This legislation should be read in conjunction with another related document entitled "Notes for Candidates" which essentially represents a useful information bulletin for the candidates during elections. The 1992

<sup>4</sup> Cornish, *Mail and Guardian* October 24, 2003

<sup>5</sup> GOS, 1992, p.12

Elections Order and this additional document govern the all the three phases of the electoral process namely (a) the pre-election phase; (b) the polling day activities; and (c) the post-election processes including dealing with election petitions etc. One of the crucial elements of the Swaziland election revolves around constituency delimitation which process then defines the electoral boundaries or what are also termed *tinkhundla*. The Delimitation Commission is appointed by the King and is the principal authority for determining the appropriate size of the 55 constituencies as well as the polling stations within the constituencies. About 150-200 polling stations were set up throughout the 55 constituencies for the 2003 election. Delimitation of constituencies is a fairly delicate political process which requires a trusted independent and impartial body in the form of an independent electoral commission to undertake. Failing which it suffers not only a legitimacy crisis from the electorate and is easily amenable to political manipulation such as gerrymandering by interested powerful political actors. During the 2003 elections, for instances, there were voices in Swaziland which complained about the delimitation process and the way in which it tended to disenfranchise some communities and this was

linked to the manner in which polling stations were located within the constituencies themselves.

Besides delimitation, another contentious element of the general election in Swaziland revolves around the primary elections. This issue is treated adequately by Shumbana Karume in number one of the *Election Update* of September 2003, and Wole Olaleye in this volume. Thus details around how the process unfolds will not detain us here for it has been sufficiently interrogated elsewhere as mentioned above. However, it is worth mentioning that the whole process of nominations and the primary elections themselves are open to undue influences by entrenched political interests given that both processes do not conform to the one of the most cardinal principles of democracy, namely secrecy of the vote. Worthy of note also is the fact that during nominations and primary elections no campaigning is allowed. This happens only between the primary elections and the secondary elections. Thus, officially campaigning for the 2003 elections in Swaziland happened between 22 September and 17 October 2003. Given the short space of time for campaigning, the electorate has difficulties making informed choice of preferred representatives in Parliament surely. During the 2003 about 1500

candidates were nominated of which 300 were females. Following the primary elections, 333 candidates were voted to stand for secondary elections of which only 30 were women. Quite clearly the Swaziland political system is extremely deficient in this respect. EISA research on primary elections in the SADC region as a whole reveals that this is one of the hot-spots that trigger overt and covert election-related conflicts due mainly to lack of intra-party democracy. But then Swaziland provides yet another dimension of the problem namely that even in the absence of political parties primary elections are used to serve certain entrenched political interests, in this regard the dynastic elite.

Finally, another aspect of the electoral process covered by the law, yet still highly controversial, relates to the counting of votes once polling has been completed. Although candidates are supposed to have agents monitoring the whole voting and counting process on their behalf, the efficacy of the agents left a lot to be desired during the 2003 election. Further more, there were not many observers during the election to observe the whole process adequately more so because the interest of the international community in Swaziland (compared to a country like Zimbabwe for instance) is almost zero. So

the most horrendous election irregularities could happen in Swaziland without the notice of international and regional observers. Fortunately, the umbrella body for Swaziland NGOs, the Coordinating Assembly of Non-Governmental Organisations (CANGO) monitored the whole election process and subsequently prepared a fairly detailed report (see CANGO, 2003). The process following the polling day is extremely open to possibilities of irregularities. After the last person has voted in a polling station, ballot boxes are then ferried to a nearby police station where they are kept overnight. The following day, the ballot boxes are ferried once again to a nearby community hall or a school building where counting takes place. In most other SADC countries, it has been proven that it is not only cost-effective but also efficient and prudent to have votes counted at a polling station and in countries like Lesotho the counting at the polling station takes place immediately after polling. This creates confidence in the process and makes it less prone to unnecessary political intrigue and manipulation.

The last piece of legislation governing elections in Swaziland is the 1992 Voter Registration Order. Undoubtedly, registration of voters tends to be an electrically charged process

much the same way as delimitation of electoral boundaries. Thus, if this exercise is not handled with utmost care and diligence, especially through an independent, neutral and impartial body, this can also generate a massive amount of political dust which, in turn, tarnishes the integrity of the electoral process and casts the legitimacy of a new government in serious doubt. The actual election does not really happen during polling day if we are to be technically correct and part of the explanation for the outcome of polling day activities lies in earlier processes. These include both the delimitation of constituencies and voter registration. Once things go haywire on these two fronts, the outcome of an election is bound to be clouded in incessant and, at times, violent conflict among protagonists in the election race. Of the total population of about 1.2 million people, Swaziland has an eligible voting population of about 600 000, only 228 950, of which 119 535 were women and 109 415 were men, registered for the 2003 election. Although slightly above the 1998 voter registration, the low numbers of voters still emphasise the profound problem of voter apathy in Swaziland as elsewhere in the SADC region as whole (see Wole Olaleye in this volume).

### **Conclusion: Imperatives for Democratic Transition in Swaziland**

It is abundantly evident from the above expose and the subsequent chapters of the *Update* that Swaziland has been holding regular elections for the composition of the National Assembly under a political condition considerably devoid of democratic content. Thus, without any equivocation, the major challenge for the small Kingdom is surely a smooth democratic transition. This chapter and the subsequent chapters in this *Update* read together with first *Update* that was prepared in September 2003 just prior to the election of October 2003 suggests, in fact, that need for a transition towards multiparty political system is more urgent now than say some twenty years ago when the Constitution was suspended in 1973. In order to generate debate within the SADC region on this process, we elucidate in a sketchy fashion some issues and processes that need to inform such a democratic transition in Swaziland.

First, the major imperative for democratic transition in Swaziland revolves around a development of a widely accepted constitutional framework. Thus, a new Constitution is a key imperative and such a legal document should not just exist but be a living

document upon which constitutionalism and the Rule of Law are firmly anchored. Integral to this mode of constitutionalism should obviously be the Bill of Rights and the revocation of the 1973 Royal Proclamation that banned party political activity. Then, a conducive political playing field would be set in motion. How far the present Draft Constitution tackles this imperative still remains a moot point. Probably the general public debate over this draft document and the subsequent referendum (if any is planned) will tell us whether or not this is the right format for democratic transition in Swaziland.

Second, then having sorted out the supreme law of the land, Swaziland then has to reform its electoral laws and electoral institutions accordingly. In this vein, obviously all the three pieces of legislation namely (a) the 1992 Establishment of the Parliament of Swaziland; (b) the 1992 Election Order; and (c) the 1992 Voter Registration Order would have to be amended in order to conform to a new democratic Constitution. Equally important is the whole issue of reform of the election management body (EMB) away from a government department towards an independent and impartial body in the form of an independent electoral commission.

Third, both the constitutional provisions and the actual practice in the field of applied politics should ensure and be predicated upon checks and balances between the main layers or organs of the state namely the legislature, the judiciary and the executive branches. The legislature and the judiciary must be able to hold the executive accountable and reduce incidences of abuse of power by the latter due to the currently obtaining condition of the political hegemony by the dynastic elite. In this wise, even the current condition of high centralisation of power within the palace would need to be tampered with. It may be a good opportunity for Swaziland to borrow from Lesotho's constitutional monarchy and deliberately steer its political system more and more away from the executive monarchy framework.

Fourth, besides the unbanning of political parties for purposes of opening the political marketplace for free and unfettered competition for control of state power, it is also imperative that civil society movement in Swaziland be allowed ample space to operate and lobby policy actors for a more democratic dispensation. Democracy operates somewhat like a car; the state institutions are the drivers; political parties are the motor mechanic

engineers; and then civil society and the electorate should be the engine. Thus, this proposition calls for constructive and peaceful engagement of civil society with the state for positive democratic reforms in Swaziland.

