

Swaziland: The Clock Is Ticking

I. OVERVIEW

Swaziland has been an absolute monarchy for more than 30 years, with a royal leadership that ignores worsening social ills and a small elite that is often openly corrupt. A new constitution that further codifies broad royal powers and privileges is in the final stages of preparation. Political violence is still more talked about than actual but frustration is building. Multilateral African institutions, the EU and key countries like South Africa and the U.S. have been too willing to accept the royalists' line that any change must come very slowly. More pressure from the outside is needed to help pro-reform elements inside the country bring back a constitutional monarchy and genuine democracy that are the best guarantees Swazi instability will not eventually infect the region.

The revised constitution effectively enshrines the 1973 state of emergency decreed by the late King Sobhuza II, which abolished the democratic system and vested ultimate judicial, executive, and legislative power in the monarch. Until that state of affairs is reversed, Swaziland's long, steady implosion is likely only to accelerate.

Opposition to the anachronistic absolute monarchy in recent years has included strikes and demonstrations by trade unions, students, religious groups and youth movements, as well as periodic waves of arson and bombings against government buildings. Nevertheless, King Mswati III and his ruling clan have continued to insist that the people do not want multi-party democracy and have wrapped their hold on power in a cloak of culture and tradition. Political parties are still banned, and the two main ones are divided over whether they should work primarily underground or as best they can within the system. Humanitarian problems -- including the HIV/AIDS pandemic, more than 40 per cent unemployment, and a need for extensive food aid -- are exacerbated by the political deadlock.

The country needs a new political dispensation that harmonises the history, culture and traditions of its people with a democracy based on universal suffrage and popular participation. The monarchy can still save itself if it moves quickly to support meaningful limits on its powers but absolutism should be ended and a

constitutional monarchy introduced that is defined by the following core elements:

- ❑ elimination of all vestiges of the 1973 state of emergency, including removal of the king's arbitrary powers over the legislature and judiciary as well as his right to appoint the prime minister and the cabinet;
- ❑ legalisation of political parties;
- ❑ a directly elected House of Assembly with oversight of royal spending and an elected prime minister as head of government;
- ❑ codification of traditional law and its reconciliation with common law, and appointment of an independent judiciary by an impartial judicial commission; and
- ❑ civilian oversight of professional security services.

The international community should be much more assertive in encouraging these reforms:

- ❑ South Africa should use its position in the Southern Africa Customs' Union (SACU) to encourage accountable spending by the monarchy, with a focus on alleviating the humanitarian crisis, and encourage Swaziland to accept the African Peer Review Mechanism of the New Partnership for Africa's Development (NEPAD) as a step toward ensuring good political, economic, and corporate governance;
- ❑ the Southern African Development Community (SADC) should encourage Swaziland to implement its August 2004 principles and guidelines governing democratic elections and its other relevant mechanisms on democracy, human rights, peace and security;
- ❑ the African Union (AU) should encourage compliance with obligations under the charter of the African Commission on Human and Peoples' Rights;
- ❑ the Commonwealth, in line with its 1991 Harare declaration on governance and democracy, should continue to provide expert advice, good offices and mediation to promote democracy; and

- the U.S. and the EU should make more determined use of their economic leverage under, respectively, the African Growth and Opportunities Act (AGOA) and the Cotonou Agreement to promote democracy, for example by indicating that development assistance and continued trade preferences require serious reforms and that targeted sanctions will be considered if the ruling elite is recalcitrant.

II. THE POLITICAL IMPASSE

Sub-Saharan Africa's last absolute monarchy is locked in political and humanitarian crises. While the tiny kingdom sandwiched between South Africa and Mozambique generates little international attention, the human costs are profound. More than one third of the population of 1.1 million is dependent on emergency food aid, and with HIV/AIDS prevalence at 40 per cent, life expectancy has plummeted from 54 years to 35 in a decade and a half. While the royal government is not solely to blame for these social and economic ills, it has all too often turned a blind eye to them and is clearly responsible for a stifling pattern of decline, underdevelopment, mismanagement and corruption. With large segments of the population eager for democratic reforms, the ruling elite pays only the thinnest lip service to change, making it a painful anachronism.

In many ways, the Swazi monarchy combines the worst excesses of the colonial period with a veneer of traditional customs and rule. Historically, the king was viewed as his "people's mouthpiece", neither an absolute monarch nor a dictator.¹ During the British colonial period (1903-1968), Swaziland was administered through a system of "native authorities", with the king serving as a paramount chief. This system of indirect rule gave the royal family ultimate authority over land allocation, which it retains to this day through the system of Swazi Nation Lands (SNL). Over time, it encouraged the monarchy to view itself less as an institution that derived its power from, and was accountable to, the people than as one related to notions of absolutism inspired by European concepts of divine right.

Much of this transformation took place during the lengthy reign of King Sobhuza II, from 1921 until his death in 1982. Sobhuza was well regarded in the country and was renowned for having over 100 wives and 600 children. Although he considered voting rights and political parties direct threats to his authority, he was forced to form a

political party himself in 1964 (the Imbokodvo National Movement, INM) after his efforts to win independence from the British on the basis of a purely monarchical system failed.

The Swazi people primarily lobbied for independence through political parties. In 1960, the Swaziland Progressive Party became the country's first political party, although it quickly split, and the splinter Ngwane National Liberation Congress (NNLC) was formed in 1962. Led by Dr. Ambrose Zwane, the then radical nationalist party called for independence, universal adult suffrage, and a constitutional monarchy with limited powers. Other early parties -- which also accepted a constitutional monarchy -- included the Swaziland Democratic Party and the United Swaziland Association, the latter representing the interests of white settlers and big business.

In the pre-independence elections of 1964 and 1967, the royalist INM won all 24 seats in the new national assembly. Since the Dlamini aristocracy (the dominant Swazi clan) monopolised the assembly, and legislation required the king's approval, the monarch was de facto in charge of the government.

After a four-year period of limited self-rule, Swaziland gained independence on 6 September 1968. It inherited a Westminster-model parliamentary system that provided for a constitutional monarchy, a prime minister and multi-party politics with a first-past-the-post electoral system. The British also left Swaziland with a dual legal system of modern (Roman-Dutch) law and traditional law in which rural constituencies under the control of hereditary chiefs reported directly to the king. The latter system was administered by the chiefs through their own police and courts. This, and control over land use, largely stifled the spread of democratic ideas beyond the urban enclaves.²

A. THE RISE OF ROYAL ABSOLUTISM

Swaziland's democratic experiment was brief. As Sobhuza II began facing a challenge from the opposition in the late 1960s and early 1970s -- the NNLC won three of 24 seats in the first post-independence legislative elections in 1972 -- he took a series of steps to set himself up as an absolute monarch. First, he and his INM party attempted to overturn the election results in court. When this failed, the king issued the Legislative Procedure Order of 13 April 1973, which declared a state of emergency, suspended the 1968 Constitution, and gave him "supreme

¹ Joshua Bheki Mzizi, "The Dominance of the Swazi Monarchy and the Moral Dynamics of Democratisation of the Swazi State", *Journal of African Elections*, vol. 3, no. 1, June 2004, p. 102.

² International Bar Association, "Swaziland law, custom and politics: Constitutional crisis and the breakdown in the rule of law", March 2003.

power" to rule by decree and appoint the prime minister and cabinet.

