



### COUNTRIES AT THE CROSSROADS 2011: SWAZILAND

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#### INTRODUCTION

Swaziland has no tradition of democracy. With the exception of the first five years of the post-colonial era (1968–73), Swaziland has been an absolute monarchy. Forged as a state in the early decades of the 19th century, the locus of domestic political power has historically resided within the royal lines of the Dlamini clan. Even under British colonial rule, which lasted from the early 20th century to 1968, the supremacy of the monarchy in regard to traditional affairs was acknowledged.

That power was somewhat curbed at the time of independence, when the British imposed a constitution that provided for political competition among parties and regular parliamentary elections. In this new order, the Swazi monarchy was relegated constitutionally to largely ceremonial status. In reality, however, the monarch, Sobhuza 11, held sway as the party of his creation—the Imbokodvo National Movement (INM)—won all parliamentary seats in elections held prior to independence. Sobhuza thus ensured that the parliament did nothing of which he did not approve. The post-independence premier, Prince Makhosini Dlamini, explicitly confirmed this arrangement: “It is the king, not I, who leads the people.” The principle of monarchical supremacy remains the central tenet of Swazi political life.

In the post-independence elections held in 1972, the INM’s monopoly in parliament was dented when an opposition grouping won three of the twenty-eight seats. This setback for the king coincided with the High Court’s declaring unconstitutional legislation passed to strip one of the opposition MPs of his Swazi citizenship. Sobhuza’s response was to declare a state of emergency, dissolve parliament, and outlaw all political parties, including his own INM. He justified the ban on political parties by declaring them inconsistent with Swazi custom, and the importers “of undesirable political practices ... designed to disrupt and destroy our own peaceful and constructive and essentially democratic method of peaceful political activity.”<sup>1</sup>

That political parties remain banned despite the introduction of a new constitution in 2005 reflects both the current king’s (Mswati 111) hostility to political parties and the fact that for the monarchy to concede the democratic principle that all Swazis should have the right to

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organize themselves politically would be a paradigm shift ideologically on its part—a shift it shows no signs of making. Mswati does not tolerate any questioning of his absolute authority to govern as he sees fit, and he uses an enormous portion of the state's resources for his personal enjoyment.

For some 30 years after 1973, Sobhuza (who died in 1982 after more than six decades of reign) and Mswati ruled largely by decree. The democratic transition in the 1990s in neighboring South Africa prompted a resurgence in political activity in Swaziland, with various political groupings—notably the Peoples United Democratic Movement (PUDEMO) and its youth wing, the Swaziland Youth Congress (SWAYOCO), as well as the Swazi Federation of Trade Unions (SFTU)—pushing for democratic reform. In response, in 1996 the king appointed his brother to chair a constitutional review commission. It operated largely behind closed doors for eight years, during which period it became clear to the Swazi establishment that its now democratic neighbor would not be pressing it in a similar direction. Its final product, a new constitution, took effect in February 2006. While it introduced some limited reforms in areas like women's rights, it affirmed monarchical supremacy and continued the ban on political parties.

On the status of political parties, the new constitution affirmed the right of Swazi citizens to form and join political parties (Section 25) but maintained the prohibition on political party electoral participation by stipulating that candidates can run only as individuals, not as party representatives (Section 29). Disappointed, civil society groups challenged the continuing ban on political parties in the courts, arguing that it violated the constitutional guarantee of free association. After two years, the High Court affirmed, with one dissenting opinion, the status quo ante. The dissenting judge, Justice Thomas Masuku, found that the ban on political parties was unconstitutional.<sup>2</sup>

Political repression has intensified since 2006. Widely condemned anti-terrorism legislation has been used to curb political opposition and labor activity, and the police appear free to act with increasing levels of impunity, evidenced by the frequency of reports of the torture, abuse, and even some deaths of detainees, as well as violent crackdowns on peaceful demonstrations.

Seven years of sustained drought between 2001 and 2008, combined with the ripple effects of global recession, has left two-thirds of the population living in poverty and almost half dependent on food aid. Swaziland relies on remittances from revenue generated by its membership in the Southern African Customs Union (SACU) for nearly 70 percent of its annual budget. As a result of the global slowdown in trade, revenue from SACU has declined by two-thirds since 2009. The result is a severe economic crisis with the government unable to meet its monthly public sector wage bill. In early 2011, security forces brutally suppressed protests at the lack of political freedoms and the threatened elimination of 7,000 civil service positions. Compounding the crisis is one of the world's highest HIV/AIDS prevalence rates (at least one-quarter of those between the ages of 15 and 45), resulting in a one-third drop since independence in life expectancy to under 40 years of age.