Finally, all said and done, the international community must also show sufficient interest in the political developments in Swaziland. These should include, *inter alia*, the Southern African Development Community (SADC), the African Union (AU) and the Commonwealth to which Swaziland is a member. The interest of the international community in the imperatives for democratic transition in Swaziland should start first and foremost through constructive diplomatic dialogue aimed at exhorting the ruling elite to open up the political system in a democratic direction.

Hopefully before the next election in 2008, Swaziland will have undergone these momentous developments and following that the key challenge, would shift from democratic transition to that of democratic consolidation.

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## DEMOCRATIC PERSPECTIVE

### TOWARDS A DEMOCRATIC TRANSITION IN SWAZILAND

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#### Introduction

Swaziland has just organised its National Elections. Judging from the observer mission reports, these were well organised and administered. But these elections, as were the previous ones, have been discredited not on the basis of the organisational point of view but on the understanding that no elections can be credible outside political parties' competition to access power and on the basis that elections must lead to the creation of a legitimate and credible Parliament.

#### Current Political Development in Swaziland: Opening Pandora's Box?

The question that challenges political scientists and policy makers alike in Southern Africa is how to deal with Swaziland which claims to have found a political system that is rooted in traditional culture immune from undue influences of the western

political culture embedded within the liberal democratic mould. African intellectuals and leaders have called on Africans to find a democratic system suitable to African dynamics. Swaziland (King and his entourage) claims to have found that system. What the King and his entourage fail to appreciate, however, is that there are universal principles beyond simply as King people to vote or choose who would represent them in Parliament for a system of governance to be really legitimate. First, there is the need to have the presence of parties around which the entire electoral process takes place. Secondly, the entire political system from the electoral system, distribution of power to the accountability of leaders must be accepted by the majority of citizens for it to be seen as democratic. It should also be understood that under a democratic system elected leaders are accountable to the people. Accountability is one of the most critical ingredients of any democratic system. Indeed there are countries that hold elections through a multiparty system and where leaders are not accountable. The argument here is that under a representative system of government, leaders are more likely to be accountable to their people.

Unfortunately, the King, who holds all the executive power, is not accountable to citizens. For example, while corruption is all too common in democracies, including well-established ones, an independent Parliament and judiciary along with a free press, can check abuses of power and sanction where possible. This is not possible in Swaziland as far as the King, and his entourage, is concerned.

The Parliament in Swaziland does not fulfil the role expected of such structure in democracies. Democratically elected leaders have an important additional source of legitimacy that can reinforce their ability to make decision in all spheres of state activities. This is not the case in Swaziland where the Parliament is said to be rubber stamp of the King to all intents and purposes. The system in Swaziland has been criticised first for its nepotistic and kleptocratic tendencies. For example, following the recent elections, the King used his prerogatives recognised by law to appoint 10 MPs to compliment the 55 MPs popularly elected. He used the occasion to appoint his own family members. Among the 10 were his nephew Mphiwa Dlamini. He also appointed his

brother, Prince David Dlamini as MP. He further named his sister, Princess Tsandzile to Parliament. It is this kind of behaviour from the King that creates tension in society and exposes the deliberate political enfeeblement of the country's Parliament. The futility of Parliament is further reinforced by the fact that the legislature has no power. In effect, MPs do not create laws, but debate laws brought to them by the Cabinet ministers, who are palace appointees.

Banning of political parties is another infringement on the democratic right of the Swazi people. The King has failed to positively react to the call of civil society to deal with this issue and even the much-awaited Constitution does not recognise political parties. For the King, as was for his father in 1973, political parties are the source of problems and do not advance democratic rights. The political leadership in Swaziland prefers to relate to conflict between political parties in SADC and lack of democracy within these parties as enough good reason to maintain their position not to allow multipartism through political parties. The King has long promised and blocked political reform at the same time. As a result tension has risen sharply in recent years with pro-democracy and trade unions

calling for more freedom. Often times, the King has promised change but unsure of his hold on power or unsure of his ability and indispensability, he continues to use an iron fist, in a typically Machiavellian fashion, to silence the opposition voices. It is only fair to conclude that there has not been shift of mindset in terms of democratisation in Swaziland, a situation that contrasts sharply with what currently obtains in a majority of the SADC member states today.

Swaziland's political impasse is traceable from 1973 when the King abrogated the Constitution. Current indicators and in view of the content of the new Constitution, the King's position is still that of an absolute monarchy with wide-ranging powers. The new Constitution, still to be ratified by the King, is being criticised as a contrivance meant to keep the monarchy in power forever. The Constitution strengthens the powers of the traditional leadership, and can be read as forbidding organised political opposition to royal rule. The King in Swaziland has confused the chieftaincy and governing. He is King through tradition and not because of his capacity to govern.

Elections are held for the welfare of the citizens and one assumes that a leader whatever he does, especially

a King, it is intended to satisfy his subjects and improve their lives. It is therefore logical that if the people are not happy with the way they are being governed or ruled alternative form of governance must be found through a consensual approach. Even in America and Europe, there are questions about democracy. There are questions about electoral system. There are questions about the rights and levels of participation. There are questions on the authority of government's actions in controversial situations. But the opportunity given to people to debate freely and propose alternatives is the power behind the much-celebrated democracy in various parts of the world especially social democracies in the Scandinavia for instance. Definitely, the Swazi people are not different from other people and are also capable of generating good ideas and propositions that can help the King and his government to advance the common good.

Nevertheless, all is not lost in Swaziland. While the idea of democracy is potentially viable everywhere, the process of democratisation is long and hard, especially in countries where political progress is hostage to economic difficulties linked to culture. The new Constitution has introduced some positive changes though limited. While the Constitution maintains the

power of the King, it does have a Bill of Rights and recognises the freedom of association. It also refers to the status of women. It makes provision for the increase of women representation in Parliament and government. The 2003 election did not improve on women representation; only 9 women were elected to Parliament and two nominated by the King. We have today 11 women MPs out of 65 MPs. Nevertheless, these changes demonstrate that the King is not, as one would like to believe, insensitive to the cries and supplications of his subjects.

### Way Forward

First, there is no doubt reforms are quickly needed in Swaziland. Consensus must be reached on key issues. These reforms should cover the Constitution and the electoral law in the first instance. The negotiations would have to include all stakeholders from the King, political parties, civil society and citizens. There is no shortcut to political transformation. Any change that would try to sideline major actors would not be sustainable in the long run. It is with this in mind that Khabele Matlosa argues, “it would be difficult to have the current Draft Constitution adopted as a collective Constitutional vision.” The underlying basis for this argument is

that this Constitution did not emanate from a wider consultation. Civil society organisations were never consulted and the selective manner in which submissions were made opened room for the rejection of the Constitution even before one could even consider its form and content. There is a need to go back to the drawing board and rethink a better constitutional route for Swaziland.

Second, the place and role of the King in future political system must be well determined. Arguably, Swaziland may have to follow the Lesotho example of a constitutional monarchy (see Matlosa in this volume). His traditional role as the father of the nation should not be tempered with.

Third, civil society organisations play a critical role in the transformation of societies. The movement of change in other countries in SADC was the work of internal forces. Swaziland civil society has not been able to pressure the monarchy to introduce fundamental change for the past decade. There is no doubt the democratisation process would be slow without civil society agitation (see Matlosa in this volume). Quite obviously, there is need for a working partnership between and among the state, private sector and civil society in the

process of democratisation. The challenge is to develop people’s participation and awareness in the political management. The creation of a democratic society in Swaziland cannot start until and unless there is a drastic behavioural change from the Kingdom. It is thus imperative that the capacity of pressure groups is enhanced and their institutional capacity to play this role effectively and register meaningful impact assured.