The same order banned political parties, maintaining that the constitution had introduced "highly undesirable political practices alien to, and incompatible with the way of life of our society", and outlawed demonstrations, processions and political gatherings without prior police consent. Fundamental freedom of expression was restricted; the government was granted authority to detain without charge for a renewable 60-day period any person deemed a threat to public peace, while the judiciary's authority over cases of detention was eliminated. With the stroke of a pen, the king had been transformed from a constitutional monarch, albeit one with considerable executive power, to an absolute monarch free of any constitutional inhibitions. In concert with the emergency order, the king also formed the *Umbutfo*, the Swaziland Defence Force (USDF), with the sole mandate of defending the monarchy.³

Subsequently Sobhuza established a Royal Constitutional Review Commission, whose recommendations led to his Order-in-Council of 1978, which decreed the establishment of the parliament of Swaziland, based on the *tinkhundla* system. The Order divided the country into four regions and 40 districts (*tinkhundla*), each of which elected representatives through open voting to an electoral college, which in turn selected the 40 members of the House of Assembly from a list of 60 nominees approved by the king or the chiefs who answered directly to him. The king gave himself the power to appoint an additional ten members, making a total of 50 in the House of Assembly. That body selected ten senators, while the king appointed a like number to form a twenty member Senate.

Both the elected and the appointed legislators were guaranteed to be loyal to the king. Introduction of a bicameral parliament did not substantially alter the situation because it was limited to providing advice, with no real legislative power. The parliament can only debate legislation proposed by the prime minister, a royal appointee, before returning it to the king for his ultimate assent.

When Sobhuza died after more than six decades on the throne, and following considerable jockeying for power, the fourteen-year-old Prince Makhosetive Dlamini was anointed his successor. Queen Ntombi served as regent until the prince was crowned King Mswati III in 1986, at the age of eighteen.⁴

³ Umbutfo is a Swazi word for "regiment". Swazi tradition provides that regiments are established and named by the king for the purpose of protecting the monarchy.

⁴ Between August 1982, when King Sobhuza II died, and 25 April 1986, when Mswati III assumed the throne, there was

B. ENTRENCHMENT OF THE MONARCHY UNDER MSWATI III

The new king moved to consolidate his position and entrench the powers of the monarchy. He disbanded the king's traditional advisory council (*Liqoqo*), which had monopolised power during the regency, reshuffled his cabinet and called for new parliamentary elections. From 1990, a series of strikes and anti-government demonstrations built pressure for political reform but there was little response. Mswati did modify the *tinkhundla* system in 1992 by increasing the number of constituencies to 55, replacing the electoral college with direct election of representatives by the entire electorate, and replacing the open queuing system with a secret ballot. However, the king's emergency powers made any sense of democracy largely a charade. Similarly, although the king reintroduced universal adult suffrage in 1993, the vote was largely meaningless in the absence of multi-party politics.

In 1995, the parliament building was heavily damaged by a fire bomb. The next year the Swazi Federation of Trade Unions (SFTU) paralysed the country for a week with a stay-away that forced the king to respond to public pressure for change by appointing a Constitutional Review Commission (CRC), chaired by his brother, Prince Mangaliso Dlamini. When that Commission finally delivered its report in 2001, several years behind schedule, however, it claimed the people were content with the status quo -- in other words, that they rejected multi-party politics and accepted royal supremacy. Further, it recommended that Swazi traditional law should override any contrary international human rights obligations.⁵ Civil society groups rejected the report, called the process a fraud, and continued to lobby for democratic reforms. Prince David Dlamini, Mswati's brother and the minister of justice and constitutional affairs, dismissed the dissenters as people who had the opportunity to participate in the constitutional process represented by the CRC but instead withdrew from it.⁶

Three bombings took place between August and November 1998, apparently timed to coincide with major state events and protest the undemocratic nature of the October elections. They targeted a Swaziland Electricity

a protracted power struggle within the *Liqoqo*, the king's traditional advisory council. On Sobhuza's death Queen Dzeliwe, his wife, became regent. In 1983 the *Liqoqo* moved to replace the prime minister with more conservative elements and replaced Dzeliwe with Queen Ntombi, Mswati's mother, as regent. Southern Africa Research and Documentation Centre (SARDC), "Swaziland Democracy Fact File".

⁵ International Bar Association, "Swaziland Law", op. cit.

⁶ Crisis Group telephone interview, 15 June 2005.

Board power line, an abandoned bridge over the Lusushwana River and the offices of the deputy prime minister.⁷ The third killed one person. Almost nothing is known about the group that claimed responsibility. Violence escalated in the aftermath of the 27 October 1998 elections, with a number of bombs going off around Mbabane. A security guard was killed by a bomb at the *tinkhundla* headquarters in downtown Mbabane in 1999. The same year, an explosion occurred on a highway bridge over which the king's motorcade had travelled an hour before. In 2000, a community centre used by the *tinkhundla* authorities was fire-bombed. Additional attacks at the end of the year targeted the magistrates' courts in Mbabane and a security forces encampment protecting the home of Prince Maguga Dlamini, the king's brother.⁸

In the face of increasing pressure from within and from regional leaders, in 2002 King Mswati established a Constitutional Drafting Committee (CDC), chaired by another brother, Prince David, and composed of loyalists. Its mandate stated it should undertake an inclusive process to consult all stakeholders on the form of the new constitution.⁹ However, no civic education was conducted to inform the people during the drafting process. The media and other key stakeholders were shut out, and pro-reform groups argued that the new constitution merely further entrenched the power of the king.¹⁰

C. THE RULE OF LAW CRISIS

In 2002, two controversial judgments sparked a major rule of law crisis. In *Minister of Home Affairs et al v Fukudze et al*, the court ruled the king had acted illegally in 2000 when he removed the chiefs of Macetjeni and Kamkhweli and appointed his brother Prince Maguga Dlamini in their stead.¹¹ The unseated chiefs refused to swear allegiance to Maguga, setting off violent local conflict, which led to the forcible removal from their village of 200 residents who also refused to swear allegiance to the new chief. The villagers sought a High Court order allowing them to return to their homes. The case of *Gwebu and Bhembe v Rex* challenged Royal

Decree no. 3 of 2001, which enumerated a list of non-bailable offences.¹² The court found that under the 1978 decree, the Swazi king could not legally rule by decree until a new constitution was passed.

Prime Minister Sibusiso Dlamini announced that the government would not abide by judgements which sought to strip the king of powers accorded to him by the nation and insisted that royal decrees were "neither debatable nor negotiable".¹³ On 30 November 2002 six judges of the Court of Appeal and the director of public prosecutions resigned in protest. During the ensuing crisis, the High Court refused to hear applications by the government, the attorney general was charged with contempt of court and had to leave the country, the police refused to implement court orders, and the government announced it would not comply with court orders with which it did not agree.

The crisis triggered consternation in the region, with lawyers from the Southern Africa Development Community (SADC) describing it as a threat to regional stability and security.¹⁴ The government tried to entice the judges back to work with salary increases in December 2002 but they insisted upon an apology and official acceptance of their judgments. In May 2003, the government refused to institute the judicial reforms recommended by the former justices or meet any of their other demands. Finally, on 17 September 2004, the Commonwealth helped to broker an agreement between the government and the judiciary in which the former pledged to abide by court decisions. On 10 November 2004, the appeal judges resumed their work after a two-year hiatus.

