

**REPORT**

**OF**

**THE PROMOTIONAL MISSION**

**TO THE**

**KINGDOM OF SWAZILAND**

21 – 25 August, 2006

## INTRODUCTION

1. The African Charter on Human and Peoples' Rights (the African Charter) provides for the establishment of the African Commission on Human and Peoples' Rights (the African Commission or ACHPR). The African Charter came into force on 21 October 1986 upon ratification by the requisite number of States Parties. The first members of the African Commission were elected at the 23<sup>rd</sup> OAU Assembly of Heads of State and Government in July 1987 and the inaugural session of the African Commission took place in November 1987.
2. Under the African Charter, the African Commission is mandated to promote the observance of the African Charter, monitor its implementation, ensure the protection of the rights and freedoms set out in the Charter, interpret the African Charter and advise on its implementation.
3. Article 45 of the Charter for example, implores the African Commission to promote human and peoples' rights through among other things, research, studies and undertaking visits to States Parties to gather information on human and peoples' rights and formulating rules and regulations that could be used by States Parties in their policies and legislation.
4. The promotion mission to the Kingdom of Swaziland (Swaziland) undertaken from 21 – 25 August 2006 was thus within the context of the mandate conferred the African Commission under Article 45 of the African Charter.
5. The Kingdom of Swaziland is a State Party to the African Charter on Human and Peoples Rights.

### **A brief history and political background**

6. The Kingdom of Swaziland gained independence on 6 September 1968 after 65 years as a British protectorate. On 12 April 1973, King Sobhuza II issued *The King's Proclamation No. 12 of 1973* (Proclamation), whereby he declared that he had assumed supreme power in the Kingdom of Swaziland and that all legislative, executive and judicial power vested in him.<sup>1</sup>
7. The Proclamation became the supreme law of Swaziland. Amongst other things, the King decreed that the 1968 Constitution was abolished. The reasons for repealing the 1968 Constitution were provided in paragraph 2 of the Proclamation as follows: 1) that the Constitution had failed to

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<sup>1</sup> [http://en.wikipedia.org/wiki/History\\_of\\_Swaziland](http://en.wikipedia.org/wiki/History_of_Swaziland) . Site visited on 28 August 2006.

provide the machinery for good government and for the maintenance of peace and order; 2) that the Constitution is 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; 3) that the Constitution has permitted the importation into our country of highly desirable political practices alien to, and incompatible with the way of life in our society and designed to disrupt and destroy our own peaceful and constructive and essentially democratic methods of political activity; increasingly this element engenders hostility, bitterness and unrest in our peaceful society; 4) that there is no constitutional way of effecting the necessary amendments to the Constitution; the method prescribed by the Constitution itself is wholly impracticable and will bring about that disorder which any Constitution is meant to inhibit; and 5) that the King and all his subjects desire at long last, after a long constitutional struggle, to achieve full freedom and independence under a Constitution created by themselves for themselves in complete liberty without outside pressures; as a nation they desire to march forward progressively under their own Constitution guaranteeing peace, order good government and the happiness and welfare of all the Swazi people.<sup>2</sup>

8. This meant the banning of political activities including political parties. All governmental powers – the judiciary, legislature and executive powers were thus exercised by the King. Swaziland then designed a political system called the *Tinkhundla*, with the King as an absolute monarchy.

9. In January 1979, a new parliament was convened, chosen partly through indirect elections and partly through direct appointment by the king. King Sobhuza II died in August 1982, and Queen Regent Dzeliwe assumed the duties of the head of state. In 1984, an internal dispute led to the replacement of the prime minister and eventual replacement of Dzeliwe by a new Queen Regent Ntombi. Ntombi's only child, Prince Makhosetive, was named heir to the Swazi throne.

10. Real power at this time was concentrated in the *Liqoqo*, a supreme traditional advisory body that claimed to give binding advice to the Queen Regent. In October 1985, Queen Regent Ntombi demonstrated her power by dismissing the leading figures of the *Liqoqo*. Prince Makhosetive returned from school in England to ascend to the throne and help end the continuing internal disputes. He was enthroned as Mswati III on April 25, 1986.

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<sup>2</sup> See The King's Proclamation No. 12 of 1973 (Proclamation).

11. In 1988 and 1989, an underground political party, the People's United Democratic Movement (PUDEMO) criticized the king and his government, calling for 'democratic reforms'. In response to this political threat and to growing popular calls for greater accountability within government, the king and the prime minister initiated a national debate on the constitutional and political future of Swaziland. This debate produced a handful of political reforms, approved by the king, including direct and indirect voting, in the 1993 national elections.

### **Geography**

12. Swaziland is a land-locked country with a surface area of about 17,363 sq. km, almost surrounded by the Republic of South Africa, save for a small strip border with Mozambique. The Population of Swaziland is about one million with a young population between 0 - 15 years thus forming 47% of the population. The adult literacy rates are 80.8% for males and 78.4% for females.

### **The people**

13. The majority of the population is ethnic Swazi, mixed with a small number of Zulus and non-Africans. Traditionally Swazis have been subsistence farmers and herders, but most now work in the growing urban formal economy and in government. Some Swazis work in South Africa. Christianity in Swaziland is sometimes mixed with traditional beliefs and practices. Most Swazis ascribe a special spiritual role to the monarch. The country's official languages are Siswati (a Nguni language related to Zulu) and English. Government and commercial business is conducted mainly in English.

### **Government and political structure**

14. According to Swazi law and custom, the monarch holds supreme executive, legislative, and judicial powers. In general practice, however, the monarch's power is delegated through a dualistic system: modern, statutory bodies, like the parliament, cabinet, and less formal traditional government structures.

15. At present, parliament consists of a 65-seat House of Assembly (55 members are elected through popular vote; 10 are appointed by the king) and 30-seat Senate (10 members are appointed by the House of Assembly, and 20 are appointed by the king). The king must approve

legislation passed by parliament before it becomes law. The prime minister, who is head of government, and the cabinet, which is recommended by the prime minister and approved by the king, exercises executive authority.

16. For local administration Swaziland is divided into four regions each with an administrator appointed by the king. Parallel to the government structure is the traditional system consisting of the king and his advisers, nine municipal governments, traditional courts, and 55 *Tinkhundla* (subregional districts in which traditional chiefs are grouped).
  
17. The King appoints the Prime Minister and in consultation with the Prime Minister also appoints cabinet, senior civil servants and heads of government offices. There are 65 members of the House of Assembly. The citizens elect 55 members of the House of Assembly and the King appoints the other 10 members. General elections (legislative and municipal) were last held in 2003 and about 70% of the population voted. Candidates are not elected on party basis but on individual basis. The next elections will be in 2008.

### **Economy**

18. Swaziland ranks among the more prosperous countries in Africa. Most of the high-level economic activity is in the hands of non-Africans, but ethnic Swazis are becoming more active. Although close to 72% of Swazis live in rural areas, nearly every homestead has a wage earner. The past few years have seen wavering economic growth which has been exacerbated by the economy's inability to create new jobs at the same rate that new job seekers enter the market. This is due largely in part to the country's population growth rate that strains the natural heritage and the country's ability to provide adequate social services, such as health care and education. Overgrazing, soil depletion, drought, and floods are persistent problems.
  