Fourth, Swaziland is a country where the power of tradition is so pervasive and as a result the governance process is marked by clear bifurcation: Western modern model and traditionalism. Apparently, the biggest challenge for Swaziland is precisely how to strike the balance between the two forms of governance and the dilemma is how to go about it? Fortunately, there are already examples on the continent of good practice to bring about a peaceful transformation. In Southern Africa, Lesotho could be a country from which Swaziland could learn.

Fifth, the *Tinkhundla* system of organising elections must be changed or amended to ensure that it is more open, transparent and competitive to give electorate sufficient room to make informed choices on the people who should govern them. As a consequence of the

*Tinkhundla* system, the Parliament as an important overseeing institution does not have the material means or required capacity to fulfill its triple functions of national representation, legislative output and control of government activity. This results essentially from the lack of a true parliamentary tradition which, itself, is a consequence of the King executive power and domination that does not allow the Parliament to acquire the necessary means and mechanisms to operate in a system where the powers are separated. There is therefore need to strengthen and protect Parliament from the executive interference (the King) as it is now. But this would only be possible when the entire electoral system is reformed and method of governance adjusted with emphasis on the separation power between the executive, the judiciary and Parliament

Sixth, the SADC region has a greater role to play in this process. The SADC region and democratic states in the region must take upon themselves to help and gently guide the Swaziland government to come up with a negotiated system of governance. SADC must engage the King and guide the Kingdom to go through what will be a slow and long road to a democratic dispensation.

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## ELECTION POST-MORTEM

### **POST-MORTEM OF THE SWAZILAND GENERAL ELECTION OF 2003**

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#### **Pre-Election Environment and the Campaign**

The atmosphere of the 2003 Parliamentary elections in Swaziland was rife with contradictory moods. On the one hand external observers were made to believe that an enthusiastic mood prevailed among both the eligible voters and the overseers of the elections, for very distinct reasons for each group. The election authorities were confident that all systems for the elections were in place; 150-200 polling stations had been prepared to serve at least 200,000 eligible voters. The enthusiasm among the eligible voters stemmed from the possible adoption of the Draft Constitution, which political analysts at the University of Swaziland believed had given these elections a catalyst to overcome voter apathy.

On the other hand the daily papers and several stakeholders consulted,

noted a disparate mood and a slightly less optimistic picture. A few allegations of violence were reported in the press; there were claims in two constituencies; Logoba and Luve that some men used violence to force voters to vote for certain candidates. References were also made to a few isolated cases of intimidation and corrupt practices that occurred during the campaign period. The most commonly mentioned case referred to the traditional chief who used his influence to intimidate voters in his chiefdom. The Chief Electoral Officer in response issued a statement warning “that people who manipulate others would be found guilty” but this was mere rhetoric, proclaimed sceptics.

The mood among the candidates was one of uncertainty and concern. Particular issues on which some candidates expressed concern focused on election preparations; and the trade of registration certificates. The registration certificate is the key to voting and contains particulars of the voter. In fact it is the only means by which voters could be identified and confirmed in the voter’s roll and thereby allowed to cast their vote. Weeks prior to the elections, however several stakeholders

noted all sorts of allegations about the registration certificate, from aspiring MPs alleged to have bought voter certificates to some even stealing them. The capacity of the Elections Office also came into question. Candidates admitted that there were some successes in terms of putting in place all the necessary mechanisms; however it was felt that various issues on the process had not been clearly articulated to the electorate. They also lamented on other shortcomings such as the unavailability of the voters register to the public before the election. This meant that voters could not check on or challenge their entry.

The court cases arising from primary election disputes generated even more uncertainty. A total of 10 lawsuits were filed after the primary elections, most of which alleged vote rigging and other forms of electoral fraud. The day before the elections three court cases still had not been resolved by the High Court which resulted in the temporary suspension of elections in the three constituencies involved in the election disputes. The allegations behind the disputes varied; in Maseyisini constituency the former Member of

Parliament for the area accused the former Justice Minister of registering people in absentia, and of intimidating a Returning Officer, whilst both in Nkhaba and Gege constituencies, disputes arose from claims that voters were intimidated and others assaulted to prevent them from voting. Political analysts announced that these court cases should have been ironed out at the latest by Friday, the eve of the elections but many cases had been grounded because there were no judges to preside over them. Given that the court was, in fact, in a two week recess during this period, it is no wonder that several of those interviewed charged that “the Parliamentary elections were being held under the absence of the rule law”. Moreover, the law in relation to election petitions contributed to making the pre-election process more precarious. As it currently stands in the Voter Registration Order of 1992, the law is not clear on the effect of the filing of an appeal to a Magistrate, High Court Judge or even Court of Appeal. This factor needs to be clarified so that the election process is not affected and the elections can continue with certainty.

It is worth noting that the elections were also slightly affected by a stay-away campaign staged by pro-democracy groups, who had advocated the postponement of the general elections until

public consultation on the Draft Constitution had been completed. Pro- democracy activists who called on people to boycott the ballot included the Swaziland Democratic Alliance (SDA), an umbrella organisation that includes labour and human rights groups and the Swaziland Federation of Trade Unions (SFTU). Despite the boycott, however we were informed that there was unprecedented euphoria and excitement. Quite a large section of the population took these elections more seriously than previous elections and did not heed their call for an election boycott and included some members of the banned political parties who were involved as independent candidates. Obed Dlamini, a former Prime Minister from 1989 to 1993 and president of the political organisation, the Ngwane National Liberatory Congress (NNLC) contested the election. Notwithstanding the boycott, the progressives’ reaction to these elections was low-key in contrast to the 1998 elections. There were no rallies to dissuade voters from participating and nor were there protest activities staged to provoke the authorities.

### **Campaigning**

Campaigning commenced on 22 September and ended on 17 October 2003, the day before the general elections. Campaigning in Swaziland is

allowed, it is only independent campaigning that is prohibited; meaning that permission from both the Election Office and the constituency head has to be sought before meetings of a political nature can be held. Once permission has been obtained campaigns are then held in the *tinkhundla* centers, the only venue where such meetings can be held, as stated in the 1973 proclamation. Traditionally, the Returning Officers together with the constituency headman, introduce the candidates to the constituencies and then organise standard campaigning meetings, where each candidate is given equal time. In the previous elections candidates would be given at most 15 minutes to campaign. It was observed that more time to campaign was allocated to candidates for these elections. Other low key conduits for campaigning purposes were also utilised; these included posters, T-shirts, the print media as well as the national radio.

Outside the structured meetings candidates campaigned as they wished. Because the law does not have any specific campaign regulations which govern the activities and conduct of candidates, the process is easily manipulated. We were told that the mechanisms and procedures of campaigning are laidback; and there is a lot of space to manoeuvre.

That said the Election Order of 1992 does list what is considered as unethical practice. Part II of the Order lists the following as corrupt practices to which candidates are expected to adhere: (sections 63) treating the provision of meat, drink or refreshment in order to influence voters, (section 64) using or threatening to use force violence or supernatural means to persuade a person to vote, (section 65) the giving or offering of money, gifts, rewards, etc to promise anyone to vote. Candidates hardly adhered to these rules and as a result campaign irregularities were rampant. There were a lot of complaints about how the campaign process went and there were allegations that some candidates donated food hampers to prospective voters, provided their own transport and other forms of bribes to entice voters.

The unprecedented involvement of members of banned political parties as candidates in these elections introduced new elements in the election process that beg some attention. As much as their participation was a welcome initiative which had created some excitement in constituencies and galvanised interest, it caused some suspicion among the non-politically affiliated candidates. We were informed that due to their connection with political groups their level of capacity

was higher than average, unleveling the playing field to their advantage. There was the possibility that high profile candidates linked to political organisations benefited both in terms of voter support and assistance from their organisations. For that reason we noted that the involvement of “independent candidates” in future elections will bring some daunting challenges to the electoral processes, which can be addressed via enacting appropriate legislation.