Nevertheless, the king continued to insist on the primacy of Swazi traditions over democracy and human rights. His emissaries abducted Zena Soraya Mahlangu from school on 9 October 2002 to become his tenth wife. Her mother reported the case as abduction under common law¹⁵ but royal representatives insisted the matter fell under the authority of the king, who traditionally selects wives at his pleasure.¹⁶ The case actually demonstrated how "tradition" is used as a blanket justification for

⁷ U.S. Department of State, Bureau of Democracy, Human Rights, and Labour, "Swaziland: Country Report on Human Rights Practices for 1999", February 2000.

⁸ Amnesty International, "Annual Report 2001", Swaziland chapter.

⁹ Electoral Institute of Southern Africa (EISA), "Swaziland Electoral Dossier 2003", no. 1, October 2003.

¹⁰ Crisis Group interview, Mbabane, May 2005.

¹¹ See International Commission of Jurists, "Report of the Centre for the Independence of Judges and Lawyers Fact-Finding Mission to the Kingdom of Swaziland June 2003", p. 22.

¹² Ibid. p. 23.

¹³ Speech by Prime Minister Dlamini on Radio Swaziland, 28 November 2002. Text available in International Commission of Jurists, "Report 2003", op. cit., p. 24.

¹⁴ Ibid. p. 31.

¹⁵ *L. Dlamini v. Q. Dlamini and Sikondze*, High Court, 2002. For a more detailed discussion, see International Commission of Jurists, "Report 2003", op. cit., pp. 19-21.

¹⁶ The concept of traditional law is somewhat problematic; Swazi customs are not codified and are open to interpretation and even manipulation. Crisis Group interviews with civil society representatives, June 2005.

royal abuse of power. Under Swazi tradition, Zena would not have been eligible to become the king's wife for two reasons: she has a twin brother, and as a Ndebele, she could not be taken for royal duties without the consent of her relatives.

The country appeared to be on the brink of political violence in 2003 when the Swaziland Youth Congress (SWAYOCO) proclaimed it would take up arms to protest repression.¹⁷ Its information secretary, Sandile Phakathi, warned that the "government does not possess a monopoly on violence. We will fight fire with fire".¹⁸ Subsequently, a dormitory in Mbabane that housed policemen and their families was fire-bombed and extensively damaged. That attack and others were attributed to frustration with the lack of reform: since 1973 Swazi kings have appointed four commissions to review the constitution with scant result.¹⁹ A senior member of SWAYOCO declined to comment on the bombings but emphasised that "people are very angry. If they continue to be harassed, and their political rights denied, as is the case, we will end up reaching the road of an armed struggle".²⁰

The government responded with a show of force. After the release of SWAYOCO's manifesto calling for violent resistance to the king's non-democratic government, the government put the *Umbufo* regiments on heightened alert and set up urban patrols and police roadblocks on all major highways.

III. THE JUNE 2005 CONSTITUTION

The CDC completed its work in two years, and the king presented the new draft constitution to the people on 31 March 2004. Parliament debated it in November of that year but disagreements delayed passage until 13 June 2005. The king met with both houses on 30 June and requested re-examination of several contentious clauses. The delay is unlikely to be lengthy.²¹ Nor is it likely to improve many of the document's deficiencies, since the king sought changes that could result in further steps

away from democratic governance and appointed a special committee of parliamentarians loyal to him for the purpose.²²

Civil society groups and the pro-reform movement reject the document as entrenching royal authority. The Swaziland Democratic Alliance (SDA), an umbrella group of legal, human rights and labour organisations formed in 1999 to press for democratic reforms, went to the High Court in 2004 to argue that the drafting process was undemocratic and manipulated by royalists. The judges threw the case out, ruling the SDA had no standing under the 1973 state of emergency decree. An appeal is pending.²³

The pro-reform movement does not call for removal of the king. Rather, it wants a constitution that demarcates a clear separation of powers and subjects the king to the law. Nevertheless, the dilemma pointed out by a Swazi academic is probably accurate: "The monarchy has to open up. So long as there are dissenting voices, it is sitting on a powder keg. Once the monarchy opens up, the future is uncertain".²⁴

The new constitution contains token steps toward democracy and good governance, while further cementing the king's position as an authoritarian and unaccountable head of government. It would:

- remove the king's ability to rule by decree, though he would retain ultimate authority over parliament, ability to appoint parliamentarians, cabinet, prime minister, chiefs and judges, and command of the security forces, and would also remain above the law. The *tinkhundla* electoral system would be retained intact, leaving elections at the mercy of local chiefs who vet all candidates, while the status of political parties would be unclear;
- provide a bill of rights guaranteeing fundamental freedoms, but subject to royal approval;
- provide for an independent judiciary while establishing a Judicial Service Commission to oversee appointment and removal of judges which would be composed primarily of royal appointments.²⁵ In reaction to the stand-off with the Court of Appeal between 2002 and 2004, the

¹⁷ "Swaziland: Youth demand democratic reform", Irinnews, 7 July 2003.

¹⁸ Ibid.

¹⁹ These included, the Polycarp (1973), Mahlalengangeni (1992), Mangaliso (2001) and David (2002) Commissions.

²⁰ Crisis Group interview with SWAYOCO leader, June 2005.

²¹ Mswati stated: "We cannot afford to waste more time on the constitution...all the interested parties should make the final touch-ups on the draft document and have it finalised as quickly as possible". "No time to waste -- King", *The Swazi Observer*, 1 July 2005.

²² The clauses that the king asked be looked at again deal with Christianity as the state religion, the royal power to veto legislation and dissolve parliament, and women's rights. Crisis Group telephone interview with Mario Masuku, president of the People's United Democratic Movement (PUDEMO), an opposition political party, 11 July 2005.

²³ Crisis Group interview, Mbabane, May 2005.

²⁴ Crisis Group telephone interview, June 2005.

²⁵ Constitution of Swaziland 2005, Chapter IX.

constitution would replace that body with a Supreme Court. It would leave unclear the relationship between common and traditional law, though the king has given assurances abroad that this will be rectified.²⁶

- set out the right of the Swazi people to be heard and represented through freely chosen representatives, while retaining the king's power to dissolve parliament at will, pass on draft legislation, reserve twenty of the 30 Senate seats and ten of the 65 House of Assembly seats for his appointees, and select members of the Elections and Boundaries Commission, which oversees voter registration, civic education and *tinkhundla* demarcation. The parliament would remain largely advisory, since the king could veto any bill he considered against the public interest; and
- proclaim equal opportunities for women in the social, economic and cultural spheres,²⁷ though with what effect is uncertain since many issues that affect women would likely still be dealt with by traditional law. Under the previous constitution, however, women had the status only of minors, which hindered access to productive resources such as land and credit. Improved legal status should better their income-generating possibilities and alleviate poverty -- important not least because women head the majority of poor households. At the 30 June session, however, the king, as well as several parliamentarians and traditional leaders, expressed the view that a guarantee of cultural equality would contravene Swazi tradition and custom. While the issue remains under consideration, the king's attitude suggests the provision will be cut back in the final version.²⁸

Prince David Dlamini, minister of justice and constitutional affairs, who has warned critics that the sudden abolition of customs would lead to chaos and anarchy, praised the new constitution as "the beginning of a new process", justifying the government's piecemeal approach to change.²⁹

²⁶ Crisis Group interview with Western diplomat, Mbabane, May 2005. Prince Dlamini, minister of justice and constitutional affairs, has asserted that "gradually the domination of law in our kingdom will prevail" and has denied that traditional law would undermine the operation of the constitution. SADC Parliamentary Forum, final communiqué, eighteenth plenary session, Ezulwini, Swaziland, 27 May-3 June 2005.

