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

INDEX

EXECUTIVE SUMMARY **4**

I. INTRODUCTION **6**
- **A. Composition and Credentials of the Mission Team** **7**
- **B. Meetings in Swaziland** **7**

II. SWAZILAND: COUNTRY BACKGROUND **8**
- **A. General** **8**
- **B. Economy** **8**
- **C. HIV/AIDS** **8**
- **D. Press Freedoms** **9**
- **E. The Royal Purchase of a Luxury Jet** **9**

III. POLITICAL HISTORY AND SYSTEMS OF GOVERNMENT **10**
- **A. The 1968 Independence Constitution** **10**
- **B. The 1973 Proclamation of His Majesty King Sobhuza II** **10**
- **C. The 1978 Establishment of the Parliament of Swaziland Order** **10**
- **D. State Institutions for Governance** **10**
- **E. Regressive Law, Decree Number Two** **11**
- **F. The Constitutional Review Commission** **12**

IV. THE LEGAL SYSTEM IN SWAZILAND **13**
- **A. The Dual System of Law** **13**
- **B National Courts** **14**
- **C Industrial Courts** **14**
- **D. Magistrate's Courts** **14**
- **E. The High Court** **14**
- **F. The Court of Appeal** **16**
- **G. Judicial Resources** **17**
- **H. Historical Threats to the Rule of Law and Judicial Independence** **17**

V. CATALYSTS FOR THE RULE OF LAW CRISIS **22**
- **A. *Minister of Home Affairs et al.* v. *Fakudze et al.*, (Evictions case)** **22**
- **B. *Gwebu and Bhembe* v. *Rex*, (Non-Bailable case)** **23**

VI. THE STATE RESPONSE TO *MINISTER OF HOME AFFAIRS ET AL.* v. *FAKUDZE ET AL.* AND *GWEBU AND BHEMBE* v. *REX* LEADING TO THE EN MASSE RESIGNATION OF THE COURT OF APPEAL **24**

VII. JUDICIAL DEFENCE AGAINST STATE ATTACKS ON THE RULE OF LAW **27**

VIII. DOMESTIC REACTION TO THE RULE OF LAW CONTROVERSY **28**
- **A. General Population** **28**
- **B. Civil Society Organisations** **28**
- **C. Trade Unions** **29**
- **D. Opposition Political Parties** **29**

IX. INTERNATIONAL REACTION TO THE RULE OF LAW CONTROVERSY **31**
- **A. South Africa** **31**
- **B. The United States and the Commonwealth** **32**
- **C. The European Union** **32**
- **D. The United Nations** **32**

X. CONTINUING ATTACKS ON THE RULE OF LAW AND JUDICIAL INDEPENDENCE **33**

XI. REAL POLITICAL POWER IN SWAZILAND **35**
- **A. The Queen Mother** **35**
- **B. Cabinet** **35**
- **C. The Standing Committee of the Swazi National Council** **35**
- **D. His Majesty's Special Committee on Justice** **35**

XII. INTERNATIONAL STANDARDS **39**

XIII. RECOMMENDATIONS OF THE ICJ/CIJL TO RECTIFY THE RULE OF LAW CRISIS IN SWAZILAND **40**
- **A. Reform of the Legal System** **40**
- **B. Political Reform** **43**
- **C. Regional and International Mechanisms** **44**
- **D. Ratification and Compliance With International Instruments** **44**

XIV. CONCLUSION **45**

ANNEXES **46**

EXECUTIVE SUMMARY

From 12–21 January 2003, the International Commission of Jurists' Centre for the Independence for Judges and Lawyers (ICJ/CIJL), sent a fact-finding mission to the Kingdom of Swaziland. The purpose of the mission was to assess various threats against judicial independence, the rule of law and the administration of justice resulting from an Executive decision to disregard two Appellate Court rulings, an action that directly led to the resignation of the nation's entire Court of Appeal.