19. Over 60% of Swazi territory is held by the Crown in trust of the Swazi nation. The balance is privately owned, much of it by foreigners. The question of land use and ownership remains a very sensitive one. For Swazis living on rural homesteads, the principal occupation is either subsistence farming or livestock herding. Culturally, cattle are important

symbols of wealth and status, but they are being used increasingly for milk, meat, and profit.

20. Swaziland enjoys well-developed road links with South Africa. It also has railroads running east to west and north to south. The older east-west link, called the *Goba line*, makes it possible to export bulk goods from Swaziland through the Port of Maputo in Mozambique. Until recently, most of Swaziland's imports were shipped through this port. Conflict in Mozambique in the 1980s diverted many Swazi exports to ports in South Africa. A north-south rail link, completed in 1986, provides a connection between the Eastern Transvaal rail network and the South African ports of Richard's Bay and Durban.
  
21. The sugar industry, based solely on irrigated cane, is Swaziland's leading export earner and private-sector employer. Soft drinks concentrate is the country's largest export earner, followed by wood pulp and lumber from cultivated pine forests. Pineapple, citrus fruit, and cotton are other important agricultural exports.
  
22. Swaziland mines asbestos (although not in as large a volume as in previous years, as health concerns internationally led to a decline in demand), coal, and diamonds for export. There also is a quarry industry for domestic consumption. Mining contributes about 1.8% of Swaziland's GDP each year but has been declining in importance in recent years.<sup>3</sup>
  
23. Recently, a number of industrial firms have located at the industrial estate at Matsapha near Manzini. In addition to processed agricultural and forestry products, the fast-growing industrial sector at Matsapha also produces garments, textiles, and a variety of light manufactures. The Swaziland Industrial Development Company (SIDC) and the Swaziland Investment Promotion Authority (SIPA) have assisted in bringing many of these industries to the country. Government programs encourage Swazi entrepreneurs to run small and medium-sized firms. Tourism also is important, attracting more than 424,000 visitors annually (mostly from Europe and South Africa).

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<sup>3</sup> U.S. Department of State Background Note – Swaziland, May 2006.

## **The legal system**

24. The legal system is based on a dual system, one based on western law and the other on Swazi law and custom. Usually when an offence is committed, the public prosecutor would decide which court should hear a case but in practice the police usually make that decision.
25. The judiciary consists of the Court of Appeal, the High Court and the Magistrates' Courts. Local judges serve on these courts indefinitely on good behaviour. Legal representation is provided *pro deo* only in capital cases in the High Court. Accused persons are entitled to legal representation in magistrates' courts at their own expense. Procedures of appeals to the Court of Appeal are well defined.
26. The Swazi customary courts apply Swazi law and custom and only try cases where parties are ethnic Swazis. There is no legal representation in these courts and defendants have the right to speak on their own behalf. Accused have the right to transfer their cases from the Swazi customary courts to the Magistrate courts. However, sentences are subject to review and to appeal to the High Court and Court of Appeal.

## **Constitutional reform**

27. In 1996 the King Sobhuza III appointed a 30-member Constitutional Review Commission (CRC) to review the 1968 Constitution, carry out civic education and collect views from the citizens. NGO's, church groups and labour unions were all involved in civic education for the masses. The constitution was finally enacted by the King in 2006.

## **The Promotion Mission**

28. The African Commission requested for authorisation to undertake a promotion mission to the Kingdom of Swaziland in 2004. This request was renewed in 2005. However, authorisation for the mission was only received in the middle of 2006 and the Commission undertook the mission from 21 – 25 August 2006.
29. The mission was undertaken by Commissioner Pansy Tlakula, the member of the African Commission responsible for the promotion of human rights in the Kingdom of Swaziland and the African Commission's Special Rapporteur on Freedom of Expression in Africa. She was assisted by Mr. Robert Eno, Legal Officer at the Secretariat of the African Commission.

### **Terms of reference of the mission**

30. The terms of reference of the mission included: -:

- To promote the African Charter, exchange views and information on the import and implementation of the Africa Charter;
- To raise awareness of and visibility of the African Commission and its functions especially among the relevant government departments and institutions and within civil society;
- To discuss the implementation of the Commission's decision on the Communication brought against the Kingdom of Swaziland and the process of ratification of the Protocol to the African Charter on the Establishment of the African Court on Human and Peoples' Rights, the Protocol on the Rights of Women in Africa and the African Charter on the Rights and Welfare of the Child and the submission of the State Reports of Swaziland in conformity with Article 62 of the African Charter;
- To seek clarification and follow up on reports and information before the African Commission about the human rights situation in the country; and
- To encourage a closer relationship between the African Commission and the Kingdom of Swaziland.

### **Meetings held during the mission**

31. During the mission, the delegation headed by Commissioner Pansy Tlakula, held meetings with a cross-section of the major stakeholders responsible for the promotion and protection of human rights in the country. This included government authorities and institutions and civil society organizations, including NGOs and political structures. The following section describes the meetings held during the mission.

#### **Meeting with Minister of Education – 21 August 2006**

32. The delegation of the African Commission met with the Minister of Education Hon. Ms. C.T. Simelane, MP. After introducing the delegation, Commissioner Tlakula explained the purpose of the mission, the mandate of the African Commission as well as the challenges facing the Commission.

33. On her part, the Minister indicated that as a country, a lot has been done and a lot is being done in the promotion of human rights generally and in promoting education in particular.



34. She noted that there was parity between boys and girls in enrolment especially at the primary school level, adding that as they progress to the Secondary school level, the girl child begins to drop out of school due to several factors, amongst them, the economic hardship of the parents, pregnancy and some cultural beliefs. She noted however that at the tertiary level, the girls are more than the boys.
35. The Minister noted that this notwithstanding, the country faces a lot of challenges in the educational sector, including: lack of empowerment and assertiveness on the part of girls, fewer girls enrolling in the science and vocational fields, Curricular materials tended to favour boys, teenage pregnancy (parents object to having a pregnant girl in school), the challenge of HIV/AIDS which has resulted in some girl children becoming heads of households because of what she refers to as the feminization of poverty which affects girls more than boys.
36. According to the Minister, the government has taken measures to deal with some of the challenges. These measures include trying to make curricular materials gender sensitive/neutral), teenage girls who get pregnant in one school can now continue their education in a different school after delivery. Because of the stigma usually attached to teenage pregnancy, the girls would not like to go back to the same school. The government is also trying to remove the myth that there are certain subjects for girls and others for boys. Both boys and girls are therefore encouraged to study all the subjects. This has resulted in more girls in the tertiary sector.
37. Other measures include the establishment of a hotline at the ministry to report sexual abuses of girl children in schools. In this regard, the ministry works closely with the police. Through the hotline, cases of sexual abuses are reported to the police. There has been summary dismissals of some teachers due to sexual abuses. In one instance however, a teacher who was alleged to have raped 13 children was suspended by the school. The dismissal was challenged in court on the grounds that the procedure used in dismissing him was flawed. The teacher was reinstated by the court and sent to the same school.
38. There is also the school feeding scheme aimed at retaining children in school. The constitution provides that education shall be free from 2008. At the moment, the government provides certain school needs such as books, pencils, free of charge. The government spends a third of its national budget, that is, 33% on education. There is also the provision of psychological support for children who are affected by HIV/AIDS.
39. The Minister also indicated that the Curriculum Center was working, with the support of the United Nations Education, Scientific and Cultural

