

AN ANALYSIS OF THE SYSTEM OF GOVERNMENT OF SWAZILAND

BY

Modudusi Gregory Qwabe
2005144031

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SUPERVISOR: Dr Tania Coetzee

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DECLARATION

I, Modudusi Gregory Qwabe, hereby solemnly declare that this mini-dissertation is my own independent work and has never been submitted previously for another course at any institution.

Signed:

M. G. Qwabe

Date: 24 January 2016

ABBREVIATIONS AND ACRONYMS

AU	African Union
ACC	Anti-Corruption Commission
AGOA	Africa Growth and Opportunity Act
CET	Commonwealth Expert Team
COSATU	Congress of South African Trade Unions
CDC	Constitution Drafting Committee
CRC	Constitution Review Committee
DPP	Director of Public Prosecutions
ESPO	Establishment of the Swaziland Parliament Order
EU	European Union
GDP	Gross Domestic Product
HIV	Human Immuno Deficiency Virus
HIV/AIDS	Human Immuno-deficiency Virus/Acquired Immuno deficiency Syndrome
HUMARAS	Human Rights Association of Swaziland
HRC	Human Rights Commission
IHS	Information Handling Services
INM	Imbokodvo National Movement
NNLC	Ngwane National Liberatory Congress
PRSAP	Poverty Reduction Strategy Action Plan
PUDEMO	People's United Democratic Movement
SACP	South African Communist Party
SADC	Southern African Development Community
SACU	Southern African Customs Union
SPP	Swaziland Progressive Party
SFTU	Swaziland Federation of Trade Unions
SUF	Swaziland United Front
SWANAFRO	Swaziland National Front
SWAYOCO	Swaziland Youth Congress
TTN	Tibiyo Taka Ngwane Fund
UK	United Kingdom
UN	United Nations
UNICEF	United Nations Children's Fund

UNDAF	United Nations Development Assistive Framework
UNDP	United Nations Development Programme
UPR	Universal Periodic Review
UN-OHCHR	United Nations Office of the High Commissioner for Human Rights
UNHRC	United Nations Human Rights Commission
USA	United States of America
USA	United Swaziland Association
WHO	World Health Organisation

CHAPTER 1

INTRODUCTION

1. ACTUALITY AND MOTIVATION

Swaziland received her independence from British rule through a multiparty process like many other post-colonial countries in 1968. In the period following that process, the country was governed by a constitution that had been facilitated by the colonial masters. Yet in 1973, the king – King Sobhuza 11, suspended the post-independence constitution and ruled the country by decree for a very long period of time. The rationale for this was given by the king, as Swaziland needing a system of government that would be unique to her people who are traditional in their approach to public life (Mabuza, 2008: 2).

This was not surprising to many, as during the pre-independence negotiations, the king vehemently opposed the notion of one-person-one-vote, as it undermined the unlimited power he had commanded under Swazi law and customs (Mzizi, 2005: 167).

This so-called “uniqueness” has recently been questioned by many other countries, international organisations and Swaziland’s citizens, as it does not allow for a democratic order to be followed. Democracy is loosely defined ‘as rule by the people’, but Heywood (2002: 68) offers a few definitions and among those:

- A society based on equal opportunity and individual merit, rather than hierarchy and privilege.
- A system of decision-making, based on the principle of majority rule.
- A means of filling public offices through a competitive struggle for the popular vote.
- A system of rule that secures the rights and interests of minorities by placing checks upon the power of the majority.

Democracy is based on the principle of majority rule under a constitution, which allows for political bargaining among different political parties. In such a system

there are checks and balances that ensure no abuse of power by government. It is an open secret in the case of Swaziland, that although the constitution claims it is a democratic country, it is more of an authoritarian state, as political parties are banned. In authoritarian states citizens are merely encouraged to participate for the sake of their indoctrination and control (Magstadt, 2006: 354). The case for Swaziland is therefore very clear - with a government based on an out-dated traditional system that is taught in schools to ensure privilege for the royal elite.

The constitution of Swaziland bans political parties, does not allow for canvassing for votes and recently the government has resorted to violence to silence its detractors. Human rights organisations like Amnesty International have been in the forefront in challenging the status quo in that country - even going as far as the UN to highlight the human rights abuses carried out by state institutions, like the police who continue to act with impunity against political opposition. The head of state according to the 2005 constitution is the King, presently King Mswati 111, who traditionally rules with his mother, the Indluvukati. Since 1996 Swaziland has been consistently affected by strikes as more and more citizens demand a democratic system of government (Schwab, 2001:69). A democratic system of government has the following characteristics:

- “There is more than one party competing for political power.
- The competition for power is open, not secretive, and is based on established and accepted procedures, including elections.
- Entry and recruitment to positions of political power are relatively open.
- There are periodic elections based on a universal franchise.
- Pressure groups are able to operate to influence government decisions. Associations such as trade unions and other voluntary organizations are not subject to close government control.
- Civil liberties, such as freedom of speech, freedom of religion and freedom from arbitrary arrest, are recognized and protected within the political system. This assumes that there is a substantial amount of independence and freedom from government control of the mass media that is radio, television, newspapers (even though government may own some components of the media).

- There is some form of separation of powers - that is a representative assembly has some form of control over the executive, and the judiciary is independent of both executive and legislature.” (Ball and Peters, 2005: 52-53)

These calls have however solicited draconian laws from the present administration in a bid to tighten its grip on power and squash any political dissent.

A new constitution, which was signed in 2005, did not remedy the situation, but simply confirmed the status quo - political parties remained banned and the king has ultimate power (www.infoplease.com). Amnesty International criticised that constitution for the following reasons:

- It is weak in protecting the independence of the judiciary.
- Does not protect the citizen’s rights to freedom of conscience, speech, peaceful assembly and association.
- It fails to protect fully the rights of women against gender based discrimination.
- It fails to protect citizens to fully participate in political life by banning political parties and endorsing the Makhudu order of 1973.

(<http://amnesty.org>. 2004)

This system of government has sometimes been called “tribal nationalism” which helped the king win the elections and destroy colonial rule in 1968 (Kuseni and Levin, 97: 83). This so called “tribal nationalism” was developed by King Sobhuza 11 and mobilized the people against colonial rule. The system apparently was aimed at reviving Swazi traditions that were promoting royal power and capital accumulation (Kuseni and Levin, 97: 83). He appealed to the Swazi people, using ‘traditional’ Swazi life as a front which had apparently been undermined by the colonial state (Kuseni and Levin, 97: 83).

The following facts under the new constitution will not be ignored, that is:

- The King and Indlovukati are the head of government and both are immune from prosecution.
- The King can dissolve parliament by a decree.

- The King is the commander in chief of the armed forces and also commissioner of police.

The following can hardly be ignored:

- Political parties have remained banned as per the provisions of decrees 11, 12 & 13 of the 12 April 1973 proclamation (Mzizi, 2005: 171).
- The 1973 King's Proclamation is still enforceable by law, even after the new constitution of 2005.
- The Tinkundla system of governance has remained intact and the executive powers of the king are still endorsed as provided for in Section 69 of the Establishment of Parliament of Swaziland, Order of 1978.

One can also conclude from the above that the doctrine of the separation of powers is not observed under the new constitution, as it gives the King power to dissolve parliament by decree and therefore nothing can curtail his power. He is both legislator and bureaucrat, as he can make laws and ensure implementation through being the commissioner of police. The King also appoints the Prime minister, members of parliament and members of the judiciary - although the constitution requires that he must consult, it also allows him not to take advice into consideration when exercising his power. In section 65(4) of the Constitution states:

“Where the King is required by this Constitution to exercise any function after consultation with any person or authority, the King may not exercise that function following that consultation.”

The doctrine of the separation of powers dictates that each of the three functions of government, i.e. legislation, execution and adjudication should be performed by different branches of government (Heywood, 2002: 315). This serves to ensure that there is no abuse of power by any branch and therefore prevents tyranny. As a result no overlap of personnel is allowed, enabling each of the three branches to be independent of each other in a way. The Swaziland constitution gives the King power that cuts across all three branches of government.

The above has been the source of discontent in Swaziland and its neighbouring countries have been urging the King's administration to embrace democracy in aid of an ailing economy. If the status quo remains, the humanitarian crisis will spill over the borders to other SADC states which will result in political instability in the region. In 2012, Human Rights Watch found that HIV prevalence in that country was sitting at 26 percent, but the country failed to provide treatment to the population (<http://www.hrw.org/world-report-2012>). The report also found that 80 percent of the population lives on less than US\$2 per day, a 40 percent unemployment rate and thousands of Swazi civil servants facing wage cuts (<http://hrw.org/world-report-2012>).

The restrictions that have been constantly enforced on Swazi people by the authorities have resulted in many people being arrested, detained without trial and movements like the Swazi Democratic Alliance getting international acclaim and support. The study will make recommendations on what options can be explored to ensure that meaningful transformation occurs, leading the country to democracy.

Duvenhage (2006:23) defines transformation as **'rapid, progressive, comprehensive and fundamental political change of society (stemming from an unacceptable political past) in the form of central planning (social and political engineering) accentuating the managing of political change in general and of conflict management in particular'**. He goes on to identify the following features of transformation:

- Reactive change - it is a reaction against a country's undesirable past.
- Progressive change - the change should be directed towards a better future.
- Fundamental and extensive change - the change is extensive and does not just alter appearances, but to the very foundations of that society.
- Planned political change - there are documents and leaders who are strategic in their approach to effect this change.

Sithole (2004: 65) gives the following as alternatives to the Swazi king:

- “He could attempt to reduce or to end the role of monarchical authority and to promote a shift towards a modern, constitutional monarchy in which authority is vested in the Swazi people, parties and parliament: or
- He could make a conscious effort to combine monarchical and popular authority in the same political system; or
- He could maintain the monarchy as a principal source of authority in the political system and make an effort to minimise the disruptive effects upon it of the broadening political consciousness.”

However long the king takes to acknowledge that country’s citizens’ dissatisfaction - it will not disappear. The people want change.

2. RESEARCH PROBLEM STATEMENT

In “Ethics, accountability and good governance: the case for Swaziland” Dlamini *et al.* (2002: 13-24) argue that the principles of ethics, accountability and good governance are not present under the present dispensation in Swaziland. They argue that democratic institutions like the legislature, mass media and interest groups are weak and therefore no checks and balances are in place. The constitution is very clear on this, as it vests all executive authority on the king to appoint 20 members of the 65 member legislature and also gives him powers to appoint the judiciary. In recent years many activists have fallen victim to constant harassment from the police - some have been evicted from their homes and charged with treason and sedition for fighting for human rights (Simelane, 2006: 12). In September 2012 the Swaziland police tried to subvert peaceful political rallies, organised by the labour movement and in the process arrested about 150 trade union leaders and members of civil society. During this time also government critics reported increased incidents of harassment, searches and seizures of office materials and monitoring of electronic communications (World Report 2012: 2).

Mzizi (2005: 175) argues that the present Swazi constitution fails to address the problem of balancing modern democracy and tradition. In August 2012, Chief Justice Ramodibe suspended Justice Thomas Masuku for insulting the king - the

judge was subsequently relieved of his duties for “serious misbehaviour”. This was quite telling, as the same judge had made rulings in the past that favoured human rights (World Report 2012: 3). The king also appoints the 6 members of the Judicial Service Commission which heard his case. Women can marry in that country under customary and civil law - the marriage age under the former is permissible for girls at the age of 13 (www.amnesty.org.2011:2).

Baloro (2007: 95) in the South African Journal of Human Rights traces the origins of the Swazi constitution from the country’s attainment of independence in 1968. It is clear how in 1973, King Sobhuza 11, suspended the constitution after winning the elections and started ruling the country by decree. His reasons for this were that it failed to ensure good governance. He went on to say:

“The constitution has permitted the importation into our country of highly undesirable Political practices alien to, and incompatible with, the way of life in our society and designed to disrupt our own peaceful and constructive and essentially democratic methods of political activity. Increasingly this element engenders hostility, bitterness and unrest in our peaceful society.” (Mzizi, 2005: 168)

In recent years the king has also revived the Swazi National Council, which consists of the king, the queen mother, paramount chiefs and all adult males. The officials are however hand-picked by the king and only act in their personal capacity. This structure is viewed by many as parallel to parliament and questions have often been raised about its role. Is this country governed within a parliamentary system of government or is it an absolute monarchy? In a parliamentary system the following would be the characteristics:

- Government would be formed as a result of parliamentary elections, based upon the strength of party representation.
- Personnel of government would be taken from the parliament’s leaders of the dominant party.
- The executive would be accountable to parliament and can be removed if the latter loses confidence in it.
- The president or prime minister can dissolve parliament by calling for elections.

- The posts of head of government (usually a prime minister) and head of state are separate, the latter being either a constitutional monarch or non-executive president (Heywood, 2000: 172).

An absolute monarch on the other hand is characterised by a way in which one person rules as sovereign - the position is filled through inheritance or dynastic succession (Heywood, 2000: 211). Critics of this system have always maintained that it violates democratic principles, is conservative and impedes modernisation and progress (Heywood, 2000: 213).

Levin in "Is this the Swazi way?" examines the question of land ownership and agriculture. He goes on to explain how the monarchy has monopolized power in that country resulting in repression. Many Sub-Saharan countries, including Swaziland, will not meet the UN's Millenium Development goal of halving world hunger by 2015, according to Drimie and Gandure in (Saunders *et al.* (2012: 181). They further state:

"One of the SADC member states, Swaziland, has experienced falling agricultural production among subsistence farmers and increased food insecurity resulting from loss of formal work by healthy breadwinners who must care for HIV-infected family members. High morbidity and mortality deplete the asset bundles of households, leading to liquidation of physical goods and livestock and an inability to pay for medical care and funerals." Drimie and Gandure in (Saunders *et al.*, 2012: 186).

The above points to government's lack of capacity to manage resources and ensuring that it alleviates poverty for the most vulnerable members of the society. This government makes things worse by trying to control all facets of public and private life to satisfy its insatiable thirst for power - something which goes against what many governments are doing globally. Governments are forging new ways of governing by forming partnerships with a variety of other stakeholders from business, civil organizations, non-governmental organizations and other actors who have the potential to influence public policy. This is as a result of pressures they experience to be more participative in their approach to ensure maximum output. Governing can generally be defined as shaping, regulating or attempting to control

human behaviour, in order to achieve collective ends (Bell and Hindmoor, 2009: 2). This requires that states must build strategic partnerships with other actors to increase their reach without having to grow in size (Bell and Hindmoor, 2009: 2). In this publication it is argued that states have to take a relational approach to governance.

Governance theory currently emphasises the need to recognise that ‘the under-development in Africa is in part down to failures in national and international governance regimes’ (Chhotray and Stoker, 2011: 5). In all governance there is input and output which poses challenges that need to be met. The current governance model in Swaziland centralises all power in the king, without any checks and balances to avoid abuse. This is contrary to what Chhotray and Stoker argue that democracy is - a ‘universal value through the power it gives individuals and communities, some protection against exploitation’ (Chhotray and Stoker, 2011: 9).

Schechter and Vontz (2010: 220-221) list the essential characteristics of bad government as among others, including:

- “Unaccountability of power, which means that the ruler is not answerable for his or her actions.
- Arbitrary use of power, which means that the ruler makes decisions on the basis of his or her personal whims.
- Absolute power which means that the ruler’s power is unlimited.
- Repressive power, which means that the ruler uses violence to stamp out opposition and dissent.”

Swaziland is described by Matlosa in Saunders et al. (2012: 79):

- “The worst governance model in southern Africa is Swaziland’s closed authoritarian regime, for Swaziland has not yet experienced a democratic transition.” The above has implications for both the citizens of that country, the whole SADC region and the international community at large.

This system is counterproductive with its rigidity and conservatism of protecting only a privileged few at the expense of the majority of the population. As indicated above the majority of the Swazi people live in abject poverty and disease - this situation is a disaster waiting to happen. The Swazi king has announced a plan called Vision 2022, in which he plans that by 2022 the country will be a developed country. This will remain a pipe dream unless he listens to the calls for democratisation. This must include a more emphatic recognition of the citizen's political rights. As Sorenson (2004: 84) puts it:

“Political rights concern the right to political participation in free and fair elections as well as civil and political liberties, i.e. freedom of the press and freedom to form and join organizations.”

Otherwise that country will face a lot of political resistance which can take any form like sabotage, violent opposition and organised protest (Chazan *et al.*, 1999: 123). Despite the fact that the traditional authority in that country would prefer that the status quo be maintained, in order that the ruling elite can continue to enjoy unlimited power, that country cannot be an island within the whole global community. The pressure from the international community will play a pivotal role in ensuring that meaningful transformation happens. This could take the form of dialogue, isolation or sanctions (Magagula and Masilela in Solomon, 2011: 200). This type of dual system of government, i.e. traditional and modern governance institutions, can only escalate the tension that has already been witnessed with the increase of political parties in recent years.

2.1. PRIMARY PROBLEM

The research problem statement is whether the present constitution of Swaziland is relevant and sustainable within the present democratic environment. Is Swaziland operating within the principles of constitutionalism or is it simply an absolute monarchy? Constitutionalism normally means that government can be limited in its power by a constitution to avoid corruption. Is this the case in Swaziland? The political environment globally and locally has been constantly changing and countries have democratised. Can the status quo in Swaziland continue?

2.2. SECONDARY PROBLEM

There are a number of other secondary issues that are connected to the primary problem that will be investigated:

- The origins of this political system in Swaziland and the present context.
- The extent to which the constitution of Swaziland meets the generally accepted standards of governance, using the British government system as a point of comparison.
- The lack of participatory democracy in terms of the laws in Swaziland: a critical analysis.
- The response of the Swazi people and the international community to this situation in Swaziland.
- Steps that can be taken to democratise that country.

3. AIMS AND OBJECTIVES OF THE STUDY

3.1. AIMS

The study is descriptive, because it describes the way things are in that country, taking the laws into consideration and explaining why things are that way. It will also then be explanatory, as it will explain certain phenomena the way they are and make causal links in certain instances. The primary aim is to analyse the laws with governance principles in mind, to determine whether these are adhered to by the government. Using concepts like constitutionalism, democracy and governance, the study will be able to test the scenario in that country to determine where the challenges are and decide on recommendations for transformation.

Babbie and Mouton (2001: 79) emphasise that the aim of social research has three most common purposes, namely: exploration, description and explanation.

It is therefore the aim of this study to:

- Explore how things are in Swaziland, using the historical background and current legislation as points of departure.
- To describe why things are the way they are and identify shortcomings that have potential to cause unrest.

- To explain the future policy alternatives that should be explored to ensure a smooth transition to leading a culture of good governance.

3.2. OBJECTIVES

3.2.1. Primary objectives

The research will critically analyse the constitution and relevant laws in Swaziland and test them against known principles of democratic governance. The country has recently been known to be an absolute monarchy, but its constitution claims it is a democratic country - which of the two can be attributed to Swaziland?

3.2.2. Secondary objectives

The following will be secondary objectives:

- Give an overview of the origins of the system of governance in Swaziland and the developments through the years.
- Investigate the political climate in that country and the international community's reactions over the years.
- Make recommendations as to how that country needs to turn the situation for the better.

Otherwise that country will face a lot of political resistance, which can take any form like sabotage, violent opposition and organised protest (Chazan *et al.*, 1999: 123).

4. RESEARCH METHODOLOGY

According to Mark (1996: 5) 'all social science research is based on the scientific method which makes certain assumptions and holds certain beliefs about the nature of the world'.

The research method that will be used will be based on a qualitative paradigm, which will largely use the technique of literature study and analysis. According to

Mouton, “different studies use different methods or techniques for the simple reason that they have different objectives” (Mouton, 1998: 38). The research problem dictates the methodology to be used. Qualitative research is defined largely as that approach that takes its departure point as the insider’s perspective on social action (Babbie and Mouton, 2001: 53).

The research tradition will be the phenomenological approach that will be used to understand the world of the Swazi people. In this type of tradition people are believed to be constantly engaged in a process of understanding their world. Human beings are understood to be conscious, self-directing and symbolic (Babbie and Mouton, 2001: 28). According Babbie and Mouton (2001: 28) the aim is not to define, but to understand people. This approach is best suited for this type of study trying to make sense of the political arrangements in Swaziland.

The researcher will use the body of knowledge, already written about the country, to assess how the political system has developed over the years, using the laws of that country as a departure point. The study is therefore a pure literature review using an interpretive approach to sources on the country. The laws and government actions in Swaziland will be used as evidence and causal links established, to interpret where the country finds itself.

Primary and secondary sources will be consulted and the information evaluated scientifically, to ensure that the research problem is investigated properly.

5. RESEARCH DESIGN

Babbie and Mouton describe research design as follows:

“A research design is a plan or structured framework of how you intend conducting your research process in order to solve the research problem.” (Babbie and Mouton, 2011: 104)

Chapter 1

This chapter will consist of the research introduction which will serve as orientation into the study. It will contain the following:

- Actuality and motivation.
- Problem statement.
- Aims and objectives of the study.
- Research methodology.
- Research design.

Chapter 2

This will be a study of the British Parliamentary system to explore mainly how the concept of a Constitutional Monarchy is not necessarily exclusive of democracy.

Chapter 3

This chapter will study the case of Swaziland - the origins and history of the political system and how things have developed over the years. This will include a study on what kind of state it is and to what extent the constitution is effective.

Chapter 4

This chapter will deal with the challenges facing that country within this governance model - issues like repression, corruption, socio-economic factors and political stability will be investigated to understand the rationale behind them. The pressure from the international community, including from international organisations, will be explored.

Chapter 5

A short summary of the study will be followed by findings and recommendations make up this chapter. How can Swaziland ensure good and effective governance in the country? The final conclusion will close the study.

CHAPTER 2

THE BRITISH PARLIAMENTARY SYSTEM

1. INTRODUCTION

As it has already been stated in the previous chapter, Swaziland got its independence from colonial rule in 1968 from the British. One can still observe traces of the British system of government within the present Swazi system. This therefore necessitates a study of the British parliamentary system to use comparative and analytical methods to determine whether the Swazi system remains viable within current global political trends. In the modern so-called “global village”, many countries, if not all, are increasingly affected by the decisions and actions in other countries (Heywood, 2008: 15).