In 1973, the former Monarch of Swaziland repealed the 1968 Independence Constitution in favour of a form of Government that eliminated political parties, restricted trade union activities and stifled civil and political dissent. In the absence of constitutionally entrenched protections, the present Executive gradually eroded the rule of law, restricted press freedoms and undertook unilateral actions detrimental to the survival of the nation.

The legal system in Swaziland is based on a dual system of law whereby local Swazi law and custom, as applied in National Courts, is subordinate to Roman-Dutch law, as applied in Westminster-organised Courts. Historically, this dual legal system performed relatively well, however, the ICJ/CIJL delegation was provided with concrete evidence affirming that the present rule of law crisis is rooted in a past whereby the Executive routinely threatened judicial independence where it conflicted with entrenched interests. Periodic attacks on judicial independence in Swaziland have given way to Executive attitudes holding the judiciary, rule of law and the separation of powers in virtual contempt. The most recent example of negative State actions against judicial independence occurred in October and November 2002. At that time, the Attorney General threatened three High Court Justices with immediate dismissal if they did not recuse themselves from a case that involved the abduction of a girl that eventually became the 10th wife of His Majesty. The Director of Public Prosecutions filed criminal charges against the Attorney General for threatening the High Court Justices, however, the State compelled him to withdraw the charges.

The rule of law crisis presently besetting the Kingdom of Swaziland originated from a 28 November 2002 statement by the palace-appointed Prime Minister wherein the nation was advised that the Government would not recognise two Court of Appeal judgments. These judicial rulings followed existing statutory law in concluding that: (a) His Majesty could not override Parliament with Royal Decrees until a new Constitution had been enacted; and (b) the Commissioner of the Royal Swaziland Police was in contempt of Court for refusing to execute judicial orders.

On 30 November 2002, the six Justices of Swaziland's Court of Appeal resigned in protest over the Government's public refusal to recognise this Court's rulings. In solidarity, trade union and civil society organisations appealed to the Government to follow the rule of law and engaged in strike action. The international community added its voice to this protest by advising the Swazi Government that its actions threatened preferential trade arrangements, the loss of which would wreak socio-economic havoc throughout the nation. In the face of domestic and international appeals, the Government continued its open attack on judicial independence, the separation of powers and the rule of law. Further tarnishing the image of the

Kingdom, the Chief Justice was forced to resign while other judicial officers were dismissed, demoted or threatened with deportation.

The ICJ/CIJL mission delegation found that a small cadre of palace advisers including the Prime Minister, the Attorney General and a host of important political and judicial actors has subverted effective Government and the rule of law in Swaziland. These palace advisers constitute His Majesty's Special Committee on Justice, more commonly known as the Thursday Committee, a body which has dedicated itself to the gratification of entrenched interests at the expense of national welfare and the survival of the Kingdom. Possessing neither a formal nor informal or published mandate, members of the Thursday Committee pose themselves as the guardians of justice and operate with unlimited jurisdiction over all matters of national importance. Silencing dissent, the Thursday Committee is the root cause of the open assault against judicial independence and the rule of law in Swaziland.

Despite the fact that the Swazi Government has not yet unequivocally retracted its 28 November 2002 statement, the ICJ/CIJL is satisfied that His Majesty King Mswati III released a draft constitution on 31 May 2003 after a drafting process that took approximately seven years. However, there can be no meaningful solution unless the Government fully respects the independence of the judiciary and abides by all court rulings including those that currently remain pending.

Pursuant to the mandate of the ICJ/CIJL mission to Swaziland, the delegation drafted a series of recommendations designed to assist in resolving the rule of law crisis and re-centre the Kingdom on a path towards peace, good governance and the rule of law.