- Organisation (UNESCO), on the introduction of human rights in school curricula. The government has also established a Directorate for Adult and Informal Education. Through this Directorate, the ministry provides literacy and vocational skills to empower the adults.
40. Adult and non-formal education programmes have also been encouraged. This programme also referred to as SEBENDA is conducted by the National Institute for Adult Education. Rural educational programmes have also been established in various parts of the country providing skills to rural adults. Literacy rate stood at 78% at last count.
  41. Traditional practices that hindered children education were also being dealt with. According to the Minister, parents are beginning to become aware of the importance of education. Forced marriages which used to be a problem in the past is being discouraged. The government has introduced feeding spots for cattle and parents who used to stop their boy children from going to school in order to herd cattle can now send their children to school.
  42. Education, both general and vocational is also extended to detainees in prisons, including juvenile offenders and in other detention centers such as refugees camps. Farming, leather work, sewing are thus taught in the Mawelawela Women Prison and three physically disabled vocational centers in Mbabane, Malkans, and Chiselwene.
  43. The Minister also indicated that the government also provides education to refugees, noting that there were about 47 refugees families left in the country. The Malinza Refugee Camp houses Mozambican refugees who have refused to be repatriated. The government continues to assist them and provides them with trucks twice a week to help them take their produce to the market.
  44. The Departments of Education and Home Affairs are responsible for the education of people with physical disabilities and teach vocational skills at three (3) vocational centres. There are also schools for the deaf, visually impaired and mentally challenged people.

### **Meeting with the Law Society of Swaziland – 21 August 2006**

45. The Law Society of Swaziland was established by the Legal Practitioner's Act - 1964. It is aimed at ensuring proper administration of justice. The Society has a Council made up of eight (8) members, with one woman, elected annually by the General Assembly of Lawyers. The delegation met with the President, Mr. Hlope Shilubane, the vice-President, Mr. Mkhawanazi and a member of the Council of the Law Society.

## Challenges facing the Council

46. The Society is of the opinion that there is need for change, considering that the Society was established in 1964 and many things have changed since then. To this end, the Society has set up a Committee to look at amending the Act to suit today's challenges. According to the President of the Council, Mr. Shilubane, the Society ought to be playing an important role in the promotion and protection of human rights. He added that the constitution only came into force in 2006 and the Society believes that the constitution can be an important instrument to promote and protect human rights in the country. He noted further that the constitution may not be perfect, but is a good start since it seeks to uphold fundamental norms of human rights.
47. The President also noted that, the Society had intervened in many constitutional cases including the case regarding the *assessors of the Industrial Relations Court*. In that case, the court ruled in favour of the assessors. The Society also challenged the constitutionality of the non-bailable offences order which suspended bail for certain offences. In that case, the Court of Appeal found the order to be unconstitutional.
48. The Society indicated that it is worried about government's lack of respect for the judiciary noting that when the court found the non-bailable offences order unconstitutional, the government was unhappy and criticized the judgment. In another case involving the eviction of Chiefs in the Eastern part of the country, the Court of Appeal decided against the government but the latter refused to honour the Judgment.
49. In 2002, the judges of the Court of Appeal decided to resign *en masse* and the government claimed they had been bribed and that they were not conversant with the Swazi culture. The judges had vowed they would not return unless the law on bail was repealed. The present Minister of Justice, struck a compromise to give the judges limited discretion that they cannot grant bail of less than R15, 000 for certain offences.
50. The President of the Society indicated that the society is still wanting on the promotion and protection of human rights and would need assistance, direction and support especially following the adoption of the constitution. He added that the adoption of a constitution provides a basis to deal with human rights.
51. Asked whether the Society visits prisons and other detention centres, the Chairperson said the Society had requested to visit prisons but permission was refused by the Commissioner of Prisons. Regarding the Society's contribution to the drafting of the constitution, he noted that the society did

- not make a submission because submissions were not accepted from groups, but only from individuals.
52. Commissioner Tlakula noted that with the coming into force of the constitution – there will be much constitutional litigation and wanted to know whether the members of the Society were prepared for the new challenge. The Chairperson indicated that the Society was preparing a proposal on law reforms and continuing legal education, but doubted whether members were ready for constitutional litigation at the moment. He said the main challenge was lack of resources, adding that the Society was working with the Open Society for Southern Africa (OSISA) to enhance the capacity of the Society. He said he wondered whether even the courts were sufficiently equipped to deal with constitutional litigation.
53. The Society complained about the challenge posed by the hiring of South African lawyers who, according to the Society, was undermining the work of lawyers in Swaziland. The Society also blamed the appointing authorities on the manner in which judges in the country were appointed. It noted that the Acting Chief Justice was a former magistrate from South Africa and was born in South Africa.
54. Commissioner Tlakula also wanted to know whether the Society will nominate one of its members to serve on the Human Rights Commission (HRC) provided for under the Constitution. The Chairperson of the Society indicated that his organization was prepared to serve on the HRC as there were senior attorneys in the Society who can be nominated. He added that the Society had already nominated candidates for the Judicial Service Commission (JSC).
55. On the international human rights obligations of the country, the Society noted that most treaties ratified by the government are not made public and the treaties are never domesticated thus it is very difficult for the Society to monitor the countries compliance with its international human rights obligations.
56. On the independence of the judiciary, the Society indicated that judges were appointed by the King in consultation with the Minister of Justice, but with the coming into force of the Constitution, the process will be ~~is~~ more transparent and the Judicial Service Commission, will have a pivotal role. The JSC will screen the candidates and recommend the names to the King for appointment.

### **Meeting with the Ministry of Justice - 21 August 2006**

57. The delegation met with the Minister of Justice, the Hon. Prince David Dlamini together with the Permanent Secretary of the Ministry.

Commissioner Tlakula introduced the delegation and explained the purpose of the mission. She described the adoption of the Charter and the establishment of the Commission, with emphasis on the mandate and activities of the latter.