²⁷ Constitution of Swaziland 2005, Chapter IV, Article 29 (1).

²⁸ Crisis Group telephone interview with NNLC leader Obed Dlamini, 11 July 2005.

²⁹ Crisis Group telephone interview, June 2005.

IV. THE PRO-REFORM MOVEMENT

A. POLITICAL PARTIES

As noted, the new constitution, while providing for freedom of assembly and association, makes no direct reference to political parties and thus leaves their legal status uncertain. Reformers generally concur that in the absence of explicit legalisation, the ban remains in force. Mswati hedges, saying he has neither banned parties nor allowed them to operate, while occasionally assuring diplomats that he will insert a clause into the constitution legalising them if there is sufficient demand.³⁰ So far, political parties and pro-reform groups have been unable to muster sufficient pressure, because government repression has left them weak, and they must to some degree work underground.

One of the two main opposition parties, the NNLC, dates to colonial times. The second, the People's United Democratic Movement (PUDEMO), was formed in 1983 out of protests against human rights violations. It is pushing for genuinely democratic, multi-party elections in 2008 and trying to win over the rural areas, traditionally the king's stronghold, through *Nhlovincika* (mass mobilisation). Its platform includes free education, a democratic constitution that guarantees civil and political rights, and land ownership by the people, not the king. On 9 July 2005 it launched what it says will be a series of protest actions, including marches, with a demonstration in Manzini.³¹ The leader of PUDEMO, Mario Masuku, who has been detained, prosecuted, and acquitted of sedition and treason three times for engaging in non-violent political activities, called the 9 July demonstration an indication of the opposition's ability to defy restrictive laws and police bans on political protest. He said it was "the beginning of protracted struggle to reclaim our political freedoms".³²

While there is general agreement on the need for political reform, the opposition parties disagree on the best method to achieve their goal. The NNLC has chosen to work within the system, while PUDEMO has remained underground and taken a more confrontational approach. The NNLC "unbanned" itself -- although the official ban remains in force -- and won seven seats in the House of Assembly and one in the Senate in the 2003 elections. Its president, Obed Dlamini, and other members ran as individuals, not party representatives, but try to act

³⁰ Crisis Group interview with diplomats, Mbabane, May 2005.

³¹ Crisis Group telephone interview with PUDEMO representative.

³² Crisis Group telephone interview with Mario Masuku, president of PUDEMO, 11 July 2005.

together. The NNLC also took part in drafting the constitution, even though it acknowledged that the king controlled the process. According to Dlamini: "Our colleagues in PUDEMO view it as a sell-out move, while we consider it to be more pragmatic to be part of the process and continue to pressure for more reforms".³³ The party plans to "up the ante" and push harder now that the constitution has been passed.

A political activist told Crisis Group: "We are going to fight for our legitimacy as political parties, and if need be, we are going to engage in an armed struggle to overthrow the traditional monarchy, this authoritarian structure".³⁴ A Swazi analyst argues, however, that it is naïve for parties to threaten violence as a way to press for reforms and that the word "democracy" has been demonised as antithetical to Swaziland's traditional society.³⁵ While it seems true at present that the Swazi population is unlikely to revolt, continued repression coupled with the ongoing humanitarian crisis could push people past the breaking point.

B. CIVIL SOCIETY

Human rights groups, church organisations and the labour movement have attempted to fill the void created by the ban on parties but they cannot participate actively in the reform process without incurring severe criticism from officials. A recent church demonstration for a more inclusive constitutional drafting process was condemned by legislators.³⁶ Limits on freedom of assembly and association have hindered the growth of civil society, with most activity directed toward issues such as HIV/AIDS education and care for orphans and other vulnerable children.

Nevertheless, the Swazi Federation of Trade Unions (SFTU) has been a major player in the movement for democratisation. It organised stay-aways that forced the government to pay lip service to reform and brought the government's violations of international standards to the attention of the International Labour Organisation (ILO) on several occasions. For example, in 1996 it challenged the government's new Industrial Relations Act, which severely curtailed trade union activities. The ILO found that a number of provisions contravened basic freedoms

of association.³⁷ As a result, the government revised the law, with the assistance of an ILO consultant and passed a new act in 2000, which the SFTU considers a major improvement as it allows organised labour to engage in protest action, including political protest.³⁸ At the June 2005 ILO convention in Geneva, SFTU General Secretary Jan Sithole brought six more cases against the government relating to violation of core labour conventions and fundamental freedoms.³⁹

In response to the rule of law crisis, the SFTU as well as the Swazi Federation of Labour (SFL) organised a strike, during which over 1,000 protesters gathered in Mbabane on 19 and 20 December 2002. Additional stay-away actions were organised in March 2003. The SFTU held a two-day general strike on 25 and 26 January 2005 to protest the new constitution, which it believes further entrenches the monarch's power. Turnout was low, as many potential strikers feared for their jobs. The SFTU and the SFL also applied unsuccessfully to the courts to block parliament from debating the constitution.

Swaziland's trade privileges under U.S. legislation (the African Growth and Opportunity Act, AGOA), the Generalised System of Preferences (GSP), and other agreements are threatened by the country's bad governance and breakdown of rule of law. Cognisant of the threat, the Swaziland Coalition of Concerned Civic Organisations (SCCCO), made up of business and labour interests, teachers, church groups and others, began in 2003 to push for better fiscal and political governance. In particular, SCCCOC called for a constitution with an enforceable bill of rights, separation of powers, an independent electoral commission, the codification of customary law, clarification of the role of the monarchy and establishment of a public prosecutor's office.

The church has also joined the ranks of the pro-reform groups. About 500 church representatives staged a protest on 12 May 2005 against the new constitution. The Council of Swaziland Churches (CSC) delivered a petition to the prime minister stating a "need to engage government peacefully in issues of governance, in particular the constitution-making process".⁴⁰ Subsequent endorsement

³³ Crisis Group interview with NNLC Leader Obed Dlamini, June 2005.

³⁴ Crisis Group interview with opposition activists, May 2005.

³⁵ Crisis Group interview with Muzi Masuku, Open Society Institute Swaziland, June 2005.

³⁶ "MPs condemn 'holy march'", *The Swazi Observer*, 13 May 2005.

³⁷ International Labour Organisation (ILO), "Complaint against the Government of Swaziland presented by the International Confederation of Free Trade Unions (ICFTU)", Case no. 1884, Interim Report, Geneva 14 March 1997.

³⁸ Crisis Group interview with Zodwa Mkhonta, assistant secretary general, Swaziland Federation of Trade Unions, June 2005.

³⁹ "SD has to answer for six cases in Geneva", *Times of Swaziland*, 14 June 2005.