I. INTRODUCTION

From 12–21 January 2003, the International Commission of Jurists, Centre for the Independence for Judges and Lawyers (ICJ/CIJL) sent a fact-finding delegation to the Kingdom of Swaziland for the purpose of gathering information on the state of the judiciary, the administration of justice and attacks against the rule of law. The threefold objectives of the mission were to:

(1) Evaluate the overall state of judicial independence;

(2) Assess the impact of the State's decision to disregard two recent Court of Appeal judgements;

(3) Issue a report with concrete recommendations on the implementation of national and international standards related to the rule of law, judicial independence and the administration of justice.

In late November 2002, the ICJ/CIJL received information that the rule of law was under serious attack in Swaziland. This was the result of a decision by the Swazi Executive to disregard two Appellate Court judgments, an action that directly led to the resignation of the entire Court of Appeal. The ICJ/CIJL issued a 4 December 2002 intervention to the Monarch of Swaziland, His Majesty King Mswati III, expressing its alarm with regard to a 28 November 2002 press statement issued by the Prime Minister, Dr. Barnabas Sibusu Dlamini, declaring that the Government would not recognise two Court of Appeal judgements as their effect would be to strip His Majesty of some of his powers. As further justification for this action, the Prime Minister advised that Appellate Court Justices had not acted independently due to "outside influences". In light of the severity of the attacks on judicial independence, the separation of powers and the rule of law, the ICJ/CIJL decided that an urgent fact-finding mission was warranted.

On 16 December 2002, the ICJ/CIJL sent a second intervention to the Kingdom of Swaziland. This communication advised of the ICJ/CIJL's intention to engage in a fact-finding mission to Swaziland and requested that meetings with His Majesty, the Prime Minister, the Attorney General and other Government officials be facilitated. Although the ICJ/CIJL did not receive a response to any of its communications, while in Swaziland, the mission delegation was able to secure meetings with key State officials

A. Composition and Credentials of the Mission Team

The ICJ/CIJL mission delegation was composed of:

(i) Team Leader

Justice Dr. George Kanyeihamba of the Supreme Court of Uganda; Former Minister of Justice and Attorney General of Uganda; Senior Presidential Adviser on International and Human Rights Affairs; Professor of Law; Chairman of the Legal and Drafting Committee of the Constituent Assembly that developed the Constitution of Uganda; and author of leading texts on constitutional and administrative law and Government.

(ii) Member

Professor Michelo Hansungule, Former Dean of the School of Law, University of Zambia; Former Raoul Wallenberg Visiting Professor, University of Pretoria, South Africa; Professor of Human Rights Law, Faculty of Law, Centre for Human Rights, University of Pretoria, South Africa; and author of leading texts on human rights protection in Africa.

(iii) Member

Professor Edward Ratushny, Queen's Counsel; Professor of Law, University of Ottawa, Canada; President of the International Commission of Jurists - Canada; Special Adviser on Judicial Affairs to the Minister of Justice, Canada; and Counsel to the Canadian Judicial Council on matters related to judicial misconduct.

(iv) Rapporteur

Edwin Berry, Legal Officer, International Commission of Jurists - Secretariat, Geneva, Switzerland.

B. Meetings in Swaziland

Throughout the course of the mission, the ICJ/CIJL delegation met with relevant political, judicial and civil society actors including: the Prime Minister; the Deputy Prime Minister; the Attorney General; Members of Parliament; the Chief Justice; Appellate Court Justices, (recently resigned); High Court Justices; Magistrates; National Court representatives; Law Society representatives; lawyers; law school faculty; political opposition representatives; labour union representatives; non-Governmental organisations; journalists; and the diplomatic and United Nations communities. Due to a prolonged seclusion related to Incwala ceremony activities, His Majesty King Mswati III was unavailable to meet with the mission delegation. Both prior to and during the mission, the ICJ/CIJL delegation reviewed relevant jurisprudence, legislation and doctrine concerning Swaziland and the rule of law crisis.