### ACCOUNTABILITY AND PUBLIC VOICE

Swaziland is an absolute monarchy, with ultimate authority over executive, legislative, and judicial matters vested in the king. The partially-elected parliament is subordinate to the king. Parliamentary elections are held every five years, and these are conducted according to the

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traditional tinkhundla system, in which candidates run as independents in demarcated constituencies. Each constituency is limited to nominating three candidates, and these emerge from a sifting process in which the constituency chiefs decide on who the candidates will be. These candidates then move on to a popular election in which all adults over 18 have the right to vote by secret ballot for one of the three.

There are 65 seats in the lower House of Assembly, 10 of which are nominated by the king and 55 of which are nominated through the tinkhundla system. There are 30 seats in the Senate, 20 of which the king nominates, with the House of Assembly nominating the remaining 10. With the prohibition on political parties, all members of parliament (MPs) are independents, but the controlled candidate nomination process ensures that the bulk of elected representatives are royalist sympathizers.

Elections in Swaziland do not comply with international standards. In addition to the ban on political parties, the unduly prominent role of chiefs is problematic, as they are all appointed by the king—their first loyalty is, thus, to the monarchy, not their subjects. Candidates are not permitted to campaign. Elections are managed by the Electoral Boundaries Commission, whose membership, like all state bodies, requires royal assent. The heavily-restricted electoral process produces a pliable parliament unwilling and unable to change the political status quo. Regime change or a rotation of power is impossible within the current system.

The most recent round of national elections took place in October 2008. A Commonwealth Expert Team monitored the election and described it as neither democratic nor free and fair. The resulting parliament was comprised almost wholly of staunch royalists who rarely express dissent.

Despite the ban on political parties, there are political groups and politically oriented youth and civic associations that wish to see the status of the monarchy reduced and a freely elected legislature empowered. Their model is post-apartheid South Africa, and some opposition activists have moved there in recent years, while many more of them have been forcibly exiled there following threats of torture, imprisonment, or death by Swazi security services; a Swaziland Solidarity Network (SSN) has formed there. The SSN has forged a close alliance with the largest South African trade union federation, the Congress of South African Trade Unions (COSATU), as well as with the South African Communist Party (SACP), and its offices are located amid those of the SACP.

The locus of power is the executive, and the legislature operates at its behest. MPs can in theory initiate legislation, but they rarely do, and essentially the legislature acts as a rubber stamp to the dictates of the king and his advisers.

In the course of 43 years of independence, a scenario has developed where the monarchy, also known as the “Swazi Nation,” refuses to honor any judicial ruling which does not suit its interests or its conceptualization of “Swazi tradition.” This limits the oversight capacity of the non-executive branches of the Swazi state. The whole political process is designed and managed to ensure that it reflects the specific interests of the monarchy and the vast patronage network through which it operates. The oversight capacity of the judiciary on the executive branch was further weakened in April 2011, when the Chief Justice issued a directive instructing all lawyers that no legal case that questions the actions of the king or his agents would be admitted into court.

Entrance to the civil service is relatively open and competitive, with the exception of the most senior positions, which in practice always go to pro-monarchist candidates. Below this, university graduates in good standing can still gain entrance to the state sector, and there appears

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to be no recruitment discrimination against female applicants. Indeed, a high proportion of the civil service is female, as is much of the middle and upper management. There is a civil society sector in Swaziland. Authorities leave groups seen as apolitical and primarily developmental or ameliorative, for example in areas like poverty relief or the care of HIV/AIDS orphans, to pursue their objectives and to seek and accept funding from local and foreign donors. The same does not apply to groups the state considers political or inimical to Swazi tradition, including those that work on human rights, or groups that focus on gender violence or the oppressive aspects of Swazi custom in regard to women's issues. At best, their representations are ignored, but some of their leading figures have also at times been subject to harassment.

Civil society groups in the state's good graces and their coordinating agency, the Coordinating Assembly of Non-Governmental Organizations (CANGO), are able to comment upon and attempt to influence policy, but their capacity to influence policy is limited where it impinges on the traditional Swazi world view. Freedom of the press has deteriorated markedly since 2007. Independent media and individual reporters and editors have been subjected to harassment and intimidation and been made to work in a generally hostile environment. The result has been a noticeable cowering of the independent press outlets.