Both the absence of political parties and the calibre of candidates affected the quality of campaign promises and issues. Because candidates have no party platforms to follow, campaign issues were more situational and dependent per constituency than policy based as expected in party political campaigning. In the absence of political parties aspiring MPs tend to focus more on local issues that matter to their electorate at community level than on issues that emphasise national plans and priorities. As a result there was no uniformity in the campaign issues; these ranged from HIV/AIDS related issues such as passing the necessary legislation to address the issue of orphans from HIV/AIDS pandemic, to others promising to resolve the problem of the Rule of Law, and promising voters with roads, clinics and

employment generating projects.

We were also informed that the composition of candidates in these elections tended to dilute the quality of the campaign promises. Candidates did not seem to have the political attitude one would require in aspiring MPs. We were told that two school-going children were contesting the elections and they used rhetoric that did not quite connect to politics. For instance they were heard to have said that they were hungry and they needed a chance to earn money as an MP. They also focused on minor issues such as promising to provide a football pitch. Celebrity candidates also found some voter appeal this year. With politicians banned in the Kingdom, it was not uncommon to see individuals with such diverse background such as fashion and radio producers contest these elections. The general sentiment was that the election was a popularity contest and that people sought to be MPs for personal gains.

Essentially candidates are restricted to certain issues due to the mode of governance that presently rules Swaziland. Many felt it was unnecessary to draw on policy specifics of how they would press for reform given that Parliament is usually used as an advisory body and MPs lack the power to

deliver on their promises. Because of this, MPs in Swaziland are seen more as extension of government officers than legislators.

### **Civic and Voter Education**

The responsibility for conducting voter education during elections usually falls on the National Elections Office. In this regard the Chief Electoral Officer reported that a nation wide voter education programme was conducted by placing notices in Swaziland's national dailies and using both the state's radio and television facilities to advertise the elections. Pamphlets and booklets were also distributed informing the voting population on all the different stages of the elections; from the registration, nomination, and campaigning to the voting phase for both primary and secondary elections. We were informed that the information and education officers in addition went around the communities using dramatisations to explain the election processes. The Office had also hoped to contract some NGOs to carry out these activities but admitted that due to limitations on the budget they were able to do relatively little thus making voter education for these elections inadequate.

The NGO community voiced similar sentiments. They charged that the content of

the voter education implemented by the Election Office was narrow and not well structured. It only focused on the electoral processes and did not engage all voters. The general complaint was that the Office's programmes reached the converted and not the majority of the rural population. Their use of the electronic media was also insufficient; it mostly entailed a half hour programme. Moreover the Office had an impractical monopoly on voter education. The idea was for the Elections Office to subcontract the job, however the Chief Elections Officer and deputy conducted it themselves.

To complement the whole civic education exercise a few NGOs conducted their own voter education programmes, but faced some official resistance at community level. NGOs we met told us that although these elections provided plenty of opportunities for such initiatives they were unable to manoeuvre, and mobilise people freely. Another reason cited by NGOs for their minimal involvement in voter education this time, was that the Draft Constitution review diverted attention from the elections. Issues related to the elections had been sidelined, instead NGOs preferred to engage people on constitutional issues as it provided a larger framework

for instituting political reform.

There was one success story, however. A few NGOs conducted a successful civic education programme under the Vote for Women Campaign. This engaged women candidates in a comprehensive education process by holding workshops to instruct women candidates on elections issues, gender empowerment and most importantly, how to run a successful campaign. We were reminded that the fact that there were as many as 30 women running as candidates in these elections was an indication that the campaign had achieved its goals.

### **Media Coverage**

The print media in Swaziland played an important role in keeping the voters and all stakeholders informed about the elections by their extensive coverage of the elections not only in the run up to the secondary elections but also during the preceding different phases. This was a marvel considering there was a parallel process on constitutional issues in the Kingdom, which was equally important in terms of coverage. We observed however that the approach the two main dailies; the *Times of Swaziland* and the *Observer* took was different from one another. The *Observer* seeing that it was

government owned took a conservative approach to the elections whereas the *Times of Swaziland*, a privately owned paper took a progressive approach and tended to sensationalise the issues. With regard to the content of their coverage we noted that the eight cases that arose from the primary election disputes, received more coverage in both dailies than pertinent electoral issues that are aimed at informing the electorate. The local observers and media personnel indicated that coverage by the broadcasting media on the other hand was scant. There were no programmes or any other discussions on elections in the few weeks leading to the polling day.

The response from the contesting candidates regarding access to the media varied. Some individuals commented that there had been unfairness in terms of giving people equal access; that candidates with financial influence had greater access to the print media. And usually those featured were mostly the popular candidates, which tended to marginalise those in rural communities with no assets. Others however commended the broadcasting media for providing equitable access. The Swaziland Information Broadcasting they noted, allowed all candidates to canvass in the airwaves for

about 5 minutes. Moreover there seemed to have been some collaboration to ensure that both the Swaziland Broadcasting Corporation and other privately owned broadcasting stations gave aspiring MPs equal access.

Reports from the local observers as well as representatives from the media indicated that the use of the media by the Elections Office was very limited. Most commented that there was very little feedback from the Elections Office to the various media outlets regarding the election process. Local observers blamed this lack of communication on the mistrust the Election Officers had for the media. That said, at least one representative from the media outlets commented positively on the interventions of the Elections Office to ensure that pertinent information regarding the election process was regularly fed to the media. In a related matter, we observed that there was no monitoring mechanism within the Elections Office to assess the media's coverage of elections. This would have ensured that the media played a more constructive role in the elections.

It is worth noting that there is no Code of Conduct regarding the behaviour of the media especially during elections, which may serve

to explain the haphazard coverage of both the print and electronic media on election issues. Most media personnel commented that they were not aware of a policy, law or even a commission that ensures that elections were covered effectively and fairly or one that allocates fair and free time to all candidates. In recent months however, media practitioners with the Media Institute of Southern Africa (MISA)'s assistance have agreed to establish a Code of Conduct to be launched in November that would govern their activities but these, we were reminded, are attempts at self-regulation. At the end of the day, Swaziland has no regulatory code or law that will bind media to any of these codes.

### **The Poll and the Count**

#### *Opening and closing times*

Approximately 45 polling stations were visited by EISA Fact Finding Team in three constituencies; Lobamba in the Manzini region, Piggs Peak in Hhohho Region and Dvokodweni in the Lubombo Region. Although the opening and closing times were clearly set out in the notice that was issued on 16 July 2003 by the King of Swaziland, they varied substantially across the country. Some were opened as early as 5.00 am and others at 6.00 am and they

closed between 5.00 pm and 6.00pm. These differences in opening and closing times that we observed were a result of miscommunication between the Election Office and its staff. The correct times were clearly not communicated to the Presiding Officers; many it seemed had different information and were not aware of the correct times. There were some cases however where the voting process was delayed as a result of agents and candidates arriving late and the material being delivered late.

#### *Polling Station set-up*

Most voting stations were laid out correctly, with adequate facilities and voting space. Sufficient number of tables and chairs and adequate supplies of forms, voters' rolls, ordinary and tendered ballot papers were made available. There were two forms of ballot papers, one for the election of the Member of Parliament and the other for the election of the *Indvuna*/community headman.

The number of polling stations was adequate; in fact the Election Office had arranged for a total of 150-200 polling stations. However, the Election Office, without prior notice combined two stations in one location for some districts, the morning of the election. This change of location

caused some confusion among the voters and compelled the government to arrange transport at the last minute. We also noted that voting stations were not easily accessible. Those who did not have official transport had to walk for long hours.