II. SWAZILAND: COUNTRY BACKGROUND

A. General

The Kingdom of Swaziland is geographically situated between Mozambique and South Africa. SiSwati is the official language of the nation, however, English is widely spoken amongst the nation's 1 million inhabitants. Standing alone as Africa's only remaining absolute Monarchy, Swaziland is currently ruled by His Majesty King Mswati III, (The Ingwenyama or Lion) and the Queen Mother, (The Ndlovukazi or She-Elephant), with the assistance of an appointed cabinet, a system of formal and informal advisory bodies and over 300 Chiefs.[1]

B. Economy

Possessing a free market economy dominated by private sector interests, the World Bank classifies Swaziland as a middle-income country despite the fact that 66% of this predominantly rural nation live in absolute poverty as measured by the United Nations Development Program. With 10% of the population holding 60% of the country's income, the gap between wealthy and poor is steadily increasing. Comparatively wealthy in mineral resources, the agricultural sector, currently crippled by a severe drought, remains the primary source of income for the vast majority of the population. Exporting soft drink concentrates, sugar, paper and minerals, Swaziland transmits over 50% of its exports to South Africa from whom it receives virtually 100% of its imports.[2]

Growth in Swaziland's industrial and export sectors has been linked to the Kingdom's participation in the Southern African Custom's Union.

C. HIV/AIDS

With a life expectancy of 37 years, Swaziland has increasingly come under threat from the spread of HIV/AIDS with a current infection rate of 38.6%. Possessing a limited health care infrastructure, few doctors trained in combating the virus and an absence of State sponsored programs that provide access to antiretroviral medications, HIV/AIDS will further ravage the Kingdom unless there is a dramatic and immediate shift in public health policy and traditional attitudes that do not sufficiently encourage "safe" sexual practices.[3] In 1999, His Majesty King Mswati III declared that HIV/AIDS was a national disaster, however, the Government has been slow to enact substantive public policy measures dedicated to combating the spread of the disease. As late as December 2002, Swazi Senator Walter Bennett, a senior adviser to His Majesty, publicly advised that there was no need for the Government to continue "wasting money" on providing medical support to HIV/AIDS sufferers because they contracted the disease from "evil habits and out of choice."[4] Though not reflective of

---

[1] See generally, (1) Swaziland - Country Profile, 2002 at http://www.worldinformation.com; (2) Amnesty International, Swaziland - Annual Report 2002 at http://web.amnesty.org; and (3) CIA - World Fact Book - Swaziland, 2002 at www.cia.gov/cia/publications/factbook/geos/wz.html.
[2] *Ibid.*
[3] The World Health Organisation has engaged a specialist Dr. Okello of Uganda to assist Swaziland in strengthening its response to the spread of HIV/AIDS.
[4] 13 December 2002, *The Mail and Guardian Online*, http://www.mg.co.za

official policy, this unfortunate statement by a senior Governmental official has contributed to a generalised social stigma whereby HIV/AIDS sufferers are discriminated against in attempting to obtain public services and in gaining/maintaining employment.[5]

D. Press Freedoms

In recent years, journalistic freedom in Swaziland has come under increasing threat. In 2001, the State controlled "Swazi Observer" newspaper and its affiliates were closed and staff dismissed without notice as a result of the newspaper's refusal to name confidential sources utilised to criticise the Monarchy. Press freedoms were also attacked in 2001 when the Swaziland Television Broadcasting Corporation dismissed 31 employees for their involvement in a strike five months earlier. Fears linger that the State may attempt to re-introduce the Media Council Bill, a previously deferred initiative ostensibly drafted to promote responsible standards of journalism while substantively seeking to subjugate freedom of the press to Government control. This fear was substantiated on 8 April 2003 when the Minister of Information, Abednego Ntshangase, advised the Swazi Parliament of a new State policy whereby "The national television and radio stations are not going to cover anything that has a negative bearing on Government."[6]