The state has strong control over the media in Swaziland and controls all radio stations except an American evangelical broadcaster. The sole private daily paper in Swaziland, the *Times of Swaziland*, engages occasionally in minimal criticism of the king, largely out of fear and self-censorship<sup>3</sup>, but it does report on cases relating to the political situation in the country and has been more vocal in recent times, including in July 2011 even ignoring an instruction not to publish an article relating to the impeachment of the Chief Justice.<sup>4</sup> The monthly, *The Nation*, despite a limited circulation, covers issues related to politics, corruption, judicial independence, and the rule of law; it does not shy away from covering controversial subjects such as excessive spending by the king and unlawful evictions by the king's agents. In 2010, Reporters without Borders included King Mswati on its list of "Predators of Press Freedom."<sup>5</sup> There is no clear evidence that the state hinders access to the internet, but internet access is minimal in Swaziland and is therefore not as yet perceived as a threat. During the run-up to and in the course of April 2011 protests, pro-democracy groups accused the monopoly internet service provider (in which the king has a significant shareholding), South African-based MTN, of limiting access to Facebook and other internet services under pressure from the Swazi state. MTN denied the charges and claimed that any malfunctioning was a result of unusually heavy traffic.

### CIVIL LIBERTIES

Civil liberties have been further curtailed since 2007 as the king has sought to close political space. Opponents of the Swaziland government enjoy no protection from physical abuse, the torture of detainees is common, attacks on protesters are routine, and there has been at least one death of a political detainee in the period under review. This was of a youth activist, Siphon Jele, who died in police custody in May 2010. The police routinely ignore the ban on torture as prescribed in the constitution, and it is not enforceable in the courts.

The most severe curtailment of civil liberties was the November 2008 Suppression of Terrorism Act (STA), which gives the state virtually unfettered powers to define and act against anything it considers terrorism. The act was widely condemned internationally: the London-based anti-censorship organization Article 19 criticized it as an assault on the right to free

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expression, and Amnesty International and the International Bar Association (IBA) in a joint January 2009 statement expressed concern at the wide-ranging, vague, and imprecise definition of terrorism it gives and called for the act's repeal or amendment. The two bodies expressed concern "that key provisions in this anti-terrorism law are inherently repressive, breach Swaziland's obligations under international and regional human rights law and are already leading to the violation of the right to freedom of expression, association, and assembly." They also strongly criticized the "provision for up to seven days incommunicado detention without charge or trial, with the attendant risks of torture, or other cruel, inhuman or degrading or punishment, or enforced disappearances." In response, the government stated publicly that it would not amend the act.<sup>6</sup>

Within days of the act's promulgation, the king classified four opposition groups as terrorist under the STA: PUDEMO, the Swaziland Youth Congress (SWAYOCO), the SSN, and a lesser-known group called Umbane. Two days later, police arrested PUDEMO's leader, Mario Masuku, and charged him with terrorism. Masuku was eventually acquitted after being held for more than a year because of the lack of evidence in the state's case.

On May 4, 2010, 35 year-old Siphso Jele, a prominent trade unionist arrested with other political activists at a rally days earlier, died in police custody. Police claimed that he was found hanging in a bathroom, but his family and colleagues alleged that the police were responsible. PUDEMO's leader, Mario Masuku, was arrested and charged with terrorism after referring to the organization, now a banned entity in Swaziland, in his oration at Jele's funeral. Masuku was freed soon thereafter, and in March 2011 the coroner's report said that Jele had hanged himself.<sup>7</sup> In September 2010, a number of Swazi and South African groups announced the launch of a Swazi Democracy Campaign. Among the South African supporters were the Congress of South African Trade Unions (COSATU) and the Open Society Initiative for Southern Africa (OSISA). Members of the Danish Africa support group, Africa Contact, were also at the announcement. Danish NGOs have long acted in support of the democracy movement in Swaziland. The campaign intentionally coincided with a Swaziland meeting of the Common Market for Eastern and Southern Africa (COMESA). On September 6, a 300-strong police contingent raided a planning meeting and took into custody some 50 attendees, including the Danes and South Africans. The Danes were interrogated for several hours, including being physically threatened but not physically harmed. They and the South Africans attendees were eventually deported.<sup>8</sup>

There are no reports of police officials being held accountable for detainee mistreatment, torture, or death in the period under review. Nor are there any reports of effective or successful redress actions on the part of those whose rights have been violated. Swaziland has no ombudsman's office. In September 2009, the king announced the appointment of a Commission on Human Rights and Administration, but the commission has no enabling legislation or clear set of powers and functions, and there was little public consultation in regard to the appointment of the commissioners. It appeared to be inactive as of August 2011.