58. Commissioner Tlakula raised among other things, the non-ratification of the Protocols on the Rights of Women in Africa and on the establishment of an African Court on Human and Peoples' Rights, the non-submission on Swaziland's periodic reports in accordance with Article 62 of the African Charter, the non-participation of Swaziland in the sessions of the Commission and Swaziland's implementation of the Commission's recommendations on communication *251/2003 – Lawyers for Human Rights v The Kingdom of Swaziland*.
59. In his response, the Minister welcomed the delegation and congratulated the election of Commissioner Tlakula to the African Commission. He said even though the country has not been taking part in the deliberations of the Commission, the country was well aware of the work of the Commission. He said the country would henceforth be represented at the sessions of the African Commission.
60. On the country's implementation of the Commission's recommendations on *communication 251/2003*, the Minister indicated that the country had never been officially informed of the decision, adding that the matter was brought to the attention of the country 'accidentally' through a friend of the Minister. He said neither the Minister of Foreign Affairs nor the Attorney General was aware of the decision of the Commission. He added that when he was informed of the matter, he brought it to the attention of cabinet, and the latter was equally very surprised. The Minister wanted to know what the country should do since the time given to the State to respond had expired.
61. Commissioner Tlakula indicated that the country can still submit its response to the Commission on the measures it has taken to implement the recommendations.
62. On the ratification of the protocols, the Minister indicated that there was no clearly set out procedure to ratify some of the documents but with the adoption of the constitution, there is a well spelled out procedure on the ratification of international treaties, adding that ratification will thus be done as soon as possible.
63. On the submission of periodic reports, the Minister apologized for the non-submission of Swaziland's reports and indicated that with the adoption of the constitution the country will comply with its international obligations,

including attending the sessions of the Commission and domesticating all international human rights instruments.

64. On the independence of the judiciary, the Minister noted that the judiciary is independent, adding that the JSC is made up of six members and they recommend to the King the judges and magistrates to be appointed to the bench. He said nobody has ever interfered with the judgments handed down by the courts adding that with the present constitution, the judiciary will have a budget set aside which they can manage independently of the Ministry.
65. He added that there was a programme to train sitting and aspirant judges in July 2005. In November 2005 when the JSC was sitting, two judges were selected from amongst the ten judges who sat for the training. This was the first phase of the training and the second phase was in the pipeline. He added that the government was in the process of replacing the judges of the Court of Appeal due to age. The oldest is 87 and the youngest is 75. The new constitution provides that the age limit is 75.
66. Commissioner Tlakula raised the question about South African lawyers coming to 'undermine the legal practice' in Swaziland. She said there was no reciprocity in the recognition of foreign trained lawyers, noting that lawyers from Swaziland need to sit for admission examinations before practicing in South Africa, while those from South Africa do not need the same to practice in Swaziland.
67. In response, the Minister indicated that the lawyers should bring their complaint to the attention of the Chief Justice and the JSC adding that the matter can also be handled through bilateral arrangements between the two countries. He cautioned however that this was a matter that should be handled with care and caution because in an open society, people are free to get the best legal minds from wherever, if the law allows them.
68. On the death penalty, the Minister informed the delegation that the people of Swaziland were duly consulted on the question of the death penalty and they overwhelmingly opted for the retention of the death penalty. He said the people were even upset that the government had enshrined in the constitution that the death penalty shall not be mandatory. He added that the country has complied with the Commission's resolution on a moratorium on the death penalty because there has been no execution for 23 years.
69. On elections in the country, the Minister indicated that, the Elections and Boundary Commission was established to deal with everything related with the conduct of elections. After the elections are over the Commission



prepares a report which is then given to the Minister responsible for elections.

### **Meeting with His Majesty's Private Secretary - 23 August 2006**

70. The delegation met with the Private Secretary to His Majesty, King Mswati III on 23 August 2006 at the Lugogo Hotel. The Private Secretary, Mr. Sam Mkhombe indicated that the King was not available to meet the delegation but that he, the Secretary was happy to meet and discuss with the delegation.
71. Commissioner Tlakula briefed the Secretary on the mandate and activities of the Commission and the purpose of the mission. She indicated that the delegation would like to discuss among other things, the establishment of political parties and the upcoming elections.
72. On the registration and functioning of political parties, Mr. Mkhombe informed the delegation that there were political formations/parties operating in the country but there was no process in place to register political parties. He indicated that there were two parties (Sibahle-Sinje and the National Liberation Conference) represented in parliament together with independent candidates. He said these parties and independent candidates took part in the 2003 general elections even though they were not registered. According to the Secretary, political parties do exist and operate in the country but candidates do not participate in the elections on party tickets but as individuals. (See Art. 79 of the constitution which seems to mean there are no political parties).
73. He indicated that in the present system, there are 55 constituencies represented by chiefdoms. Each constituency elects a candidate on an individual and not on party basis. From each chiefdom, there will be competition and the winner goes to the constituency to compete with others from different chiefdoms.
74. On the participation of the public in the constitution drafting process, the Secretary indicated that the King established a Constitution Drafting Committee and appointed persons from all walks of life to serve on the Committee. The members of the Committee were to serve in their individual capacity and not as representatives of organizations. He said the idea was to institute direct democracy, allowing the people to come and speak for themselves rather than organisations speaking for them.
75. He said some organizations boycotted the process and refused their members to participate insisting that they wanted to present their views as organizations and that they wanted to choose their own representatives.

So, some of them withdrew and refused to participate. He added that His Majesty was committed to democratization and change in the country.

76. He concluded by noting that the constitution introduced a lot of changes in the manner in which things were done and there needs to be serious law reform in the country. He said the country would thus need immediate assistance in law reform to put in place institutions and necessary laws to meet both domestic and international human rights obligations.

### **Meeting with the Commissioner of Police - 23 August 2006**

77. On 23 August 2006, the delegation met with the Commissioner of Police, Commissioner Hillary. Commissioner Tlakula introduced the delegation and explained the purpose of the mission, the mandate and activities of the ACHPR.

78. On his part, the Commissioner of Police welcomed the delegation. He noted that as a police organization, there were always going to be accusations of abuse of human rights and that if the police were to shy away from these accusations, they would never carry out their duty. He said the police are there to protect the rights of the individuals and to make sure they obey the law. He indicated that in the execution of their mandate, the police face numerous challenges, including in particular, the fact that:

- organizations do not inform the police when they intend to hold rallies;
- organizations do not want to cooperate with the police. For example, when the police request for a meeting to discuss their request for a public meeting, they usually refuse. The organisations believe the police is part of the system (the regime of the day) and they do not have confidence in the police.

79. The Commissioner concluded that his greatest challenge is thus to establish a good relationship and trust between the police and the public.

80. Commissioner Tlakula urged the Commissioner of Police to initiate constructive dialogue with civil society organizations so as to establish trust. She also informed the Commissioner that in the new dispensation, there will be need for a reorientation of the police to embrace human rights norms, and as such, the police had to be trained on human rights issues.

81. The Commissioner of Police indicated that human rights were in the curricula of the Royal Swazi police and that the latter is a member of Southern African Police Organisation (SAPCO) - a Southern African Development Community (SADC) organization for the police. He added that SAPCO has also developed a code of conduct for the police which



embraces tolerance and human rights. He added that the police had been taught human rights even before the advent of the constitution, noting that human rights are taught at the police college and that since the adoption of the constitution, workshops have been organized for the police at all levels.