E. The Royal Purchase of a Luxury Jet

Faced with the second highest HIV/AIDS infection rate in Africa coupled with severe food shortages, the Kingdom of Swaziland is poised to proceed with the purchase of a 19-seat luxury jet from a private company in Canada. The cost of the jet is equal to almost four times the annual health budget of $20,000,000. A report released by a Swazi parliamentary select committee established to study the royal purchase of the jet concluded that the Prime Minister and three cabinet ministers had acted beyond their constitutional powers in committing national funds to a "dubious project."[7] Despite this report, the appointed Cabinet approved delivery of the luxury jet and justified the purchase as necessary for the King to seek foreign aid and investment. In response to this planned purchase, the European Union withdrew development assistance while the United States warned that the purchase of this unaffordable luxury would jeopardise beneficial trade preferences and donor assistance initiatives as these programs are linked to good governance, respect for rule of law, sound economic policies and economic stability. On 21 March 2003, Swaziland's Parliament voted against the luxury jet purchase, however, the Prime Minister advised that this vote was merely a recommendation that could be disregarded by the Monarch. At present, the Government has not advised as to whether it will proceed with the purchase.[8]

---

[5] *Supra*, note 1. In an effort to curb the spread of HIV/AIDS, in 2001, His Majesty issued a statement in which he ordered that anyone who engaged in sexual contact with a virgin before marriage was to be punished according to Swazi tradition.

[6] Radio Swaziland, Mbabane, Swaziland, 17 April 2003, 1700 GMT as re-reported on Reuters News Service at http://wwwb.rbb.reuters.com.

[7] *Africa Online*, "Showdown Looming Over Royal Jet" 19 March 2003, http://www.africaonline.com.

[8] Reuters News Service, 21 March 2003 at http://wwwb.rbb.reuters.com.

III. POLITICAL HISTORY AND SYSTEMS OF GOVERNMENT

A. The 1968 Independence Constitution

During the late 1960's, the British colonial authority gradually responded to Swazi pressure for political reform through the establishment of a constitutional Monarchy featuring His Majesty King Sobhuza II, the father of the present King, as the head of State. Achieving full independence in 1968, the Westminster styled *Constitution of the Kingdom of Swaziland*[9] contained an expansive Bill of Rights, subjected the King to the principle of parliamentary supremacy and instituted a firm separation of powers between the Executive, Legislative and Judicial branches of Government.

B. The 1973 Proclamation of His Majesty King Sobhuza II[10]

Asserting that the Westminster style of Government was incompatible with the Swazi way of life, on 12 April 1973, His Majesty King Sobhuza II repealed the 1968 Constitution, dissolved Parliament, assumed all powers of Government and banned political parties and trade unions. Despite the repeal of the Constitution, the *1973 Proclamation* retained certain constitutional provisions relating to the Courts, their methods, the security of judges and the administration of justice. From 1973 to 1978, His Majesty King Sobhuza II ruled Swaziland without an elected Parliament, enacting laws though Royal Decrees and Royal Orders in Council.

C. The 1978 Establishment of the Parliament of Swaziland Order

In enacting the *1978 Establishment of the Parliament of Swaziland Order*,[11] legislative power previously held by the King was nominally returned to the Swazi people. **Of great import to the present rule of law crisis facing Swaziland, the *1978 Order* declared that the Monarchy could not issue further Royal Decrees until a new Constitution was entrenched.** While a new Constitution was promulgated on 13 October 1978, it was not formally presented to the people and thus did not come into force. Despite the aforementioned prohibition, the Swazi Monarchy has continued to govern through the use of Royal Decrees. As rooted in the *1978 Order*, the promulgation of laws in Swaziland may stem from three sources: (1) Acts of Parliament; (2) King's Orders in Council, operative when Parliament is not in session; and (3) Royal Decree, upon the entrance into force of a new Constitution.