Furthermore, the model of government utilised in the United Kingdom (UK), has been to a greater extent exported to many other countries, especially former colonies (Heywood, 2008: 21). The influence of British politics on the world stage can therefore not be underestimated, as the traces can be found in most states and it belongs to one of the few countries normally referred to as the first world. In order to understand the modern British state, one needs some understanding of its history (Judge, 1993: 6). The British parliamentary system was already in place long before that country became a liberal democracy (Judge, 1993: 7). The British system developed through significant changes over the centuries and what is now termed parliament, in fact is a fusion of legislative, executive and judicial functions, which makes it a very exceptional constitutional mixture (Judge, 1993: 6). When we talk about the British parliament nowadays, we refer to the two houses, namely the House of Lords and the House of Commons. There is also the branch of government called the executive, which is made up of the prime minister and the cabinet ministers, which is sometimes referred to as the Queen’s ministers or Whitehall (Blackburn *et al*, 2003: 3). The British system is also known to have curtailed the power of the monarchy as early as the thirteenth century, by King Edward 111’s reign, when it was established that taxation was illegal without consent of the two houses (Blackburn *et al.*, 2003: 3). Walter Bagehot, in 1867, asserted that the monarchy belonged to the ‘dignified’ part of the constitution (Pearce and Stewart, 2007: 16). It is therefore in the constitution that though the

Queens ministers have the royal Prerogative, they are also accountable to the two houses of parliament.

The discussion within this chapter will attempt to look at the following:

- The Constitution of the United Kingdom - the sources and principles of the Constitution.
- Important role-players in the British political system - the monarchy, the two Houses, Parliament, the Prime minister and cabinet.
- The advantages and disadvantages of the system.

2. THE CONSTITUTION

Heywood (2002: 292) describes a constitution as a 'set of rules, written and unwritten that seek to establish the duties, powers and functions of the various institutions of government, regulate the relationships between them, and define the relationship between the state and the individual'. Hood (1987: 5) describes it as 'the system of laws, customs and conventions which define the composition and powers of organs of the state, and regulate the relations of the various state organs to one another and to the private citizen'.

Both the above explanations agree that constitutions are there to rule over both government and the individual. Constitutions:

- Create governments by defining the state, recognizing the sources of government's authority and outlining government's principles and purposes.
- Frame government by providing what form it takes and go further to explain its powers and clarify limits to that power.
- Finally they clarify the relationship between government and its people. (Schechter *et al.*, 2010: 194-200)

Leach *et al.* (2011: 173) also contend that a constitution provides a framework of rules and principles for the conduct of government within a particular state. Constitutional changes are usually handled with great caution in most countries, but remain part of the political game (Leach *et al.*, 2011: 174). Schechter *et al.* (2010:

189) also agree that a constitution sets out ground rules that establish, frame, empower and limit governments. It's clear from these explanations that constitutions are therefore very basic in their nature and empower and limit governments. Many written and unwritten constitutions cannot simply be changed by a simple majority vote, but may have requirements like a two thirds majority in order to curtail the power of the ruling party.

The British constitution is normally described as uncodified - which simply put means it is unwritten. This is partly true as not all of it is unwritten, but parts are actually written as we will discuss, but this rather points to the fact that there is no one document in which you can find this constitution. No constitution is entirely written or unwritten as there is always a balance between written (e.g. laws) and unwritten (e.g. customs or conventions) (Heywood, 2008: 165).

According to Heywood (2008) unwritten constitutions have the following features:

- They are not authoritative as they have the same status as ordinary laws.
- They are not entrenched - they can be changed through the normal process of enacting a statute law.
- They are not judiciable, because of their unwritten nature, judges have no legal standard against which they can declare an action 'constitutional' or otherwise. (Heywood, 2008:166)

One case in point would be during the years of Prime Minister Tony Blair, which were characterised by some far reaching constitutional reforms, including the formation of the representative assemblies in Ireland, Scotland and Wales. According to political scientists, David Richards and Martin Smith, this radical agenda's constitutional reform had been trapped within Labour's longstanding commitment to the Westminster model of government (Driver and Martell, 2002: 165). The changes however did show how flexible the British constitution is, even though they were littered with contradictions.

This however does not mean that the Britons do not have any respect for their constitution, nor does it inhibit its effectiveness in organising government business

(Wilson, 1994: 50). The Constitution has undergone major changes in the past, moving from an absolute monarchy to the modern democracy we witness today.

2.1 SOURCES OF THE BRITISH CONSTITUTION

The British constitution has over the years moved from being mainly unwritten to mostly written, through the various laws enacted by parliament and the courts. The rules and principles of the constitution can be found in a variety of sources (Heywood, 2008: 169). The most important sources will be discussed in detail.

2.1.1 Statute Law

These are the laws that have been enacted by Parliament - though not all those laws are of constitutional significance (Leach *et al.*, 2011: 172). Parliament in Britain is supreme as it represents the “estates” of the nation, being the monarchy, aristocracy, church and people and therefore enacts laws (<http://about-britain.com>). These laws override all other constitutional sources and place parliament to be the supreme arbiter of the constitution (Moran, 2011: 50). The principle of parliamentary sovereignty simply means that parliament can enact a law without fear of being challenged in court (Bevir and Rhodes, 2003: 94). The system is therefore characterised by three defining traits, according to Bevir and Rhodes (2003), namely:

- A strong executive;
- No constitutional constraints on the executive beyond those it chooses to accept and
- A system which produces working class majorities in parliament, ensuring that legislation delivered. (Bevir and Rhodes, 2003: 94)

Moran (2011) distinguishes between statutes and super statutes - the latter being ‘a set of laws that restrict government in Britain in unique ways’ (2011: 50). These, among others, are laws that led to the establishment of the Welsh Assembly and the Scottish Parliament.

2.1.2 Common Law

These are laws based on tradition, custom and precedent - the country has no penal or civil code, but rather a common law that has evolved over the years (<http://about-britain.com>). The ultimate source of common law is custom, but quite a significant source has been the decisions made in court by judges, as they interpret the statute. The decisions made by judges influence the way certain laws are shaped (Moran, 2011: 50). It cannot however evolve in a way that is contradictory to established social norms or parliamentary law. This is seen as the judges not only interpreting the law, but also making it in terms of their judgements, hence common law can be seen as law made by judges, not politicians (Heywood, 2008: 262).

The Royal Prerogative powers of the Monarch are also considered to be common law.

2.1.2 Conventions

These are unwritten rules which have been observed traditionally and widely accepted to ensure that government runs smoothly (Leach *et al.*). Most of the powers of the Prime Minister come from conventions (Leach *et al.*, 2011: 173). One major convention is where the Prime Minister has to be in the House of Commons on Wednesdays to answer questions from parliamentarians. It is also widely accepted that government acts on behalf of the Monarch and is normally referred to as Her Majesty's Government (Wilson, 1994: 55).

2.1.3 Works of constitutional authority

There are various textbooks that have over the years been given a status of guides for people to understand the British Constitution (Holmes, 2008: 302). They do not carry legal status, but are often consulted at relevant times when the need arises. The key works include:

- Walter Bagehot's *The English Constitution* (1963 [1867]) provides a classic definition of the role of the prime minister and that of cabinet (Heywood, 2008: 172).

- A. V. Dicey's *An Introduction to the Study of the Law of the Constitution* (1885) which outlines the fact that the two most important features of the British Constitution are Acts of Parliament and conventions (Holmes, 2008: 302)
- Thomas Erskine May's *Treatise on the Law, Privileges, Proceedings and Usage of Parliament* (1997[1844]), providing the most authoritative account of the practices, procedures and rules of parliament (Heywood, 2008: 172).
- Sir Ivor Jennings' *The Law and the Constitution* (1933) (Leach *et al.*, 2011: 173).
- *Questions of Procedure and Code of Conduct for Ministers* – this is an official document that is given to newly appointed ministers and outlines conventions that affect them (Holmes, 2008: 301). It is normally re-edited when a new government comes to effect and covers the doctrine of ministerial individual responsibility, but has mostly remained the same (Holmes, 2008: 302).

2.1.4 EU laws and treaties

There is a body of treaties and laws that nations have to abide by once they join the European Union. These laws have higher status than the statutes of any particular country. This has sparked debate about parliamentary sovereignty in the UK (Heywood, 2008: 172). The UK joined the then European Community in 1973 and has gradually recognised the higher status of these laws over the years. The issue of parliamentary sovereignty remains unclear in the context of the UK's EU membership, especially because of the unwritten constitution. The most important European Union treaties are:

- Treaty of Rome 1957 – founding treaty of the European Economic Community established a customs union and a common external tariff (Leach *et al.*, 2011: 268).
- Single European Act 1986 – the treaty established one market within the European Community and ensured a free movement of goods, services and capital (Heywood, 2008: 172).
- Treaty of the European Union or the Maastricht Treaty of 1992 – it, among other things, included progress towards a monetary union, closer integration and a common foreign and security policy (Leach *et al.*, 2011: 270).

- Treaty of Lisbon 2009 – this treaty is considered to be the most radical as it establishes a number of provisions like the post of President of the European Council, a new “High Representative”, who acts like a foreign minister of the EU, powers of institutions like the Court, etc.

Heywood (2008) argues that the issue of Europeanization does not just influence a member states’ policies, but that it’s reciprocal – the policies of the EU are also shaped by the measure of power a nation wields within the union. There is a Council of Ministers that involves all elected ministers from member states meeting regularly to negotiate policies and this rather gives powerful safeguards to citizens against government (Heywood, 2008: 84). The involvement of the UK in the European Union has however had implications for the sovereignty of parliament (Leach *et al.*, 2011: 173). Leach *et al.* (2011: 173) also list the European Convention as another source of the UK’s constitution. The UK’s direct influence within the EU through its participation in the European Parliament, cannot be underestimated.

2.2 PRINCIPLES OF THE CONSTITUTION

Every constitution has a set of core principles that underpin each and every aspect within it and the following section looks at the UK constitution’s principles.

2.2.1 Parliamentary sovereignty

Sovereignty is defined by Heywood (2008: 173) as ‘the principle of absolute and unlimited power, implying either supreme legal authority (legal sovereignty) or unchallengeable political power (political sovereignty).’ Parliament in the UK can legislate on any law it sees fit without having to be challenged in the courts. It can make any law which will take precedence over previous laws passed (Holmes, 2008: 308). The other aspect of this sovereignty is that no parliament can pass a law that cannot be repealed by future parliaments (Holmes, 2008: 308). The courts recognise this sovereignty and therefore know that they must implement or interpret acts of parliament as they are (Macridis, 1987: 23). This

sovereignty is sometimes a matter of controversy, according to Heywood (2008: 173-174), because of the following reasons:

- Parliament is not politically sovereign: though it has the legal authority to make or unmake a law, it is not always able to do that politically. There are laws that, if it decided to make or unmake, would lead to protests and even rebellion within the kingdom (Heywood, 2008: 174). For instance if parliament simply decided to do away with regular general elections, there would probably be widespread riots that would challenge its legitimacy.
- 'There has been a shift from parliamentary sovereignty to popular sovereignty' - this can be seen in the wider use of referendums, laws, like the Human Rights Act protecting citizens from arbitrary use of power and a host of others. This means that the issue of supreme authority is actually with the citizens.
- 'Parliament may no longer be legally sovereign' – this might be the result of its membership to the EU and the idea of devolution has resulted in a form of federalism leading to parliament being reluctant to challenge the powers of devolved bodies.

The principle of parliamentary sovereignty has also been somewhat affected by the establishment of the representative institutions in Scotland, Wales and Northern Ireland. But these developments, in a way do not weaken this parliamentary power drastically, as the new assemblies still depend on central government's fiscal transfers which in a way affects their autonomy (Driver and Martell, 2002: 178). Bale (2005: 55) however argues that states within the European Union no longer have complete control or freedom of action. It cannot therefore be denied that these reforms have far reaching implications for the principle of parliamentary sovereignty.

2.2.2 The rule of law

Constitutionalism usually goes hand in hand with the principle that no one is above the law - a country governed by laws, not people (Schechter, 2010: 203).

This emphasise the fact that law is always supreme above any government and applies to both government and the electorate.

This principle ensures that government or no other body in the UK is above the law. This principle asserts that even though the constitution is uncodified, laws apply to all and everyone is bound by it (Heywood, 2008: 264). It emphasises the fact that even government must be subject to checks and balances to ensure that its officials never exceed their powers.

2.2.3 Parliamentary government

The UK's system of government ensures that there is a 'fusion of powers' between the executive and parliament (Heywood, 2008: 175). Parliament unites the executive and legislature, though the former is accountable to the latter (Macridis, 1987: 23). The British parliament is also the parliament of the United Kingdom and has delegated powers to the regional assemblies or parliaments of Scotland, Wales and Northern Ireland (<http://about-britain.com>). Parliament refers actually to three distinct elements namely: the monarchy, House of Lords and the House of Commons (Wilson, 1994: 56). Those three institutions together, exercise legislative power with the monarchy and House of Lords, having more ceremonial powers than the House of Commons.

2.2.4 Constitutional monarchy

The monarchy in the UK lost its power during the 19th century, but it remains a constitutionally significant body within the UK's political system (Wilson, 1994: 51). It is understood that the powers of the monarchy rest with parliament and ministers, including the prime minister - they all act on its behalf. The role of the monarchy is understood to be to promote popular allegiance and to serve as a symbol of unity (Wilson, 1994: 52). A nineteenth century constitutional expert, Walter Bagehot, used to refer to the monarchy and the House of Lords as the 'dignified' parts of the constitution and the cabinet and the House of Commons as the 'efficient' parts (Heywood, 2008: 175). This will be discussed later in this chapter. The monarch is seen as the head of state who is a symbolic figure,

signifying unity, whilst the Prime Minister is the head of government, being a temporary political figure ruling the nation politically (Holmes, 2008: 329).

2.2.5 European Union membership

The UK's membership has had far reaching constitutional implications and given controversy to the idea of parliamentary sovereignty (Heywood, 2008: 175). The power of parliament, in other words, has been greatly diminished by the influence of the EU in its daily affairs. This has been a source of heated debate and given rise to the notion of 'parliamentary sovereignty within the context of EU membership' (Heywood, 2008: 175).

Moran (2011) however talks about the core domains and contested domains of the UK constitution, instead of the principles and he lists them as:

- Core domains:
 - Rule of law; (discussed above)
 - Procedural democracy;
 - Accountability and
 - Liberal freedoms.
- Contested domains:
 - Territorial unity;
 - Parliamentary supremacy; (discussed under parliamentary sovereignty)
 - Crown legitimacy and
 - Citizens not subjects.

2.2.6 Procedural democracy

The British constitution instructs every government to hold elections every five year and this has never been contested since its inception through the Parliament Act of 1911. This entails holding elections as stated above; to allow registered voters to vote and to facilitate the process of voter registration by creating an enabling environment (Moran, 2011: 54). This has been a powerful regulating influence within every government.

2.2.7 Accountability

The prime minister and ministers are expected by the nation to answer questions regularly in the House of Commons and this ensures accountability. The House of Commons has elected members and are therefore representatives of citizens and thus act on their behalf. They not only are obliged to answer questions in parliament, but on any question of national interest posed to them by members of the public, especially journalists. This idea of accountability is central to British political practice (Moran, 2011: 54).

2.2.8 Liberal freedoms

The freedoms referred to, include freedom of the press, speech and assembly (Moran, 2011: 54). Any abolition of anyone of these freedoms will have serious constitutional implications. Though all these freedoms have their limitations and are not absolute, they are part of the key domains of the constitution (Moran, 2011: 55).

2.2.9 Territorial unity

The whole idea of creating the 'United Kingdom' was to 'unite the territories of the islands under a single Crown' (Moran, 2011: 56). This has been challenged to the extent that the so-called Empire has had to be dismantled in the twentieth century and countries like Ireland, Wales and Scotland have broken away from the Crown through a process called devolution and established their own parliaments.

2.2.10 Crown legitimacy

The work of Bagehot of 1867, put the Crown at the centre of the constitution and ensured that the 'dignified' function is recognised in this type of rule (Moran, 2011: 57). The twentieth century has seen the Crown being under what is referred to as the 'Royal Family'. This so called 'dignified' function has greatly been diminished over the last century as the troubles of the Royal Family have become common knowledge in the public domain. Moran (2011) states the fact that the 'key device identified by Bagehot - the cultivation of an aura of magic

and mystery - has disappeared'. The public has therefore come to rate members of the royal family according to their performance (Moran, 2011: 57). The Crown, in a way, is being pushed aside in the daily life of the constitution and this has led to its performance of the 'dignified' role, being diminished.

2.2.11 Citizens not subjects

The British were traditionally subjects, not citizens (Moran, 2011: 58). In other words, the protection of their civil rights was given by the state, but they could not enforce or claim it legally (Moran, 2011: 58). This has changed over the years with the passage of laws, like the Human Rights Act of 1998, which legislated the rights of citizens as opposed to the concessions granted to subjects by the Crown (Moran, 2011: 58). There was a time when the idea of subjects was settled in British politics, but that has now greatly changed.

3. IMPORTANT ROLE PLAYERS IN THE BRITISH POLITICAL SYSTEM

It is crucial at this juncture to look at the different institutions that make up the British political system. The functions of the different role players will also be examined in brief.

3.1 THE CONSTITUTIONAL MONARCHY

The monarchy in Britain is seen as a symbol of national identity and unity - 'a focal point of national loyalty, transcending political partisan rivalry' (Brazier, 1990: 144). The King/Queen personifies the state and the nation, their history and continuity (Brazier, 1990: 144). The monarchy has a lot of constitutional duties to perform and mostly are ceremonial, like presiding at the opening of each new parliament.

Presently the position is occupied by Queen Elizabeth II, hence the whole system of government is usually referred to as "The Queen in Parliament" (www.Everything2.com). It is a case of common law that governors act on behalf of the Queen and there is what is referred to as the Royal Prerogative. In principle the Sovereign, as she is sometimes referred to, can overrule parliament, but this can be challenged through other legislation like the Human Rights Act. The Queen

as the Head of State calls a general election every five years - after being advised to do so by the prime minister (www.Everything2.com). She also has to dissolve parliament when a general election has been called, as the prime minister cannot use the Royal Prerogative in this particular instance. After every general election, the party that wins the majority will be invited by the Sovereign to form a cabinet from the House of Commons. The usual powers of the Sovereign are customarily summarised as her having the 'rights to advise, to encourage and to warn ministers' (Brazier, 1990: 146). In exercising these rights, the Queen is always cautious of the fact that she does not have to face the electorate and understands that at times she will differ with the opinions of Downing Street (Brazier, 1990: 148).

The role of the Sovereign is therefore mostly symbolic and ceremonial as she is a non-executive head of state. She is normally associated with Parliament in a number of ways:

- *Appointing a government:* the Sovereign usually chooses the prime minister after the general election. However, she has little choice in this matter as the leader of the largest party in the House of Commons is usually the only one who can command that confidence (Heywood, 2008: 198). The Queen last used her power to appoint a prime minister independently in 1974, as there was no overall majority winner during that election - she still did it with the advice of her Privy Council (Everything2.com).
- *The Queen's speech:* at the beginning of each parliamentary session the Sovereign opens with a speech which is usually written by the prime minister. The speech usually referred to as the 'gracious address' outlines parliament's legislative programme for that session (Heywood, 2008: 199). In 2007 however, Gordon Brown broke with tradition when he pre-empted the Queen's speech by announcing legislative proposals, claiming it allowed for more consultation time (www.direct.gov.uk).
- *Opening and dismissing Parliament:* parliament is normally opened by the Queen through the State Opening, at the start of each parliamentary year and at the request of the Prime Minister the Queen can dissolve Parliament (Heywood, 2008: 199).

- *The Royal Assent*: the Sovereign also signs a Bill into an Act once it has been passed by Parliament and this is called Royal Assent (<http://about-britain.com>.) She has no choice in the matter as the monarchs never refuse to give this assent. This again is only a matter of formality more than anything else as this assent can be given by the prime minister through signing certain general documents and giving them to parliament (<http://.cw.routledge.com>).

3.2 THE HOUSE OF LORDS

The British government is made up of what is normally called a bicameral legislature which loosely explained, is that it is made up of two houses. The two houses are the House of Lords and the House of Commons. Bicameralism is effective if the second house acts as a revising legislative chamber, provides further scrutiny of the executive and the two houses can perform different functions (Holmes, 2008: 376).

The House of Lords was originally the dominant house in parliament until the nineteenth century when industrialisation happened and later legislation was enacted to shift the bulk of power to the House of Commons (Moran, 2011: 164).

The House consists of the following:

- Life peers: these are appointed by the prime minister under the Peerages Act 1958 and are mostly former members of the House of Commons, former senior officials, former judges, former business leaders or trade union officials (<http://about-britain.com>). They recently have included 'people's peers who can be appointed based on individual recommendations and are the most dominant in the house with a membership of 600.
- Hereditary peers: these are peers who have inherited their titles and include dukes, marquises, earls, viscounts, barons and their female equivalents (Heywood, 2008: 197). They are 92 in number and are elected by other peers after a process of each candidate submitting a brief statement of views to be considered. (Holmes, 2008: 383)
- Lords Spiritual: they are 26 in number and are the bishops and archbishops of the Church of England. They are appointed by the prime minister with

recommendations from the Church of England (Holmes, 2008: 382). Recently Prime Minister Gordon Brown has indicated that he intends to transfer this power to appoint from the prime minister (Heywood, 2008: 197).

- Law Lords: these are the 12 most senior judges in the UK and do work for the Appellate Committee of the House of Lords (Heywood, 2008: 197). The Constitutional Reform Act 2005 removed the Law Lords from the House of Lords by 2009 and establish a Supreme Court (Heywood, 2008: 198).

The House of Lords has remained with legislative powers after its judicial powers were transferred to the Supreme Court, established in 2009. These however are not very effective as the House can only delay a bill to be passed in the House of Commons. The second chamber recently approves bills quickly as the lower house consists of elected members of the people (<http://about-britain.com>). The House of Lords lack political legitimacy and can therefore never act effectively in checking on the House of Commons - leading many to question whether this 'bicameralism' is real in Britain (Holmes, 2008: 377).

The fact that the Law Lords were removed from this chamber is another indication of how the British Constitution has evolved through the years to ensure that some kind of separation of powers exists. The Labour Party's election manifesto of 2001 promised voters that the House of Lords would be made 'more representative and democratic'. (Holmes, 2008: 384) This was subsequently done and though some would argue that it significantly weakened the role of the chamber, the gains for the British system as a whole, are far more significant as in a way it ensures the independence of the judiciary.

3.3 THE HOUSE OF COMMONS

Membership into the House of Commons is won through general elections that are held every five years and the date being set by the prime minister. Its composition is as follows:

- It has 650 members elected by a universal suffrage under a system of relative majority (<http://about-britain.com>).

- Each MP is elected by a single-member parliamentary constituency using the 'first past the post' voting system and are usually divided into frontbenchers and backbenchers (Holmes, 2008: 338).