Extended pretrial delays are common in the Swazi judicial system. For example, 16 defendants charged with treason in 2006 still have not stood trial nearly five years later. They remain out of custody on bail. There have been other cases where activists have been arrested, charged, released on bail (often after some delays), and then not brought to trial. The cases are constantly postponed and it appears that this has become a method employed by the authorities to limit the political activities of individuals seen as hostile to the existing order.

Delays were clear in the case of South African Amos Mbedzi, who was arrested in September 2008 when a car in which he was allegedly a passenger exploded close to one of the

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king's royal palaces. Two other passengers died in the explosion. They were named as Musa "MJ" Dlamini, a Swazi lawyer, and Jack Govender, an Indian South African and reportedly a founding member of the SSN and a former member of the African National Congress' (ANC) underground army, Umkhonto we Sizwe. After a year in detention, Mbedzi was charged with attempted sabotage and appeared in court in late 2009. His trial was then postponed to March 2010, and then again to June 2010, when the original charge was amended to include two murder charges relating to the deaths of Govender and Dlamini. The trial on the new charges took place in February 2011 and a verdict is awaited.<sup>9</sup>

The Swazi constitution allows capital punishment, but no executions have been carried out since 1983, and only one death sentence has been imposed in recent years. That was in April 2011 and involved a serial killer convicted of killing 28 people over a number of years.<sup>10</sup>

Conditions in Swazi prisons are poor, although not especially bad by regional standards. Prisons are overcrowded, in part due to the number of non-bailable offences on the statute book. A large proportion of prison inmates await trial. Detainees can be held for long periods before their cases are heard. Another consequence of poor and crowded conditions in Swazi gaols is that they are a fertile breeding ground for the spread of the HIV virus.

In October 2008, parliament passed the People Trafficking and People Smuggling (Prohibition) Act. There is little evidence of trafficking in Swaziland, but there is an assumption in some of the South African literature on human trafficking that Swaziland represents a comparatively easy transit route for traffickers on account of its porous and poorly policed borders with South Africa and Mozambique.

Violent crime has been on the rise in Swaziland in recent years. In the course of 2010, both the UK and US governments issued official alerts to visitors on the dangers of visiting Swaziland. The UK alert warned travelers of possible terrorist attacks, car hijackings, and street crimes. It also warned visitors of the force that Swazi police use to disperse demonstrators.

Women in Swaziland continue to suffer discrimination and abuse. The 2006 constitution did, however, ameliorate a number of the discriminatory burdens borne by Swazi women regarding property, inheritance, and financial matters. For example, Swazi women married by traditional custom no longer lose their property and other inheritance rights upon the deaths of their spouses; nor do they still require their husbands' permission to acquire passports, open bank accounts, travel outside the country, obtain contraceptive devices, or purchase property. Despite these advances, inequalities persist. Swazi men are legally entitled to practice polygamy but women are not. Forced marriage of young Swazi girls continues to occur, though not frequently. The current king has been linked to one or two such cases.

Swazi women do not have the same access to justice as Swazi men and are not equally protected under the law. Incidents of rape and the violent abuse of girls and women are common and have been on the rise in recent years, and more Swazi women are HIV positive than men. A 2007 survey found that one-third of all Swazi women had been subjected to sexual violence and two-thirds to some form of beating or physical abuse. While both the legal code and customary law offer some protection against gender-based violence, enforcement has been minimal, amounting in effect to impunity.<sup>11</sup>

One area where gender discrimination has eased since independence is employment. As noted earlier, women occupy many senior positions in the public sector. Women are well represented amongst the country's university academics, and the highest office at the University of Swaziland has been held by a Swazi woman. Many Swazi women have been principals in

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schools and senior administrators in the hospital service, and women may join the Swazi police. The government has not, however, taken specific action to ameliorate the gender gap.

The Swazi population is ethnically homogeneous; only a tiny fraction of the population is not Swazi by origin. Issues of ethnic discrimination are uncommon. Mixed-race Swazis, however, have at times encountered difficulties with passports and nationality issues, particularly in cases in which the father is a foreigner. This discrimination does not, however, appear to be widespread or a matter of policy. Most Swazis are Christians. About 65 percent are Protestant or Catholic and the remainder adhere to the African Zionist faith. Religious practice is essentially free in Swaziland and the state respects the right of citizens to follow the religion of their choice. The one occasional exception is Jehovah's Witnesses, some of whom have been prevented from becoming teachers. All religious groupings are required to register with the government, and they must obtain permission to construct church buildings. There is no record of that permission being refused. The government has occasionally banned or dispersed interfaith church gatherings where the gatherings were deemed to be political.