D. State Institutions for Governance

While His Majesty King Mswati III holds ultimate political authority in Swaziland, according to unwritten customary norms and colonialist laws that remain in force, His Majesty exercises power in consultation with the Queen Mother, Her Majesty Queen Ntombi, a Westminster style Parliament, district Chiefs and a body of informal advisers.

When King Sobhuza II restored nominal legislative power to the Swazi nation through the *1978 Order*, he introduced a "Tinkhundla", a traditional system of

---

[9] Hereinafter the *Constitution*.
[10] Hereinafter the *1973 Proclamation*.
[11] Hereinafter the *1978 Order*

African Government, ostensibly designed to blend Western democracy with traditional structures of Government. As reformed in 1992 by His Majesty King Mswati III, the Tinkhundla may be defined as a number of delineated areas or constituencies, presently numbered at 55 that put forth candidates standing for election to a bicameral Parliament. All candidates must receive the approval of His Majesty prior to standing for election.

Swaziland's bicameral Parliament consists of 55 publicly elected and 40 Monarch appointed Members of Parliament. In the House of Assembly, the fifty-five elected members sit with ten Monarch-appointed members. The Senate consists of 20 Monarch-appointed members and ten members elected by the House of Assembly. The Monarch personally selects the Prime Minister and Cabinet and may appoint whomever he sees fit to this body, regardless of whether they originate from the ranks of the elected or appointed Members of Parliament. While Parliament sits for a five-year term, it may be dissolved at His Majesty's pleasure. Laws duly promulgated by the Parliament must receive the King's assent, which may, in whole or in part, be withheld.

Ostensibly representing a traditional process of grassroots political discussion as blended with Western democracy, the framework underpinning the Swazi Parliament ensures that individuals sympathetic to His Majesty are more likely to hold parliamentary office. This is due to the fact that His Majesty must approve electoral candidates, and Chiefs, who owe allegiance to the Monarchy, select candidates on the local level. Further, in order for elected Members of Parliament to deliver gains to their constituents, they have to curry the favour of those in power and thus do not tend to engage in actions that may offend the Monarchy. With political power concentrated wholly in the hands of His Majesty, numerous civil society organisations have called on the Monarch to distribute political power in order that national interests may be shaped through popular representation.

E. Regressive Law, Decree Number Two

Despite domestic calls for political reform, the intention of Swazi authorities to comply with such demands may be inferred from His Majesty's 22 June 2001 advancement of Decree Number 2. Severely restricting fundamental rights while supporting virtual impunity for Executive action, salient points of this proposed law included:

- Strict limits on judicial jurisdiction to challenge Executive actions;
    - A prohibition against judicial challenges concerning the appointment, removal or functions of district Chiefs;
    - The creation of criminal offences for non-violent political expressions of anti-State views. Those convicted of "offending the dignity or office of the King or the Queen Mother" were liable to face ten years imprisonment;
    - The unchallengeable State power to ban any newspaper, magazine or book for any reason that does not have to be made public; and

- A reinstatement and extension of the *Non-Bailable Offences Order* that obliged Courts to refuse bail to any person charged with any of a number of common law or statutory criminal offences.

Severely restricting the rule of law and basic human rights, intense domestic and international condemnation of Decree Number 2 prompted His Majesty to rescind this law.

F. The Constitutional Review Commission

Under domestic pressure to reform and modernise the political process, in 1996, His Majesty appointed a 30 member Constitutional Review Commission[12] to examine the suspended 1968 Constitution, engage in civic education to determine societal concerns and draft a new Constitution for Swaziland. Constituted by individuals unrepresentative of Swazi society under the leadership of Prince Mangaliso Dlamini, the CRC's terms of reference barred the receipt of social, political and civic group submissions, conducted its deliberations in the absence of effective public scrutiny and was hobbled by internal conflict that caused approximately one third of its original membership to resign. In 2001, the CRC published a report and issued a private draft constitution to His Majesty that recommended a constitutionalised strengthening of His Majesty's Executive powers, a continuation of the ban on political parties and a proviso that, in the face of conflicts between international human rights standards and Swazi customs, the latter should reign. Strong domestic and international condemnation of this draft constitution suspended its promulgation.