82. On the accusation of police misconduct, the Commissioner of Police indicated that all allegations of misconduct are investigated, and in some cases, the government appoints a commission to investigate the misconduct. If a police officer is found to have misconducted himself or herself, disciplinary action is taken. He added that, over the years, many police officers have been suspended or dismissed for misconduct. In some cases, police officers have been dismissed, especially if they breach the code of conduct. Some have been convicted in the High Court. He added that the new constitution provides for the establishment of the position of a Commissioner of Police who will be responsible for among other things, investigating police misconduct.
83. On the representation of women at the top echelon of the police service, the Police Commissioner indicated that he is assisted by two deputies and six assistant commissioners one of whom is a woman. He added that there were many women superintendents and noted that there were few women at the top management of the police because in the early stages of the force, there were very few women. When asked whether there was a deliberate policy to fast track the appointment of women in senior position, he indicated that there was no such policy, adding that the policy is that women will progress through the ranks like all their male counterparts.

### **Meeting with Civil Society - 23 August 2006**

84. The delegation held a meeting with civil society organizations in the premises of the Swaziland Lawyers for Human Rights. The meeting was attended by several NGOs, including the Swaziland Lawyers for Human Rights and the Economic and Social Rights Forum, etc.
85. During the meeting, the NGOs informed the delegation that there were many problems in the country and the issue of human rights in the country has been a continuous struggle. They indicated that the Swazi authorities seem to think that human rights were not in tandem with the culture of the Swazi people, noting that this is why the King had to annul the independent constitution in the 1973 decree.
86. The NGOs admitted that there are lots of challenges, both for government and civil society, brought about by the new constitution as it expressly provides for the promotion and protection of human rights.

87. They noted several challenges, including the lack of protection of socio-economic rights, the duality of the legal system and the conflict between traditional law and civil law given the strong cultural root and leaning of the Swazi nation. If the government does not harmonise the two legal systems to find a balance, the question of human rights in the country shall remain a problem, they argued.
88. They also criticize the manner in which the rights are provided in the constitution, noting that the human rights provisions contain numerous claw-back clauses, that make the rights meaningless. On specific rights, they decried the fact that the constitution fails to provide for the right of association, no express right to land since Swazis can only access land through their chiefs. According to the NGOs, land is given only to men and the Swazi land tenure system has been used to victimize people who disagree with their chiefs or local authorities.
89. The NGOs argued that the King and his close associates try to hide behind culture to deny the Swazi people their inalienable rights, and anything that seeks to clash with the 'so called' Swazi culture is regarded with disdain. One cannot challenge a cultural practice in a court of law as culture has been put above positive law.
90. On the independence of the judiciary, the NGOs also argued that the constitution fails to guarantee separation of powers and further undermines the judiciary. They said some aspects of the powers of the judges have been taken away and given to the chiefs. They argued that the Swazi customary court was regarded as higher than ordinary courts and has been termed a fortress.
91. To illustrate the manner in which the judiciary is undermined, the NGOs argued that there were eight High Court judges, six of whom were acting, and in the Industrial Relations Court, there was only one acting judge. All these, according to the NGOs, undermine the independence of the judiciary as an acting judge would want to act in a way that would please the master to confirm his or her appointment. On the legislature, they said Parliament was not independent. The King summons parliament to meet at his *kraal* (palace) and has the power to dissolve same.
92. Regarding the role of civil society in the constitution review process, the NGOs indicated that the new constitution was founded on shaky grounds as, according to civil society, they were not permitted to participate in the drafting exercise. They wondered why the King and the government would allow groups submissions on important constitutional and national issues such as HIV/AIDS, security, etc, but refuse group submissions

when it comes to governance and sharing of power, insisting on individual submissions in the latter situation.

93. According to the NGOs, there was no sensitization of the public on the meaning and importance of a constitution. They added that out of 700,000 eligible Swazis only 1501 participated in the constitution making process, adding that this affected the legitimacy of the process. There was therefore no understanding of what the constitution was and what it means and many people did not know how it will impact on their lives.
94. The NGOs indicated that the constitution provides for equality, but the principle of equality before the law does not exist, noting that the King and the King's mother were above the law. They are accountable to no one. They do not pay taxes yet are the highest earning citizens. According to the NGOs, given the fact that the Swazi society is one that women have been relegated to an inferior status, it will be difficult for women to be empowered through the constitution. They added that Swaziland is a dictatorship since 1973 and the constitution has not changed that.
95. They concluded that the constitutional making process was micro-managed by the King's people. That no educational campaign was undertaken to educate the people and as such, many people, including parliamentarians do not understand the constitution. They further stated that the Drafting Committee was hand picked and the King vetoed what the committee produced and instead gave them his own document. They described Swaziland as a dictatorship and added that the new constitution entrenched this position, with the monarch dominating political life. Under these circumstances, they stated that human rights cannot be enjoyed.
96. They further indicated that women in Swaziland are regarded as lesser citizens and it would take time to view women as equal partners with equal rights, adding that oppressive cultural practices still recognized in the constitution contribute to this state of affairs. The NGOs also alleged that girls who do not take part in the Reed Dance are fined and those who do not pay the fine are expelled from the village by the Chief.
97. The NGOs indicated that they were disappointed with the African Union in general and the African Commission in particular for the neglect of the human rights situation in the country and further calls on the Commission to be able to follow up on its decisions.

## **Meeting with the Peoples' United Democratic Movement (PUDEMO) – 24 August 2006**

98. The delegation met with the main political movement in the country, PUDEMO. The party was represented by its Chairperson, Secretary General and several other members. Commissioner Tlakula introduced the delegation and explained the purpose of the mission.
99. The President of PUDEMO, Mr. Mario Masuku informed the delegation of the issues they face as a political movement. He informed the delegation that the party was formed in 1983 with the principal objective of having a constitutional multiparty democracy in Swaziland which is based on the will of the people.
100. PUDEMO indicated that there has never been any political participation in the country since 1973 and since 1983 PUDEMO has been agitating for democracy. In 1990, 11 members were charged with high treason. They were acquitted on the charge but found guilty of wrongful assembly. In 1992, the youth wing of the party, - the Swaziland Youth Council (SWAYOCO) was formed.
101. Mr. Mario Masuku informed the delegation that he was appointed by the King to serve on the Constitution Review Committee, but PUDEMO withdrew from the Committee 'based on principle'. He said he later met with the King to explain the position of PUDEMO and the King indicated that he will not allow the formation of political parties in the country.
102. The delegation was informed that there has been no participation of the public in the governance of the affairs of the people. PUDEMO said the members of the party have been constantly arrested, harassed and intimidated. In 2000, the president of PUDEMO was arrested and charged with sedition, for saying that people should move towards a constitutional democracy. He added that the youth wing of the party organized a march in Mbabane and the police dispersed the marchers with rubber bullets.
103. They acknowledged that the Bill of Rights entrenches rights and freedoms, including freedom of association and assembly in section 25. However, they added that these rights are clawed back by section 79 which prohibits the establishment of political parties. The party argued that there was a contradiction between the two articles and it had brought an application before the court to rule on the contradiction.
104. PUDEMO therefore argued that Section 79 of the constitution bars the establishment of political parties, but PUDEMO will continue to engage with all stakeholders for genuine democracy and the enjoyment of universal rights. He said the 1973 decree/proclamation annulled the 1968