Swazis do not enjoy constitutional rights to assemble or protest freely. Police routinely refuse permission for groups to gather, and meetings and marches are routinely and forcibly attacked and broken up when they occur. The most recent attack occurred on April 12, 2011, when a coalition of student and labor groups called a "day of rage" to coincide with the 38th anniversary of the abrogation of Swaziland's independence constitution, which guaranteed multi-party democracy. Branding the protest illegal, the security forces detained hundreds of alleged activists at road blocks and forcibly broke up demonstrations in Mbabane and Manzini. Many dozens of protesters were injured and some hospitalized, but there were no fatalities.<sup>12</sup> Some of the detainees have been charged under the STA. A number of known activists were placed under house arrest in the days leading up to the protest, including the PUDEMO leader, Mario Masuku. Trade unions are lawful in Swaziland, and workers are free to join them. Their activities are coordinated by the Swazi Federation of Trade Unions, one of the two labor federations in Swaziland and in recent years a vocal critic of the government. Together with the Swaziland Federation of Labor (SFL) and other unaffiliated organizations such as Swaziland National Association of Teachers (SNAT), it has been coordinating the work of labor activists in the country. On May 1, 2011, SFTU, SFL, and SNAT announced their unification under the banner of the Trade Union Congress of Swaziland (TUCOSWA). Union officials are regularly harassed and sometimes detained without charge.

### **RULE OF LAW**

Swaziland operates a dual court system comprising traditional courts, in which presiding chiefs apply customary law, and a Roman-Dutch system of magistrate courts, a high court, and a court of appeals. The latter is not a permanent body but one currently staffed mainly by southern African judges, some retired, and one judge seconded to the court by the Commonwealth Secretariat. The court of appeals convenes in Swaziland two to three times each year. The king appoints all judges, including those from outside of Swaziland, and their appointments are not subject to parliamentary approval or scrutiny. In the late 1990s, the government disbanded the Judicial Services Commission (JSC), a body responsible for recommending to the king all judicial appointments. It was replaced with a special committee composed of cabinet ministers, the attorney general, the director of public prosecutions, the commissioner of police, heads of the

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security services, the chief justice, and some palace advisers. The organization's operations went well beyond judicial appointments and involved scrutinizing the workings of the entire justice system. It met weekly for close to ten years, and in that time the independence of the court system was badly compromised. With the promulgation of the new constitution in 2006, the king reinstated the JSC, and a degree of legitimacy was restored to the appointments process. The JSC's responsibilities do not include commenting on or interfering with the decisions of judges and magistrates. However, in a worrying development in August 2011, the JSC did just that as part of an investigation into the conduct of Justice Thomas Masuku, one of the allegations being that he had insulted the king in language used in one of his judgments earlier in the year.

The coexistence of two legal traditions with fundamentally different conceptions of rights lies at the core of a crisis that has afflicted Swaziland since the early 1970s. It began with the declaration of a state of emergency in 1973, which was triggered in part by the fact that the high court had acted to overturn the legislative will of parliament. A more recent manifestation was the 2002 resignation en bloc of the appeal bench, stemming from the monarchy's refusal to implement judicial rulings with which it did not concur. The political and legal crisis stemming from this action on the part of the monarchy severely compromised the independence of the judiciary and threw the administration of the judicial system into disarray. Throughout 2003 and 2004, Swaziland did not have a court of appeal, which resulted in a violation of the rights of all those whose civil and criminal cases were at the appeal stage but could neither be heard nor concluded. The court of appeal was reinstated in 2005, but the ongoing tension between Swaziland's two judicial systems has demonstrated that the will of the monarchy always prevails. What this means politically is that the un-elected monarchical order refuses to accept any constitutional or legal limits to its rule, a modern manifestation of the notion of the divine right of kings.<sup>13</sup>

Despite the system's many shortcomings, the judges, both local and expatriate, who have served in Swaziland's high and appeal courts of Swaziland have a reputation as able and competent judicial officials. While many local judges have lacked the experience and seniority of their foreign colleagues, they have all been trained as legal practitioners with appropriate qualifications. This generally good reputation of the Swazi bench is based on the fact that it has applied the law fairly and consistently but also because it has strongly resisted—albeit sometimes in vain—attempts by the state and traditional authorities to influence decisions through intimidation.