⁴⁰ "Church groups protest in Swaziland", *iAfrica*, 13 May 2005.

of this move by the Vatican was seen as a major victory for the pro-reform movement.⁴¹

The media is characterised by self-censorship and state intimidation. Repressive legislation is used to muzzle the press. For example, the Proscribed Publication Act of 1968 was employed in 2001 to ban the privately-owned weekly *Guardian* and the monthly *Nation*, leaving the country with two dailies -- one owned privately and one owned by the king's investment company -- and two weeklies. There are two government-owned and one independent radio station and one television station that is nominally independent but owned by relatives of the royal family. The king discourages any unfavourable media coverage of himself or his government. The palace instituted a press ban on photographs of Mswati's cars following negative publicity when he bought a luxury vehicle.⁴² The new constitution is seen by many as a missed opportunity to grant greater media freedom and to guarantee private ownership of media outlets.⁴³

On 12 May 2005 government, labour and business representatives launched what they called a new social dialogue to deal with issues such as unemployment, poverty alleviation, fiscal discipline, rule of law and HIV/AIDS.⁴⁴ Optimism, however, would be premature. A similarly broad stakeholder consultation was part of the process for drafting the National Development Strategy in 1999 but in the end the prime minister's office deleted all the recommendations for separation of powers, a bill of rights and application of the rule of law.⁴⁵ If all who call for reform continue to be labelled anti-Swazi or anti-monarchy, there will be little space for open debate.

V. THE HUMAN EMERGENCY

The humanitarian crisis has complex roots, including HIV/AIDS, drought, the migration of business to South Africa after the end of apartheid and declining exports due to the strength of the South African rand (to which the local currency is pegged). Nevertheless, the government's response has been inadequate, uncoordinated, and slow;

⁴¹ Crisis Group interview with Zodwa Mkhonta, assistant secretary general, Swaziland Federation of Trade Unions, June 2005.

⁴² "Photos of king's luxury limos banned", IRIN, 21 February 2005.

⁴³ Crisis group interview with civil society leaders, May 2005.

⁴⁴ "Employers, workers, govt embrace", *The Swazi Observer*, 13 May 2005.

⁴⁵ Crisis Group interview with Zodwa Mkhonta, assistant secretary general, Swaziland Federation of Trade Unions, June 2005.

in many cases its initiatives have been painfully removed from reality and have worsened matters. Equally important, the king and his entourage continue their habits of free spending and corruption.

A. THE CHALLENGE OF HIV/AIDS

The HIV/AIDS pandemic has emerged as the greatest threat to Swaziland's social fabric, in the process derailing efforts to revamp the economy. At about 40 per cent of the total population, Swaziland has the world's highest HIV/AIDS prevalence. In 2003 17,000 died from AIDS and AIDS-related illnesses.⁴⁶ Life expectancy declined from 54.4 years in 1990 to 35.5 in 2004,⁴⁷ leaving 15 per cent of households headed by children. There are about 80,000 AIDS orphans, a number projected to reach 120,000 by 2010.⁴⁸ These children are vulnerable to abuse, have few or no social links, and usually cannot afford to attend school. HIV/AIDS has impacted negatively on government capacity to deliver services, because of the high death rate of its workforce.⁴⁹

The government response came late. The authorities denied the problem until it assumed extreme proportions and then belatedly declared a national emergency in 2004.⁵⁰ The few measures taken before then demonstrated a serious lack of understanding of the gravity of the situation. For example, in 2000, the government passed legislation forbidding school girls to wear short skirts, which it said could lead to promiscuity and spread of the disease. In August 2001, the king forbade men from sleeping with teenage girls for five years, a ban he undermined by keeping his teenage fiancée at the royal residence.⁵¹

The mandate of the recently established National Emergency Response Council on HIV/AIDS (NERCHA) is to coordinate the government's response to the pandemic. This is an unprecedented initiative in the SADC region, the impact of which it is still premature to judge. If the authorities continue to downplay the true situation, however, they risk jeopardising the donor funding needed

⁴⁶ Crisis Group interview with Abdoulaye Balde, World Food Programme Country Director, Mbabane, May 2005.

⁴⁷ Swaziland Vulnerability Assessment Committee, "Study to determine the links between HIV/AIDS, current demographic status and livelihoods in rural Swaziland", Mbabane, April 2004, chapter 3.

⁴⁸ Crisis Group interview, Mbabane, May 2005. See also "Swaziland a country at war with HIV and AIDS", UN World Food Programme, 21 April 2005.

⁴⁹ Crisis Group telephone interview with Muzi Masuku, Open Society Institute Swaziland, June 2005.

⁵⁰ Crisis Group telephone interview with UN official, June 2005.

⁵¹ "Swaziland dissent over no-sex ban", BBC News, 26 October 2001.

for prevention campaigns and treatment programs.⁵² Moreover, health professionals interviewed by Crisis Group tend to agree that "an end to Swaziland's political crisis is a necessary step towards minimising the devastation of HIV/AIDS".⁵³

B. THE AILING ECONOMY

Swaziland's instability is also linked to its ailing economy. Part of the problem is that the South African rand has more than doubled, from just over R12:\$1 in 2002 to an average of R6:\$1 in 2005.⁵⁴ As a result, Swazi textiles are no longer competitive against Chinese products. About 10,000 jobs have been lost since 2004, and 30,000 more are at risk as the textile and sugar industries lose export markets.⁵⁵ At the same time, retrenchments in the South African mining sector have left approximately 150,000 Swazis without work; their return home has exacerbated the unemployment problem. Between 30 and 40 per cent of the population is unemployed, with some 66 per cent living below the poverty line (\$21 a month).⁵⁶

Approximately 330,000 Swazis, nearly a third of the population, need food aid after recent storms and a five-year drought. Estimates are that only 77,500 metric tons of maize will be harvested during the current crop season -- a shortfall of 61,600 metric tons.⁵⁷ Deaths related to HIV/AIDS have reduced the land under cultivation. The tenure system under which most rural land is designated Swazi Nation Land (SNL) and is held in trust by the king discourages investment in new, higher-yield technology.⁵⁸ Without guaranteed tenure rights, farmers cannot secure mortgages for improvements.

The SNL system is a pillar of absolutism, widely used to silence political opposition. Five chiefs, appointed by the king, allocate land, creating a rural population afraid to criticise the monarch.⁵⁹ As long as the government can evict farmers for political reasons, there is little hope of using land more productively to eliminate poverty or food shortages.

C. FAILED GOVERNMENT POLICIES

The existing system of governance, which lacks accountability and transparency, has hampered effective responses to HIV/AIDS, economic decline and food insecurity alike. Repression of political opposition and severe restrictions on civil society have prevented the monitoring of policy formulation, implementation and service delivery. The government has launched several initiatives but has routinely failed to carry them through due to corruption and lack of accountability. After several years of implementing Vision 2022, which King Mswati proclaimed part of the National Development Strategy (NDS) to improve health and education and decrease poverty in Swaziland through "sustainable economic development, social justice and political stability",⁶⁰ most human development indicators continue to show a steady decline.