- constitution and gave all powers to the King - executive, judiciary and the legislative. The proclamation also criminalized the enjoyment of human rights, in particular, freedom of assembly, association, expression, etc. He said the present constitution is not different from the 1973 proclamation and PUDEMO will not participate in any election under such conditions.
105. On the Constitutional Drafting process, PUDEMO argues that the process took place under very hostile circumstances. The party noted that groups were not allowed to participate and there was no civic education to sensitize the people. The party added that the European Union (EU) wanted to pay for civic education but wanted it to be done by a renowned organization, but the government refused, insisting this must be done only by the Constitution Drafting Committee (CDC). He said meetings were held during the day when most of the intelligencia was at work.
  106. Commissioner Tlakula asked PUDEMO why it thinks the King does not want multiparty democracy. According to PUDEMO, through the present set up, the King and the Royal family as a whole benefit from royalties paid to the State. PUDEMO is of the view that the King is scared multiparty would reverse this situation, that the King is afraid of losing power. PUDEMO's position is that he should remain a constitutional monarchy. PUDEMO is however against an absolute monarchy which will not allow democracy and be accountable to its people. PUDEMO noted further that constituency elections are not held by secret ballots but by show of hand and under such a situation people cannot freely express themselves.
  107. They noted that the constitution making process took place under very hostile environment when the 1973 decree was still in force which banned freedom of assembly, association and expression. Organizations could not hold meetings on the constitution because only individual submissions were allowed.
  108. PUDEMO believes that people are compelled to go and work for the King and those who refused do so are fined and those who cannot pay the fine are evicted from their property. PUDEMO concluded by stating that they are prepared to dialogue to change the situation and make the playing field level and to make sure political parties are represented and that if the status quo is not changed, PUDEMO will not participate in the 2008 elections.

### **Meeting with Commissioner of Correctional Services**

109. The delegation met with the Commissioner of Correctional Services, Mr M.H. Simelane, at the Headquarters of Correctional Services in Mbabane. In attendance at the meeting were the Deputy Commissioner, the Public

Relations Officer and other high ranking officials of the Department of Correctional Services.

110. After welcoming the delegation, the Commissioner explained the mandate of the Department, emphasizing that the principal mandate is to look after the welfare of detainees – convicted and awaiting trialists. He indicated that this does not only involve locking them up but also means ensuring rehabilitation and skills development.
111. He said most of the detention centres have clinics with nurses, and serious health cases are referred to the hospital. There is also a medical doctor who visits prisons across the country on a regular basis. He said with the prevalence of HIV/AIDS, prisoners are given Anti-Retro Viral (ARV) drugs by the government free of charge. If a prisoner wishes to be tested, he or she is entitled to ARV. He said the department was also working with NGOs to deal with issues of HIV prisoners, especially voluntary testing and provision of counseling facilities to HIV/AIDS positive prisoners.
112. The Head of Prisons indicated that there were about 12 detention facilities - prisons. He admitted that gallows were still maintained and invited the delegation to visit one of them where he demonstrated how persons on death row are hanged. During the visit, there were 2 prisoners on death row. The delegation was informed that the last execution was in 1983 and that most of those on death row have had their sentences commuted.
113. The Head of Prisons also indicated that the Department faces numerous challenges in the execution of its mandate, in particular, inadequate resources – financial and human, and poor salaries and accommodation for staff. He added that due to lack of personnel, there is usually a problem of taking awaiting trialists to court, as there is the problem of security.
114. Other challenges include overcrowding in some facilities, especially those awaiting trial; the problem of drug (dagga) smuggling in prison, sometimes with the complicity of officers.
115. Commissioner Tlakula wanted to know whether there was any human rights training for prison officers and how juveniles were treated.
116. The Head of Prisons indicated that the Department was in the process of training officers in line with the new constitution and that two workshops had already been organized.
117. Regarding the treatment of juveniles, he indicated that juveniles, according to Swazi law are persons between 12 – 16 years and while in



- detention, special classes are given to them by teachers specially trained for that purpose. They sit for exams and use the same educational facilities like other pupils. When they leave prison, the authorities identify special schools where they can continue their education. There was only one facility holding juveniles in the country and this was for male juveniles only. Female juveniles are mixed with female adult prisoners.
118. On alternatives to incarceration, the Head of Prison indicated that it is mandatory for first offenders and persons sentenced to six months or less to do community service, adding that the judiciary has also introduced community corrections for limited offences. He also noted that parliament was writing a new Correctional Law and it was being proposed that persons with sentences of two years or less should be made to do community services instead of being sent to jail.
  119. Prisoners are also required to work in the prison farms and all prisoners are paid 20 cents per working day. Skilled workers earn 25 cents per day. They may save the money during incarceration and be given on release or use it as they wish.
  120. It is also worth noting that there were no political prisoners in the country and NGOs and religious bodies have access to prisoners. Equally important, the Arusha Tribunal has identified Swaziland to hold some of the genocide convicts.
  121. The delegation visited three detention facilities: the Mawelawela Prison, Mbabane prison and the Malkans and Matsapha Police Stations.
  122. The *Mawelawela prison* was built in 1997 and had 74 inmates, 66 convicts, 5 remandees, 1 in hospital and 1 on community correction. The facility also had a daycare center, a Clinic, a Workshop. The detainees are taught among other things, Sewing, Handicraft, Agriculture/farming and Weaving.
  123. The *Mbabane Prison* had 331 inmates with 9 dormitories. One of the cells measuring 20 x 6m was housing 44 inmates. In the female section, there were 11 inmates, 3 convicted and 8 awaiting trial.
  124. The inmates were relatively healthy. Unlike in the male section, the female section was very clean with clean linens on the beds and less congested.
  125. The delegation was informed that the inmates were fed three times a day and had visitation rights and access to information. There was a small clinic which served as a first aid centre.

126. There was lack of recreational facilities at the prison and the delegation was also informed that awaiting trialists could not stay in detention for over a week without going out of their cells due to inadequate staffing to provide security.

### **Meeting with the Swaziland Youth Council (SWAYOCO)**

127. The delegation met with the youth wing of PUDEMO, the Swaziland Youth Council (SWAYOCO) (which has a membership of more than 2000 youths) on 24 August 2006. The discussion centred among other things, on the relationship between the organization and the Police, respect for state institutions and extent to which the Commission can contribute in the promotion of human rights in the country.
128. SWAYOCO was represented by three youths, one male and two females. They informed the delegation that they have been under constant harassment by the police and have been refused permits to assemble. They claim one of their members, Mr. Sifiso Mabuza was shot by the police on 5 August 2006 when they organized a march to commemorate the 15<sup>th</sup> Anniversary of SWAYOCO. The Theme of the commemoration was ‘ 15 years of militant youth struggle – taking the struggle to the belly of the enemy, forward to rush hour 2008’. It was alleged that Ms. Dudu Sithole, the Secretary for Gender of SWAYOCO was arrested on the day of the march. They said the police claimed they did not ask for a permit, but noted that those that had requested for permits before had never been given and they knew they too would not be given. They claimed the police used tear gas and life ammunition to disperse the over 150 marchers. When asked whether there was anyone who sustained wounds from life ammunition, they could not confirm.
129. They claimed the police was bias as they allowed other groups aligned to government - e.g Sibahle Sinje to hold a rally at the Convention Centre without permission of the police but did not allow SWAYOCO to meet even to hold its conference in a hotel. They believed their differences with the police can only be resolved if the present regime removes all impediments to free political participation - allow political parties, level political field, and allow exiles to return.
130. SWAYOCO also alleged that the King also appoints University lecturers to ensure that they do not influence students. Student organizations are equally not allowed to operate on campus.
131. They further alleged that to get jobs from the government or any government scholarship, a young person in Swaziland must be part of a regiment. They stated that application Form B for example requires the name of the regiment an applicant belongs to.