The powers of the House of Commons include:

- *It is the sole source of legislative power* (Magstadt, 2007: 90): in theory the house can make, unmake and amend any law it wishes, while the House of Lords can only delay it (Heywood, 2008: 196). As a result of there being no constitution to amend, the House of Commons can do anything it wants by a majority vote as long as the public approves (Magstadt, 2007: 91). It is only subject to the higher authority of EU laws and treaties (Heywood, 2008: 196).
- *It alone can remove the government of the day* (Heywood, 2008: 197): if the government is defeated in the House on a major issue or through a vote of no confidence, it must resign or call a general election (Heywood, 2008: 197). This is normally deemed as the government having lost public support and the major opposition party would take advantage (Magstadt, 2007: 91).

3.3.1 Functions of Parliament

Moran (2011: 155-157) argues that the House of Commons is not a legislator, as virtually all legislative proposals originate from the Executive (Moran, 2011: 155). He goes on to assert that even the extensive debates that happen in that house, do very little to shape or overturn the proposed legislation, as detailed amendments are usually the result of minister's concessions (Moran, 2011: 157). Leach *et al.* 2011: 236) agree that a lot of times the legislation that is considered, comes from the executive. The job of parliament is rather to legitimate than legislate (Leach *et al.*, 2011: 236). Be that as it may, the assent of parliament is still vital if a bill is to become law.

A number of authors however, list the functions of parliament as follows:

- Legislation;
- Representation;
- Scrutiny and oversight;

- Recruitment and training of ministers and
- Legitimacy.

3.3.1.1 Legislation

The British parliament is supreme in terms of making laws - legislative programmes are introduced in the House of Commons (<http://about-britain.com>). A lot of legislation passed by parliament makes up a big part of the uncodified constitution. This also means that the House of Commons can overrule any other body in making laws, including the newly formed assemblies (Holmes, 2008: 341). As mentioned above, the sovereignty of parliament is questioned, given the fact that the executive dominates its programme and there are European Union laws that it has to adhere to. It is however undeniable that no law can be passed without the approval of parliament in Britain (Leach *et al.*, 2011: 236). It also has the power to repeal any law passed by a previous parliament.

3.3.1.2 Representation

Parliament is usually considered as exercising power on behalf of the electorate. Representation means that a person or a group of persons may take decisions on behalf of a larger group of persons and those decisions would be binding upon the whole group (Gildenhuis, 1997: 81). In the UK the elected representatives are found in the House of Commons and therefore act as a key link between government and the people (Heywood, 2008: 200). The different MP's also have to meet often with pressure groups and take their views into consideration when voting (Bale, 2005: 90). Holmes (2008: 342) argues that representation is a very complicated concept and it is difficult to really be sure that parliament is effectively representative.

3.3.1.3 Scrutiny and oversight

One of the major strengths of the Westminster system is parliamentary scrutiny of the executive via questions (Bale, 2005: 98). This oversight is also exercised through the committee system, whereby bills are scrutinized and tidied up before being passed into law (Leach *et al.*, 2011: 238). This can often not be very

effective as most members of parliament in the House of Commons, would be members of the ruling party and would therefore not want to embarrass government. The prime minister appears in the House of Commons every Wednesday to answer questions from MP's, who select committees that have to scrutinize policy and call ministers, civil servants and other witnesses to account (Heywood, 2008: 202).

Moran (2011: 160) comments that the significance of these committees is threefold:

- They are able to call witnesses and demand documents from a wide range of departments and even other government agencies.
- They represent 'substantial areas of expertise'. The members who sit in these committees have a considerable amount of expertise in the field the committee is supposed to keep in check.
- Many MP's who fail to make it to the front benches of parliament end up chairing one of these committees and find it rewarding.

(Moran, 2011: 160-161)

Doring and Hallerberg (2004: 111) argue that in most European parliaments, committees are prominent vehicles of delegation, instruments for legislation, budgeting and oversight of the executive branch. The committees are distinct and specific, thus have certain tasks they have to perform (Doring and Hallerberg, 2004: 137). The different committees in the British system are expected to scrutinize bills coming from the House of Commons and ensure that they are constitutional. They are even allowed to call ministers to appear before them to account.

3.3.1.4 Recruitment and training of ministers

One of the main tasks of the British parliament is to train and recruit future leaders (Wilson, 1994: 56). Unlike in the United States, where future ministers come from local politics, in the British system all leaders come from the House of Commons (Wilson, 1994: 56). The executive is drawn from the House of Commons and is

dependent on that support and this may seem as if the executive is weak (Leach *et al.*, 2011: 233). The Prime Minister and cabinet are also serving members of parliament and they occupy the Front Benches of parliament directly opposite the leaders of the Opposition (<http://about-britain.com>).

3.3.1.5 Legitimacy

Heywood (2008: 204) argues that 'when a government governs through a parliament, their actions are more likely to be seen as rightful and therefore to be obeyed'. The UK parliament is elected by a popular vote and its legitimacy rests largely upon that fact. Heywood (2008: 204) goes on to assert that as parliament represents the people and therefore any of its decisions is believed to be made on behalf of the people. Moran (2011: 163) however argues that there was a time when the House of Commons could solely lay claim to legitimacy within the Westminster system, as it was the only organ directly elected. This has changed, as the House of Lords, European Parliament, Scottish Parliament and the Welsh Assembly, are also directly elected. This has however still not taken a lot from the legitimacy of the House of Commons.

After all is said and done, the House of Commons remains the dominant house in British politics, as it is synonymous with government. It has been like that since 1911 - it can pass laws even when the House of Lords tries to suppress it (Magstadt, 2007: 91). The House of Lords has gone against parliament only four times in the last almost eighty years, as they know if they ever over-asserted their power, they could risk abolishment by parliament. Recently the second chamber can only delay a bill being passed and suggest amendments to it, rather than block it completely (www.parliament.uk). It is the House of Commons that provides even the opposition, space to go on the offensive and hold the ruling party to account.

3.4 THE PRIME MINISTER AND THE CABINET

The branch of government that is responsible for the implementation of government policy is the executive (Holmes, 2008: 405). The executive is the centre of political

leadership and it really is the arm that 'governs', as it ensures implementation. Heywood (2008: 228) says that it does this with its two parts:

- Political executive, consisting of ministers whose job is to be responsible for the direction and coordination of government policy.
- The bureaucracy, composed of civil servants whose job is to advise and implement policy.

3.4.1 The Prime minister

The British prime minister is the most powerful leader within this system of government, as he is the chief executive officer, leader of the majority party and chief advisor to the crown (Magstadt, 2007: 93). To be prime minister a leader must fulfil the following requirements:

- Must be a member of the House of Commons and
- Must be leader of the majority party in the house.

Heywood (2008: 229-230) lists the following as the 'key aspects of the modern role of the prime minister:

- Making governments: the prime minister is officially appointed by the Queen, then he/she appoints a cabinet which effectively means he/she has the power to 'hire and fire'.
- Directing government policy: he/she directs government policy and defines its strategic goals.
- Managing the cabinet system: he/she chairs cabinet meetings, controls the number and lengths of these meetings and appoints staff for cabinet committees.
- Organizing government: they can set up or reorganize government ministries and decide on the structure and size of government.
- Controlling parliament: being the leader of the majority party in the House of Commons, he/she controls that house. This is normally referred to as the fusion of powers, instead of separation.

- Providing national leadership: the office is under constant pressure from the media and the electorate – the office derives its authority from the fact that it's elected by the populace.

3.4.2 The Cabinet

The cabinet in the UK system of government is supposed to be the central body that makes government decisions (Heywood, 2008: 230). The departments, with the headquarters in Whitehall, run the day to day business of government (Magstadt, 2007: 95). Heywood (2008: 231-232) argues that UK's recent cabinets have largely relinquished their powers to the prime ministers, with weekly meetings that hardly last over two hours - policy debates rarely happen within their formal forums.

Heywood (2008:232) lists the main roles of cabinet as:

- **Formal policy approval:** for government policy to be official, most of the time it has to be approved by cabinet – the debate happens in parliament and the prime minister sometimes just fails to consult cabinet.
- **Policy coordination:** cabinet has to ensure that ministers know what is happening in other departments, so that things can happen smoothly. This ensures that government works in a coordinated way when it comes to policy implementation.
- **Resolve disputes:** differences between ministers are sometimes sorted out by cabinet to ensure that they are resolved amicably.
- **Forum for debate:** the prime minister and other ministers can sometimes use parliament to sound out ideas and debate issues.
- **Party management:** cabinet always takes into account the views of the majority party and hence the chief whip always attends cabinet meetings.
- **Symbol of collective government:** cabinet brings the convention of collective ministerial responsibility to reality, as it symbolises the fact that the UK government is a collective.

Holmes (2008:406-7) however lists the role of the executive as follows:

- Support for other branches of government: the legislature in Britain is controlled by the executive. The latter dominates parliament business by introducing bills that need to be passed as law. In 2006, 56 acts were passed by Parliament and during that same period 3500 pieces of delegated legislation was passed by ministers under Parliament's authority (www.parliament.uk/commons).
- Democratic, representative function: as it was elected by the people to represent them, it has to act in their best interest. It has to represent them in a democratic way, following on its party's election manifesto.
- Responsive government: it has to listen to a variety of groups or institutions that link it with the people and respond to the needs expressed. Groups like the media, public opinion polls, pressure groups and indeed parliament itself.
- To govern responsibly: as much as the executive must be responsive, it also at times must go against popular belief to govern responsibly and sensibly. It is a leadership body after all.
- Administrative role: for a business to be successful, it has to be run efficiently - this also applies to government. There is a great link between a successful business and good government.
- Cover a great range of government business: there are quite a number of areas in which government must show expertise, in order to govern efficiently.

It is clear from the functions listed above, from different authors, that the executive is the nerve centre of successful governance. The authors do not contradict one another, with Heywood concentrating mainly on the British government, whilst Holmes gives a more generalised approach.

4. THE ROLE OF ELECTIONS

The UK was traditionally known as a two party system, but for the better of the twentieth century it has been dominated by three parties, namely the Conservative party, the Labour party and the Liberal party (Magstadt, 2007: 96). Elections are a

central practice that defines the UK's claim to democracy and according to Heywood (2008: 62) are based on:

- Universal adult suffrage
- One person, one vote
- The secret ballot
- Competition between parties and candidates

General elections happen when the Monarch agrees to the request of the prime minister to dissolve parliament and call an election. The law stipulates that the maximum life of any parliament must not exceed five years. Moran (2011: 322) argues that prime ministers decide to call an election at an opportune time, know how to manipulate the system and call an election when they are at the peak of their popularity to ensure victory. The doctrine of 'mandate' is prevalent in many democracies and simply mean that the party that wins the popular vote is mandated by the electorate to implement its policies (Heywood, 2008: 66).

5. ADVANTAGES AND DISADVANTAGES OF THIS SYSTEM

It would be befitting to now close the chapter by looking at the advantages and disadvantages of the British parliamentary system since no system is perfect.

5.1 ADVANTAGES OF THE BRITISH PARLIAMENTARY SYSTEM

- The system is a combination of tradition and modernisation. There are laws that are based on tradition and are therefore very old, which gives it stability. There are also laws that are very modern, like the establishment of the Supreme Court which happened in 2011.
- The system is very flexible and can therefore adapt to changes imposed on it by the citizenry. The fact that the constitution is not written allows for the government to be able to change it with a simple majority. This, it can be argued, ensures that government is efficient and responsive to the needs of the people. A case in point is the dissolution of powers which led to representative structures in Scotland, Wales and Northern Ireland. The UK has become what some term,

a 'quasi-federal state', as these structures still depend on central government in many ways, though they have their own governing structures. (Bale, 2005: 43)

- The system allows for the prime minister and cabinet to be questioned in parliament and therefore makes them accountable. It therefore can be said that it self-regulates itself to ensure effective and responsive government. The effects of pressure groups, the media and public opinion polls, cannot be downplayed in British politics.
- Though there is more of a fusion of powers than separation – the system is able to regulate itself and ensure that no abuse of power is allowed. The fact that Parliament can pass a vote of no confidence against the executive, is a great limit to the power of government.
- The regular elections ensure that no dictatorship is allowed. The constituency system of Britain allows for a local person to represent a community in parliament and ensure that that community is heard. The power remains with the people to remove or endorse a particular party based on its election manifesto.

5.2 DISADVANTAGES OF THE BRITISH PARLIAMENTARY SYSTEM

- This system allows parliament to be strong enough so that it can change the constitution very easily with a simple majority. It is also evident that the executive can be too strong and dominate parliament's legislative programme. This can be a weakness, as it inhibits parliament's role of oversight and scrutiny of the executive.
- There is too much attention and power given to the Prime Minister. The workload can negatively impact on the incumbent's success in the job. If the Prime Minister is too strong a character, they can dominate even the executive completely, as it happened in the years of Margaret Thatcher.
- Lack of separation of powers can make accountability difficult to monitor. The fact that ministers are part of the House of Commons makes it difficult to hold them accountable, as it would be in a presidential system.
- An uncodified constitution makes it difficult to prove the constitutionality of a new law. As a result, this parliament is left to promulgate any law and it cannot be challenged. This in a way is a form of dictatorship by parliament.

- The electoral system of first-past-the-post has enabled a two-party dominant system which has made it almost impossible for new parties to grow (Ingle, 2008: 197). Since the mid-1800s only four governments have won an outright majority (Ingle, 2008: 19). This negates the popular belief that the two strong parties reflect the balance of public opinion. This has largely also influenced the role of party discipline, which does not necessarily translate into ensuring that the will of the people takes preference in parliamentary decisions.

6. CONCLUSION

Despite all its flaws recorded above, the British parliamentary system remains the best example of liberal democracy in modern times. The following features are strongly visible:

- The House of Commons, which is the strongest legislative body, is a representation elected by the people. This system uses the legislature as a mechanism that makes decisions for the rest of the population that elected for a limited period of time (Weale, 2007: 43). The elections are simply a control mechanism in which the citizens simply either endorse a present government or reject it, based on its performance.
- The government is responsive to the needs of the people, as one has increasingly evidenced especially in recent years. Since the tough period of Margaret Thatcher rule, we have seen several parties trying to listen more to the citizens. In 2007, for instance, Prime Minister Brown broke away from precedence by announcing his government's legislative programme, by not waiting for the Queen's speech to allow the public an opportunity to have input (Ingle, 2008: 182). Earlier in that year, David Cameron, had pledged to allow the public to draw up his party's election manifesto (Ingle, 2008: 182). The decision-making powers of the government are increasingly influenced by interest groups, non-governmental organisations, private businesses and a myriad of other players in the population (Dreyzek and Dunleavy, 2009: 140).
- One of the controlling principles of the constitution, is the rule of law which protects citizens from abuse of power by the government. The two principles governing this aspect of democracy are constitutionalism, which requires government to conduct its business within the confines of the law and

- democratic principle, requiring it to implement the will of the people (Weale, 2007: 181). There is therefore a Bill of Rights which protects all citizens equally.
- There is a constitutional monarchy which has mainly ceremonial powers - taking direction from the elected leaders of the people. Britain has succeeded in preserving the traditions of its monarchical past and placed them within a modern democracy (Wilson, 1994: 51). The government and indeed the entire civil service, is symbolically prefixed with “Her Majesty’s Parliament”, “Her Majesty’s civil service”, etc. A lot of actions of government are said to be undertaken on behalf of the sovereign. This is to symbolise unity and acknowledge the monarchy’s prominence in the present order.
 - There has been a concerted effort to localise government through the process of devolution. Historically the United Kingdom was governed through unconstrained sovereignty of the Westminster parliament (Dreyzek and Dunleavy, 2009: 146). As recent as 1999, Scotland had a parliament running its domestic affairs, whereas Wales has had a national assemble and a government since 2007 (Dreyzek and Dunleavy, 2009: 147). These are still subjects to the British parliament as it remains sovereign, but there is an effort towards subsidiarity and multi-level governance. This can only aid participation by the citizens.

This chapter serves to indicate that it is possible to preserve your traditional norms as a country, without having to compromise on democracy for your citizenry. The normal excuse by the rulers of Swaziland is always that democracy does not fall within the traditional confines of the population and can therefore never work. This chapter has studied a country that was originally run through an oppressive traditional system, but has evolved over the years to be a model of democracy, whilst staying true to its past. The good governance in Britain is a result of ongoing discourse that has succeeded in capturing all or most of the considerations of its stakeholders, being the British citizens in its policies (www.governancepro.com/news).

The next chapter will consider the history of the political system in Swaziland to consider its origin and the different turning points in that system. The chapter will

go on to critically analyse the present constitutional dispensation in Swaziland and compare it to the British parliamentary system.

CHAPTER 3

THE KINGDOM OF SWAZILAND- FROM PAST TO PRESENT

1. INTRODUCTION

This chapter will undertake a descriptive analysis of the development of the political system of Swaziland. This will be done through tracing the history of the political order, from during the colonial period, right up to the present situation. The chapter will analyse the present political system and compare it to the British parliamentary system, which was studied in the previous chapter. The different sections of the chapter will then be as follows:

- The early years up to 1968;
- The period of 1968 to 1978;
- The period from 1978 to the present;
- The system of government in terms of the Constitution and a
- Comparison between Swaziland's political system and the British system.

This will assist in understanding the country's situation, as it is a former British colony and will be crucial to see if the country has embraced a progressive political order or whether it is stagnant.

2. THE EARLY YEARS UP TO 1968

The Kingdom of Swaziland is a small country that lies in south-eastern Africa, between South Africa and Mozambique (Booth, 1983: 1). The country, like many other in the region, was originally occupied by the San people until the 16th century after which a group of Bantu speaking people settled southwest, in what is presently known as Mozambique (Sithole, 2004: 11). The country, in prehistoric times, lay strategically for migrants from central to southern Africa.

The Swazi language is an admixture of Nguni, Sotho and Tsonga, as these were nations they had to defeat in order to leave the land they presently occupy. These other nations settled north, in what is present day Mozambique and others south in what is now north Kwazulu-Natal. In about 1750, the Swazi challenged the Sotho people for control of the land, but ended up crossing the Lubombo Mountains to

settle on the northern bank of the Pongola River, to present day Nhlangano, in southern Swaziland (Booth, 1983:7).

The country was rich in natural resources, which made it very important in the subcontinent, despite its small size (Booth, 1983: 1). The country in the early years, had to protect itself against attacks coming mainly from the Zulus, during King Shaka and subsequent rulers' quest to expand that nation. At the same time they also had to wade off attacks from other frontiers.

This period is said to have been a time when the Dlamini clan, under several leaders, based on a family dynasty, led the Swazis in a world that was characterised by wars which led to other tribes being swallowed by another. This took a lot of political skill, diplomacy and political force. Under the leadership of Ngwane, Mswati and Sobhuza, the Swazi people went through a mixed period: peace, sometimes war, growth and at times adversity, caused by larger nations like the Zulus and Ndwedwe's. When in the 1870s, the rulers of the Transvaal, desired to have access to the sea through annexing Swaziland, the latter's leader was to look to the British for assistance. Consequently in 1879, the Swazi and British army defeated the Pedis under Sekhukhune. The British in the meantime, guaranteed Swaziland's sovereignty in perpetuity as a gesture of gratitude (Booth, 1983: 12). The British then established a Royal Commission on which both the Swazis and Boers were represented (Kuper, 1978: 23).

There were lots of attempts by the South African government to conquer Swaziland and add it to the Republic, but this was always curtailed by the British High Commissioners in charge of both countries. It was also a logical step that the three British protectorates, viz. Bechuanaland, Lesotho and Swaziland would be incorporated into South Africa, but the British needed assurance that the rights of Africans would be preserved. However, at the end of the Anglo-Boer war in 1902, the British sent an administrative staff and a small army to Swaziland and the country was placed under the government of the Transvaal, led by Sir Alfred Milner (Kuper, 1978: 38).

Sobhuza 11 was inaugurated as king in 1924 and he immediately set out to persuade the British to give Swaziland its independence and autonomy. Progress towards the realisation of these came through the Proclamations of 1944 and 1950, which were ratified after negotiations and the king taking advice from the liqoqo (Inner Council) and subsequently the libandla (General Council) (Kuper, 1978: 174). However the country remained a British colony with powers vested mainly in Sobhuza, as the king of his people, through the help of the National Council. The Council regulated the politics and bureaucracy in the country and ensured that the “Indirect Rule” by the British was recognised and controlled. The King had limited power and the British initially prohibited the use of the title of “King”, but was rather referred to as the paramount chief.

The events that preceded independence in the late 1950s and early 1960s, ensured that the Swazi monarchy remains a dominant institution in that country’s political arena. The King effectively manipulated processes to secure his dominant position (Booth, 1983: 33). This also meant that the royal family gained control of the Swazi economy and was able to amass wealth, using traditional institutions that were part of the Swazi’s daily life.

By the early 1960s, an interim Legislative Council was formed from members of the Swazi National Council and the European Advisory Council, charged with the responsibility of drafting a new constitution to aid independence. The King had strengthened his authority among the people, by advocating for what he called “tribal nationalism”, which he claimed was aimed at preserving Swazi traditions and customs, but it was also to ensure that royal power and dominance are preserved (Kuseni and Levin, 1997: 83). The idea of a constitution was vehemently opposed by Sobhuza and his political arm, the Imbokodvo National Movement (INM), which was mainly made up of the Dlamini royal clan (Maroleng, 2003: 1). Sobhuza made his position very clear during these negotiations, that he did not accept the western model of elections, political parties or caucuses (Kuper, 1978: 220). He rejected the idea that ‘west was best’, when it came to drafting the constitution, as it challenged the ‘aristocratic nepotism’ that ensured that the royal family would be the legitimate rulers of Swaziland. He also vehemently opposed the notion of ‘one-man-one-vote’, which he saw as a threat to monarchism (Mzizi, 2002: 2)

Other political organisations that had influence on the new constitution, finally drafted and promulgated in 1967, included the United Swaziland Association (USA), whose main aim was to preserve the political and economic interests of the Europeans (Booth, 1983: 67). There was also the Swaziland Progressive Party (SPP), which was mainly urban in its membership, attracting the growing Swazi middle class, consisting of members who felt alienated by traditional rule (<http://africanhistory.about.com>). Furthermore there was the Ngwane National Liberatory Congress (NNLC), which advocated for a constitutional monarch (<http://africanhistory.about.com>).