Each polling station according to the polling procedures was supposed to be staffed and managed by the Presiding Officer, polling officers and security personnel. The Presiding Officer's main responsibilities were to maintain a commanding position, give directions as may be necessary, explain to voters the correct procedures, give assistance and keep order. A Returning Officer was also appointed for each constituency responsible for the general arrangement and conduct of the poll in that constituency. We noticed that in some stations, however not all the required staff was present. Some stations had the 8 required staff and others had less than four. It was also difficult to identify them; in some stations the election staff was easily identifiable with their bright orange election bibs whilst in others staff did not have any form of identification to denote their status, which made it difficult for observers to identify those that had permission to be in the stations and those that did not. It is also worth noting

that in almost all the polling stations the team visited the outer perimeter was not clearly marked, hence it was difficult to assess whether or not any form of candidate campaigning taking place was or was not taking place within the perimeter.

#### *Voting procedures*

The polling arrangements are clearly set down in the Election Order of 1992, which also states the laws regarding the counting and results process. The rules and regulations, we concluded were not appropriately communicated by the Election Office to its staff, nor were they followed uniformly across the country as they are set out in the Order. This conclusion was based on the following observations.

We observed that there were many other cases where polling procedures were not uniformly followed. Some stations did not check for indelible ink on voters thumbs neither did they stamp the voters certificate. Some were stamped at the end of the voting at some polling stations and at other polling stations not stamped at all. At most of the stations we visited we found more than one voter inside the station which is against voting procedure whilst other stations only allowed one voter at a time. According to the Election Order of 1992 in section 22,

no person is admitted to a polling station unless his/her name appears on the register of voters. Persons who are exempt are of course, the Election Officers, security officers, the candidates' agents and observers. The sealing of ballot boxes also differed, we observed that many stations only had their ballot boxes locked and many were not sealed with thread and sealing wax as stipulated in the regulations

There were some positive observations however. For instance we noted that electoral officials observed the rules quite well with regard to voters' identification. Most demanded to see the registration certificate or the stipulated identification documents in the case where a voter had misplaced his or her certificate. They also turned away voters that did not have either form of identification, although there were very few such cases. There were cases where the Presiding Officer allowed voters without appropriate voter certificates to vote provided their names were identified in the registers roll and provided the identity of the voter was confirmed by a traditional chief. In general, in those stations we visited we observed that Presiding Officers only allowed those who were on the register to vote.

However, in cases where the applicant for a ballot paper

stated that a particular name in the registers roll referred to him but there was evidence that a ballot paper had already been issued in his name, not all polling officers followed procedures as stipulated in the Election Order. Some followed the instructions by issuing him a tendered ballot paper and asking the voter to sign a declaration whilst others allowed such voters to vote using the ordinary ballot. All these different cases arose because the registration certificate did not have adequate information of the voter and was open to manipulation and vote buying. The Elections Office admitted that this was an issue that needed to be modified. The fact that the certificate did not have a picture for instance was problematic.

#### *Electoral staff performance*

The mission observed that for the most part, election officials carried out their duties efficiently and in an impartial manner. Each station we visited was staffed by a sufficient number of officials which helped to overcome the workload as this ensured that each staff was designated a particular task. Presiding Officers in particular, should be commended for their diligent work and support they provided their staff. In a few of the reported cases where procedures were not followed correctly, the team

observed that this was more a result of inadequate staff training by the Election Office than inability of the officials to perform their tasks. This raises questions about staff training and is an indication that there may not have been an adequate administrative system provided by the Election Office for its staff to operate in.

#### *Secrecy of the ballot*

The secrecy of the ballot during the voting was generally assured except for the assisted voters, in particular the elderly, whose secrecy was compromised as they had to be assisted by the Presiding Officer. This is authorised, however in such instances we observed that others too, assisted voters such as the security officers. When assisting incapacitated voters, Presiding Officers were required to enter the name of the voter on a form for record keeping; a procedure that was not always followed. A further tendency that might have undermined the ballot secrecy was the way in which some voting booths were positioned. In a few instances the open end of the voting booth was facing windows or officials. Additionally, the team was particularly concerned with the writing of the registration number on the counterfoil of the ballot paper, this meant that it was possible to ascertain who each voter

voted for. Fundamentally the ballot was not at all secret, and one could view this practice as a form of intimidation, among other things.

### *Security forces*

Security forces made up of both police and soldiers were present at all times in the stations we visited. It was not clear how many were authorised to be at each station but we noted that there was an uneven distribution of security forces. Fewer forces were deployed to rural areas than to stations located in urban areas. Their presence, there however may have been more important for maintaining order. Overall there were no incidents of overt voter intimidation but their performance could have been more thoroughly assessed. A related issue worth pointing out is that in some instances, security forces directly assisted voters cast their ballot, and not the Returning Officer as stipulated by the election laws. This practice should be discouraged in future elections.

### *Local Observers and Candidates' agents*

Domestic observers and candidates agents were deployed to observe the polling process. In some stations, however there were no agents; some candidates obviously saw no need to

have their representatives present. As for the local observers, it appeared to have been the first time that NGOs deployed domestic observers to observe the electoral processes. There was no provision for their involvement in the electoral laws but with regard to candidate agents, the law does set out the rules concerning their appointment. It states that a candidate may appoint, if s/he wishes, one polling agent and one messenger to represent him at each polling station, but the Election Office must be informed in writing of the elected representatives at least seven days before the polling day. Candidates' agents however, we noted seemed unaware of their duties and did not raise any complaints or concerns even when warranted. Generally agents did not fulfill their role as expected, indicating that extensive training is necessary.

### *Closure*

Again closing times, as already noted above, varied across the country. Most closed at 6.00 pm, the stipulated time and the team concluded that overall the closing process went smoothly, with the exception of a few stations. At a voting station in Dvokodweni delays were experienced and there seemed to be some confusion among staff about the procedures to be followed during the closing

process. The team, in addition, observed that closing arrangements slightly differed per station. The procedures for the safe keeping of all the sensitive election material for example, varied. Most Presiding Officers took the responsibility in safekeeping the material. Other stations stored them together with the ballot boxes at the police stations. We also noted that candidates' agents did not always accompany the ballot boxes to the designated police station, yet again another example of how inadequately informed they were of their responsibilities.

### *Counting of votes at polling stations*

The counting took place the next morning and the process overall proceeded satisfactorily and swiftly especially as the stipulated counting procedures were few and manageable. Security forces were present throughout and particularly effective during the transportation of the ballots. Candidates and their agents as well as local and international observers were also present but in some stations Returning Officer/unaccredited persons were allowed to observe the counting.

Some observers reported delays in transporting the ballots from the police stations. At a counting station in the Lobamba

constituency delays seemed to have resulted from mere disorganisation, counting commenced two hours after the material had been delivered. It is worth noting that in stations we observed, the ballot boxes and other election material were appropriately sealed as they had been the previous night. Procedures overall were followed with the exception of the Lobamba High School counting station where the Presiding Officer did not verify the count nor tally up used and unused ballots.

included the names of most of those who voted, there were some instances where voters who had transferred were not on a particular constituency register because the transfers had not been properly addressed or completed in time. Another shortcoming of the processes as highlighted in the above account and needs to be brought to the attention of the Election Office, is that certain procedures as required by the election laws were overlooked by the election staff.

*Conclusion of the poll and the count*

In conclusion, the voting process went swiftly in all the regions, Presiding Officers and their staff executed their tasks professionally and in an impartial manner. The Election Office of Swaziland is highly commended for the successful conduct of the election especially given that it is staffed by only a handful of individuals. The delegation also congratulates the Office for the inclusion of women among polling staff.

The mission however, observed some inefficiencies in the management of the election. In some cases voters did not always understand the voting procedures especially in the rural areas, a reflection of the inadequacy of the voter education provided. Although the voters roll

## TRADITIONAL POLITICS RE-EXAMINED

### CHIEFDOM POLITICS VS ELECTORAL PROCESSES IN SWAZILAND

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#### Background to Election Results

An election is a demonstration of the will of the people on who should govern through popular vote. The process leading to the general elections in October 2003, which started in July 2003, with the nomination of candidates for the legislative seats, was interrupted twice because of poor voter participation in the nomination process. It was observed that the nomination process was conducted in an undemocratic manner in some areas because traditional chiefs prevented citizens' their rights to nominate people of their choice because of personal grudges. It is quite ironic that this nomination took place under a state of political

impasse between the traditionalist and the pro-democracy groups.