According to the saved provisions<sup>14</sup> of the 1968 independence constitution, a high court judge can be removed from office only on grounds of an “inability to perform the functions of his office, whether arising from infirmity of body or mind or any other cause or for misbehavior.” This provision is supposed to be invoked only after the chief justice has requested that the king investigate the conduct of the judge in question, which must occur through a tribunal appointed by the king. None of these requirements were met in April 2003, when Justice Thomas Masuku, the sole dissenting judge in the high court ruling that the ban on political parties was not unconstitutional, was transferred from the high to the industrial court. This de facto removal from the bench was challenged in the high court by the Swazi Law Society, and the court ruled in May 2004 that the dismissal was unlawful and ordered him reinstated.

The presumption of innocence was undermined by the 1993 passage (with subsequent amendments) of the Non-Bailable Offences Order. According to this legislation, Swazi courts are prohibited from granting bail to persons charged with one or more scheduled offenses. These include murder, rape, robbery, and offenses referred to in public order and anti-subversion laws.

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The appeal court struck down the order in 2001, but the government quickly issued a decree that re-imposed the provisions of the 1993 order. Challenges to this decree were launched by two pre-trial detainees denied bail, resulting in November 2002 in a second appeal court's ruling striking down the legislation. In response, the prime minister announced that the act would remain in force and that all government agencies had been instructed to ignore the appeal court's ruling, which he described as an attack on the powers of the king.

Citizens have the right to independent counsel of their choice. For most Swazis, however, this is a nominal right, given that over half the population lives below the poverty line. There is no state system of legal aid for those unable to afford counsel. The administration of justice in Swaziland is politicized. While some public officials and ruling party actors are charged before the courts, cases are brought selectively and usually only involve those who fall foul of the traditional authorities. Not all Swazis experience an equal application of the law, despite the best efforts of the Swazi high and appeal courts.

There is essentially no civilian control of the security services by the judicial and legislative branches, as the services essentially function as an enforcement arm of the traditional authorities in the executive branch. Their interference in the political process at the behest of the traditional authorities is frequent. The police and the military are to all intents and purposes above the law, subject only to the authority of the king.

The issue of property rights in Swaziland is complex. There is a dual land system with distinct freehold and leasehold sectors, which roughly corresponds with the urban-rural divide of the country. For those with freehold rights, all residents of the country have an equal right, though obviously not an equal capacity, to property ownership. This sector operates under normal market conditions, and the state adequately enforces and protects property rights and contracts. A very different situation prevails in the communal leasehold sector, in which the majority of Swazi citizens reside. In these areas, land cannot be bought and sold, and the tenure rights of the occupants are dependent on the goodwill of the chiefs who administer the land on behalf of the king. This situation can be manipulated for political and other reasons; there is a long history in Swaziland of the precarious nature of tenure rights being used as a means to pressure or discipline the commoners in the leasehold sector. In short, those who do not comply with their chiefs' orders can have their land taken from them, and forcible eviction of families or whole communities is not uncommon.

In October 2000, the police forcibly evicted from their homes 120 residents of the KaMkhweli and Macetjeni communities when they refused to accept the appointment of one of the king's brothers as their new chief. On several occasions thereafter, the evictees turned to the courts, and in all but one instance their right to return to their homes was upheld. Finally, the court of appeal in November 2002 made such an order but the government simply stated it would not obey it. It was this defiance by the state which prompted the resignation of the appeal bench. In its ruling, the court also upheld an earlier high court decision to jail the commissioner of police for contempt because he had not implemented earlier rulings. This order has never been implemented, nor have the evictees after a decade been allowed to return to their homes.<sup>15</sup> The latest high-profile land grab by the king's agents, the Kashali demolitions, came to court in February 2011 and has tainted the monarchy's image even among his most loyal subjects; the court ruled in favor of stopping demolitions.<sup>16</sup>

### ANTICORRUPTION AND TRANSPARENCY

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The politico-economic environment in Swaziland is conducive to extensive corruption. The result is a level of corruption which is both endemic and pervasive. This is especially true in regard to the monarchy and the institutions of the Swazi Nation, where expenditure is lavish and rarely accounted for. The king has in recent years used state funds to purchase an executive jet for his personal use and to construct new palaces for his 14 wives and 23 children at a cost of \$14 million. Each year in April he has spent vast sums on his birthday party, and even in the midst of the most serious economic crisis in Swazi history, parliament increased the allocation for the royal family by approximately six million dollars to celebrate Mswati's 25th year on the throne. In 2008, eight of the queens undertook a shopping visit to Dubai, at a reported cost of about \$4 million.