When he presented the budget to parliament on 9 March 2005, Finance Minister Majozi Sithole said corruption was costing the government R30 million to R40 million (approximately \$4.8 million to \$6.5 million) each month.⁶¹ Although the justice ministry drafted an anti-corruption bill and established the Anti-Corruption Unit in 1998, the body lacks power to investigate and prosecute cases.⁶²

⁵² Recently, Dr. Derek von Wissel, chief of NERCHA, denied that Swaziland has the world's highest prevalence rate, saying a new study was needed to show that it was in fact closer to 16 or 17 per cent. "E10 million for this year's HIV/AIDS study", *Swazi Observer*, 8 June 2005.

⁵³ Crisis Group interview with civil society workers, Mbabane, May 2005.

⁵⁴ Figures denoted in dollars (\$) in this briefing are in U.S. dollars.

⁵⁵ Crisis Group interviews with World Food Programme officials, Mbabane, May 2005.

⁵⁶ Swaziland Millennium Development Goals, "Country Report 2003". There is no conclusive data on the incidence of poverty in Swaziland; the Millennium Development Goals report stresses the need for better statistical data.

⁵⁷ Crisis Group interview with Abdoulaye Balde, World Food Programme Country Director, Mbabane, May 2005.

⁵⁸ Alfred Mandzebele, "A presentation on land issues and land reform in Swaziland", paper presented at the Southern Africa Regional Poverty Network (SARPN) conference on "Land Reform and Poverty Alleviation in Southern Africa", 4 / 5 June 2001.

⁵⁹ The case that sparked the resignation of the judiciary in 2002 and the rule of law crisis involved the eviction of the residents of Kamkhweli and Macetjeni for refusing to transfer their allegiance from their traditional chiefs to Prince Maguga, a brother of the king, who claimed authority over the two areas. Crisis group interview with senior opposition political leaders, May 2005. See also, U.S. Department of State, Bureau of Democracy, Human Rights and Labour, "Swaziland: Country Report on Human Rights Practices for 2004", February 2005.

⁶⁰ Prime Minister Absalom Dlamini, "Policy Speech to the Parliament of Swaziland", September 2004.

⁶¹ "Poverty and AIDS biggest challenges -- finance minister", IRIN, 9 March 2005. In a recent example, the Auditor General revealed that officers of the deputy prime minister's office spent an unauthorised R692,945 (\$115,490) of Regional Development Fund money intended for poverty alleviation on expenses such as travel and lunch. "Over R600,000 for the poor spent on loans, lunch and allowances", *Times of Swaziland*, 28 June 2005.

⁶² "Govt embarks on anti-corruption drive", IRIN, 16 March 2005.

King Mswati III has been widely criticised for his lavish spending in the face of the country's extreme poverty. He celebrated his 37th birthday on 19 April 2005 with a party that cost the public more than \$1.5 million.⁶³ In March 2004, the house speaker, Marwick Khumalo, resigned in protest over the king's purchase of an \$111 million private jet against the advice of a special parliamentary committee. The king attracted international criticism when he bought new BMWs for his ten wives in February 2005. While such waste is not the cause of national poverty, it steals resources from what should be priority areas for government spending. There is need for parliamentary oversight of the monarch's spending as part of a broader effort to establish accountability in government.

VI. INTERNATIONAL ACTORS

With the exception of an emergency meeting in 1996 at which the leaders of South Africa, Mozambique, Botswana, and Zimbabwe pressed King Mswati to instigate a constitutional review, regional leaders have maintained an awkward silence about their authoritarian neighbour's troubles. Similarly, Western institutions and governments have often ignored the situation, in large part because of Swaziland's relatively low geo-political importance.

A. SOUTH AFRICA AND AFRICAN MULTILATERAL INSTITUTIONS

South Africa, the Southern Africa Development Community (SADC), and the African Union (AU) have paid insufficient attention to the linkages between the political deadlock and the humanitarian crisis.

1. South Africa

Swazi human rights groups have looked to South Africa, as the country's strongest neighbour and major trading partner, to press for democratic reforms. Both countries are members of the Southern African Customs Union (SACU), which could be used as a vehicle to encourage progress, as well as other regional bodies. South Africa provides 80 per cent of the kingdom's imported goods and services and absorbs 60 per cent of its exports. Swaziland is dependant on South African road, rail and air links and receives 80 per cent of its electricity and all its petroleum products via its neighbour.

⁶³ "Huge birthday bash for Swazi king", iAfrica, 11 March 2005.

Even though the Mbeki administration has not spoken out about the political crisis in Swaziland, it has allowed critics of the monarchy to operate from South Africa. Exiled PUDEMO members have highlighted human rights abuses. Similarly, the Swaziland Solidarity Network (SSN), which is based in Johannesburg, makes periodic media attacks while attempting to raise the democratisation issue on the regional agenda.

South African civil society organisations have supported the Swazi civic groups. On 12-15 August 2003, the Congress of South African Trade Unions (COSATU) blockaded the border in protest over the holding of the Global Smart Partnership summit in authoritarian Swaziland. On 30 March 2005, nearly 1,000 members of the South African Young Communists League and the SSN protested outside the Swazi embassy in Pretoria, calling for sanctions to isolate King Mswati III and his family, the legalisation of all political parties, an end to arbitrary detentions and torture of political activists, and genuine constitutional transformation.⁶⁴

However, Swaziland's territorial claims complicate South Africa's position as a potential broker of a peaceful transition to democracy. The apartheid regime announced in 1989 that it would transfer the KaNgwane "homeland" to Swaziland but fell from power before it did so.⁶⁵ In 1994, King Mswati appointed his brother, Prince Khuzulwandle, as chairman of the government's Border Adjustment Committee. The territory Swaziland claims is divided into three sections. KaNgwane extends up to 40 kilometres from Swaziland's west to northeast border; Ngavuma, extending from the border with Mozambique to Lake Sibaya, would restore its access to the Indian Ocean; Nsikazi is not contiguous with Swaziland but extends north from the White River in Mpumalanga.⁶⁶

Although South Africa has refused to acknowledge the claim, arguing it would violate the AU policy of respect for borders inherited from colonial times, it signed a bilateral agreement on 20 December 2004 creating the

⁶⁴ "Protesters want Swazi sanctions", iAfrica, 30 March 2005.

⁶⁵ The motive was to reward the king for his secret agreement to cooperate with the apartheid regime, whose security forces carried out raids and assassinations against ANC cadres in Swaziland in the mid-1980s. See, Institute for Security Studies, "Swaziland Fact File," <http://www.iss.org.za/AF/profiles/swaziland>, accessed on 20 June 2005.

⁶⁶ The government appears intent on pursuing the claims against South Africa. In June and July 2005, Prince Khuzulwandle conducted research in the U.S. and UK and returned asserting that he had obtained supporting evidence. "Ngwavuma is part of SD-Khuzulwandle", *Swazi Observer*, 4 July 2005.

Joint Bilateral Commission for Cooperation (JBCC).⁶⁷ While the JBCC will apparently look into the territorial issue, its mandate is broader, suggesting South Africa may wish to use it to nudge Swaziland toward democratic reforms.⁶⁸ It may well find itself hamstrung, however, unless the land dispute can be resolved in some manner.⁶⁹

2. SADC

If SADC is to be regarded seriously as a regional institution, it should take a stronger stand on abuses by member governments. It has a number of tools that could be used to promote democracy and good governance. Article 4 of its constituent treaty stipulates that human rights, democracy and the rule of law are principles guiding its members. Article 5 commits members to "consolidate, defend and maintain democracy, peace, security and stability" in the region. SADC's Organ for Politics, Defence and Security (OPDS) was established to protect against the instability arising from the breakdown of law and order, to promote the development of democratic institutions and practices in the region and to encourage the observance of universal human rights.⁷⁰ It has jurisdiction over the resolution of intra-state conflict which "threatens peace and security in the region", as well as inter-state conflicts over territorial boundaries.