The impasse is a result of domination of the political landscape by the royalist faction, which dates back to April 1973 when the Constitution was suspended by King Sobhuza II. Political parties were banned under the pretence that parties are allegedly responsible for the undesirable political activities, bordering on the subversive that are completely foreign to, and incompatible with the normal and peaceful way of life of the Swazi people. This state of affairs continues to create a rift between the defenders of the monarch and the progressives, who are calling for unbanning of political parties, and total reform of Swaziland political system. All hopes and aspirations were dashed by the 31 member Constitutional Review Committee (CRC) set up by the King, Mswati III in July 1996. The CRC, which was to draft a new Constitution suitable for the

Kingdom of Swaziland and its people, finally released the first draft in May 2003 only to find that the issue of political parties was omitted. This was a disappointment to many of the progressive groups and individuals. The final recommendation of the Commission on an appropriate and effective political system for Swaziland is a no-political party system based on the *tinkhundla* system

As the *tinkhundla* system evolved, its social engineers remained adamant against the necessity of political parties for the proper functioning of society in Swaziland for several reasons. Most importantly, they maintain that political parties' are incompatible with Swazi chieftain system. They claimed that political parties allow division within society in party affiliation and impose a structure that allows elections to be dominated by those who derived influence from wealth or high status. This they argue, violates

Swazi tradition that allows everyone, regardless of status, to contribute on an equal basis to matters of local and national interest; and opened the way to political corruption, the funding of certain political groups by foreign powers, and the “buying” of votes by interest groups with the necessary financial means.

The King, Mswati III introduced a new electoral dispensation in 1992 through the establishment of Parliament of Swaziland Order 1992. The Voter Registration Order 1992 and the Election Order 1992<sup>1</sup> (See Matlosa in this volume). Prior to 1992, the choice of who should become a public representative was a sole responsibility of the elite within the Electoral College. The citizens were only responsible for electing members of the Electoral College, who then elected Members of Parliament. These amendments partially shifted the power of electing public representation away from the Electoral College, which is an

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<sup>1</sup> Commonwealth Expert Team: 2003

inadequate attempt to involve citizen participation in political processes, especially in elections.

The first *tinkhundla* elections were conducted in 1993. Swaziland is now the only country in Southern Africa without a multiparty system. The monarchy is hereditary; the Prime Minister is appointed by the monarch. A bicameral Parliament, an advisory body, consists of the Senate (appointed by the House of Assembly and the monarch) and the House of Assembly (appointed by the monarch and elected by popular vote). There are two stages in the elections for the 55 elected members: primaries and secondary elections. Nomination of candidates takes place by show of hands in open session at a meeting held at a local school or the chief's kraal. The candidates do not officially put themselves forward, but must be proposed by the people within respective chiefdoms. Those nominated then go into a primary election and the winners are put on to the ballot for the

constituency (*inkhundla*) representative in the House of Assembly. The second stage involves secret voting. Polls usually take place every five years: 1993, 1998, and 2003.

Voter turnout in 1998 elections was lower than in 1993, with just 30% of eligible voters casting their ballots<sup>2</sup> Banned political parties, trade unions and other pro-democracy groups had called for a boycott of the 1998 election and some observers say that this was a significant reason for the poor level of voter participation<sup>3</sup> (Ibid). Others suggest that apathy and a lack of civic education played a part, as well as disillusionment with incumbent MPs. In fact, the percentage turnout was not very different from that of other African countries that have recently held elections (Zimbabwe 27%, Niger 28%, Botswana 45%, Zambia 34%) under a one party dominant political actor. Voter turnouts are lower where there is manipulation of political power.

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<sup>2</sup> Rule: 1998

<sup>3</sup> *Ibid.*

What is clear from the 2003 Swaziland elections result is that there was widespread dissatisfaction with the performance of incumbent MPs - a large number of whom were not re-elected into Parliament and serious evidence of voter disengagement in the election. This would appear to suggest that the process is relatively free from the influence of the chiefs, since it seems unlikely that they

would have wanted such a dramatic change but this is not the case. Of the 30 members of the Senate - the upper house of Parliament - 20 are appointed by the King. The King has considerable amount of power and scope to exert substantial influence over election process.

### Summary of the 2003 Elections Results

The Chief Electoral Officer declared the

results of the Parliamentary and the *Tindvuna Tetinkhundla* elections on 21 October 2003. The result of the election announced excludes constituencies where elections result were disputed either at the primary and secondary levels.

The number of votes secured by the elected Parliamentary and *Tindvuna Tetinkhundla* candidates is as follows:

**Table 1: Votes won by elected representatives in different constituencies**

DISTRICT	CONSTITUENCY	ELECTED MEMBER OF PARLIAMENT	NO OF VOTES SECURED	Tindvuna Tetinkhundla	NO OF VOTES SECURED
Hhohho	Lobamba	Khumalo Marwick	902	Khumalo Majahodvwa	699
	Hhukwini	Sibanyoni Mamisa	621	Mkhabela Titus	629
	Maphalaleni	Dlamini Michael	758	Manana Mbalekelwa	662
	Motshane	Shongwe Elijah M.	869	Dlamini Robert	662
	Nkhaba**	No Elections	Nil	No Elections	Nil
	Mbabane East	Dlamini Esther	538	Mshengu Mabuza	523
	Mbabane West	Sikhondze Elphas	320	Ndwandwe Simon	369
	Pigg's Peak	Ndlovu Hlobisile	695	Mavuso Philemon	542
	Ntfontjeni	Dlamini Henry M.	762	Shongwe Mpostoli	690
	Timpisini	Tsabedze Zondi S	652	Mamba Jeremiah	652
	Mayiwane	Dlamini Vusi	1201	Ncongwane George	1048
	Mhlangatane	Mavuso Phillip	1620	Mkhatshwa Musa	915
	Madlangempisi	Masuku Joseph	699	Nxumalo Gagu	1061
	Ndzingeni	Dlamini Lutfo	2021	Dlamini Mpondo	652
Shiselweni	Sandleni	Hlophe Gibson	1277	Simelane Nomsa	604
	Zombodze	Thwala Titus	743	Dlamini Samuel	567
	Somntongo	Sihlongonyane Doward	597	Mbhamali Thokozani	615
	Matsanjeni	Shiba John	506	Myeni Themba	543
	Sigwe	Jele Joshua	787	Langwenya Titus	631
	Shiselweni 1	Sithole Vusi	916	Gamedze Dumasani	619
	Gege**	No Elections	Nil	No Elections	Nil
	Masevisini**	No Elections	Nil	No Elections	Nil
	Kubuta	Mabuza Njabulo	486	Dlamini John	602
	Mtsambama	Simelane Franson	830	Simelane Aaron	765
	Nkwene	Dladla Aaron	1194	Dladla Moses	1004
	Shiselweni 2	Vilane Enos	394	Dlamini Lymon	325
	Ngudzeni	Malinga Phineas	495	Masuku Titus	382
	Hosea	Masaku Thulani	681	Dlamini Abel	413

Table 1 (continued from previous page)