In February 2002, through Royal command, Prince David Dlamini, the Ambassador of Swaziland to Scandinavia, was appointed to head a new 16 member CRC drafting team. Prince Dlamini held consultations with Commonwealth representatives and received expert submissions[13] from a host of domestic organisations, however, CRC deliberations were neither public nor transparent. Unfortunately, the ICJ/CIJL delegation was advised that CRC members had been subject to negative pressure by political actors who have an interest in seeing Swaziland remain an absolute Monarchy. Despite these obstacles, the CRC produced a draft constitution that was released by His Majesty on 31 May 2003. While silent on the issue of multi-party democracy, the draft constitution contains a Bill of Rights that guarantees various human rights and freedoms.[14]

---

[12] Hereinafter the CRC

[13] At a November 2002 constitutional conference, Lawyers for Human Rights, (Swaziland), submitted a constitutional blueprint that recommended a constitutional Monarchy, an expansive Bill of Rights and a strong separation of powers between the Executive, Legislative and Judicial arms of Government.

[14] "Democratic Gains in New Constitution" 2 June 2003 in AllAfrica.Com, http://allafrica.com/stories/200306020818.html

IV. THE LEGAL SYSTEM IN SWAZILAND

A. The Dual System of Law

The legal system in Swaziland is partly based on Roman-Dutch law,[15] as applied in English organised Courts, and traditional Swazi law and custom, as applied in Swazi National Courts. Historically, this dual legal system performed relatively well with the Roman-Dutch High Court and Court of Appeal applying Swazi customary law when called upon and/or where appropriate.

As confirmed by Section 3 of the 1905 *General Administration Act*, where a conflict arises between Swazi law and custom and the Roman-Dutch law, the latter shall prevail:

> *The Roman-Dutch common law, save in so far as the same has been heretofore or may from time to time hereafter be modified by statute, shall be law in Swaziland…*

Further, Section 11 of the 1950 *Swazi Courts Act* provides that Courts shall administer:

> *Swazi law and custom prevailing in Swaziland so far as it is not repugnant to natural justice or morality or inconsistent with the provisions of any law in force in Swaziland.*

Finally, Section 6(1) of the 1950 *Swazi Administration Act* provides that:

> *The Ngwenyama, (King) and every chief shall perform the obligations imposed on them by this Act, and generally maintain order and good Government among Swazis residing or being in the area over which his authority extends; and for the fulfilment of this duty he shall have and exercise over such Swazis the powers of this Act conferred in addition to such powers as may be vested in him by any other law, or by Swazi law and custom for the time being in force, providing such Swazi law and custom is not incompatible with any other law...*

Swaziland thus conforms to the principle that Swazi law and custom is subordinate to Roman-Dutch law. For example, in *Ngwenya* v. *The Deputy Prime Minister and the Chief Immigration Officer*, 1973, the Court of Appeal struck down *The Immigration (Amendment) Act*, for improperly utilising Swazi law and custom to detract from the powers of the High Court in matters of citizenship.

---

[15] Swaziland's Roman-Dutch law is a system of interesting parentage. When the British established a national Court system, they introduced an essentially English form of procedure, however, they decided that the substantive law to be administered was to be the Roman-Dutch law already prevailing in South Africa. See generally, Lobban M., "Southern Cross, Civil Law and Common Law in South Africa" *English Historical Review*, November 1998.