In 2011, with the government unable to meet fully its public sector wage bill, King Mswati and an entourage of 50 attended the wedding of Prince William in London, staying for nearly a week at one of London's most expensive hotels.<sup>17</sup> Corruption in Swaziland stems from the undemocratic and unaccountable nature of the political order and an entitlement culture on the part of the monarchy and political class in general. For example, in the mid-1990s the Swaziland Development and Savings Bank went bankrupt largely because a series of large loans to members of the royal family and chiefs which were never repaid. No action was taken against the loan defaulters, and the funds were never recovered. Transparency International's 2009 Corruptions Perceptions Index ranked Swaziland 79 out of 178 countries surveyed and the 12th worst performer in sub-Saharan Africa. This represented a drop of seven places on the global list over the course of a year. The 2010 index ranked Swaziland 91 out of 180 countries, a steep fall over a single year.<sup>18</sup>

Corruption in Swaziland is so endemic that in a rare act of candor the minister of finance—a royal appointee—told parliament in 2010 that the country was losing approximately \$12 million per month as a result of corrupt activities by high state officials, including cabinet members.<sup>19</sup> Despite this high-level recognition of corruption, the Anti-Corruption Unit set up by parliament in 2007 has not brought a single case of corruption before the courts. Part of the problem is the lack of any whistle-blower legislation to encourage individuals to come forward with allegations of graft and bribery.

The Swazi economy is a capitalist system. Foreign investment is sought and encouraged, and there are few controls on the repatriation of profit. There is, however, considerable state involvement in the economy in the form of royalist-controlled investment corporations. The largest of these is the Tibiyo Take Ngwane Fund. At independence, control over Swaziland's mineral rights and royalties were vested in the Swazi nation and not the government. To administer the concession, the king established the Tibiyo fund. Headed by a board, the majority of whom are male relatives of the king and are answerable only to the monarchy, Tibiyo pays no taxes and is not accountable to parliament.

Over the years, Tibiyo has developed into a major corporation and a source of wealth for the royal family and those close to it. It is involved in all sectors of the economy, establishing a solid partnership with foreign capital, the dividend payments from which have become Tibiyo's largest source of revenue. It has also been the means by which the Swazi aristocracy has acquired for itself a considerable material base in the modern economy, complementing their control of the traditional agrarian sector, which was achieved through a monopoly on the right to allocate and withdraw land tenure rights. The Swazi aristocracy—the royalist lines within the Dlamini clan—is therefore not just a privileged elite but a modestly wealthy capitalist class for

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whom a regime change, or even a significant democratization of the system, could have strongly negative consequences.

The state does not enforce effective legislative or administrative processes to promote professional integrity or prevent and detect corruption. No adequate financial disclosure procedures prevent or minimize conflicts of interest among public officeholders or those in the private sector. No asset register exists to record the business and other interests of, or gifts to, public officials. The king's wealth is also buffered by the Royal Emolument and Civil List Act of 1992. This law not only gives him a budget from the government, but also requires government ministries to make provisions for the expenditure of the king and his family. It is because of this provision that government departments are unable to resist the demands of the royal family.<sup>20</sup>

Tax collection is efficient and accountable in the formal sector of the economy, though the financial operation and tax processes in the institutions of the Swazi Nation are completely opaque. Swaziland has no independent auditing office, such as that of an auditor general or ombudsman. Bribes are not necessary to gain admission to higher education, although in some cases pressure has been applied successfully on the authorities of the University of Swaziland to admit members of the royal family and political establishment.

Other than in the courts, victims of corruption have little means or avenues by which to pursue their rights or seek redress when they fall victim to corrupt practices. Allegations of corruption directed at members of the royal family and other figures in the traditional sector (such as chiefs) are rarely investigated and even more rarely acted upon. While in the 1990s the press gave extensive, even gleeful, coverage to allegations of scandal, the state crackdown on the media in recent years has effectively silenced it, with journalists and editors largely succumbing to self-censorship.

The public has little access to state information, and there are no legal mechanisms to facilitate access. The process of awarding government contracts and tenders is public, but it is susceptible to corruption in that tenders are almost invariably awarded to those with political connections. The executive budget-making process is not transparent, although parliament does exercise a watchdog role over the budget and government expenditure. It has at times undertaken this function to good effect by reining in, for example, reckless spending on the part of some government ministries, but it has never acted to curb excessive spending by the monarchy.