**Meeting with the National Constitutional Assembly (NCA) Ngwane National Congress and Women's League of Ngwane National congress – 25 August 2006**

132. The NCA raised several issues including the constitution making process, national dialogue, etc. On constitution making, the NCA indicated that the process was limited to individual submissions and group submissions were not allowed. The delegation was further informed that the King appointed all the people who made submissions and people were guarded in making submissions in front of TV Cameras, that there was no education on the constitution, people did not know the content thereof. The NCA concluded that the constitution only protects the interest of the regime and does not recognize separation of power and felt that the majority of Swazis do not own the constitution. It was further stated that the constitution does not entrench economic and social rights which are provided in the section dealing with directives principles of the state.
133. They requested a meeting with the Ministry of Justice to express their concerns on the constitution but as at the time of mission they had not received any response from the Ministry. They added that the government is not open to dialogue and those who do not agree with government are labeled as aggressive and violent.

**Meeting with the Swazi Federation of Trade Unions (SFTU)**

134. The delegation also met with the Swazi Federation of Trade Unions (SFTU). The delegation was informed that the SFTU together with other civil society organizations agitated for the adoption of the Constitution and will continue to seek dialogue with government on the constitution. The SFTU indicated that the Constitution Review Committee (CRC) composed of 33 people who were all appointed by the King to draft the Constitution. The progressive movement proposed that one of the terms of reference be that decisions should be reached by consensus. The King ignored the proposal and decreed the terms of Reference and appointed the CRC members in their individual capacity. The SFTU decided to withdraw from the constitution process out of principle because they believed the process would not be effective.
135. The SFTU indicated that the Trade Union has used every avenue available at its disposal to bring the situation in Swaziland to the fore, noting that Swaziland has been the subject of discussion at ILO since 1995.
136. The Union concluded that there was no political will on the part of the government to engage in honest dialogue on the way forward regarding

- the constitution and indicated that the ILO offered to assist with the facilitation of dialogue between civil society and government on the constitution making process and the government agreed to this but later reneged.
137. The Union claimed further that culture seems to triumph over every right provided in the constitution adding that the Government hides behind culture to violate human rights.
138. It was also indicated that Public Sector Unions have requested meetings with the King and the Prime Minister to discuss national and union related issues and there has been no response from the King while the Prime Minister has turned down the request, yet he continues to meet with other groups including the church. They wondered why the government recognizes debates and submissions by organizations for the purpose of discussing HIV/AIDS, corruption and other issues of national interest, but would not recognize groups or organizations to discuss democratic governance issues.
139. The SFTU further proposed that a mediator be appointed to facilitate dialogue between government and progressive movements, suggesting that in the run-up to the 2008 elections, government should be dissolved and an interim government appointed.

### **Meeting with the United Nations Development Programme (UNDP)**

140. The delegation met with the Deputy Country Representative of the United Nations Development Programme (UNDP).
141. The UNDP Representative informed the delegation that his organization together with the British High Commission supported the constitution making process and assisted the government. He noted that the final product was not a perfect document, adding that when the constitution was made public, the donor community had a meeting and decided to support the constitution on the basis that the constitution was not perfect but that having a constitution was better than having none at all.
142. He said the donors placed emphasis on the bill of rights. The idea was that once there was a constitution in place, even if flawed, this will be amended in due course. This view was supported by almost all the donors.
143. On the question of political parties, he said the issue is not specifically mentioned in the constitution. The view of the majority of the Swazi people was not in support of putting political parties in the constitution and the

matter was before the Swazi Courts, thus *sub judice*. He added that some people in government have tried to reach out to civil society but some members of civil society are intransigent and do not want to talk to the government.

144. He advised that both civil society and government must dialogue, and civil society must not put stringent conditions to obstruct dialogue. The civil society must not insist on going straight to the King. They have to talk to Ministers, Prime Minister, and if it does not work, they should then seek to see the King. Civil society should exercise flexibility in their demands and follow hierarchy in pursuing these demands. He concluded by saying that if both sides fail to exercise flexibility, and magnanimity, this will be a recipe for disaster. The solution is for both parties to be flexible and try to give and take. He said UNDP was prepared to sponsor law reform to look at those sections of the constitution that create conflict between government and civil society.

#### **Briefing meeting with Minister of Foreign Affairs**

145. On 25 August 2006, the delegation held another meeting with the Minister of Foreign Affairs to brief him on the preliminary findings during the missions. During this meeting, the Head of delegation, Commissioner Tlakula informed the minister of the persons and institutions visited and the issues that they raised.
146. The minister responded to some of the issues and undertook to follow up on others and report to the Commission accordingly.

#### **Press Conference**

147. At the end of the mission, Commissioner Tlakula held a Press Conference together with the Minister of Foreign Affairs and fielded questions from journalists from South African Broadcasting Cooperation (SABC), BBC, SBC, and from other NGO representations.

#### **Observation and analysis**

148. During the mission, the delegation of the African Commission met and held discussions with senior state and government officials, leaders of the opposition political parties, and officials from civil society NGOs in the country. The Mission expressed the willingness and the duty of the African Commission to cooperate and assist all the relevant organisations and institutions in Swaziland relating to the promotion of the African Charter and human rights.

149. The delegation explained that the mandate of the African Commission is basically geared towards assisting African States to develop a human rights culture within their countries and through undertaking promotional missions to Member States, the African Commission is enabled to appreciate the particular situations in the country.
150. After meeting with a cross section of the major stakeholders, the Commission was of the opinion that the persons and institutions met and the issues discussed provided it with sufficient information to enable it make an informed opinion on the human rights situation in the country. The recommendations that is contained in this report is thus based on the information gathered during the mission.
151. The Commission recognizes the fact that since independence, Swaziland has evolved economically, socially and political. Measures have been put in place to deal with the numerous socio-economic and political challenges faced by many modern states. The Commission appreciates for instance the fact that Swaziland has placed a moratorium on the death penalty and has not executed anyone since 1983; recognizes the establishment of the hotline by the ministry of education to deal with the exploitation of girls, the provision of psychological support to children affected by HIV/AIDS and the introduction of community services to petty crimes so as to avoid over crowding the unnecessary deprivation of liberty, the establishment of prison farms and the 'remuneration' of prisoners who work in these farms.
152. The above notwithstanding, as stated earlier, several issues were raised during meetings with stakeholders, but the following issues dominated the meetings:
- the position of the King as an absolute monarch
  - participation in political governance
  - the constitution review process
  - Deep rooted cultural beliefs
  - The establishment of political parties
153. Swaziland is one of the two countries in Africa with an absolute monarchy – where the King is Head of State and Head of the Armed Forces (after Lesotho changed to Constitutional monarchy, the only other country with absolute monarchy in Africa is Morocco).
154. There has been political agitation to reverse this situation since 1973 when King Sobhuza II annulled the 1968 independence constitution and assumed absolute power. The Commission noted that the people do not want the abolition of the monarchy but rather prefers a constitutional