The new constitution recognised a multiparty democracy, established the King as a Westminster style constitutional monarch, guaranteed regular elections and established the sovereignty of the Kingdom of Swaziland. However, King Sobhuza 11 was not happy with the new status quo and felt that the constitution was too foreign to the Swazi way of life. It is also notable that the new constitution gave ownership of all lands and minerals to the King - not the new parliamentary government (Booth, 1983: 68). The Constitution did however bind the King to exercising his authority, in accordance with it, thus eliminating any prospects for dictatorship. In the elections of 1967, the INM won 75% of the vote, which meant it had all the seats in parliament - relegation all other parties to being opposition outside government. King Sobhuza 11 was then installed as king and Prince Makhosini as the first Prime Minister on 25 April 1967 (<http://africanhistory.about.com>). The country became independent fifteen months later, when Sobhuza received the instruments of government on 6 September 1968 (Booth, 1983: 69).

3. THE PERIOD OF 1968 TO 1978

It soon became evident, after achieving independence, that the King wanted more power as he meddled in the governance of the country, by exercising oversight over the legislature and the judiciary (<http://africanhistory.about.com>). King Sobhuza

also never liked political parties, hence his INM was never referred to as such, but rather as a movement for all Swazi people with the King as a symbol of unity (Magagula and Masilela in Hussein, 2011: 180). He believed that political parties were a source of disunity in many African countries. It was evident in both the 1967 and 1972 elections, when leaders of the INM were chosen by the traditional regional committees, called *tinkhundla* and presented to the King (Magagula and Masilela in Hussein, 2011: 180). The INM believed in the “the continuance of the monarchy, Swazi customs, mineral and land rights and the prerogative of the Ngwenyama.” (Levin, 1997: 72). The ‘Ngwenyama’ being the royal house. It is therefore clear that King Sobhuza 11’s INM wanted the restoration of what was before the constitution. The potentially meaningful opposition to the INM was from the NNLC which rather believed in a Pan-Africanist approach, which allowed for a constitutional monarch with limited ceremonial powers, guarantee of individual liberal freedoms and a one-man-one vote secret ballot in elections (Mabuza, 2008: 27). In the 1967 elections the NNLC failed to win any seats in government and this meant it missed the opportunity to be the official opposition, therefore giving the INM the power to form the government alone. In the 1972 elections however, the NNLC won three out of the 24 seats in parliament and this was a rude shock for the King (Booth, 1983: 72). The first five years into independence were however characterised by the adjustments in both the government and opposition to the new reality. The NNLC, which was the most significant opposition, went through a period of a power struggle when its leader Dr Ambrose Zwane’s attempts to exert his power were challenged by the younger leadership (Booth, 1983: 70). Within the INM there was a constant struggle between the ‘traditionalists’ and ‘modernizers’, within senior members of government.

This period can be viewed as a time of democracy in the history of Swaziland, as political activity was allowed, human rights were part of the constitution and regular elections were to be held. The parliament had two chambers: the House of Assembly and the Senate (Mabuza, 2008: 28). The King had a role in forming the parliament in that:

- He had the power to appoint 6 members out of the total of 30 in the House of Assembly (Levin, 1997: 78).

- He could appoint fifty percent of the twelve members of the Senate (Levin, 1997: 78).

During this period however, there were several instances where the King and government had to be forced through the judiciary, to abide by the constitution and this was not well received. One such instance was when the government tried to deport the leader of the NNLC, Thomas Ngwenya, to South Africa as they had declared him an “undesirable person” (Booth, 1983: 73). When he appealed, the High Court set aside the deportation, but then parliament amended the Immigration Act to ensure that the Prime Minister be the final arbiter in cases of deportation, not the High Court (Booth, 1983: 73). Ngwenya’s lawyers went on to appeal and succeeded in declaring the amendment unconstitutional.

This case proved to be very crucial in the history of Swaziland, as fourteen days later on 12 April 1973, the king declared the constitution suspended, Parliament dismissed and all political parties banned (Magagula and Masilela in Hussein, 2011: 181). He also announced that he was assuming all legislative, executive and judicial power and would rule by decree with his Council of Ministers (Magagula and Masilela in Hussein, 2011: 181).

This actually meant that he was effectively staging a coup - suspended democratic order of doing things and decided to be an autocratic ruler. This particular order also allowed for a person to be detained for 60 days without trial and almost immediately after which the leaders of the opposition, NNLC, were detained under this new stipulation (Booth, 1983: 73). This action caught many observers unaware as the INM had been dominating the politics in that country. Many had obviously underestimated the king’s dislike of the British-style constitution and perhaps the re-emergence of the opposition simply pushed him over the edge. According to Maroleng (2003: 2) the following were the reasons given by King Sobhuza 11:

- “The Constitution had failed to provide machinery for good governance and for the maintenance of peace and order;

- The Constitution was the cause of growing unrest, insecurity, dissatisfaction with the state of affairs in our country and an impediment to free and progressive development in all spheres of life;
- The Constitution had permitted the introduction into Swaziland of highly undesirable political practices alien to, and incompatible with, the Swazi way of life; these practices were seen by the King as designed to disrupt and destroy the Swazi's peaceful, constructive and essentially democratic methods of political activity. Sobhuza considered that this engendered hostility, bitterness and unrest.”

He ruled the country from then onwards by decree and without a parliament and effectively nullified the Bill of rights that had been operational after independence. In effect this meant that the country would charge opponents with treason, detaining them without trial and the King himself was the supreme lawyer of Swaziland, whose leadership couldn't be challenged. It meant that civil liberties were non-existent and the monarchy tightly controlled the media and civil society (Takirambudde and Fletcher in Ndulo, 2006: 73).

The King then continued to rule the country as an absolute monarch, following traditional principles and ensured that anti-traditionalists were kept out of the process of government (Esterhuysen, 1984: 5). It is also important to note that the King did undertake to draft a new constitution for the country without any outside pressure and announced a new Constitutional Review Committee (CRC) in September 1973 (Mabuza, 2008: 33). Levin (1985: 188) clarifies the task of this new commission as to “... enquire into the fundamental principles on which the Kingdom of Swaziland's constitution should be based, having regard to the history, culture, the way of life of the people of Swaziland and the need to harmonize these with the modern principles of constitutional and international law.”

In the period between 1973 and 1978 the King ruled without any constitution and had ultimate authority over all political institutions (Mabuza, 2008: 33).

The above period was also characterised by strikes that were indicative of the frustration felt by the populace at the King's actions in reversing the process of

democratization (Booth, 1983: 75). There was the strike by railroad workers in 1975; the violent strike by sugar workers at Big Bend in 1978; and the teacher boycotts and violent student demonstrations in 1977 (Booth, 1983: 75). In all the incidents the government reacted with violence like rubber bullets, tear gas and using live ammunition in certain instances. During the teacher and student boycotts in 1977 many teachers walked out of a meeting the King was addressing to tell his subjects to go back to school - an act of utter defiance happening for the first time in the history of that country (Booth, 1983: 75).

The CRC was supposed to deliver on its mandate within a month after its establishment, but it was only after five years that the King announced the Establishment of the Swaziland Parliament Order (ESPO) in 1978, which was published as the King's Order-in-Council, No 23 of 1978.

The new document stipulated among others:

- Political activity remained banned - no political parties were allowed. This was based on the traditionalists' belief that political parties were just after power to serve their own interests (Magagula and Masilela in Hussein, 2011: 182).
- It confirmed the Monarch as the only political authority in the country by not clearly re-establishing the separation of powers, which is consistent with democracy (Mabuza, 2008: 34).
- It allowed for the re-establishment of a House of Assembly (*libandla*), which would be elected through local community councils called *tinkhundla*, submitting a list of candidates to the King to approve (Booth, 1983: 76). Those elected who came in their personal capacities as political parties, were banned (Mabuza, 2008: 35).

The new electoral process was closely controlled by the Monarch, who first would appoint a national coordinator of the process called Indvuna YeTinkhundla (Mabuza, 2008: 35). At a meeting of the inkhundla, candidates would be elected to represent that community in the electoral college - which would elect members to the House of Assembly. The members of the House of Assembly would in turn elect the Senate.

The system was widely criticised as being very authoritarian and outdated, especially as it outlawed political parties. It was authoritarian in that people voted because their chief instructed them to do so; not out of their own volition (Magagula and Masilela in Hussein, 2011: 184). Opposition parties were effectively silenced by Sobhuza in 1973 and this was further confirmed by the events of 1978. The fact that every candidate had to be approved by the King meant that he was allowed to gate-keep in effect and ensure that his loyalists were the only candidates allowed to stand for election. This amounts to a quasi-democratic order. In as much as there are regular elections, the system is designed to protect itself from opposition and therefore ensure its survival.

The removal of the Westminster-style constitution was effectively a coup by the monarchy, taking advantage of the fact that the majority of the population was rural and therefore uneducated. The monarchy exploited the Swazi people's respect for tradition to advance its own agenda, fuelled by its insatiable hunger for power and total control. The 1973 Makhundu order, which allowed the police to deal with labour and political unrest by arresting and detaining protestors, journalists and political opponents, for 90 days, without trial has remained enforceable to this day (Schwab, 2001: 69).

4. THE PERIOD 1978 TO THE PRESENT

Many critics of the 1978 political arrangement agree that it did not usher in a progressive and democratic political dispensation, though Sobhuza was always at pains to argue that it did.

The ban on political parties meant that the will of the people never really informed the incumbent government on what was necessary, as political campaigning was banned (Magagula and Masilela in Hussein, 2011: 183). Contrary to the belief by the Monarch, that political parties are platforms where people were deceived by being given false promises, they are also places where the electorate can voice their concerns about what is wrong in their society and how it can be fixed. Many Swazis refrained from voting in this Tinkhundla system, as they believed that

parliament was there to just rubberstamp decisions unilaterally made by the king (Dlamini, 2005: 12).

The power of the Monarch was as great as never before as he would be able to veto the nomination or election of any 'undesirable' leader. Parliament was simply reduced to a debating platform and in real sense only those who had been appointed by the Monarch wielded power (Booth, 1983: 77). The King had the power through dismissal and appointment of even members of cabinet, the prime minister and the judiciary. There was therefore an undeniable concentration of powers in one individual. In 1979 the Prime Minister was the King's brother, Prince Mabandla Dlamini and by 1983 two of his sons were cabinet ministers (Booth, 1983: 77).

The method of electing a candidate in these polls was also a bone of contention for a lot of educated people in Swaziland. On Election Day the candidates would each stand at a gate and people would walk into the gate of their preferred candidate. A head count would be taken and a winner declared (Mabuza, 2008: 36). It was even evident in the rural areas where chiefs had instructed their subjects to vote, that many did not, as they did not understand the concept of voting (Magagula and Masilela in Hussein, 2011: 184). This was a direct result of lack of political activity as political parties would have ensured that their members understand the concept clearly.

King Sobhuza 11 died in 1982, leaving the Tinkhundla system in place with the ESPO as a constitutional framework (Mabuza, 2008: 36). The country was then in a transitional period as the crown prince, Makhosetive, was only fifteen years old. The queen regent, Dzeliwe, was to rule the country with the Liqoqo - which was a traditional body consisting of chiefs and members of the royal family (Dlamini, 2005: 21). A time of uncertainty then ensued which created a form of power vacuum.

When King Mswati 111 assumed power in 1986, there was a lot of optimism that a democratic order would be ushered in, but it was not to be. There were numerous commissions that pointed out the deficiencies of the Tinkhundla system that asserted that the electoral process was flawed, as there was a need to ensure that

all constituencies are directly represented in the House of Assembly (Mabuza, 2008: 34). However the Establishment of the Parliament of Swaziland Order of 1992, simply reasserted the power of the Monarch and ensured that the separation of powers principle was not revived.

Another constitutional review process was initiated in 1996 by Mswati, in which he picked the members of the commission who were undoubtedly his loyalists. One significant finding by this latest review was that "...political must remain banned in the Kingdom. The existing laws regarding this must be enforced." (Constitutional review Report, 2000: 95).

Some of the criticism that was levelled against this latest Constitutional Review Committee (CRC) was:

- It consisted mainly of members of the royal family and chiefs that were loyal to the monarchy (<http://www.countrywatch.com/swazilandreview> 2014). It was therefore unlikely that they would recommend anything different that would curtail their power or that of the monarchy.
- The CRC was to consider submissions from individuals only - nothing from any organised labour, political parties or even human rights groups within the country (<http://www.countrywatch.com/swazilandreview>: 2014).
- The deliberations were not to be covered by the media and this made many wonder if the monarchy was truly committed to bringing about political change in that country (<http://www.countrywatch.com/swazilandreview> 2014).

It is clear from the above that the Monarchy knows how to manipulate the processes of review, to ensure that it gets the desired results. It is also evident from the number of constitutional reviews that the Monarchy knows that it is only a matter of time before it will be forced to effect meaningful change in that country. It is however surprising to note that the monarchy is not ready to deal with this reality sooner rather than later. The Monarchy remains the only real political player in the politics of that country, with parliament and cabinet expected to simply ratify decisions already made by the King (Dlamini, 2005: 18).

The Liqoqo, a body consisting of all chiefs and members of the royal family, was the most powerful player in the politics of that country prior to the death of Sobhuza (Dlamini, 2005: 21). The body made decisions that were binding on the Monarchy, but Mswati abolished it as soon as he was enthroned. Following the constitutional review report in 2000, the King appointed a Constitution Drafting Committee (CDC) in 2001, to draft a new constitution that would incorporate the recommendations. Opposition parties refused to participate, as they first wanted the ban on political parties lifted, but this was not to be realised (Magagula and Masilela in Hussein, 2011: 185).

The final constitution was eventually promulgated as the Constitution of Swaziland, Act 2005, and was passed on 8 February 2006. The so-called new constitution was widely criticised as it simply confirmed the status quo of centralising power on the Monarchy and being unclear on the unbanning of political parties.

5. SYSTEM OF GOVERNMENT IN TERMS OF THE CONSTITUTION

The system of government of Swaziland, is somewhat a dual system, which has a both traditional hierarchy and a modern institution in the form of parliament (Dlamini, 2005:21). The study will move into examining both these formations in detail.

5.1 THE TRADITIONAL HIERARCHY

According to Swazi traditional custom, the King (*Ngwenyama*) rules with the Queen Mother (*Indlovukati*). The King and his Mother hold very powerful positions in the country's public life, as they preside over national gatherings, distribute wealth and allocate land (Dlamini, 2005: 23).

The powers of the King are clearly stated in Chapter 2 of the Constitution as:

- Commander in Chief of the Defence Force;
- Commissioner in Chief of the Police Services and
- Commissioner in Chief of the Correctional Services.

The constitution effectively places the King above the law with power to dissolve parliament at any time (Maroleng, 2003: 4). It also allows the King to appoint 20 of the 30 members of the Senate. The King is also exempt from taxation and cannot be sued. The King is also entitled to have a body of advisors, called the King's Advisory Council in terms of Section 13 of the Constitution.

Executive authority of Swaziland.

64. (1) The executive authority of Swaziland vests in the King as Head of State and shall be exercised in accordance with the provisions of this Constitution.

(2) The King shall protect and defend this Constitution and all laws made under, or continued in force, by this Constitution.

(3) Subject to the provisions of this Constitution, the King may exercise the executive authority either directly or through the Cabinet or a Minister.

(4) The King in his capacity as Head of State has authority, in accordance with this Constitution or any other law, among other things to —

(a) assent to and sign bills;

(b) summon and dissolve Parliament;

(c) receive foreign envoys and appoint diplomats;

(d) issue pardons, reprieves or commute sentences;

(e) declare a state of emergency;

(f) confer honours;

(g) establish any commission or *vuse/a*; and

(h) order a referendum

(Constitution of Swaziland Act of 2005)

The above section shows the power of the King in terms of the Constitution, namely that he has all the executive power. Sections 65-68 goes on to give the King the right to appoint the Prime Minister and the Cabinet - the former on the advice of the King's Advisory Council and the latter on the advice of the Prime Minister.

One of the major critical issues is the one below:

(4) Where the King is required by this Constitution to exercise any function after consultation with any person or authority, the King may or may not exercise that function following that consultation. (Constitution of Swaziland Act of 2005)

The above shows that the King can act without any advice from those mandated to advise him. The Executive and Parliament serve in government at the will of the King and he has the power to dissolve government, without taking any advice into consideration. This amounts to a certain extent to an authoritarian type of government.

Authoritarian government is often used to refer to undemocratic governments like monarchies (Brooker, 2009: 25). Brooker explains authoritarian regimes in four distinctive characteristics:

- Limited political pluralism: the extent of this varies from regime to another - in certain instances there could be a limited political participation of parties, whilst in others parties may be completely disallowed, like in the case of Swaziland.
- Absence of an elaborate and guiding political theory: even though the regime might know of ideology, it does not use it to guide the policies of government, but uses more emotional mentalities. This is particularly true for Swaziland, where people have to rather comply at the King's pleasure.
- Lack of political mobilization: other political players in the form of groupings might not be allowed to participate. This rings true for Swaziland where political parties have been banned since 1973.
- Power is exercised within 'ill-defined limits' that can be predicted: the leader's actions are sometimes arbitrary but can be predictable. (Brooker, 2009: 26)

The government of Swaziland can therefore be classified as authoritarian if one looks at the above characteristics- with a monarchy that has resisted any meaningful democratic change in that country. The king is also mandated by the Constitution to appoint key members of the judiciary, including the Chief Justice and members of the Judicial Service Commission:

153. (1) The Chief Justice and the other Justices of the superior courts shall be appointed by the King on the advice of the Judicial Service Commission.

The above quotation from the Constitution shows how the King is also powerful when it comes to judicial matters, which would affect the independence of that branch of government. The following also demonstrates that:

159. (1) There shall be an independent Judicial Service Commission for Swaziland, hereinafter in this chapter referred to as —the Commission.

(2) The Commission shall consist of the following —

(a) the Chief Justice, who shall[sic] be the chairman;

(b) two legal practitioners of not less than seven years' practice and in good professional standing to be appointed by the King;

(c) the Chairman of the Civil Service Commission; and

(d) two persons appointed by the King

It is clear again from the above section of the Constitution that the King has absolute power when it comes to the Judicial Service, 4 out of the 6 members on it when one includes the Chief Justice. When it comes to the Director of Public Prosecutions, once more:

162. (1) There shall be a Director of Public Prosecutions whose office shall[sic] be a public office.

(2) The Director of Public Prosecutions, in this Chapter referred to as the Director, shall be appointed by the King on the advice of the Judicial Service Commission. Significantly in all these appointments, the King has to take advice from some statutory body, but as we have already established above, he is not obliged to use any of the advice.

The Queen Mother (*Indlovukati*) is immune from taxation and prosecution in terms of the constitution. The Constitution asserts:

7. (1) Without prejudice to the provisions of section 229, the *Ndlovukazi* is traditionally the mother of the King and *iNgwenyama* and is appointed in accordance with Swazi law and custom.

(2) Until the King and *iNgwenyama* has been installed, that is to say, until he has publicly[sic] assumed the functions and responsibilities of the King and *iNgwenyama*, in accordance with this Constitution and Swazi law and custom, or during any period when he is by reason of absence from Swaziland or any other cause, unable to perform the

functions of his office, those functions shall be performed, save as otherwise provided in this Constitution, by the *Ndlovukazi*, acting as Queen Regent.

(3) In her capacity as Queen Regent, the *Ndlovukazi* shall be assisted and advised by the *Umntfwanenkhosi Lomkhulu -in-Libandla*.

(4) The Queen Regent shall be entitled to such remuneration as may be prescribed and that remuneration shall be paid out of the Consolidated Fund and shall not be reduced during the continuance in office of the Queen Regent.

(5) Civil proceedings shall not be instituted or continued in respect of which relief is claimed against the Queen Regent, for anything done or omitted to be done, by the Queen Regent in her private capacity and shall not be summoned to appear as a witness in any civil or criminal proceedings

The above shows the powers of the Queen Mother, even during the transition from one King to another - she is automatically in charge of the country. Her power however, continues even during the reign of the King with her being in charge of certain customary celebrations and the King has to consult her on every matter of national importance. In times when members of government need to convince the King to enact a certain law for instance, they can consult her to discuss it with him and convince him. Most traditional ceremonies or celebrations happen at her place of residence which is never the same as the one of the King.

The Queen Mother has the power to rebuke the King if she thinks he is wasting the national wealth (Dlamini, 2005: 24).

The two have to act together in certain traditional rituals and are therefore required to co-operate with each other, as any tension can lead to internal strife and divisions in that nation. It is clear from the above that in Swaziland we have a ruling monarchy, not just a symbolic one, which is similar to the one in the United Kingdom as demonstrated in the preceding chapter.

In Herb's recent analysis of ruling monarchies in the Arab world, the following groupings are very relevant for this study:

1. Appointed parliaments with weak powers =Saudi Arabia and UAE

2. Elected parliaments with weak powers = Oman, Qatar and Bahrain
 3. Elected parliaments with strong powers, but:
 - (a) Weak or non-existent parties + minor electoral fraud/manipulation = Kuwait
 - (b) Weak or non-existent parties + marked electoral 'malapportionment' = Jordan
 - (c) Stronger parties + 'serious' electoral manipulation/fraud = Morocco
- (Reformulated from Herb, 2005: 186, table 8.1) in (Brooker, 2009: 62)

It is clear from above that the Swazi system demonstrates aspects from the different groupings in the Arab world. Certain members of the Swazi parliament are appointed by the King and others elected by the people, but regulated strongly by the monarchy through legislation. The parliament itself is under powerful manipulation from the monarchy.

It is perhaps sufficient to say at this point that the King appoints the Prime Minister after consulting the King's Advisory Council and the appointee is always one of his brothers. Other princes are normally appointed as Ministers by the King in consultation with the Prime Minister. The powers of the King are in a way limitless.

5.2 PARLIAMENT

The country has a bicameral system of government - there is the House of Assembly and the Senate.

The members of the House of Assembly are elected directly by their *tinkhundla* constituencies and others appointed by the King. The SiSwati word *tinkhundla* (singular *Inkhundla*) refers to the traditional rural councils which have several chiefdoms with chiefs being responsible to seeing that their subjects attend the meetings (Sithole, 2004: 22). The affairs of the Tinkhundla are usually run by a commoner appointed by the King, called *induna*, though the system, who relies on the chiefs to mobilise their subjects (Sithole, 2004: 22). Chiefs have power in that they preside over local traditional courts and they can allocate land to those who pledge their allegiance to them and withhold it if the subjects rebel.

The Tinkhundla in the rural areas also organise national elections in their areas with the chiefs mobilising their subjects to vote. There are also centres for local government administration and town councils which are normally run by them (Sithole, 2004: 23).

Section 95 of the Constitution states:

House of Assembly.