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<sup>1</sup> See Johnson Vilane and John Daniel, "Swaziland: Political Crises, Regional Dilemma." *Review of African Political Economy* 35 (May 1986): 56.

<sup>2</sup> "Swaziland – Amnesty International Report 2010," Amnesty International, May 28, 2010, <http://amnesty.org/en/region/swaziland/report-2010>; John Daniel and Marisha Ramdeen, "Swaziland," in *Africa Yearbook 2008: Politics, Economy and Society South of the Sahara*, eds. Andreas Mehler, Hennign Melber, and Klaas van Walraven (Leiden and Boston: Brill, 2009): 490.

<sup>3</sup> "Swaziland country profile," BBC, [http://news.bbc.co.uk/2/hi/africa/country\\_profiles/1069035.stm](http://news.bbc.co.uk/2/hi/africa/country_profiles/1069035.stm), accessed May 17, 2011.

<sup>4</sup> "'Times' Contempt of Court Threat," Swazi Media Commentary (blog), July 17, 2011, <http://swazimedia.blogspot.com/search/label/freedom%20of%20the%20press?max-results=20>.

<sup>5</sup> "Press Freedom Index 2010," Reporters Without Borders For Press Freedom, <http://en.rsf.org/press-freedom-index-2010,1034.html>, accessed May 17, 2011; "Predators," Reporters Without Borders For Press Freedom, <http://en.rsf.org/predator-abdallah-ibn-al-saud,37208.html>, accessed May 17, 2011.

<sup>6</sup> John Daniel and Marisha Ramdeen, "Swaziland."

## COUNTRIES AT THE CROSSROADS

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<sup>7</sup> Bheki Makhubu, "Bizarre death at Sidwashini prison," *Nation*, <http://www.theswazination.com/Focus-on-the-coroner%27s-report-into-the-death-of-Sipho-Steven-Jele-5.html>, accessed September 9, 2011.

<sup>8</sup> Ibid.

<sup>9</sup> Ibid.

<sup>10</sup> "Swaziland – Amnesty International Report 2010," Amnesty International.

<sup>11</sup> Freedom House, "Swaziland," in *Freedom in the World 2010* (New York: Freedom House, 2010), <http://www.freedomhouse.org/template.cfm?page=22&country=7925&year=2010>.

<sup>12</sup> Swazi Newsletter, April 22, 2011, SAK-swazinewsletter@yahoo.co.uk.

<sup>13</sup> See John Daniel, "Swaziland," in Freedom House, *Countries at the Crossroads 2005: A Survey of Democratic Governance* (New York and Washington DC: Freedom House, 2006): 523–25.

<sup>14</sup> These were provisions in the 1968 constitution which the king decreed remained in effect despite the scrapping of the constitution as a whole.

<sup>15</sup> See John Daniel in *Countries at the Crossroads*, op cit, 527.

<sup>16</sup> Sikelela Hlatshwayo, "Land question Heating up," *Nation*, August 1, 2011, <http://www.theswazination.com/Evictons-The-land-question-heating-up-to-be-a-boiling-kettle.html>.

<sup>17</sup> Barry Bearak, "Police Officers in Swaziland Squash Rally for Democracy," *New York Times*, April 12, 2011, <http://www.nytimes.com/2011/04/13/world/africa/13swaziland.html>.

<sup>18</sup> "Corruption Perceptions Index 2009," Transparency International, [http://www.transparency.org/policy\\_research/surveys\\_indices/cpi/2009/cpi\\_2009\\_table](http://www.transparency.org/policy_research/surveys_indices/cpi/2009/cpi_2009_table), accessed May 17, 2011; "Corruption Perceptions Index 2010," Amnesty International, [http://www.transparency.org/policy\\_research/surveys\\_indices/cpi/2010/results](http://www.transparency.org/policy_research/surveys_indices/cpi/2010/results), accessed May 17, 2011.

<sup>19</sup> Winile Mavuso, "Govt loses E80m monthly through corruption," *Swazi Observer*, February 24, 2011, <http://www.observer.org.sz/index.php?news=21530>.

<sup>20</sup> World Bank, *Swaziland Public Expenditure Review* (World Bank, August 2006), [http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2006/10/04/000310607\\_20061004155347/Rendred/PDF/353181SW0Main0Vol.pdf](http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2006/10/04/000310607_20061004155347/Rendred/PDF/353181SW0Main0Vol.pdf).