Manzini	Kwaluseni	Nkambule Majaha	351	Dlamini Andreas	322
	Nhlambeni	Dlamini Obed	509	Nxumalo Edgar	587
	Lobamba Lomdzala	Magongo Charles	630	Dube S'dumo	410
	Mkhiweni	Mavuso Machawe	1364	Dlamini Mfan'fikile	1353
	Mtfongwaneni	Nkambule Mfomfo	616	Mkhatshwa Mvelo	533
	Mafutseni	Sithole Majozi	864	Mkhatshwa Solomon	645
	Ludzeludze	Sikhondze Phillip	536	Dlamini Thandi	455
	Lamgabhi	Dlamini Themba	581	Dlamini Mbhulane	435
	Manzini North	Sukati Dumsile	326	Mdluli Clement	378
	Manzini South	Ntshangase Mariah	262	Mabuza Kenneth	302
	Kukhanyeni	Dlamini Clement	1119	Simelane Phola	399
	Mhlambanyatsi	Mavimbela Petros	263	Zwane Zacharia	346
	Ngwempisi	Msibi Vulindlela	496	Ntshangase S'fiso	451
	Mahlangatsha	Ngwenya Petros	826	Manyatsi Khandlela	643
	Ntondozi	Manyatsi Moses	814	Dlamini Mganjeta	485
	Mangcongco	Motsa Patrick	343	Dlamini Peter	205
Lubombo	Dvokodvweni	Fakudze Mtiti	1021	Dlamini Steward	726
	Hlane	Dlamini Mandlenkosi	793	Mavuso Lindive	580
	Mhlume	Mathunjwa Moses	382	Dlamini Bennet	408
	Lomahasha	Meninjeni Mahlaela	806	Mngometulu Simon	752
	Siteki	Ntjingila Wiseman	713	Nkambule Msizi	708
	Matsanjeni	Mbhamali Nkululeko	546	Matsenjwa Bhekithemba	656
	Mpholonjeni	Dlamini Thulani	506	Nhleko Lofana	466
	Sithobela	Mamba Patrick	725	Mamba Enock	706
	Lubuli	Myeni Timothy	1045	Dlamini Manesi	1305
	Nkilongo	Gina Trusty	437	Gina Thomas	363
	Siphofaneni	Gamedze Gundwane	1841	Dlamini David	536

Source: Extracted from the Report on NGO Electoral Support Network Observer Mission on Primary and Secondary Elections in Swaziland: 19<sup>th</sup> – 20<sup>th</sup> September & 18<sup>th</sup> – 19<sup>th</sup> October 2003. Published by The Coordinating Assembly of Non-Governmental Organisations (CANGO)

\*\* Elections either did or did not take place in these constituencies because of disputes on primary or secondary elections outcome.

In all constituencies the number of registered voters for the Parliamentary election is exactly the same as those who registered for the *Tindvuna Tetinkhundla* election. The register of voters does not distinguish voters on the basis of those registered for the parliamentary election and those registered for the *Tindvuna Tetinkhundla* election.

However, it does appear from the number of votes cast for the parliamentary

election (39 276) that voters are more interested in voting for Members of the Parliament as compared to local council representatives (*Indvuna Yenkhundla*) where only 31 326 exercised their choice. In total, this number represented a mere 18.4% (39 276) of registered voters who voted in the parliamentary election. This figure, when compared to 1998 elections, represents a difference of 67.2% (80 569) in number of voters who voted in the parliamentary election. Generally, a lower

than usual voter turnout is much evident in this election with Hhohho district commanding the highest number of votes cast in the Kingdom – 20.3%. Since there is no available estimate on the actual number of eligible voters in Swaziland, it is difficult to extrapolate to the entire population relative to the proportion of eligible voters in Swaziland. The table below provides the percentage of registered voter who voted in the 2003 parliamentary elections:-

**Table 2: The percentage of registered voters who cast their votes in the 2003 parliamentary election**

DISTRICT	REGISTERED VOTERS	VOTES CAST	% POLL
Lubombo	44 424	8 815	19.8%
Hhohho	57 384	11 658	20.3%
Manzini	63 638	9 900	28.1%
Shiselweni	48 501	8 906	18.4%
Total	213 947	39 279	18.4%

Source: Compiled from the Report on NGO Electoral Support Network Observer Mission on Primary and Secondary Elections in Swaziland: 19<sup>th</sup> – 20<sup>th</sup> September & 18<sup>th</sup> – 19<sup>th</sup> October 2003. Published by the Coordinating Assembly of Non-Governmental Organisations (CANGO)

### Contextualising the 2003 Elections Results

The election under consideration in this paper is the parliamentary elections for Members of Parliament and *Tindvuna Tetinkhundla* within different constituencies in Swaziland, which was conducted on 18 October 2003. The counting of votes took place on 20 October 2003 in all constituencies and the election result was announced on 21 October 2003 by the Chief Electoral Officer.

In general, there is no official figure available on the actual voter turnout for the elections. A total of 228 616 people registered for the October 2003 general election. The number of women who registered to vote far outweighs the number of men: 119 358 women registered compared to 109 258 men. The number of registered voters reflects an increase trend when compared to the previous elections (i.e. 1993 & 1998). This number represents an

increase of 15.2% (30 171) in the number of registered voters compared to 198 445 registered voters in 1998 elections. According to the statistics provided by the Swaziland National Elections Office, Manzini and Hhohho regions had the highest number of registered voters – 63 638 and 61 999 respectively. This is followed by Shiselweni (58 555), and Lubombo (44 424).

The political impasse in Swaziland not only raises pertinent question around the nature of political and efficacy of the political system. In appreciating and assessing the performance of the various elected representatives in the October 2003 elections, one must query whether an election conducted under a state of political impasse characterised by a despairingly low voter turnout can be regarded as representing the will of the Swazi people. Invariably, there will be divergent views on this issue. Some would like to see the election and

its outcome as representing a form of democracy that remains true to African traditions. Others would struggle to acclaim any legitimacy to elections conducted under a system that appears to give the people a minimal say on how their interest is represented. This election, demonstrated through its low voter turnout is a clear indication that the Swazi people are refraining from participating in *Tinkhundla* based elections. This is a highly striking feature and possibly a victory to the pro-democracy movements and the underground political parties who called for the boycott of the election and that the *tinkhundla* system lacks popular legitimacy as a consequence of apathy demonstrated through low voter turnout.

The challenge for Swaziland as well as outside observers is to determine whether individuals elected through the *tinkhundla* system without aggregated constituency mandate/interest and national

policy preferences represent an appropriate and efficient institutional mechanism for mediating between the state and people. We should not lose sight of the fundamental function of any political system, which is to represent the interest of the citizens. The capability and disposition of the *tinkhundla* system to be undemocratic operationally as a system necessitates the participation of organised political rivals. This would typically be in the form of political parties. It is a widely accepted truism that governance is highly unlikely in the absence of competitive political parties. There is a need for stabilised party representation.

One of the key features of any political system is the mass participation of citizens (not subjects as they are commonly referred to in Swaziland) through various social formations and or political parties in political processes. Parties in these processes provide wider representation that extends beyond fielding candidates for contestation in election within constituencies. They help motivate political participation and integrate people on a larger scale into the political system. Most importantly, they provide an avenue for articulating and aggregating political preferences and interests. Repressing and banning of participatory structures such as political parties, competitive elections only

contributes to increasing the obstacles to participation. In Swaziland, these actions are *prima facie* evidence of disengagement.

### Conclusion

This election result clearly demonstrates the urgent need to transform the *tinkhundla* system into a political system that provides adequate and equal opportunities for citizens to place questions on the national agenda and for expressing reasons for endorsing a particular political outcome over another. Participation and representation will only happen through a political system that is designed to promote the protection and advancement of citizen's interest such as protection against the abuse of state power and equality before the law. The freedom to form and participate in political parties as an expression of people interest as well as a mechanism for structuring electorates choice are non-existent.