SADC heads of state, including King Mswati, adopted principles and guidelines governing democratic elections in August 2004. Article 2 calls for, inter alia, freedom of association, political tolerance, independence of the judiciary, impartiality of electoral institutions, and voter

education, none of which obtains in Swaziland. Article 4 posits constitutional and legal guarantees of the rights of citizens as a key guideline for assessing elections.⁷¹

However, SADC has prioritised solidarity with King Mswati over seeking a solution to the crisis in his country. For instance, on a visit to Swaziland on 1 May 2005, Mozambican President Armando Guebuza pledged to help the king fight "bad publicity" over his extravagant lifestyle.⁷² The Eighteenth Plenary Session of the SADC Parliamentary Forum was held in Swaziland from 27 May to 3 June 2005. While that body has been the most vocal branch of SADC in condemning fraudulent practices in regional elections, the meeting had nothing but compliments for Swaziland's constitutional drafting process.⁷³

3. African Union

The protocol establishing the AU's Peace and Security Council (PSC) sets up the body as a standing, decision-making organ for the prevention, management and resolution of conflicts. Its objectives include promotion of democratic practices, good governance and rule of law and protection of human rights and fundamental freedoms, as part of conflict prevention.⁷⁴ The PSC is empowered to use good offices, mediation, and a number of other peacemaking tools.⁷⁵ While the AU tends to defer to regional organisations on matters of intra-state peace and security, the mandate of the PSC equips it to intervene. It could arbitrate the dispute between South Africa and Swaziland and press Swaziland to respect the spirit and letter of the principles in the PSC Protocol.

The African Commission on Human and Peoples' Rights (ACHPR), which requires member states to submit regular reports on their compliance to the 1986 African [Banjul] Charter on Human and Peoples' Rights,⁷⁶ should insist that Swaziland file its tardy country reports with no further delay.

In a welcome further development, the ACHPR announced in July 2005 that it had given Swaziland six months to conform to the African Charter, and recommended it draw

⁶⁷ "Summit with South Africa indefinitely postponed", IRIN, 15 March 2005.

⁶⁸ JBCC objectives include the promotion of economic and social development, multilateral cooperation, democracy, human rights and good governance in the two countries; the promotion of democratic, credible and effective leadership, development of a strong civil society and respect for universal human rights and the rule of law within the two countries; and the maintenance of security and stability. "Agreement between the Government of the Republic of South Africa and the Government of the Kingdom of Swaziland on the Establishment of a Joint Bilateral Commission for Cooperation", 20 December 2004.

⁶⁹ Crisis Group interview with South African Department of Foreign Affairs official, 14 June 2005. In March 2005, President Mbeki invited King Mswati for their first formal talks but the meeting has been indefinitely postponed. South African officials deny Mbeki issued the invitation so he could press for democratisation. Foreign Affairs Minister Dlamini-Zuma has said the agenda would be the general one contained in the JBCC. *Ibid.*

⁷⁰ See SADC, "Protocol on Politics, Defence and Security Cooperation", Blantyre, Malawi, 14 August 2001, especially Articles 2 (1), 2 (2) a, e and g, 11 (2) a (i) and (iii), 11(2) b (ii) and (iv).

⁷¹ See SADC, "Principles and Guidelines Governing Democratic Elections", adopted at SADC summit, Mauritius, August 2004.

⁷² "Swazi king offered PR", News24, 2 May 2005.

⁷³ SADC Parliamentary Forum, final communiqué, Eighteenth Plenary Session, Ezulwini, Swaziland, 27 May- 3 June 2005.

⁷⁴ See African Union, "Protocol Relating to the Establishment of the Peace and Security Council of the African Union", Durban, South Africa, 9 July 2002, Article 3(f).

⁷⁵ *Ibid.* Article 6.

⁷⁶ African [Banjul] Charter on Human and Peoples' Rights, adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force Oct. 21, 1986.

up a new constitution with input from civil society. The commission's report came after three years of examining a complaint brought by the Swaziland-based organisation Lawyers for Human Rights, which argued that the 1973 proclamation by King Sobhuza II violated basic democratic rights.⁷⁷ Given that the June 2005 constitution does not conform to the requirements of the Africa Charter, the ACHPR should denounce the June constitution and demand a more inclusive constitution making process involving civil society and political parties. The June Constitution is a recipe for a steady slide to violence and chaos.

4. NEPAD

The African Peer Review Mechanism (APRM) is a voluntary self-monitoring mechanism of the New Partnership for Africa's Development (NEPAD), whose goal is to foster policies that lead to political stability, high economic growth, sustainable development and economic integration, on the basis of democracy and good governance. Swaziland should be encouraged to accept the APRM -- a step that could spur much-needed investment and economic growth.

B. OTHER INTERNATIONAL ACTORS

The Commonwealth, the European Union (EU), the G8 and powerful governments such as the U.S. have made efforts to assist Swaziland to return to constitutional order by providing resources for the recent constitution drafting exercise as well as supporting programs to deal with the humanitarian crisis. But they have tended to acquiesce to the royal view that "Rome was not built in a day" in accepting procrastination on democratisation.

1. The Commonwealth

Swaziland has been a member since 1968. In October 2003 the Commonwealth sent a team to observe voter registration before the parliamentary elections and another team to observe the elections themselves. The final report emphasised that "no elections can be credible when they are for a Parliament which does not have power and when political parties are banned".⁷⁸ It recommended that the ban on parties be lifted, the restrictions on campaigning be eased, civic and voter education be undertaken by the government, civil society and parties, and that an independent and sufficiently staffed electoral body

oversee elections. Commonwealth good offices were used to broker a 2004 agreement that defused the rule of law crisis between the government and the judiciary.⁷⁹

Commonwealth representatives told Crisis Group the goal is to "influence the reform process" and move Swaziland toward a constitutional monarchy upholding democratic practices.⁸⁰ The Commonwealth was instrumental in the government's decision in 2002 to allow professional and public input into the constitutional review process and seconded two experts who assisted with drafting of the June 2005 constitution. A representative told Crisis Group the Commonwealth views that document as a first step, not a final product, and that it will work with the government toward greater reforms.⁸¹ Nevertheless, it appears prepared to give the monarch considerable leeway on how fast he moves toward a constitutional order that contains genuine democratic reforms in line with its own Harare Declaration of 1991.⁸²

2. European Union

The EU has warned that Swaziland's relative peace and stability could be threatened by the muzzling of political liberties.⁸³ During the rule of law crisis, the EU invoked Article 8 of the Cotonou Agreement, which governs its economic relations with the African, Caribbean and Pacific (ACP) countries, to initiate political dialogue.⁸⁴ An EU representative claimed to Crisis Group that resolution of that crisis and inclusion of a bill of rights in the new constitution were at least partly the result of that bilateral dialogue.⁸⁵ EU diplomats affirm that the organisation is monitoring the situation to ensure that the rule of law and fundamental freedoms and human rights are upheld.⁸⁶ The EU does have leverage to use the Cotonou agreement and trade preferences to further democratic reforms. The European Development Fund

⁷⁷ "AU body slams Swaziland on reforms", SABC News, 3 July 2005.