- monarch along the lines of the British system where the monarch has very little to do with every day management of state affairs. In none of the meetings did anyone call for the abolition of the monarchy.
155. It is the view of some section of the public, especially the opposition parties and civil society organizations, that absolute monarchism leads to abuse of power and lack of transparency and accountability. This school of thought holds that in the Swazi situation, the King accounts to nobody and he and his close associates spend the country's meager resources at the expense of the poor masses, that the monarchy has stifled the enjoyment of human rights and the participation of people in the government and governance of their country and that Swaziland will be more developed under a genuine and flourishing democracy.
  156. Swaziland is a society deeply rooted in tradition. Almost every human activity in the country is judged on how it conforms with the customs/tradition of the country, to the extent that traditional practices sometimes prevail over civil law.
  157. On a general note, the human rights situation in the country falls short of the international standard. There is denial of basic rights to assembly or association, the judiciary is not independent and the police use excessive force and lack professionalism in the manner they deal with citizens, especially opposition movements. Participation in the affairs of the government has been seriously undermined by the non-existence of political parties. In the constitutional drafting process for example, interest groups were not allowed to make submissions. The constitution as it currently stands would seriously restrict the enjoyment of basic civil and political rights guaranteed in the African Charter, in particular the rights provided under articles 2, 3, 9, 10, 11 and 13.
  158. While the Commission recognizes the government's intention to empower the individual to speak for themselves, it also notes the fact that there are certain interests that can be protected as a community or group and needed to be taken on board. It is also worth noting that in a population of over one million inhabitants, only about 1,500 individuals contributed to the drafting of the basic law of the land. Had this been open to groups and other institutions, it is certain there would have been many more sources to draw from.
  159. The Commission is thus concerned about the restrictions placed on the participation of political groups in the affairs of the country and the low level of representation of women in the high echelons of public institutions, in particular the police and correctional services. The lack of participation of groups and organizations in the constitution making process, the registration and participation of political parties in elections and

governance structures in the country seems to undermine the legitimacy of the political process currently taking place in the country and does not give Swazis the opportunity to fully utilize their potentials towards contributing to nation building.

160. The Commission is pleased to note that the government undertook to look into these matters. The government further indicated that the adoption of the constitution was the beginning of a process of domesticating international instruments, including the African Charter. The Commission also takes note of the undertaking by the government to enhance the promotion and protection of human rights, for example, the institution of a toll free line to report cases of child abuse in schools and the transformation of the school curricula to address gender and other stereotypes.
161. It must be noted further that one thing that came out clearly is the fact that there is a desire on the part of government and other groups to move the country towards a constitutional democracy where there is respect for human rights and the rule of law. The difficulty however seems to be the approach to be adopted. The Commission believes that this impasse can only be broken if there is political will and genuine desire for dialogue from all stakeholders. The Commission avails its good offices to the government of the Kingdom of Swaziland that it is ready at any time to make a contribution in the political process, including bringing all the different groups together.
162. It is hoped that this mission will further strengthen the cooperation between the African Commission and the Kingdom of Swaziland in the promotion and protection of human rights. It is also hoped that the recommendations formulated in the present report shall go a long way to assist the government and the people of Swaziland deal with the situation of human rights in the country.

### **Conclusion and recommendations**

163. The adoption of a constitution is a good start that must be encouraged. Both civil society and government should see how to build on the provisions in the constitution to enhance the enjoyment of human rights, promote the rule of law and entrench multi-party democracy and good governance. Regional organizations such as SADC, the African Commission and the AU should support law reforms, capacity and institutional building to ensure that the institutions established under the new constitution function properly.

164. The decision to establish a Human Rights Commission is commended. However the government must ensure that this institution conforms to the Paris Principles on the establishment of national human rights institutions.

### **Recommendations**

165. *The African Commission recommends to the government of Swaziland to:*

- initiate constructive dialogue with civil society to discuss the political process and the participation of all citizens and interest or pressure groups on the constitution;
- ensure that proper disciplinary measures are put in place to prevent exploitation of girls by their teachers;
- ensure the independence of the judiciary and respect the decisions of the courts;
- allow civil society organizations including the Swaziland Law Society access to prisons and other places of detention;
- abolish the death penalty;
- ensure that the Police is properly trained to ensure respect for the rights of individuals in an open and pluralistic society;
- repeal the law on Public Order to ensure that individuals who wish to protest would not need a permit but would rather inform the Police for the latter to provide security and the necessary logistics;
- ensure that there is equality before the law;
- ensure the separation of adult female prisoners from the female juvenile prisoners;
- adopt affirmative action measures to ensure the promotion of the rights of women and lift them in decision making positions in some key institutions, including the Police;
- the scholarship and employment policies should be re-examined to prevent discriminatory practices;
- ensure the monarch respects the doctrine of separation of power and the rule of law ensuring that power belongs to the people;
- take urgent steps to establish the national human rights Commission and ensure it conforms with the Paris Principles;
- establish measures to build confidence and trust between the police and the citizens;
- ensure that the seeming conflict between culture/customary law and positive law is harmonized to avoid confusion;
- encourage individual as well as group participation in the socio-economic and political governance of the country;
- ensure that girls who choose not to participate in the Reed Dance are not victimized, and that no one should be compelled/forced to work for the King or evicted from their property if they do so;



- take steps to ratify the protocol on the rights of women in Africa and the protocol on the establishment of an African Court on human and peoples' rights;
- ensure the effective implementation of the African Commission's recommendations on communication 251/2001 – Swaziland Lawyers for Human Rights v Kingdom of Swaziland; and
- take steps to submit its periodic reports to the African Commission in accordance with Article 62 of the African Charter;
- to keep the African Commission constantly informed of developments in the country; and
- ensure that the constitution recognizes and complies with the provisions of the African Charter on Human and Peoples' Rights, in particular the right to assembly and association, including the right to form and belong to political parties and trade unions;

*166. The African Commission recommends to NGOs/civil society to -:*

- Closely collaborate with the government in the establishment of a constitutional democracy;
- settle differences through dialogue and where necessary through the courts;
- keep the African Commission constantly informed of developments in the country; and
- apply for observer status with the African Commission.

*167. The African Commission recommends to the international community to -:*

- support the current political process in the country through law reform, human resource development and institutional capacity building capable of meeting the challenges posed by the new dispensation; and
- support civil society organisations to make a meaningful contribution to the political process.