95. (1) Subject to the provisions of this Constitution, the House of Assembly shall consist of not more than seventy-six members composed as follows —

(a) not more than sixty members elected from *tinkhundla* areas, serving as constituencies;

(b) not more than ten members nominated by the King, acting in his discretion after consultation with such bodies as the King may deem appropriate;

(c) four female members, specially elected from the four Regions, subject to subsection (3);

(d) the Attorney-General who shall be an *ex officio* member.

(2) The nominated members of the House shall be appointed by the King —

(a) so that at least half of them are female; and

(b) so as to represent interests, including marginalized groups, not already adequately represented in the House.

The Senate consists of 30 members and Section 94 of the Constitution stipulates:

Senate.

94. (1) The Senate shall consist of not more than thirty-one members (in this Constitution referred to as Senators), who shall be elected or appointed in accordance with this section.

(2) Ten Senators, at least half of whom shall be female, shall be elected by the members of the House in such manner as may be prescribed by, or under any law at, their first meeting so as to represent a cross-section of the Swazi society.

(3) Twenty Senators, at least eight of whom shall be female, shall be appointed by the King acting in[sic] his discretion, after consultation with such bodies as the King may deem appropriate.

(4) The Senators appointed in terms of subsection (3) shall be persons who, in the opinion of the King —

(a) are able by reason of their special knowledge or practical experience to represent economic, social, cultural/traditional or marginalized interests not already adequately represented in Parliament; or

(b) are by reason of their particular merit, able to contribute substantially to the good Government and progressive development of Swaziland.

The above two sections demonstrate that the King has enormous power in appointing the legislature and senate - therefore influences the decisions taken in those chambers. The King, as Head of State, is in a way not accountable to anyone as he is also able to dissolve the legislature (Dlamini, 2005: 30).

To be elected as a representative by your constituency, the inkhundla, you do not campaign as campaigning is prohibited, just like political parties. The philosophy is that if you are a genuine leader you will get the people's mandate without having to canvass for votes (Magagula and Masilela in Hussein, 2011: 183) This type of system, coupled with the ban on political parties, is the reason for the amount of repression that exists in that country.

In order for a Bill to become a law it must be assented to and signed by the King. Section 108 states:

Assent to bills.

108. (1) A bill shall not become law unless the King has assented to it and signed it in token of that assent.

(2) Subject to the provisions of sections 117 and 246, a bill shall be presented to the King for assent where, and shall not be so presented unless, that bill has been passed by —

(a) both Houses of Parliament without any amendments or with such amendments[sic] only as are agreed to by both Houses;

(b) the House in terms of sections 112, 113, 114 and 116(2);

(c) the Senate in terms of section 115(4);

(d) a joint sitting of the Senate and the House in terms of sections 115(3), 117(1), 118 and Chapter XVII.

(3) Where a bill that has been duly passed is presented to the King for assent, the King shall signify that he assents or withholds assent —

(a) in the case of an appropriation bill, or bill for a law to amend this Constitution, within ten days;

(b) in the case of any other bill, within twenty-one days.

When laws come into operation.

109. (1) The Attorney-General shall cause a bill that has been duly passed and assented to, in accordance with this Constitution, to be published in the Gazette as law as soon as practicable[sic].

(2) A law made by the King and Parliament shall not come into operation until that law has been published in the Gazette.

(3) Subject to the provisions of section 119, the King and Parliament may state when a law or part of the law shall come into operation.

(4) Laws made by the King and Parliament, in terms of this Constitution, shall be styled —Acts of Parliament, and the words of enactment shall be —ENACTED by the King and the Parliament of Swaziland.

The above demonstrates the legislative powers of the King. It is now clear that the King has all the three tiers of government vested upon him, namely the legislative, executive and judiciary. This raises questions of checks and balances that are necessary for a democratic system to function effectively. The exercise of state power has to be rooted in the principles contained in the constitution that promote the rule of law. Ndulo (2006: 2) writes:

“The aim of the rule of law is to limit, thereby checking the arbitrary, oppressive and despotic tendencies of power and ensure the equal treatment and protection of all citizens irrespective of race, class, status, religion, place of origin or political persuasion.”

This kind of check and balance is absent in the Swaziland constitution, which in effect places all these powers in the hands of the Monarch. The above status quo is also largely responsible for the slow pace of development in that country and this will be discussed in more detail in the next Chapter.

The Constitution further entrenches the customary law and powers of the King and traditional leadership in the following section:

(5) A bill shall not be presented to the King for assent in terms of subsection (4), unless the Senate so resolves by two-thirds majority, of all the Senators.

(6) The provisions of this section apply to a bill which, in the opinion of the presiding officer would, if enacted, alter or affect —

(a) the status, powers or privileges, designation or recognition of the *iNngwen-yama*, *Ndlovukazi* or *Umntfwanenkhosi Lomkhulu*;

(b) the designation, recognition, removal, powers, of chief or other traditional authority;

(c) the organisation, powers or administration of Swazi (customary) courts or chiefs' courts;

(d) Swazi law and custom, or the ascertainment or recording of Swazi law and custom;

(e) Swazi nation land; or

The Swazi Constitution therefore contains both aspects of modern government structures and African traditional feudal system. It is not the premise of this study that the two are necessarily mutually exclusive, but that each has a contribution to make to ensure the positive development of the populace. Centralisation of power in the Monarchy however, spells political strife which has gripped the tiny kingdom, especially in recent years.

Section 25 is part of the Bill of Rights and it reads thus:

25. (1) A person has the right to freedom of peaceful assembly and association.

(2) A person shall not, except with the free consent of that person, be hindered in the enjoyment of the freedom of peaceful assembly and association, that is to say, the right to assemble peacefully and associate freely with other persons for the promotion or protection of the interests of that person.

This is followed immediately by a limitation:

(3) Nothing contained in, or done under, the authority of any law shall be held to be inconsistent with, or in contravention of, this section to the extent that the law in question makes provision —

- (a) that is reasonably required in the interests of defence, public safety, public order, public morality or public health;
- (b) that is reasonably required for the purpose of protecting the rights or freedoms of other persons; or
- (c) that imposes reasonable restrictions upon public officers.

The above two quotes firstly guarantee the right of citizens to assemble peacefully and immediately limit that right by stating that a law can be enacted to restrict such events - in a way there is a contradiction within this section. The Constitution also stipulates that the Tinkhundla system is the system of government in Swaziland and under this system leaders are chosen on their individual merit, not campaigning. This is a bit confusing - are political parties still banned? However judging by the way the government has dealt with demonstrations and strikes, it is clear that they are still banned. This will be discussed in detail in the next chapter. Now the study will focus on a brief comparison to the British Parliamentary system, as discussed in the previous chapter.

6. COMPARING THE SWAZI SYSTEM TO THE BRITISH SYSTEM

The Swazi system, as already stated earlier in the chapter, originated from the British parliamentary system. In fact the British drafted the Constitution that was promulgated in 1967 that was subsequently repealed by King Sobhuza 11 in 1973. There are still glaring similarities and differences still prevalent in both systems that need thrashing out in this section.

6.1 SIMILARITIES BETWEEN THE BRITISH AND THE SWAZI SYSTEMS OF GOVERNMENT

1. They both have a monarchy - Swaziland is ruled by the traditional clan of Dlamini, led by King Mswati 111, whilst the British royal family of Queen Elizabeth 11 reigns in Britain.
2. They have a bicameral parliament - the British system has the House of Commons and the House of Lords as the two houses of parliament. The Swazi parliament is made up of the House of Assembly and the Senate. In both systems, Bills are debated in both houses before being signed into law.

3. The constitutions are made up of certain traditional laws - in Britain referred to as 'Conventions', whilst in Swaziland they are simply referred to as 'Swazi customary laws' and aspects of modern legal practices.
4. They both have a Prime Minister - the Prime Minister in both systems runs the daily affairs of government.
5. They both have an executive in the form of Cabinet - both systems have ministers who each have a department to run on behalf of government.
6. They both have a Bill of Rights to protect the fundamental rights of their citizens even though they do it to varying degrees.
7. Both countries have laws that emanate from their respective regional organisations. The UK's laws have to abide by European Union's laws and treaties whilst Swaziland has to be in line with organisations like the AU and SADC.

6.2 DIFFERENCES BETWEEN THE BRITISH AND SWAZI SYSTEMS OF GOVERNMENT

1. Britain has a constitutional monarch who has mainly ceremonial powers and does not interfere with the running of the country. The Swazi monarchy on the other hand has centralised all power to himself - he is both a ruling and reigning monarch, as demonstrated above.
2. Britain is a multiparty democracy where political parties contest elections on a regular basis. Swaziland on the other hand, does not allow political parties to operate and leaders are chosen by people without having to campaign.
3. The British parliamentary system regulates itself through a number of mechanisms, including holding the executive to account. The Swazi system on the contrary has no checks and balances and the King's authority is unquestionable.
4. There is some kind of separation of powers within the British system, strengthened by an independent judiciary. The Swazi system centralises power on the King who appoints judges, the executive and even the legislators.
5. The people of Britain elect the Prime minister by electing his/her political party to form the government without interference from the monarchy. In Swaziland

the King appoints the Prime Minister from among his brothers and appoints the ministers with advice from the Prime Minister.

6. The British system has evolved over the years to become a democratic structure, while the Swazi system regressed from being democratic to being autocratic.
7. The British parliament is sovereign when it comes to enacting law- its power cannot be challenged by any individual. In Swaziland however there exists a situation where the King can go against parliament.
8. The law in the UK has been greatly influenced by its membership in the EU in such a way that the sovereignty of parliament is at times questioned. In Swaziland however the country refuses to listen to calls from its neighbours and fellow SADC members to democratise and often challenges the authority of regional bodies claiming its 'democracy is unique'.
9. The British system encourages its citizens to act like citizens not subjects of the Queen. It does this by simply ensuring that the elected House of Commons is the most powerful assembly in British politics. The Swaziland system does the opposite as we have seen that the King's power is absolute and the citizenry cannot challenge it.

10. CONCLUSION

This chapter has attempted to track the political developments in Swaziland from even pre-colonial times, in order to give meaning to what we presently witness happening in that country. This is crucial as it assists the study to be able to interpret the present in the light of the past. It aids the study in evaluating the present and also perhaps predicting the trajectory the politics of that country are likely to take.

The chapter began by looking at the origins of the Swazi nation and how they came to settle in that area of Southern Africa and the trouble they experienced in becoming firstly a tribe and then developing into a nation.

It is also clear that the country became a British protectorate territory, as it had issues with the Afrikaners who were running the Union of South Africa in those early

years. The tribe developed from a number of Zulu and Nguni people and was led by the Dlamini clan from the start, which simply assumed leadership.

The tribe, later developing into a nation, experienced a number of internal challenges related to leadership succession. A lot of what was the original country was given to South Africa in land concession, normally in exchange for some kind of protection to some imminent threat.

The British in the meantime, had a High Commissioner, originally residing in the Union of South Africa and eventually based in Swaziland, who was running the country with the help of the 'paramount chief', who was from the Dlamini clan. The British did a lot of work to protect the interests of Europeans who came into the country to develop its economy and exploit business opportunities.

The Swazi King, Sobhuza 11, was the one who was to deliver the Swazi people from their colonial masters in 1968. This was after a period dominated by lengthy negotiations between the Swazi representatives of the royal house, the Europeans living in that country's representatives and the British directing the process.

King Sobhuza was against what he termed the 'western way' of doing politics, which he felt was being imposed on the nation. The process was to culminate in a Constitution in 1967, leading to elections in 1968, which were won by the King's party and opposition left in the cold. In 1973 the opposition won a few seats and this was seen as an insult to the King who decided to suspend the Constitution, ban political parties and rule the country by decree. In 1978 a new Constitution was promulgated through the Establishment of the Parliament of Swaziland Order of 1978, establishing the Tinkhundla system of government. Political parties remained banned though until Sobhuza 11's death in 1982. King Mswati 111 was enthroned in 1986 and he immediately commissioned a Constitutional review whose recommendations were promulgated as the Establishment of the Parliament of Swaziland Order of 1992.

The last constitutional review culminated in a new constitution known as The Constitution of Swaziland Act of 2005. In all these developments, political parties

have remained banned and police deal harshly with any opposition activities. The new Constitution has ensured that the King has centralised political power on him and the doctrine of the separation of power is not adhered to. The basic human rights are protected, but without any checks and balances any law can be promulgated that is contrary to the constitution.

The following can therefore be concluded:

- The history of Swaziland is typical of any African country previously under colonial rule and after a lot of negotiation the country is free to run on its own.
- The British tried to ensure that the country adopts a democratic dispensation and that is evident in the first post-colonial constitution of 1967.
- The then King of Swaziland was the one who effectively staged a coup by suspending the Constitution, placing the country under a state of emergency and banning political parties.
- Centralisation, which will be discussed in detail in the next chapter, is a problematic political arrangement and has been at the centre of the political challenges of Swaziland.
- Comparing the British and Swaziland political systems, show that the former developed towards democracy, while the latter regressed into an autocratic type of government. The British realised early in their history that they needed to modernise their type of politics and followed suit. The Swazis on the other hand enhanced their traditional practices and decided to give the King autocratic rule ensuring that the monarch is almost above the Constitution. This has left Swaziland with a system that is outdated.

The present political situation in Swaziland is unsustainable and has serious socio-economic implications for the country and the SADC region at large. The next chapter will look at the challenges facing Swaziland as a result of this political environment.

CHAPTER 4

CHALLENGES FACING THE KINGDOM

1. INTRODUCTION

It is evident from the previous chapter that the history of Swaziland was influenced by both internal and external forces. The internal forces were largely directed by the ruling elitist clan of the Dlamini's, who assumed responsibility of consolidating the Swazi tribes into the modern nation that we currently know. Swaziland was the last of Britain's territories to be granted independence and its transition was not particularly impressive (Gillis, 1999: 18). The events after the two world wars that Britain had been involved in, meant that the latter had its own internal issues to deal with, hence they had to speed up relinquishing power in their other territories, including Swaziland.

What emerged ultimately in the Constitution of 2005 was a country governed with two parallel systems – modern institutions like parliament and traditional institutions in the form of local chiefdoms, called *tinkhundla*. This political trajectory initiated by Sobhuza 11, was trying to harmonize two political systems, i.e. European and African, but it has caused many unforeseen challenges that continue to stifle development into a modern society (Gillis, 1999: 19). It would be difficult to argue against the fact that the vision of Sobhuza 11 was not well thought-out and what has emerged has been a ruling elitist monarchy that is out of touch with the masses of Swazi people and the international community.

This chapter will examine the challenges that Swaziland faces as a result of the faulty political structure that governs that country. The following will be dealt with in detail:

- The challenges of governance in Swaziland;
- Political parties under siege and
- Some international community's responses.

2. THE CHALLENGES OF GOVERNANCE IN SWAZILAND

2.1 (GOOD) GOVERNANCE AND DEMOCRACY

From literature on governance it is clear that the concept is not very easy to define and is also in agreement that it is not easy to achieve. Chhotray and Stoker (2011: 3) describe it as a practice of collective decision-making, as demonstrated in the following quote:

“Governance is about the rules of collective decision-making in settings where there are a plurality of actors or organisations and where no formal control system can dictate the terms of the relationship between these actors and organisations.”

The above definition makes a very crucial point about governance being a ‘collective’ action in decision-making. In collective decision-making a number of individuals make the decision and it therefore it does not fall on one person. The definition also points out that governance happens in both formal and informal settings. In other words, they explain that no one person is actually in charge, but a collection of individuals (Chhotray and Stoker, 2011: 5). Furthermore, it also confirms that coercion and authority somewhat stand in contrast to good governance practice.

According to Chhotray and Stoker (2011: 5) governance is a political action, as it seeks to make a decision, taking into consideration the plurality of interests and views. It is a human action, as people are best placed to make decisions about how they want to live and relate to each other. The above definition, however good, is a bit thin on expanding what elements would constitute good governance action.

Good governance does require consensus among the different stakeholders to ensure that the decision is in the best interest of the group and not serving just an individual stakeholder (<http://www.governancepro.com>).

Chirambo in (Pretorius, 2008: 71) explains that the concept of good governance has come to be equated with democratic governance, which encompasses issues like freedom of expression and association, fundamental human rights, the rule of law, media freedom and free and fair elections. These values are endorsed as part of a culture of accountability and participation, inherent in all democratic societies.

Kooiman (2003: 5) talks about social-political governance which he describes as “using an analytical and normative perspective on any societal governance that is ‘collective’.” Kooiman’s definition lists some governance activities as self-governing, others as co-governing, whilst there is also a place for authoritative/hierarchical governance. Governance is therefore an interactive activity and the quality of these interactions are diverse, dynamic and complex. Indeed governance can only be relational, as it is about governing human beings.

The Office of The United Nations High Commissioner for Human Rights on the other hand describes good governance as ‘the exercise of authority through political and institutional processes that are transparent and accountable and encourage public participation’ (UN-OHCHR publication, 2007: 2). The United Nation’s Commission on Human Rights lists the following four characteristics of good governance:

- Participation: the public participates either directly or indirectly in the decisions that affect them.
- Responsiveness to the needs of the people: institutions try to meet the needs of all stakeholders reasonably.
- Transparency: decisions taken are within legal parameters and information on these decisions is readily available to those affected.
- Responsibility and accountability: decision-makers are answerable to the public or stakeholders. (<http://www.unescap.org>)

The above United Nations document goes on to list the following as additional elements of good governance:

- Equity and inclusiveness: the process has to include even the marginalised in society and all have to be treated with some degree of equality.
- Consensus oriented: a decision has to be reached through a process of facilitated agreement among stakeholders - it should not be just one stakeholder deciding on behalf of others.
- Effectiveness: the system must function in a way that resolves issues of importance in the quickest and most satisfactory manner.

- Rule of law: all power has to be subject to a set of rules that ensure that no abuse takes place in the exercise of that authority - it can be arbitrary.

Szerletics (2011: 3) however argues that 'mere' democratic government cannot simply mean good governance, as the term is applicable to both the public and private sector.

The idea of linking good governance to human rights, is however of a particular interest to this study and has been developed over centuries. Plato for instance, believed that the 'philosopher king' was the ideal ruler, who would be able to exercise power wisely for the good of society (Szerletics, 2011: 3). Aristotle examines the different forms of constitutional rule and emphasizes the fact that governance institutions have to foster civic virtues (Szerletics: 2011: 3).

Present governance theory however, goes further to link good governance to development or lack thereof. Good governance, according to the World Bank for instance, is associated with measures like anti-corruption, sound market economies, the rule of law, transparency and efficiency (Szerletics, 2011: 4). If we were to agree in this study that democracy is a form of good governance, then we would be supported by a plethora of literature that confirms this good governance vis-à-vis development relationship. The following quote from Matlosa *et al.* (2007: 25) would be of particular interest:

"Democracy and human rights do not thrive in economic adversity. Where governments do not derive legitimacy from the people whom they govern, and often even when they do, the social tensions and revolutionary pressures generated by economic crises are usually met with brutality and suspension or abolition of democracy and human rights. Hungry men and women are angry men and women who have little respect for laws which perpetuate their hunger."

The above explanation confirms that democracy and in a way, good governance, cannot exist where there is no economic empowerment and policies marginalise the majority of the people (Matlosa *et al.*, 2007: 25). In a society of self-interest and self-centredness, policies result in large disparities between the rich and poor - and

these will grow within time, resulting in 'mass poverty, structural unemployment, and high levels of crime and violence' (Matlosa *et al.*, 2007: 25).

Woshinsky (2008: 41) explains democracy as a 'system of using cooperation for the purpose of restraining political power'. The emphasis is on people being able to reject non-democratic political arrangements, where power is exercised by an elite few who have no regard for the powerless majority. Democracy therefore, stresses cooperation among different groups in society through mechanisms like free speech and a free press (Woshinsky, 2008: 41).

It is clear from the above literature that good governance encompasses democratic dispensations. This study will adopt the definition of good governance that includes the tenets of democracy, like collective decision-making, the rule of law, anti-corruption measures, participation, responsiveness and others, that are generally accepted as falling within that realm. At this juncture it would be good to test some of these democratic concepts in light of the laws of modern day Swaziland.

2.2 PARTICIPATION

The political system in Swaziland poses very serious challenges for full citizen participation, as the Constitution and other legislation regulate the space rigidly and manipulatively. Participation can loosely be defined as the extent to which the citizens take part in the political activities of their country.

Political development, the process where a society's political system can change, normally contributes to its level of citizen participation (Mabuza, 2008: 21). Woshinsky (2008: 106) describes participants in a political system as those 'who know about politics, talk about it, work in groups for political goals, campaign actively for preferred leaders and policies'. Woshinsky (2008: 106) also describes citizens as another group of participants who 'know something about politics, occasionally discuss it and vote'.

The elections in Swaziland happen in the local chiefdoms called Tinkhundla, as already explained in the previous chapter. Matsebula (1988: 267) talks about the process through which these were established:

“Forty Tinkhundla were established throughout the kingdom. Each nkhundla would elect two persons who would go to Lobamba (administrative royal capital) where the 80 elected people would be constituted as an electoral college. This in turn would elect (not from themselves) 40 persons. The king would nominate 10. These 50 people would be sworn in as members of parliament, they would elect 10 people (not from their own) and the king would nominate another 10. These people would then be sworn in as Senators.”

This process was manipulated by the leadership, misleading the nation into believing that they were participating in choosing their government (Mzizi, 1995: 191-192). The so-called members of the Electoral College were normally taken away from their constituencies for about two weeks, where they would be given names of who to elect (Mzizi, 1995: 191). This indirect system of electing was however, abolished during the time of Mswati 111 and people now elect people directly into the parliament.

The above is however not the main problem with the system, but the fact that political campaigning for a position is not allowed in Swaziland. People are supposed to be elected on the basis of individual merit and under the system there are no political parties (Magagula and Masilela in Solomon, 2011: 186). The Constitution does contain in the Bill of Rights, the right to freedom of association in Section 125(1), but it is unclear whether political parties can operate (Magagula and Masilela in Solomon, 2011: 186). The Swazi government has so far dealt very harshly with activists that try to mobilise people for support in advancing political change. In a meeting held in Denmark with two of Swaziland’s leading civil activists, both expressed being abducted and harassed by police at some point during their lives (Pejstrup, 2011: 20). Several other activists have been imprisoned under the infamous Suppression of Terrorism act of 2008 and the Sedition and Subversive Activities Act of 1938, which entrench political exclusion and restrict the rights of freedom of expression, association and peaceful assembly (<http://www.amnesty.org/en>). In 2010 an activist was arrested for wearing a political

t-shirt during the labour celebrations of May the 1st and died under mysterious conditions in police custody (Human Rights Report 2010). In July 2014 a newspaper editor, Bekithemba Makhubu, and human rights lawyer, Thulani Maseko, were each sentenced to two years for raising concerns about judicial independence (<https://www.amnesty.org/en>).