⁷⁸ Commonwealth Secretariat, "Report of the Commonwealth Expert Team on the Swaziland National Elections", 18 October 2003, released 5 November 2003, p. 9.

⁷⁹ Crisis Group interview with Professor Ade Adefuye, special adviser in the political affairs division, Commonwealth Secretariat, June 2005.

⁸⁰ Ibid.

⁸¹ Crisis Group telephone interview, June 2005.

⁸² The Harare Declaration affirms the rule of law and the right of individuals to participate freely in a democratic political process to shape the society in which they live.

⁸³ See "Swaziland-European Community Country Strategy Paper and National Indicative Program" for the period 2001-2007.

⁸⁴ The EU is Swaziland's largest donor and a significant trading partner. Under the Cotonou Agreement, most Swaziland exports to the EU are exempt from tariffs.

⁸⁵ Crisis Group interview with European Commission official, June 2005.

⁸⁶ Crisis Group interview with Western diplomat, Mbabane, 2005.

(EDF) package for Swaziland, approved in 2002 and covering six years, allocates €43 million in development assistance, the bulk for education. Trade may be more important than aid in terms of leverage, however, since Swazi exports to Europe in 2002 totalled €129 million, approximately 15 per cent of GDP.⁸⁷

3. The United States

The U.S. strategy for helping Swaziland avoid slipping into violent conflict and for promoting democracy relies on economic relations. Since 2002, Swaziland has benefited from the African Growth and Opportunities Act (AGOA), which provides trade privileges to less-developed countries. A U.S. official told Crisis Group: "We are using more of the carrot than the stick, and we have set benchmarks, using AGOA for reforms".⁸⁸ The benchmarks, in general terms, include rule of law, legalisation of political parties, protection of the rights of women and children and separation of powers. A U.S. diplomat acknowledged progress on reforms is slow but said Washington continues to press behind the scenes.⁸⁹

During the rule of law crisis, the then Secretary of State Colin Powell warned the prime minister that preferential trade status was contingent upon the government's commitment to reform. The U.S. temporarily suspended Swaziland's trade privileges in 2000 after the government passed the Industrial Relations Act, which severely curtailed workers' rights. Since 2004 the U.S. has pressed the government to improve women's legal status, which on paper at least has been done in the new constitution.⁹⁰ The U.S. should continue to use AGOA to press for greater, and faster, political reforms.

4. The United Kingdom

The former colonial power participates in Commonwealth and EU efforts to encourage reform but in high-profile bilateral matters it has often appeared to close its eyes to social ills and misrule. The Swaziland visit of the British heir to the throne, Prince Charles, in 1997 and the reception given to King Mswati during his visits to the UK have been seen as encouraging Swazi monarchists in their belief their conservative attitude toward reform is acceptable.⁹¹

5. United Nations

The UN delivers development and humanitarian assistance, particularly through programs of the World Food Programme and UNICEF dealing with hunger, poverty and HIV/AIDS.⁹² It has not taken a strong position on the deteriorating political situation, although on several occasions the Special Rapporteur on the Independence of Judges and Lawyers of the Commission on Human Rights has denounced the government's attacks on the judiciary and more generally on the rule of law.⁹³ The UN should stress accountability and transparency in all its humanitarian and development support to Swaziland.

VII. CONCLUSION

The failure of the revised constitution to provide for a path to democracy and a return to constitutional monarchy -- of the sort Swaziland enjoyed from independence until 1973 -- is likely to increase discontent and heighten the risk that instability could eventually spill into the wider southern African region.

Multi-party democracy and civil and political rights need to be enshrined in the law, and the powers of the monarchy need to be subjected to that law. If it is to have democratic legitimacy, a majority of representatives in parliament should be elected directly by the people and not appointed by the king. The parliament needs autonomy and genuine legislative power, including oversight of all government and royal spending. If the government is to be accountable to the people, the prime minister and members of the cabinet should be elected officials, not royal appointees. Independence of the judiciary requires that appointments of judges be in the hands of an independent, impartial body, not one controlled by the king. Domestic reformers, such as the trade unions and other civil society organisations, should work with the government through available channels, including the newly established social dialogue, to press for a constitutional monarchy with a clearly defined balance of powers and guaranteed bill of rights.

⁸⁷ "Swaziland-European Community Report Strategy Paper and National Indicative Program" for the period 2001-2007.

⁸⁸ Crisis Group interview, May 2005.

⁸⁹ Crisis Group interview with U.S. diplomat, Mbabane, 26 May 2005.

⁹⁰ Crisis group interview, May 2005.

⁹¹ Crisis Group interview with civil society leader, 20 June 2005; "Spice Prince on African Tour," BBC News, 29 October 1997.

⁹² Crisis Group interview with UN Development Programme (UNDP) official, Mbabane, 26 May 2005.

⁹³ Ibid. Also United Nations press release, "UN expert expresses grave concern over recent developments in Swaziland", 4 December 2002; United Nations press release, "Swaziland's judicial and legal system nearing crisis, urgent reforms required, says UN rights expert", 15 April 2003; United Nations press release, "UN rights expert expresses concern over threats to the independence of lawyers in Swaziland", 27 June 2003.

The king is chief of the armed forces, as well as head of the police and the prison services. The loyalty of the security forces to him is ensured through the recruitment process, which begins with the selection by local chiefs of loyal subjects to be sent for training. That recruitment process should be depoliticised as a first step towards building a merit-based, professional force which serves the interests of the entire nation.

At the same time, the international community needs to press the king harder to allow reforms while they can still be achieved peacefully. Until Swaziland genuinely implements the regional human rights, governance and democratic instruments to which it is a signatory, it will represent a growing risk to regional and international peace.

The SADC and the AU should press Swaziland to live up to the letter and spirit of those documents and offer mediation or other services to help resolve the border dispute with South Africa. The U.S. and the EU are well placed to use trade leverage in pressing for democratic change. They should emphasise that only through political reform will Swaziland be able to emerge from its humanitarian crisis, which is due in no small part to unaccountable and corrupt government practices. They should consider cutting off direct support to the government until it shows willingness to end all vestiges of the 1973 state of emergency and restore fundamental rights. While general sanctions would cripple the already weak economy and exacerbate poverty and hunger, targeted sanctions against the ruling elite should be considered if it proves recalcitrant.

Commenting on the revised constitution, King Mswati's brother and minister of justice and constitutional affairs said, "this document will be a torch that will light up the path to transform Swaziland to a better country".⁹⁴ However, without providing further democratic freedoms, legal means for opposition or clear steps toward resolving the humanitarian crisis, it is unlikely to improve the situation meaningfully. Swaziland needs to move much faster to implement a constitutional monarchy that harmonises its history, culture and traditions with the democratic principles embraced by its neighbours if its anachronistic system is not to become a threat to itself and those neighbours.

Pretoria/Brussels, 14 July 2005

⁹⁴ "Swaziland cements royal power with constitution", Reuters, 14 June 2005.

APPENDIX

MAP OF SWAZILAND





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