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## GENDER PERSPECTIVE

### INTERROGATING THE GENDER QUESTION IN THE SWAZILAND ELECTORAL PROCESS

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#### Historical and Cultural Background

Swazi women have been engaged in a long struggle for emancipation in electoral matters, fighting age-old custom and tradition. Women have been considered as minors and denied control and ownership of assets. Inheritance has been through the male children with the effect that women have been unable to advance both socially and economically. Dependency on men for access to the land has gone as far as women heads of household having to gain permission for land use through sons or other male relatives. Culture and political structures have been the main obstacles in discouraging women seeking election the support that they need. As stated by Phumzile Dlamini, the head of the Justice, Peace and Reconciliation Department with the Council of Swaziland Churches “ It is a matter of attitude; many men

and women still believe that it is still not right for women to be involved in politics”. She also stated that single women were most likely to be excluded because in Swazi culture, married women are taken more seriously in their communities, yet ironically, they could be prevented from seeking office by their husbands<sup>9</sup>

Other examples of the customs to which women candidates adhere include kneeling when addressing gatherings attended by chiefs and men, as well as the wearing of a headscarf. If widowed, participation in an election is not permitted, and neither is election to Parliament<sup>10</sup>. The period of mourning is two years, and this denies thousands of capable women the chance to run for office or even to cast a ballot.

#### The 1998 Elections

In the 1998 elections, 2 women were elected to the House of Assembly although 200 were nominated for Parliament. This number remained unchanged from the 1993 election. In addition to the 2 elected women, King Mswati III included 2 women among his 10

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<sup>9</sup> Women Candidates Fight Age-Old Sexism: 1998

<sup>10</sup> *Ibid.*

choices for Parliament. Zakhe Hlanze, research associate with Women and Law blamed the advocacy groups for the lack of political success “We didn’t know the women who stood for election; we don’t even know if they were about women’s rights and problems<sup>11</sup> (Only Two Women Get into Swaziland’s Parliament: 1998). Swaziland Programme Officer for Women and Law, Maureen Magwadza itemised other reasons for the lack of representation by women such as lack of empowerment, no follow-up support from their communities, the risk of humiliation by other women who voted for others, time and energy necessary in addition to running the home and caring for children; and stated “women are often custodians of culture and are trained to be submissive. It can be very difficult for them to enter politics”<sup>12</sup>

#### The 2003 Elections

In the five years since the 1998 elections, women have been engaged in a quiet cultural revolution, in which the battle against HIV/AIDS has played no small part. The mourning period hinders a woman’s ability to earn an

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<sup>11</sup> Only Two Women Get into Swaziland’s Parliament: 1998

<sup>12</sup> *Ibid.*

income and further impoverishes destitute families. The demographic change wrought by HIV/AIDS is raising a 'threat', in the view of the traditionalists, that more women will enter the public service. As women at present, are not permitted to own property or secure bank loans, Women and Law in Southern Africa have successfully managed to put into place in the Draft Constitution a section that makes it illegal to refuse to do business with women.<sup>13</sup>

The Draft Constitution perhaps heralds the end of the Swazi custom that bestows on women the legal status of minors as it prohibits discrimination on the basis of sex, but it was not ratified by the King in time for the 2003 elections. The King has made it clear that none of its provisions will be allowed to stand if they are in conflict with Swazi law and custom.

Nevertheless, Non-Governmental Organisations (NGOs) have played a seminal role in increasing the number of women legislators in the 2003 elections. The National Director of the Swaziland Chapter of Women in Law in Southern Africa explained:

*We engaged in a candidate education process like never before. We held workshops to instruct women candidates about the issues. But we also gave them*

*tips on how to impress the voters and how to run a successful campaign. The time for an education campaign is before the MP enters office, even before she is elected. Once they are in the House of Assembly, it is almost too late to ground them in an understanding of basic issues, because of their work duties. For the most part, the candidates are made up of community leaders. If they have been nominated, and succeeded in the primary elections to run in the general elections, then they have influence and supporters. They will continue to be involved in the developmental issues. It is important that they be trained as well, even if it turns out they don't become MPs.<sup>14</sup>*

Participants were also introduced to a wide range of social issues as well as information on gender empowerment and specific legislation that is required to elevate the status of women such as property ownership permission for women.

Approximately 255 women, from a total of some 1000 were nominated to stand as Members of Parliament in the parliamentary elections. This excluded a number of those who were nominated as constituency heads (*Tinvuna Tetinkhundla*) and those elected constituency councillors (*Bucopho*). According to figures supplied by the Chief Elections Officer, almost all three (considered educationally advanced) regions of Shiselweni, Manzini and Hhohho had the lowest number of women

representation with the difference being marginal. The Shiselweni region topped the Manzini region by one vote, with 102 nominated for the former and 101 for the latter, while Hhohho was not far behind with 99. The drought-stricken Lubombo had approximately 52 women nominated with an unofficial report that a woman was forced to withdraw by her husband. Thwala stated "It is true that a number of women were nominated, but a number declined... so to me, the figures are not different from previous elections, except that perhaps now, there has been a lot of interest from a number of people."<sup>15</sup>

### Voter Turnout

According to the Commonwealth Expert Team, the turnout of women voters as a proportion of the total number was impressive, although poor transport facilities may have deterred some women from voting<sup>16</sup>

### Women in Parliament

Five women were appointed to the 65-member House of Assembly and four as constituency governors. The Shiselweni Region was the most disappointing with only one female candidate, Nomsa Simelane appointed as constituency governor for Sandleni. In the Lubombo

<sup>13</sup> Hall: 2003

<sup>14</sup> Hall: 24 October 2003

<sup>15</sup> Lushaba: 2003

<sup>16</sup> Commonwealth Expert Team: 2003

region, three women emerged as winners, Trusty Gina was elected MP for Nkilongo while Lindiwe Mavuso of Hlane and Manesi Dlamini became governors. The same number of women were elected in Manzini, with two becoming MPs. These are Dumisele Sukati from Manzini North and Maria Ntshangase of Manzini South. Thandi Dlamini is the constituency governor at Ludzeludze. Only two women were elected in the Hhohho region. Esther Dlamini and Hlob'sile Ndlovu became MPs for Mbane East and Pigg's Peak respectively. The number represents 8.6% of the total number of candidates elected for both the MP and *Indvuna Yenkhundla* (constituency governor) posts. This comes far below what SADC is advocating when it comes to decision-making since it desires a 30% women representation<sup>17</sup>.

Section 95 (3) of the Draft Constitution states that 20 Senators, at least eight of whom shall be female, shall be appointed. If the Draft Constitution was adhered to at least 12 of the people on His Majesty the King's list of appointees should be women. The Draft contains clauses that make it compulsory for the King to appoint at least eight women into the Senate and four into the House of Assembly.

<sup>17</sup> Maphala:2003

Given the number of women to make it to Parliament in the national elections, His Majesty seemed to be the last hope for those who advocate the appointment of women to positions of power.<sup>18</sup> In reality, the King appointed two women two MPs to complement the five elected women MPs, one of whom is his sister Princess Tsandzile. This raised the representation of women in the House of Assembly to 11%.

The national director of the Swazi Chapter of the Women in Law in Southern Africa summarised the current increase in the number of women representatives as follows: *We fought hard to get women into Parliament. We are succeeding. Swazis now see what these women can do. They see us in positions of authority; they see us speaking from the floor of Parliament – this will make an impression. It has been difficult for women to be elected before – now it will be easier. People will no longer dismiss the notion of women in positions of power, or be afraid of us in those position*<sup>19</sup>

This position was further validated by the appointment of Trusty Gina, the first female to the post of Deputy

<sup>18</sup> Maphala: 24 October 2003

<sup>19</sup> Swaziland: Mswati Picks His New MPs :2003.

Speaker in the House of Assembly.<sup>20</sup>

### Conclusion

The challenge for greater participation of women in the political development of Swaziland is two-pronged. First, the constitutional and legal framework must be a conducive one for gender equality. Second, women's organisation ought to intensify the gender struggle in Swaziland with or without constitutional reforms.

This conclusion means that constitutional and legal reforms are a critical imperative for increased participation in the governance process. How the Draft Constitution addresses this issue remains to be seen. Be that as it may, addressing gender imbalances in Swaziland, as elsewhere, is a political issue that forms part of lobbying and advocacy by both women's organisations and other pro-democracy groups in the country.

<sup>20</sup> Yende:2003

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