The government under this system is designed in such a way that it has limited power compared to that of the king (Xaba, 2014: 35). The way in which individuals are appointed by the king is still protected by the constitution and this has cast a lot of doubt on the credibility and legitimacy of government (Xaba, 2014: 35).

Sabela in (Reddy, 1999: 227) makes the following observation:

“Under the *tinkhundla* system, power is concentrated at the top with adverse implications to the governmental system as a whole. The system tends to exclude large sections of the population from the exercise of political power. This is significant in view of the general absence of a political infrastructure, including political parties, and pressure groups at the local level. Creative participation in politics is discouraged in the case of ordinary Swazis. The *tinkhundla* system of local government set out to decentralise political power and decision-making, but has ended up concentrating power at the top.”

The above sentiments show how the system has failed to mobilise political activism and how it excludes many from public life.

The plight of the people of Swaziland is expressed in a complaint filed by the Swaziland Lawyers for Human Rights, to the African Commission on Human and People’s Rights of 24 April 2012, which states:

“12. The Complainant avers that to prove beyond any doubt, in November 2008 the People’s United Democratic Movement (PUDEMO) and its Youth League, the Swaziland Youth Congress (SWAYOCO) were banned and listed under the infamous Suppression of Terrorism Act No. 3 of 2008. Its leaders were arrested, charged and tried under the Act, and one of its members, Siphon Jele, died in custody after he was arrested during the Worker’s Day Commemoration on 1 May 2010.”

In another incident on 7 September 2011, the police beat and injured protesting students in Mbabane who wanted to deliver a petition to the minister of labour and social security (<http://www.hrw/world-report-2012>). They even detained others, releasing them later without any charge. In another incident on 12 April 2011, police and security forces arrested about 150 civil servants planning a mass demonstration against poor economic and human rights conditions (<http://www.hrw/world-report-2012>). These incidents point to the seriousness of the human rights abuses within this debilitating political environment.

2.3 RULE OF LAW

Heywood (2002:302) defines the above concept as ‘the principle that the law should ‘rule’ in the sense that it establishes a framework to which all conduct and behaviour conform, applying equally to all the members of society, be they private citizens or government officials’. This concept therefore ensures that government adheres to the constitution and has limited power. It emanates from the early philosophers’ belief that power corrupts and should be curtailed in one way or another to avoid this.

A complaint from the Swaziland Lawyers for Human Rights, submitted to the African Commission on Human and People’s Rights, received on 24 June 2012, states:

“11. The Complainant argues that the idea of the supremacy of the King and Monarchy is inherently inconsistent with constitutionalism, democracy and good governance. The concentration of one power in the hands of one person or institution, it avers, is inherently not conducive to the protection, promotion and enjoyment of fundamental human rights, basic freedoms and civil liberties.”

The quotation above affirms that in terms of Swazi law the King has absolute power and this is not consistent with the principles of good governance. This undermines the concept of the rule of law as we already indicated in the previous chapter, that the King cannot be sued or even be called to testify in a court of law.

In 2008 the King celebrated his 40th birthday and spent millions of public money in a country where 80% live on less than US\$2 per day (<http://www.hrw.org/world->

report-2012). Making matters worse was that a number of the King's wives went on shopping sprees in the USA and Middle East and this was kept a secret by government - the nation got to know via South African media (Pejstrup, 2010: 43). This is just another example of how the Swazi king abuses his power at the expense of the nation.

In another incident, showing that the king is above the law, he lifted a ban in 2005 on sex for women under the age of 18, to allow him to take a 13th bride who was 17 years old at that time (Country review, 2014: 19). This ban had been put in place to attempt to curb the HIV/AIDS pandemic that had been ravaging the country's women, yet the king could just lift it at will. The pandemic is believed to be between 25-30% among people between the ages 15-50 (Country Review, 2014). It is the argument of the researcher that culture is being used to oppress the people of Swaziland - if you do something that might offend the king your children might be thrown out of school (Pejstrup, 2010: 43). A lot of Swazi government ministers talk about a unique type of democracy - just pulling wool over the citizen's eyes and trying to fool the international community. Mzizi (2004: 97) refers to this as follows: "... the uniqueness of the Swazi scenario lies in the fact that the Swazi cultural reality falls into the trap of being used by the dominant group to legitimate the status quo. The most dangerous scenario is when the gullible masses are unaware that what they always held to be culture and tradition, is being used to subjugate them in whatever form. In this scenario, traditionalism falls into the trap of social class, serving the whims of the dominant class in their agenda of power wielding and self-preservation."

The researcher cannot ignore the fact that the king derives his legitimacy from the fact that the traditional Swazi people respect him as required by tradition. Many Swazis have been brought up to believe that the king's word is law - no one is allowed to challenge that. The violent treatment by police and the security forces of anyone who dares speak out against the regime, is another factor that has allowed the status quo to thrive, namely fear.

Section 157 of the Swazi Constitution expressly states that a non-Swazi cannot be appointed a judge of the Supreme Court, but in 2009 the king appointed a

controversial judge from Lesotho, Michael Ramodibe, as chief justice (<http://mg.co.za/article/>). This judge continued to serve at the pleasure of the King, even when his contract expired in 2012, he was allowed to continue in his post. This very same chief justice is the one who issued warrants of arrest for journalist, Bhekithemba Makhubu, and human rights lawyer, Thulani Maseko, for exercising their rights to freedom of expression in The Nation magazine. It goes without saying that this is also an encroachment by the king on the independence of the judiciary in that country.

Judiciary independence in a country where the Head of State appoints the judges, even the chief justice, without any restrictive guidelines, is impossible. As pointed out in the previous chapter, the King appoints the chief justice, judges and the Judicial Service Commission. He can remove any judge from the bench - supposedly constitutionally. On 30 November 2002, judges from the Court of Appeal resigned after the government refused to abide by its decisions, including the Chief Justice of the High Court (Maroleng, 2003: 5). A report by the International Commission of Jurists in January 2003, argued that threats to judicial independence manifested in the “periodic attacks on the judiciary by the executive reveal an executive attitude that holds the judiciary, rule of law and the separation of powers in virtual contempt, in particular when they conflict with entrenched interests.” (Maroleng, 2003: 5).

There are practice directives that have been imposed on courts that undermine the access to effective legal recourse for the victims of human rights abuses (<http://www.amnesty.org/en/>). There's one directive which ensures that the courts are inaccessible to anyone trying to sue the King directly or indirectly. Cases that could potentially hurt the monarchy are handled by certain justices, whilst others are excluded. A public statement by Amnesty International dated 15 March 2012 highlights this crisis:

“Amnesty International welcomes Swaziland’s acceptance of recommendations to take concrete and immediate measures to guarantee the independence and impartiality of the judiciary. Such measures are urgently needed. Amnesty International remains gravely concerned that the protection of human rights and access to justice for victims of human rights violations continues to deteriorate,

through what is in effect a crisis in the rule of law. A visible manifestation of this was the blatantly unfair removal of a senior High Court judge, Thomas Masusku, and the dismissal of the then Minister of Justice, David Matse, who had refused to participate in that removal.”

This public statement that was issued after Swaziland had submitted its Universal Periodic Review report to the United Nations Human Rights Commission in 2012, warns that there is a crisis in the rule of law, indicated by the government’s interference with the independence of the judiciary. The so-called ‘concrete and immediate measures’ referred to above, never materialised leading to the final impeachment of the Chief Justice in 2015, by an independent tribunal following the latter’s suspension by the High Court of Lesotho where he was serving simultaneously as the President of the Appeal Court (<http://www.times.co.sz/news/>). The Chief Justice, Michael Ramodibedi, was facing a string of allegations that would have made it impossible for him to continue as a judge, bringing into question his level of integrity.

The restrictions that have been placed on the media are another case in point, indicating the lack of democracy in that country. The King’s Proclamation to the Nation of 1973 immediately had restrictions on how and what the media can cover about politics (Magagula and Masilela in Solomon, 2011: 1940). Other legislative frameworks promulgated through the years that restrict the media are:

- Proclamation No 1 of 1981 - it disallows any publication to criticise the monarchy and its institutions (Magagula and Masilela in Solomon, 2011: 194).
- Proscribed Publications Act, 1968 - empowers the minister to ban any publication arbitrarily on grounds of public safety or something that vague.
- Books and Newspapers Act, 1963 - ‘the Act demands a prohibitive amount of bond from aspiring media owners whilst putting pressure to have publications in siSwati’ (Magagula and Masilela in Solomon, 2011: 194).

The media is strictly controlled by the government and editors can easily be thrown into jail for being critical of government.

The above incidents and even those under the previous heading, also point to the risk of giving one ruler unlimited power without the checks and balances necessary for a democratic dispensation.

The fact that the legislature is rather weak and serves under the Head of State is the main factor that ensures that the king does not have to account for his actions. The legislature has been reduced to simply agreeing with the King and it will never challenge this arbitrary abuse of power (Dlamini, 2005: 30). The role of parliament in democratic governments is usually to hold the executive accountable - to curtail the power of the ruling elite and therefore enforce the rule of law. The system of election into parliament in this country ensures that political opponents will never make it into government. The chiefs, who are appointed by the king, have to approve for anyone to stand for election at *nkhundla* level. Parliament ends up with a group of praise singers for the king - ready and willing to serve and worship him.

2.4 CORRUPTION AND LACK OF ACCOUNTABILITY

One of the elements of good governance, as explained above, is being able to deal with corruption and having measures in place to do this effectively. The whole idea of democracy ensuring that power is not centralised in one person, is to combat corruption originating from the old saying that 'power corrupts'. Mills (2011: 300) comments:

"The monarchy incurs both direct and indirect costs, political and economic. For absolute powers are not good for accountability, probity and honesty, and lie at the heart of elite attitudes and actions. They feed - and feed off - a pyramid of patronage."

In a democratic country where the rule of law is a guiding principle, citizens are able to ensure anti-corruption by holding those in public office to accountability (Mutisi in Matlosa *et al.*, 2007: 52). Lack of accountability is endemic within the Swaziland system of government, as it is centralised, very hierarchical and traditional in its very foundation.

The Tibiyo Taka Ngwane Fund (TTN) was established during the era of British rule and its purpose was to help government “further the interests of the people of Swaziland...” (Xaba, 2014: 30). This fund has always been administered by a board appointed solely by the king. The establishment of the fund by King Sobhuza 11, was a noble idea, but its management has left much to be desired (Xaba, 2014: 30). Kuper (1986: 118) makes the following observation:

“It was controlled by the king independent of government, separate from the treasury, and not accountable to parliament or to the public for its expenditures. [...] No outsider knew or dared to enquire to what extent, if any, the property vested in the king in trust for the nation was distinguished from his own personal and private resources.”

It is clear that the ‘outsider’ refers to those who were not part of that royal inner-circle that was accumulating capital, using state power (Xaba, 2014: 31). The fund has largely remained in this way, highlighting the worst case of corruption by the ruling elite of that country. In 1983, then Prime Minister Mabandla, was ousted when he ordered an investigation into the TTN as Levin (1985: 150) explains:

“Soon after his elevation to Prime Minister, Mabandla enraged the comprador elements within Tibiyo by initiating a commission of inquiry into corruption. Initially, the Commission’s terms of reference were confined to the civil service, but it appears as if Mabandla used the commission to attack individuals within Tibiyo. As the commission began to subpoena the files, the king was persuaded to intervene personally. This led to the disbanding of the commission with the king declaring that it was taking over the work of the police.”

The intervention of the king in the above matter was dubious - and a lot of questions remain unanswered about this royal fund. The fund remains to this day outside the parameters of any scrutiny of government (Xaba, 2014: 44). It also brings into question the political will within Swaziland to root out corruption and the king’s role in the scourge. Presently Mswati 111 holds a personal ten percent stake in the cellular company MTN; which is the sole provider of such a service in that country (Mills, 2011: 300). Even more worrying is the fact that the monarchy does not pay any tax on its holdings to the Swaziland Revenue Authority (Mills, 2011: 301).

In 2006 the Prevention of Corruption Act was promulgated and it revived the Anti-Corruption Commission (ACC), which was originally established by King Sobhuza 11, but had been dormant since 1998 (Xaba, 2014: 44). The performance of this structure has however been extremely disappointing, to the extent that some have questioned the justification of its €12 million (Xaba, 2014: 44).

The king's extravagant lifestyle has also been a huge bone of contention for anyone familiar with the events and socio-economic situation in that country. In a country "faced with 80% of landless peasants and severe food shortages" this king is not afraid to decide to purchase a luxury 19 seat jet from a private company in Canada (Sithole, 2004: 35). This kind of wasteful expenditure has been the reason why many international donors refuse to fund poverty alleviation initiatives within that country. A lot of the country's revenue is spent on the royal family, including the Queen Mother's own needs and some more than 250 princes and about the same number of princesses (Mills, 2011: 300). The Minister of Finance, Martin Dlamini, pays lip service to the fight against corruption in the 2014 Budget Statement:

72. Mr Speaker, the fight against corruption and bribery is a global phenomenon which has gained momentum in recent years worldwide. However, the problem is that if anything, it is getting worse, even in Swaziland. While it is recognised that public accountability requires the active participation of all sectors of society, Government must take prime responsibility. Government will therefore continue supporting the Anti-Corruption Commission (ACC) and the Directorate for Public Prosecution (DPP) to enhance their fight against corruption in Swaziland. E20.2 million has been provided to them for this purpose in next year's budget.

In 2011 it was estimated that the Swazi nation loses about R80 million every month to corruption and one wonders how a budget of only R20, 2 million can actually make a meaningful impact combatting this problem.

Xaba (2014: 46) quotes an editorial comment from Swazi News, by Nomile Hlatshwayo below:

"First it was the €31 million embassy land scandal, then it was the cabinet ministers who got Crown land at discounted prices, and the ministers who recently got iPads

from an investor... a bit of a constitutional crisis, with the prime minister and the Speaker of the House of Assembly involved in a tug of war regarding the separation of powers. Some of these scandals went to the extent of requiring the attention of the Head of State (Hlatshwayo, Saturday, July 19, 2011).

It is therefore not only the lack of efficiency that is of great concern, but there seems to be no political will on the part of government. This lack of efficiency in dealing with corruption coupled with the seeming lack of political will, indicate a serious failure of governance on the part of government. One cannot ignore the fact that this is as a result of the government itself being involved in the despicable practice. The lack of accountability by the king ensures that his lavish lifestyle goes unchallenged internally; is at the heart of the economy's dismal performance in recent years.

2.5 A DEEPENING SOCIO-ECONOMIC CRISIS

There are 1,108,449 people living in Swaziland, according to the census of 2007, in a country 17,364 square kilometres in size (www.elgf.org.uk). The unemployment rate is 40% and the HIV/AIDS is at 26% and both unfortunately mean poverty (Xaba, 2014: 1). Life expectancy is the lowest in the world at 32 years in 2010. 70% of the population engage in subsistence farming and live on just about \$1 per day, while natural resources and exports are declining (Mills, 2011: 298). Sugar and wood pulp were the country's top exports, but declined drastically in recent years as they have been affected by the drop in prices in Europe.

Swaziland's economy depends on agricultural products accounting for about 13% of the GDP, manufacturing (mostly textiles and sugar-related processing) accounting for about 37% of GDP, and services led by the government accounting for 50% of GDP (Country Review 2014: 67). The country's GDP averaged at about 1.8% in 2005, below the SADC's 5.4%, pointing to serious issues within that country (Xaba, 2014: 1). The economic growth has been slow in recent years as a result of the HIV/AIDS pandemic, recurring droughts and the effects of the global economic recession, as it affected the SACU revenues which account for about 60% of the fiscal revenues (Country Review 2014: 67). Sugar and wood pulp were the country's

top foreign exchange earners, which declined drastically in recent years - sugar being affected by declining prices in Europe and wood pulp by the closure of the Sappi mill (Mills, 2011: 299). The textile industry which used to employ about 40 000 workers at the turn of the millennium, was employing 16 000 workers by 2011, who were affected by a myriad of issues, including rise in competitiveness in East Asia markets, a low skills base and high absenteeism due to illness (Mills, 2011: 299).

By the middle of 2011, Swaziland was in danger of plunging into a financial crisis and had to request a loan from neighbouring South Africa, which also happens to be their largest trading partner. The country was in danger of being unable to pay its civil service workers who accounted for 18% of total expenditure (Country Review 2014: 67). There were demonstrations across the country, calling for a way forward towards a democratic state, release of political prisoners and the unbanning of political parties (Country Review 2014: 67). At the same time the loan from South Africa did not materialise, as the latter demanded certain guarantees that the country will introduce reforms towards democratisation.

In the midst of the crisis above, the Swazi government increased the army budget in the 2011/2012 financial year from €6.6 million to €81 million (Mabuza, 2011: 18). This was quite a significant move that angered a lot of the Swazi people living in squalor. This was, according to many, an indication that government was buying the army out to ensure that it remained loyal to the status quo.

Magagula and Masilela in (Solomon, 2011: 196) illustrate the state of affairs in that country in the following extract:

“The undemocratic rule in the country produced many problems which ranged from economic issues, to social and political issues. There is mismanagement of finances, corruption, lack of accountability, poor allocation of resources, inefficiency, lack of service delivery to the public, embezzlement of funds, lack of humanity on the part of leaders, weak administrative institutions, no basic human rights, restriction of reporting by the media, failure to attract foreign investors.”

The above outlines the multiple problems faced by Swaziland, resulting from the lack of democracy. The opposition has tried to raise these issues, but it is always

treated with disdain by the political elites in that country. The economy will continue to suffer unless something drastic is done to redirect the country's political trajectory. Sithole (2004: 16) writes:

"The fairly well-developed, but small, economy is increasingly strained, trying to provide jobs, education, health care and housing to a fast-growing population."

The causal link between good governance and development is illustrated in the following quote:

"From a different perspective, we can say that it is impossible to have genuine and sustainable development without endorsing a human rights based model of good governance. It is necessary to recognize that 'societies and markets couldn't function unless government was able to design and implement appropriate public policies, administer resources equitably, transparently and efficiently and respond efficaciously to the social welfare and economic claims of citizens'" (Szerletics, 2011: 8)

Mills (2011: 246) agrees with the above:

"Democracy is important for sustained economic growth, and not just because it is a 'nice to have' for human rights reasons. Among developing countries outside of East Asia, between 1960 and 2003 democracies grew their economies 50 percent faster than autocracies."

A United Nations Development Assistance Framework (UNDAF) document comments:

"The PRSAP is inspired by the Vision 2022 that was launched in 1999 whose aspiration is that "by the year 2022, the Kingdom of Swaziland will be in the top 10 percent of the medium human development group of countries founded on sustainable economic development, social justice and political stability." (UNDAF-Swaziland 2011-2015: 14)

The above Vision 2022 will not be realised without good democratic governance and adequate public policies - the economy of Swaziland will continue to suffer and by extension the people in that country. Democracies create institutions that are accountable, based on the rule of law and control corruption - these, if they work

properly, can minimise the negative impact of bad governance on society. We know sadly though, that it is not always that simple.

3. POLITICAL PARTIES UNDER SEIGE

It has been stated a number of times that political parties are not allowed in Swaziland and the 2005 Constitution is not very clear about this. However, the events that have unfolded, i.e. the way the police and army have handled protests, show that the ruling elite will do everything to ensure that political parties remain in the political wilderness.

As noted earlier the Constitution states categorically:

“The system of government of Swaziland is a democratic, participatory, *tinkhundla* based system which emphasises devolution of state power from central government to *tinkhundla* areas and individual merit as a basis for election or appointment to public office.”

Under the *tinkhundla* system there are no political parties, as the community nominates someone who is then approved by the local chief to stand for election. The Bill of Rights within the Constitution, however does guarantee freedom of association which has left many Swazis confused and opposition parties, although banned, find some of these provisions unacceptable (Magagula and Masilela in Solomon, 2011: 186).

The re-emergence of political parties is a sign that citizens want to be heard and want meaningful change to happen within that country towards democracy. It will be good at this juncture to look at some of these organisations and see what changes they want to be introduced in Swaziland.

3.1 THE PEOPLE’S DEMOCRATIC MOVEMENT (PUDEMO)

This movement was formed in 1983 and it doesn’t want the monarchy abolished completely, but advocates for a constitutional limitation to the powers of the monarchy (Sithole, 2004: 25).

It is a socialist party that believes that the status quo is undemocratic, discriminatory, nepotistic and oppressive (Magagula and Masilela in Solomon, 2011: 189). Mario Masuku, the leader of PUDEMO, is considered the most prominent leader and extra-parliamentary politician (Sithole, 2011: 28). He has been arrested and harassed by police several times without trial. One such incident was on 14 June 2014, when police raided his home early in the morning and confiscated most of his documents (www.pudemo.org).

Their mission statement reads:

“We are a political movement committed to the creation, protection and promotion of a multi-party democracy, a transparent and accountable government, an environment conducive to economic growth, and economic empowerment and to the development of a culturally vibrant and tolerant society based on maximum participation and the respect of the will of the people.” (www.pudemo.org).

The ten goals of PUDEMO are listed as follows:

- To create a constitutional multi-party democracy.
- To create a government based on majority will.
- To promote economic growth, development and the empowerment of citizens.
- To promote and protect access to land and security of tenure.
- To promote job creation and high levels of employment.
- To protect the right to education and promote the sustenance of high levels of relevant education.
- To promote the right to life.
- To promote good public health and improve the quality of life for all.
- To promote and develop the rich heritage of Swazi culture.
- To promote the observance and protection of basic Human Rights.

(www.pudemo.org)

The above mission and goals show that the opposition in Swaziland is still fighting for the basic rights that are taken for granted in most countries in the world. PUDEMO considers the monarchy to be their major obstacle and blames the

tinkhundla system for most the problems in Swaziland (Magagula and Masilela in Solomon, 2011: 189).

The organisation has a youth wing called, the Swaziland Youth Congress (SWAYOCO), which assists in carrying out programmes of mobilizing support for democratic change (Mabuza, 2008: 42). It has other affiliates like the Human Rights Association of Swaziland (HUMARAS), Swaziland National Front (SWANAFRO), Swaziland Progressive Party (SPP) and the Swaziland United Front (SUF) (Sithole, 2004: 26).

3.2 THE SWAZILAND FEDERATION OF TRADE UNIONS (SFTU)

This is another very important actor within the political sphere of Swaziland and it formed in 1973. In a report of 27 August 1998, titled 'The SFTU Report on the Swaziland Political Situation', it describes itself as:

- The SFTU is a democratic organisation, and, as such, allergic to undemocratic systems of governance, whether they be military, feudal, aristocratic or dictatorial.
- The SFTU believes that government is a social contract between the government and the governed.
- We also believe that governing should do so with the consent of the governed.
- The SFTU believes that a multi-party environment is the best system of governance, because it allows opposition and dissenting views to be heard.
- The SFTU believes that no democracy can exist within a state of emergency, when free political activity and the bill of rights are banned.
- The SFTU does not believe in cosmetic changes, but needs a true all-inclusive, participatory and people-driven process.
- The SFTU believes that human rights are not situational, but are the birth right for all humanity, irrespective of where they come from (Swaziland included).
- And, of course, the SFTU believes that workers everywhere are a vehicle for social transformation. (<http://www.liberationafrique.org>).

The SFTU's appeal to the international community raises the following:

- Appeal for pressure to be exerted on the Swazi government to adopt a 'real people-driven and all-inclusive democracy' for all in Swaziland.
- The present situation can only be altered if there is pressure 'both diplomatically and economically'.
- The fact that Swaziland is the only undemocratic country in the SADC region.
- Swaziland has been able to fool the international community into believing it is democratic.
- Corruption and mismanagement of public funds remains rife in Swaziland.
- Only a 'chosen few' enjoy the wealth of Swaziland and the rest are 'downtrodden'. (<http://www.liberationafrique.org>)

In April 1999, an alliance was announced between the NNLC, PUDEMO and the SFTU, which became known as the Swaziland Democratic Alliance (SDA). (Sithole, 2004: 27).

3.3 THE NGWANE NATIONAL LIBERATORY CONGRESS (NNLC)

The party was referred to in Chapter 3 as having been formed in the 1960s - its leaders, Ambrose Zwane and Thomas Ngwenya, had to go into exile immediately after the 1973 decree, when the organisation itself went underground (Magagula and Masilela in Solomon, 2011: 188). It is the oldest and pre-independence party that still exists.

Its members have participated in recent elections, with a view of trying to change the Swazi system from within. The party was once legally registered before the banning of political parties in 1973 (Magagula and Masilela in Solomon, 2011: 189).

When it relaunched in 1998, it had the following two objectives:

"To liberate the citizens of Swaziland from a mentality that accepts the status quo, docility, and abuse of the people in the name of culture and traditions."

“to restore a multi-party democratic political dispensation with a constitution, which protects the freedoms of all Swazis, i.e. freedoms of association, assembly, expression etc. as defined in the United Nations Universal Declaration of Human Rights” (Mabuza, 2008: 45)

There are dissenting voices like the *Sive Siyinqaba Sibahle Sinje* organisation, which was formed to counter the negative sentiments around the monarchy. It is there to advocate for the status quo to remain and has support from very conservative sections of that society (Magagula and Masilela in Solomon, 2011: 189).

It is clear from the above brief discussion on the Swazi political parties, that there are elements within the country that want political change (Sithole, 2004: 29). The mounting tension between pro-democracy groups and the government, is counterproductive and has led that country into political instability and what is possibly a political crisis.

The response of the Swaziland government has in the meantime, been one of introducing draconian laws to try and hold on to power. A lot of political leaders who dared to hold the view that threatens the monarchy and the political system, have been detained without trial, harassed, forcibly removed from their land and in certain instances have no choice but to flee to neighbouring countries.

4. SOME INTERNATIONAL COMMUNITY’S RESPONSES

There have been several calls to the international community to pressurise the Swaziland government to democratise the system of government. The responses have been a mixed bag with the SADC’s and AU’s seeming reluctant, calls by Swaziland’s organisations for sanctions, international human rights pressure groups trying to persuade organisations like the UNHRC to pressurise Swaziland and exclusion from opportunities like the United States’ Africa Growth Opportunity Act (AGOA).

A Transparency International document titled 'Country Study Report: Swaziland' (2006/7:7) observes the following about the system of government:

“Swaziland is in dire straits, largely due to the inexorable conflict between western and traditional systems of government. In the circumstances, the promise of our new Constitution to, inter alia, “blend the... institutions of traditional law and custom with those of an open and democratic society, so as to promote transparency and the social, economic and cultural development of our Nation”, seems a tall order. In any setting, corruption is relative. Note that socio-political cultural practices of a particular country, factor very heavily within the equation. In Swaziland, the impact of traditional culture on the socio-economic and political landscape is legendary. It permeates all facets of life. For example, nepotism, and its associated ills, is not necessarily considered untoward, considering the fact that, with a relatively small population, there is virtually a network of consanguine and affinity relations that compel loyalty to family that any bureaucratic system of governance often can accommodate. In these circumstances, culture may very well be regarded as the stimulus for corruption, so that any heroic attempt to constructively purge venality must be directed at inimical cultural practices, endemic from the grassroots to the highest echelons of government.”

The above highlights the problems posed by this dual system of government found in Swaziland and goes on to trace the problems of corruption as emanating from it. The unfortunate use of culture to advance the oppression of the Swazi people is also alluded to above. The report goes on to outline the lack of judicial independence, the weak or lack of parliamentary oversight, the absolute nature of the powers of the King, among other things, as causes for the unfortunate state of affairs.

The report recommends:

- “The Executive must give the Swazi people a people-driven Constitution that addresses pertinent issues, particularly redistribution of excessive powers of the King to other arms of Government and establishment of structures that are not dependent on the goodwill of the King. The Constitution should be adopted through a Constituent Assembly, a legal body whose composition must be

agreed upon among all relevant stakeholders, including civil society and the Church.

- As of now, policies are not constitutional, but are a monarchical prerogative which renders the rest of the Executive ineffective and therefore window-dressers.
- In Swaziland, appointments are effected through the King's unjustifiable prerogative, which is absolute and cannot be reversed or altered by parliament's vote. Ideally, appointments are supposed to be on merit." (Country Study Report, 2006/7: 20)

The above extract outlines the flaws within the Constitution of Swaziland that have held back the development of effective institutions to ensure good governance. The report laments the fact that the King has absolute power and suggests that this should change and recommends that power should be located within the parliament, who are supposed to be the chosen representatives of the people. The problem of an Executive that is ineffective, is also highlighted.

A Commonwealth document titled 'The Application of the Death Penalty in Commonwealth African States: Swaziland Report' (2004: 5) recommends:

- (a) It is of paramount importance that the independence of the judiciary is not only guaranteed in theory, but observed in practice. Judges must be free from the interference from the executive, as well as 'the traditional elite', which is constituted principally by the chiefs, the princes, the princesses and the members of the Swazi National Council. The executive branch of the government must not defy the court rulings that they find unfavourable and unpalatable.
- (b) The Non-Bailable Offences Order must be scrapped because it violently undermines the principle of the presumption of innocence which is now enshrined in the draft Constitution of Swaziland.
- (c) The torture of suspects by the police must cease. This is only possible if an impartial and independent body is established to investigate and sanction policemen who engage in the practice of torturing suspects. Additionally, the police should be exposed to proper and periodic training in human rights norms.

At present this is not part of the police training programme. It must be pointed out that the International Committee of the Red Cross has initiated a programme for the training of senior police officers in human rights and international humanitarian law in the Kingdom.

The above shows that the Commonwealth is aware and concerned with the lack of human rights in Swaziland. It is however notable that opponents of government are still tortured, killed, detained without trial and the police continue to act with impunity. The independence of the judiciary remains an elusive reality for the people of Swaziland.

Amnesty International has been one of the international pressure groups that has been relentless in its call for change in Swaziland. When Swazi government representatives accepted the UNHRC's outcome of the Universal Periodic Review (UPR) in 2012, recommending that the country must 'align its legislation with international obligations to promote and protect freedoms of expression, association and peaceful assembly' (<http://www.amnesty.org/en>), Amnesty International issued a statement to the effect that the government must publicly set time-frames. In another public statement in 2011, the organisation castigates the Swazi government's lack of protection of the rights of women (http://www.amnesty.org/en/documents/afr_55/006/2011). The document, which was submitted to the UPR working Group is quoted below:

Amnesty International calls on the government of Swaziland:

On discrimination against women

- To ensure the urgent repeal of legislation that discriminates against women and to enact new laws which comply with the commitments to gender equality voluntarily accepted by Swaziland through its accession to the Convention on the Elimination of All Forms of Discrimination against Women;
- To commit publicly to a time-frame within which the repeal or reform of existing discriminatory laws and the enactment of new laws to protect the rights of women, will be accomplished.

On restrictions on fundamental freedoms

- To remove all restrictions in law and practice which prevent full participation in political life, as guaranteed under the International Covenant on Civil and Political Rights and other international standards;
- To repeal or immediately amend the Suppression of Terrorism Act of 2008 and other pieces of security legislation, to bring them in line with international human rights standards.

On violations of the right to life and physical integrity

- To institute an urgent review of laws, regulations and procedures, relating to the use of force and firearms by law enforcement officials and those acting under delegated powers in the private sector;
- To enact legislation which specifically defines and criminalizes torture and stipulates effective measures to prevent and punish any violations of the right not to be subjected to torture;
- To seek advice and to implement a process leading to the establishment of an effective, independent and impartial body to oversee and investigate alleged human rights violations by the security forces.

On National Human Rights Institutions and the independence of the judiciary

- To ensure the speedy enactment of publically-considered enabling legislation, to equip the Human Rights and Public Administration Commission with clear powers and adequate resources, to ensure that it is able to work in an accessible, effective, independent and impartial manner.
- To refrain from making (or to revoke) a decision to suspend Justice Thomas Masuku, following the manifestly unfair removal proceedings against him, including the hearing conducted by the Judicial Service Commission, and to reinstate him in his position on the High Court bench. (<http://www.amnesty.org/en/documents/afr55/006/2011:9>).

It is clear from the above:

- Gross human rights abuses occur in that country and are sanctioned by legislation, which is not in line with international treaties/commissions, in which Swaziland is a signatory.
- The judicial independence is often disregarded, as we witness in the case of the removal of Judge Masusku.
- The rights of women are not specifically guaranteed in the Constitution.
- Security forces and the police act with impunity in torturing those in detention and the government is fully aware.

The above concerns have been raised by the researcher throughout this chapter as part of the problematic situation we all are witnessing in Swaziland. The above calls for the review of a number of Swaziland's laws and the very Constitution have sadly not been heeded by the ruling elites in that country. The country remains on the path to self-destruction, with the international community satisfied with just acknowledging that the status quo is unacceptable. In a press statement of 25 March 2015, Amnesty International still condemned the 'repression of fundamental freedoms' in Swaziland (<http://www.amnesty.org/en/documents/afr55/1345/2015>). Swaziland's biggest trade partner is South Africa with about 70% of exports going to the latter and about 90% of the former's imports coming from that country. The bilateral relations have been increasingly strained by the fact that a lot of the exiled opposition leaders of Swaziland take refuge in South Africa. The other cause for the strained relations is the fact that the Congress of South African Trade Unions (COSATU) and the South African Communist Party (SACP), have supported PUDEMO in its trans-border strikes that have seen borders between the two countries blockaded in protest (Country Review, 2014: 70). PUDEMO receives both financial and logistical support from the two South African organisations (Country Review, 2014: 70). One other big reason for the strained relations is the fact that in 2012 South Africa refused to grant Swaziland a loan of about \$4 million, as the latter refused to accept the loan conditions, insisting on political and economic reforms (Human Rights Watch, 2012: 4).

A report of the UK based International Bar Association of 2003, titled 'Swaziland: Law, Customs and Politics: constitutional Crisis and the Breakdown in the Rule of Law' (2003: 6), makes the following recommendation:

“The new constitution must also address the status of the legislature, judicial review of administrative and legislative action, and the expansion of freedom of association in the civic and political areas. The monarchy could be entrenched, but with clear constitutional regulation of its powers and role, in particular with respect to the influence of unelected and unofficial persons and bodies on the decision-making process.”

The above recommendation was however ignored by the drafting committee, as the final document is different. Among others the report goes on to say the following:

“Swaziland should meet its reporting and other obligations under the international and African regional human rights instruments, to which it is a party, and, as a UN member, adhere to the principles of United Nations instruments, such as the Basic Principles on the Independence of the Judiciary and the Code of Conduct for Law Enforcement Officials. All relevant officials should be educated in these obligations. Swaziland should seriously consider ratification of the International Covenant on Civil and Political Rights and the International Convention on the Elimination of All Forms of Discrimination Against Women.

The international community has a responsibility of solidarity to help Swaziland extricate itself from its present crisis. The UNDP, UNICEF and WHO are already making positive contributions in their respective areas of competence, especially in capacity building and institutional support. In this regard, the UN agencies in Swaziland should be strengthened. Countries with presence in, or influence with, Swaziland, such as South Africa, Britain, and the United States, should continue to provide assistance and support to the people of Swaziland. Above all, the neighbouring countries of South Africa and Mozambique must assume a robust role in mediating the current stalemate between the Executive and the judiciary.”
(Swaziland- Law, Custom & Politics, 2003: 8)

That report could actually have been written yesterday, as nothing raised in that report was taken care of - the judiciary remains under the Executive's control, the rights of women are still unclear and human rights abuses are the order of the day. The United States suspended Swaziland from the Africa Growth Opportunity Act (AGOA), as a result of its dismal human rights performance, which members were expected to correct (IHS Country Reports-Swaziland, 2015: 3). AGOA gave Swaziland access to United States markets without having to pay trade tariffs. The IHS Report observes:

“Without moves towards political reform, agitation for change will continue, with related protests likely to lead to further confrontations with the police or security clampdowns. The socio-economic fall-out from the US's decision to suspend Swaziland from its African Growth Opportunity Act (AGOA), including job losses, also increases the risk of labour-related unrest in the coming year.” (IHS Country Reports-Swaziland, 2015: 1).

There have been other numerous international calls to the government of Swaziland to change from this authoritarian system to a more democratic model. The Commonwealth had a three member team to oversee the drafting of the Constitution that was finally adopted in 2005. The 1991 Harare Commonwealth declaration to which heads of government pledged themselves (Swaziland included), states:

“The protection and promotion of the fundamental political values of the Commonwealth: democracy, democratic processes and institutions which reflect national circumstances, the rule of law and independence of the judiciary, just and honest government...” (Commonwealth Secretariat, 1993 in Ndulo, 2006: 10).

The above document goes on to bind the African member states to form Human Rights Commissions (HRCs) in their countries, based on what is commonly known as the Paris Principles. The said principles stipulate that HRCs should:

- Have their foundation in the countries' constitutions or by law;
- Be given a broad mandate;
- Civil society must be represented;
- Be funded adequately and

- Have wide investigative powers.

(Hatchard in Ndulo, 2006: 111)

A Commonwealth Expert Team (CET) was sent to Swaziland during the 2008 elections and given a mandate:

“to consider the various factors impinging on the credibility of the electoral process as a whole, and to determine in its own judgment whether the elections have been conducted according to the standards for democratic elections to which Swaziland has committed itself, with reference to national election-related legislation and relevant regional, Commonwealth and other international commitments.”
(<http://www.pudemo.org/index.php>)

The report that was released by the CET, found a lot of contradictions that rendered the elections undemocratic and neither free nor fair. In its overview of the Political Environment the report states:

“Political organisations are currently unable to register and participate as political parties in elections in Swaziland. Instead the electorate votes for individuals. Minimal voter education has been provided and the voters appear to have little knowledge of the democratic systems which are available to other countries in the region and the whole world.” (<http://pudemo.org/index.php>)

The above is a confirmation of what the research has been arguing - that the system cannot be regarded as democratic, even though it holds regular elections. The report concludes that the elections were not credible. It was just after those elections, when there was unrest and King Mswati announced that **‘the state must and will ruthlessly fight and “throttle” those with diverging views, including their families and relatives.’** (<http://pudemo.org/index.php>)

The above statement from a head of state is very worrying, but confirms the fact that the Swazi ruling elite will go to great lengths to protect its hold on power. A lot of people have died at the hands of the police and security forces, after being subjected to severe torture methods and merciless beatings.

5. CONCLUSION

This chapter started with a brief conceptual study of governance - looking at a few current definitions and went on to link good governance to the protection of fundamental human rights. The final definition used, was finally one which accepted democracy as a form of good governance.

The chapter went on to test certain democratic principles like participation, rule of law, political mobilisation, free political organisation and looked at the responses of the international community. The following can be concluded from the different sections:

- Participation - political participation in Swaziland is very limited with people expected to participate in elections via the *tinkhundla* system. The system is limited, as government controls it in such a way that only people approved by the local chief and the King can stand and be elected to Parliament. The ban on political parties remains a further limiting stipulation.
- The Rule of Law - it is clear from the discussion above that the Swaziland government has allowed a crisis in this regard. This principle is supposed to curtail power and ensure that officials do not abuse power. This has sadly not been the case as security forces and police act with impunity, torturing and even killing political opponents of the monarchy. The King himself is literally above the law and constantly flouts the Constitution. The limitations placed on the Bill of Rights have ensured that government can abuse people's rights without any recourse for the abused. The judiciary remains under the control of the executive and the media is heavily silenced via the legal system.
- Corruption and lack of accountability - it is clear from the discussion that the government is involved in corrupt activities which points to bad governance practices. There is no accountability as the institutions, like parliament and anti-corruption agencies, are weak. The lack of political will is therefore explicit in fighting corruption.
- A deepening socio-economic crisis - 80% of the population lives in under \$2 dollars a day. The economy has reached critically low levels, but the ruling

monarch continues to live in luxury with his many wives. HIV/AIDS has reached epic levels and the rights of women are not protected.

- Political Parties - political parties remain banned since the 1973 Makhudu Order that was issued by King Sobhuza 11. The new Constitution is ambiguous on the issue - though it guarantees freedom of assembly it bans political parties. We discussed how members of opposition are often detained without trial, tortured and a lot of them have died in police custody.
- Some international community responses - the international community has criticised the Swaziland government for its appalling treatment of political opponents and dismal human rights record. NGO's like Amnesty International, work very hard to highlight the plight of the Swazi people. It is clear that more needs to be done and decisive action taken, to pressurise the rulers of Swaziland.

Given the discussion in this chapter, it is clear that Swaziland cannot be regarded as a democratic country - not in any sense of the word whatsoever. The country is not free - it is ruled through a repressive system that has been able to manipulate the populace. The so-called 'uniqueness' often spoken about, is nothing but a smokescreen meant to fool everyone and preserve the status quo.

The following chapter will draw lessons from this discussion and attempt to make recommendations for the future.

CHAPTER 5

FINDINGS AND RECOMMENDATIONS

1. INTRODUCTION

The introduction in Chapter 1 outlined the issues facing the country and the need to investigate. The chapter gave an explanation of the primary and secondary aims of the study, as being based on the system of government of Swaziland, using the constitution as its basis. The final aim of the study was to draw findings from the research and make recommendations towards the political transformation of Swaziland.

In Chapter 2 the British Parliamentary system was studied and the following were investigated:

- The British Constitution including its sources and it is accepted as uncodified.
- The principles of the British Constitution including the rule of law, constitutional monarchy, parliamentary government, accountability and procedural democracy, to name but a few.
- The main role players were then investigated with a view of noting the extent to which they influence happenings in that country. These included the constitutional monarchy, the two Houses of Parliament, the executive in the form of cabinet and the Prime Minister. The role of regular elections and the fact that liberal freedoms are protected, were noted as significant.

The chapter concluded with a discussion of advantages and disadvantages of the system. It was a finding of the study that Britain is a democracy developed over centuries.

Chapter 3 went on to do a descriptive-analysis of the history of Swaziland, concentrating on the following periods:

- The early years up to 1968: these were the years which saw the origins of the Swazi nation under the Dlamini clan. The years were characterised with the country having to manoeuvre and ensure protection from the British colonisers who were ruling the Union of South Africa against any nation that tried to attack

it. The period culminated in the country being granted its independence by Britain, after lengthy negotiations and a democratic constitution being adopted. This was followed by a multi-party electoral process that was won by King Sobhuza 11, as the leader of the Ngwane National Party.

- The period of 1968-1978: this was the period when King Sobhuza 11 decided to suspend the post-colonial democratic constitution in 1973, declare a state of emergency, ban political parties and rule the country by decree. According to the King, democracy was 'un-Swazi' and had bred disunity among the citizens. A lot of labour strikes happened during this period and a lot of repressive laws were introduced. The King initiated a constitutional review which was to consult and it finally introduced the Tinkhundla system of government.
- The period from 1978 to the present: this period was characterised by the escalation of dissent within Swaziland against the undemocratic rule of the Monarchy. When King Sobhuza 11 died in 1983, the country was ruled by several regents until King Mswati 3 ascended the throne. Several reviews and refinements of the electoral process were undertaken as reactions to internal strife and international pressure. The final constitutional review culminated in the Constitution of 2005, which continues to be the law of that country. This period also witnessed the rise of political parties and the organised labour movement. A lot of unrest has happened during this period, forcing government to act ruthlessly.

The chapter then analysed the Constitution of 2005, concluding the following:

- It centralises power on the King who appoints a number of people into the elected parliament; appoints judges - senior and any other level; appoints the Prime Minister and cabinet and can dissolve Parliament by decree.
- It still does not allow for political parties or electoral campaigning.
- It has a Bill of Rights which has many limitation clauses.

Chapter 4 went on to discuss the challenges facing the Kingdom of Swaziland highlighting the following:

- The challenges of governance: problems around participation, rule of law, corruption and lack of accountability; and a deepening socio-economic crisis were all discussed. It was concluded that the country needed to correct these issues, otherwise the political and economic situation will worsen. The country has one of the highest HIV/AIDS prevalence rate, high unemployment and more than 80% of the population lives on less than \$2 a day.
- Political parties under siege: the ban on political parties continues to this day since 1973. The police and security forces have dealt harshly with any political unrest occurring in that country. A lot of activists and their families have been harassed, tortured and sometimes killed, resulting in many of them going to exile in neighbouring countries like South Africa.
- Some international community responses were also discussed. International organisations like Amnesty International have called on the Swazi government to introduce political reforms in that country. The organised labour movement has enjoyed support from South African trade union federations like COSATU. The Commonwealth and other organisations like SADC have responded with very little conviction to the plight of the people of Swaziland. The lack of political reform has prompted the United States of America to suspend Swaziland from the Africa Growth Opportunity Act (AGOA).

The chapter concluded that Swaziland is not a democratic country and will need to reform towards democracy if it were to prosper.

This chapter will draw from the other chapters to make findings and recommendations on the political system that has already been described. The descriptive analysis of the political system will be developed further to make findings and ultimately a comparative element will be explored once more to make recommendations. The evidence that has been gathered will be used for the two processes.

The chapter will make the following main findings and discuss each in detail:

- Swaziland is an absolute monarchy.
- Democracy in Swaziland exists on paper only.
- The economy will continue to deteriorate.

- Political dissent will lead to a political crisis.
- Other findings will be listed without too much discussion.

The recommendations will be based on the fact that, unless the country takes steps towards democratisation, it will degenerate into chaos and a state of civil war.

2. SWAZILAND IS AN ABSOLUTE MONARCHY

Heywood (2002: 28) describes 'absolutism' as "the theory or practice of absolute government, most commonly associated with an absolute monarchy". He goes on to elaborate that "Government is absolute in the sense that it possesses unfettered power: government cannot be constrained by an external body to itself". In Heywood (2002: 342), a monarchy is described as an "institution through which the post of head of state is filled through inheritance or dynastic succession."

Brooker (2009: 46) describes monarchy as involving "inheritance of the ruling office and title..." Monarchy is explained in terms of Weber's 'tripartite typology of legitimacy – the traditional, the charismatic and the legal-rational.' (Brooker, 2009: 47). Weber explained the notion in terms of a "hereditary transmission of charisma", in which members of the royal family are believed to be exceptional and apart from ordinary human beings (Brooker, 2009: 48).

In explaining the Swazi king's claim to legitimacy, Pejstrup (2011: 25) uses Weber's theory in this quotation:

"There are three types of legitimacy: a rational one that is strong due to the King's supremacy; a traditional form that is strong, in this case, due to conservatism and nationalism; and a charismatic form that reflects the superhuman icon the King has become."

The above captures what has been demonstrated through the study that the King has absolute power according to the Constitution, in which all in the government serve at his will. The Swazi King appoints the Prime Minister, the cabinet, the members of the judiciary (Chief Justice, judges, attorney general and the Judicial Service Commission), members of Parliament and the Senate and even the local

chiefs. The system is designed in such a way that his power is limitless. Anyone who dares to speak against the King is dealt with harshly by the police and security forces.

The study has also pointed out that the Constitution prevents any legal action to be taken against the King (Ngwenyama) or the Queen Mother (Indlovhikati). None of the two can also be called as witnesses in any criminal or civil court. The study also shows that historically in 1968, the post-colonial Constitution gave the Swazi people political freedoms, including freedom of association, while this was of great concern to the traditionalists and in particular King Sobhuza 11. In 1973 the King simply suspended the Constitution, banned political parties and ruled the country by decree.

This has largely remained the status quo up until today, even though a new Constitution was passed in 2005. Human Rights Watch (2012:1) concedes: “Under Swazi law and custom, all powers are vested in the king. Although Swaziland has a prime minister who is supposed to exercise executive authority, in reality, King Mswati holds supreme executive powers and control over the judiciary and legislature. The king appoints 20 members of the 65-member house of assembly and approves all legislation that parliament passes. Political parties have been banned in the country since 1973.”

The above quote from Human Rights Watch summarises the system of government prevalent in that country. Matters are exacerbated by the fact that there are no political parties allowed in that country. As has been argued in previous chapters, this ensures that the Monarchy and its traditionalist followers cannot be politically challenged. Pressure has been mounting within and outside Swaziland, to force the King to introduce democratic reforms, but this has been met with resistance.

It can therefore be concluded from the body of evidence given in previous chapters and above, that the country is run by a ruling monarchy that is highly authoritarian in nature.

3. DEMOCRACY IN SWAZILAND EXISTS ON PAPER ONLY

Notwithstanding the fact that the Constitution of Swaziland describes the country as a democracy, the reality is different. The country fails if its practices are judged according to democratic principles. The study has demonstrated that unequivocally. The following reasons from the study are compelling:

- Political parties have remained banned since 1973, when King Sobhuza abolished them. (see pages 79-81)
- The Tinkhundla system of government is heavily controlled by the Monarch in such a way that only candidates, sanctioned by the latter, can stand for election. As a result, Parliament and the Senate exist only to agree with the executive always - never to question abuse of power or state institutions. The corruption that was discussed, is exacerbated by the lack of political will to eradicate it effectively.
- Human rights are guaranteed in the Bill of Rights, but are heavily limited by other clauses in the Constitution. The study was able to cite a number of instances where political opponents have been harassed, arrested, tortured and even killed by the police and security forces - in all these instances the government has failed to act. In fact the King has been quoted calling for these actions to be carried out against opponents.
- The media is heavily controlled by a number of laws to ensure it doesn't report negatively about government and especially about the royal family. The executive has the power to censor any journalist that dares to reflect it in a negative light. (see page 86)
- Judicial independence, which is one of the cornerstones of democracy, is non-existent in that country. The study has quoted a number of instances when the executive simply disregarded court rulings. This has posed serious challenges for the rule of law, which has prompted a number of international reactions - calling on the Swazi government to reform. (see pages 84-85)

The above reasons stand in contrast to how democratic rule is supposed to conduct its business. The Human Rights Watch Report (2012: 3) also concedes:

“Civil society activists and government critics have reported increased incidents of

harassment, searches, and seizures of office materials, as well as monitoring of electronic communications, telephones calls, and meetings by the authorities. Police and other security officials routinely use excessive force against political activists. Local activists reported that police often use torture and other ill-treatment against activists with impunity. No independent complaints investigation body exists for victims of police abuses.”

It can therefore be concluded from previous chapters and above, that the democracy is not worth the paper it is written on. It is just an empty claim designed to fool the citizens and the international community.

4. THE ECONOMY WILL CONTINUE TO DETERIORATE

The deepening economic crisis in that country has been discussed in the previous chapter. It has also been argued that unless Swaziland’s rulers reform governance practices to curb corruption, unemployment and poverty, the economy will continue to suffer.

The suspension of Swaziland by the US from AGOA, is a case in point as it happened simply because the monarchy and its cronies refused to bring about political reform. This will have a devastating effect on the economy as the country will become an unattractive destination for foreign investors. A country with 80% of landless peasants, 40% unemployment and an overwhelming majority living on less than \$2 a day, needs access to every market worldwide, especially in the United States.

The high prevalence of HIV/AIDS will worsen the economic situation, as more people become sick and are unable to work. Drimie and Gandure in (Saunders *et al.*, 2012: 186) explain the role of HIV/AIDS as follows:

“HIV/AIDS undermines livelihoods in four ways: it reduces farm production and income and diminishes labour and capital, owing to disease and death; it undermines the ability of households to cope with liquidation of assets and to take care of sick family members; it prevents household breadwinners from finding work

and stunts migration; and it diminishes skilled staff in public service and private sectors.”

The scourge of corruption that was discussed in the previous chapter, will continue to bleed the economy.

It was demonstrated in Chapter 4 that even the government is involved in corrupt activities, hence it is reluctant to address it. The extent of the corruption in the country was also demonstrated earlier and how little the government invests in the Anti-Corruption Commission, which is supposed to deal with the problem.

It was also argued earlier that the economy of Swaziland is shrinking because its biggest trade partner, South Africa’s economy, has also slowed down in growth. The IHS Country Report (2015: 2) confirms this:

“However, SACU receipts are set to decline from 2016-17 onward, owing to lower import projections. Economic growth in Swaziland’s main export partner, South Africa, will also be subdued in the near term.”

The IHS Country Report, quoted in Chapter 4, asserts that the country’s economic growth will be retarded by the lack of political reform, which has resulted in it being suspended by the United States from AGOA. The report warns that confrontations between protestors and police will worsen the socio-economic situation, leading to job losses in a country with a high unemployment rate.

Thus there is a bleak outlook for economic growth in Swaziland in the medium term. The lack of growth can simply be attributed to the wrong choice of governance, which has ignored the call of the governed to reform.

The PRSAP, or Poverty Reduction Strategic and Action Plan, is part of the Swazi government’s work-plans to ensure that development happens in that country (see Chapter 4: Page 81). The people’s aspirations will not happen unless favourable conditions are cultivated for development to occur. This marvellous plan will remain a pipe dream without democracy. The above and what was presented in the previous chapter, is evidence enough that things are set to get worse for the

Swaziland economy, unless the government stops being in denial. It is a finding of this study that economic growth cannot just happen if issues perpetuating underdevelopment are not addressed and the majority of citizens live in abject poverty, as has been argued in the previous chapter and above.

5. POLITICAL DISSENT WILL LEAD TO A POLITICAL CRISIS

The growing discontent inside Swaziland, which has been shown in the previous chapters, has a long history. It started during the time of the drafting of the post-colonial constitution and it has been noticeable through the history of that country.

The previous chapters have demonstrated that the calls and discontent have been consistent - the response of the monarchy has been to buy itself time by instituting a process to review the Constitution and manipulate it in a way that will work in its favour. This consistency points to one reality - the people of Swaziland want change towards, what Huntington (1968: 33) refers to as, political modernization. Political modernization according to Huntington above, is described as changing from a traditional perspective to a modern perspective in political systems within a country. In other words, it is development to values and attitudes towards democracy.

Any form of political change usually happens as a result of realisation that the status quo is no longer desirable. This might be as a result of some political upheaval by the governed. Swaziland has been experiencing this type of discontent as Sithole (2004: 29) asserts:

“Finally, it may be mentioned by way of projecting into the future that although a full-scale revolution is not on the cards, despite alarmist warnings from various government politicians, Swaziland is faced with a deepening political crisis which will not be resolved until some form of multi-party democracy is instituted. The increasing polarisation between the monarchical traditionalists and pro-democracy groups has introduced political instability at a time when Swaziland can least afford it.”

The above shows that the instability was already evident in that country in 2004, as a result of lack of democracy - it has continued to this day. This discontent has been

well-documented in the previous chapter. The calls for civil rights groups within and outside Swaziland, the international community's responses and actions coupled with regional pressure, have been unrelenting, though not sufficient. Landsberg in (Matlosa *et al.*, 2007: 96) picks up on this issue:

“In Swaziland, there continues to be a serious stand-off between the monarchy and civil society movements, notably the labour aristocracy, which is seeking to democratise the country and introduce democratic governance. Political parties remain banned in Swaziland, suggesting that a critical institutional and governance actor remains absent from politics. Civil society actors are said to be largely excluded from governance processes, and it appears that tension between civil society and government is set to continue. At the same time the country has registered weak macroeconomic performance, sluggish growth and poor social indicators.”

It is therefore a finding of this research that the political instability will lead to a political crisis, which can only be averted by the rulers, adopting democratic reform as the next logical step. The recommendations of the United Nations' Human Rights Commission, documented in the previous chapter, will finally have to be implemented, otherwise the country risks economic sanctions.

The present government's manipulation of review processes can only serve to buy time, but will not be sufficient to sustain oppression and exploitation of the Swazi people. It will only serve to deepen the crisis.

6. OTHER FINDINGS

- Comparing Swaziland with the British parliamentary system, it is clear that the latter has gradually developed into a model democracy over the years. The power in the British system is vested in the democratically elected House of Commons from which the Prime Minister is elected. The Prime Minister then chooses from the House of Commons a Cabinet which is the executive. In the Swazi system the Prime Minister is chosen by the Monarch and is always one

of his brothers, Cabinet is again chosen by the Monarch and it doesn't have to be the elected members.

- The regular elections in Swaziland are not credible, as the candidates have to stand as individuals, political campaigning is not allowed and political parties are banned. All candidates are nominated by the community on merit and can only be allowed if endorsed by the local chief who serves to appease the King. The latter is therefore able to gate-keep to ensure that no political opponents are elected onto any position - as a result many political formations operating in that country, have refused to get involved in the elections calling them a charade meant to fool the citizens and the international community.
- The present way of merging the traditional ways and modern way of governance, has not worked. It has resulted in a dual system of government which is normally referred to as a 'unique system' of democracy. This has created a power vacuum, whereby citizens don't really know whether parliament or the King and the chiefs are really in charge of governance. The absolute power of the King and his mother come from a cultural background, but then there is a Prime Minister who does not seem to have any power, except instructions from the Monarch. The study has demonstrated over history how certain prime ministers were removed from office when the Monarch was not happy with their actions.
- There are huge implications for the right of equality before the law, for every citizen, as the King and the Queen Mother can never be sued or appear in a court of law in any matter. Furthermore the King can appoint his family to positions of power, which can be seen as nepotism under normal governance practices. In Swaziland this is allowed for the King - he is allowed to flout anti-corruption principles simply because he is from the royal family.
- Previous chapters have also demonstrated that the principles of the separation of powers are not adhered to in Swaziland. The legislature, executive and judiciary are operating separately, but the Monarchy always interferes. Instances of interference happen because the Constitution allows them, they are provided for as demonstrated in Chapter 3 of this study. The present Constitution therefore fails to be a modern document by international standards.

7. RECOMMENDATIONS

The following are the recommendations of this study:

7.1 FOR THE INTERNATIONAL COMMUNITY

- Swaziland's biggest trading partner is South Africa, as demonstrated in the previous chapter. The latter has undergone a massive transformation process which led to democratisation in the early 1990s. South Africa will have to do more to pressurise Swaziland to transform its policies - perhaps to even appoint a mediator to assist that country to reach a negotiated settlement on how to set the country on the path of transformation. The lack of human rights in Swaziland will continue to destabilise the bilateral relations, as discussed in Chapter 4 and therefore affect the bilateral trade and peace agreements. A lot of political exiles are already taking asylum in South Africa - a problem that is already threatening the relations between the two countries.
- Swaziland is a member of the Commonwealth, which has standards of practice which it expects every country to adhere to. The Commonwealth has a number of guidelines like the Paris Principles of Best Practice referred to in the previous chapter. From the Paris Principles emerged the Harare Commission's Best Practice Guidelines 'which provide for the organization and powers' of Human Rights Commissions (Hatchard in Ndulo, 2006: 111). The body also has the Commonwealth African Human Rights Commissions which is aimed at assisting member states to establish a culture of human rights within their countries. The body needs to take a principled stance against Swaziland, as it did with South Africa all those years ago. This will be to give the country an ultimatum to reform its governance and dismal human rights record or face suspension.
- The Southern African Development Community needs to also exert pressure on Swaziland, to reform its repressive laws towards a democratic state. The unstable situation that is bound to unfold in Swaziland, will destabilise the region and in turn make the whole region an unattractive option for foreign investors. The political crisis which is imminent in Swaziland, as argued above, will lead to a humanitarian crisis and a lot of refugees will leave and find refuge in countries like South Africa, Botswana or Namibia, whose economies and

politics are stable. This spill-over will not be conducive to good economic growth and it will definitely scare off investors.

- The United Nations Human Rights Commission, through its Universal Periodic Review, will have to take a tougher stance against Swaziland in the next review period. It is evident from the discussions in previous chapters that Swaziland has not implemented any of the resolutions adopted at its previous process. The world cannot afford to sit back and watch a government violate its citizen's human rights. Recommendations have to be made for possible sanctions to pressurise the country to initiate political reforms. As a signatory in the Universal Declaration of Human Rights, Swaziland has universal statutes to adhere to and must be held accountable.
- International organizations like Amnesty International, Human Rights Watch and others, will have to step up their efforts inside and outside Swaziland to force the rulers to introduce reforms. They will have to work with the opposition parties in that country and mobilise forces within that country, to use whatever means necessary to sensitise the international community to be sympathetic and take concrete steps to set the country in a different political trajectory.

The UNDAF-Swaziland (2011-2015: 27) document outlines United Nations priorities in assisting the country towards democratisation:

(a) Support capacity improvements in the implementation of the Constitution and in the facilitation of legal provisions, including assistance towards the ratification and domestication of instruments and follow-through, with comprehensive policy changes and the establishment of operational plans.

(b) Address Gender and Human Rights, including the rights of women and children.

(c) Enhance capacity for securing transparency and accountability in public sector management, including national efforts to reduce corruption in public offices, through assistance to oversight institutions that include Parliament, Civil Society and the media.

(d) Strengthen national partnerships between the government and non-state actors in the national quest to collectively face developmental challenges.

(e) Strengthen mechanisms for enhanced citizen participation in governance.

Although the above commitment by the United Nations must be commended, it must be stressed that the organization and the international community at large, must now move from producing just reports, but take concrete steps towards forcing reforms in Swaziland. Notwithstanding the fact that Swaziland is a sovereign state and it must deal with its domestic affairs without external interference, human right issues soon become international issues when refugees start to migrate to other countries. The government has to be called to greater accountability in light of its international and regional commitments.

7.2 FOR OPPOSITION PARTIES AND ORGANIZED LABOUR IN SWAZILAND

- The opposition parties are banned in Swaziland, as has been one of the major themes throughout this study. They have however 'illegally unbanned' themselves and has been working with organized labour unions in recent years. They need to reorganise themselves and avoid fighting each other, as that would be a good weapon in the hands of their oppressors. They need to think differently about one another and consolidate their potential to exert pressure on the government. They need to use their influence and educate the ordinary citizens of Swaziland on why the present system of government is not desirable for the country and organize mass demonstrations. The divisions that exist will need to be ironed out and the opposition must use its alliance with the labour unions to form a strong and coherent structure which will stand against the status quo.
- The opposition also needs to raise funds and mobilise the international community to pressurise the Swazi authorities to reform their repressive laws within that country. They have to ensure that the present relationships that they have built with organizations like the South African Trade Union federation, COSATU, are strengthened and new alliances are forged with other international formations, which would serve two purposes. Firstly they might be able to raise funds that they so desperately need to be able to do their business of opposition. Secondly they will be able to establish an international profile and form international alliances that could assist in mobilising international organisations and other countries.

- Furthermore they have to start making their presence felt at regional organisation meetings of the SADC and the AU. They must make in-roads into such entities and speak with one voice. They must mobilise all the resources they have to get to the United Nations General Assembly and the UN Human Rights Commission and make these bodies aware of the international treaties that Swaziland is breaking - present well-substantiated reports outlining the violations of human rights in that country. They have to advocate for dialogue with the Swazi authorities and if that fails, economic will be the only option open, although it will hurt the ordinary Swazi's right from the start. Travel bans must be imposed on the Swazi government's senior officials, especially the royal family.

7.3 FOR SWAZILAND

The Monarchy in Swaziland needs to face the reality in the best interests of the nation; to admit that the present outdated model of government is not working and set that country on a transformation path. Political transformation as a pattern of political change was discussed in this study as the best model to follow, as it happens in such a way that it is rapid and extensive:

- The first thing that the King needs to do is to unban political parties, release all political prisoners and recall all in exile to return to ensure that the environment for meaningful dialogue is established. This will also mean apologising for the way the country has oppressed the people since 1973. He has to own up to his and his family's failure to protect the Swazi people from oppression. This gesture of reconciliation will go a long way in changing the self-destructive path that the country is presently on.
- The country will then have to approach the AU to assist with facilitating dialogue that will lead to a peaceful, long-lasting negotiated settlement. An independent facilitator or mediator will ensure that all parties, including Swaziland government officials, negotiate as equals and therefore respect each other and no one has an unfair advantage.
- The country does not need a constitutional review committee like in the past, as such formations have in the past been manipulated by the King to ensure that they produce a favourable result for the monarch. The country does not need a

referendum either, as it is clear in this study that the present system of government is failing. The country needs to redirect its political trajectory and start on a new direction which will lead to better human development and economic growth.

- All stakeholders need to be brought together to negotiate a better future for that country and these must include government, opposition parties, cultural groups, non-governmental organizations, organised labour and big business representatives.
- A new Constitution has to be the final result of the negotiated settlement. In the new constitution the following must be done:
 - The King must have no executive authority, but be a constitutional monarch who has ceremonial powers only, in terms of Swazi tradition. He has to move from being a ruling monarch, to a reigning monarch. The King and the Queen Mother have to relinquish all executive power and preside over traditional celebrations like the *Incwala*.
 - The Constitution of the British system must serve as a model on how to reorganise the powers of the Monarch.
 - The Bill of Rights must be included to guarantee the rights of all citizens without any of the strict limitations that are present.
 - Undesirable pieces of legislation like the Suppression of Terrorism Act, must be repealed.
 - The rights of women, children and other vulnerable groups must receive special attention.
 - The Makhudu Order of 1973 and other decrees ordered by the King, which are inconsistent with the new Constitution, must be withdrawn.
 - The system of government must be one where Parliament is elected; it elects the leader of the majority party as Prime Minister who in turn chooses cabinet from within the members of Parliament. The term of office must be clearly spelt out, learning from other countries with similar systems.

8. FINAL CONCLUSION

The above recommendations and findings are based on what has transpired through the whole study. Overwhelming evidence of incidences in Swaziland has been presented in previous chapters which has led to the findings in this chapter.

The huge deficiencies in Swaziland that bedevil implementation of sound governance principles can simply be traced from a wrong Constitutional dispensation. A stipulation in the Constitution that actually gives all powers to the King; violating the all-important democratic principle of separation of powers. Any country that aspires growth and development like what is contained in the Vision 2022 plan of the Swazi monarch, cannot afford to ignore the separation of powers as an essential principle of good governance. Xaba (2014: 122) quotes Lederman *et al.*, (in Stapenhurst *et al.*, 2006: 29) to emphasise this:

“Generally, separation of powers - together with checks and balances - helps prevent abuse of authority, with different governing bodies disciplining each other in the citizen’s favour. ... This is true in regard to the relationship among different levels of the executive power. For example, parliamentary systems allow for a stronger and more immediate monitoring of the executive by the legislature because in this case, parliaments have the power to remove politicians from executive office. ... as long as it is not in the interest of one of the government branches to collude with the other branches, separation of powers creates mechanisms to police and punish government officials that misbehave, thus reducing the level of corruption.”

The above is unfortunately untrue in present-day Swaziland, as the separation of powers is hugely limited via the constitution.

This chapter therefore draws findings from the evidence presented by the study in previous chapters and goes on to make recommendations on how the status quo in Swaziland can be changed for the better. The recommendations move from a premise that previous efforts by the monarchy to review the system of government have not been authentic actions, to open dialogue, but were simply geared at buying time for the ruling elite. It is also argued that the country cannot continue in this self-destructive trajectory. The evidence speaks for itself.

The recommendations were mainly that the country needs to start a period of political transformation as a route to democracy. Given the findings it is clear that the rulers of Swaziland do not have a choice but to listen to the world and the citizens. The study strongly concluded that the Swazi government does not have a choice and should not call for a referendum - just decide on reforming the constitution.

The study has succeeded in what it set out to do in the first chapter. The system of government of Swaziland has been analysed and criticized for its inadequacy. The study could have been further enriched if the researcher had been able to do field-work and conducted some face to face interviews with some key role players in Swaziland. It could have further been enriched if focus groups with ordinary people could have been conducted to hear how they experience the political situation. The research is however current, as it used many latest reports about Swaziland.

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