B. National Courts

Most citizens in Swaziland encounter the domestic legal system through traditional bodies formally known as National Courts that administer unwritten Swazi law and custom. The criminal jurisdiction of National Courts is limited to petty offences such as theft, assault and violations of traditional Swazi law and custom such as the practice of witchcraft. On criminal conviction, maximum sentences are limited to 10 months imprisonment and/or fines of up to 120 Emilangeni, (the equivalent of 14 USD). Civil jurisdiction is limited to cases involving a monetary value not exceeding 1,000 Emanaganni, (the equivalent of 125 USD). Court Presidents, without legal training/education, fulfil judicial functions and are usually Elders appointed by the Monarchy. Cases are dispensed with in a relatively efficient manner as defendants are not permitted counsel, rules of legal procedure are not employed and case proceedings are not recorded. Civil and criminal findings may be reviewed by traditional authorities that theoretically should include appeals up to His Majesty or the Queen Mother.

C. Industrial Courts

Industrial Courts in Swaziland are vested with exclusive jurisdiction over labour matters that include unfair dismissal, contractual labour agreements and labour union actions/strikes. Employed on a fixed term two-year contract, the incumbent Judge President of the Industrial Court, Justice Nderi Nduma, does not enjoy tenured service, however, recent Industrial Court rulings demonstrate that this Court has, in practice, maintained its independence. Rulings from the Industrial Court may be appealed to a three Justice panel of the High Court and then to the Court of Appeal, if necessary.

D. Magistrate's Courts

Dispensing Roman-Dutch law, Magistrate's Courts are governed by the 1938 *Magistrate's Courts Act* whereby the criminal jurisdiction of top level Magistrate's Courts encompass all criminal offences except treason, murder, sedition, offences relating to coinage and currency, rape and any conspiracy or attempt to commit any of these offences.[16] Civil jurisdiction is limited to cases involving a monetary value not exceeding 1,000 Emanaganni, (the equivalent of 125 USD), and to matters not involving the dissolution of a marriage, estates and determinations as to mental capacity. On criminal conviction, top level Magistrate's Courts may impose maximum sentences of up to ten years and/or fines of up to 2000 Emilangeni, (the equivalent of 250 USD). Civil and criminal findings may be reviewed by the High Court and up to the Court of Appeal, if necessary. Thirteen legally qualified Magistrates serve Swaziland on the bench of Magistrate's Courts.

E. The High Court

Of the five Justices of Swaziland's High Court, two were appointed by His Majesty on the basis of fixed-term contracts whose terms and conditions were negotiated directly with the King. This appointment process violates several principles of international

[16] *Magistrate's Courts Act*, 1938, s.70 (3).

law concerning judicial independence. Under Article 26 of the *African Charter on Human and Peoples' Rights*,[17] ratified by the Kingdom of Swaziland in 1995,

> *States Parties to the present Charter shall have the duty to guarantee the independence of the Courts and shall allow the establishment and improvement of appropriate national institutions entrusted with the promotion and protection of the rights and freedoms guaranteed by the present Charter.*

Under the 1998 *Latimer House Guidelines for the Commonwealth Concerning Parliamentary Supremacy and Judicial Independence*,[18]

> *Jurisdictions should have an appropriate independent process in place for judicial appointments. Where no independent system already exists, appointments should be made by a judicial services commission (established by the Constitution or by statute) or by an appropriate officer of state acting on the recommendation of such a commission.*
>
> *The appointment process, whether or not involving an appropriately constituted and representative judicial services commission, should be designed to guarantee the quality and independence of mind of those selected for appointment at all levels of the judiciary*
>
> *Judicial appointments to all levels of the judiciary should be made on merit with appropriate provision for the progressive removal of gender imbalance and of other historic factors of discrimination.*
>
> *Judicial appointments should normally be permanent; whilst in some jurisdictions, contract appointments may be inevitable, such appointments should be subject to appropriate security of tenure.*
>
> *As a matter of principle, judicial salaries and benefits should be set by an independent body and their value should be maintained.*

Under Chapter IX, Part III of the 1968 *Constitution*, the Judicial Services Commission[19] was authorised to appoint, exercise disciplinary control and remove High Court and Court of Appeal judicial officers in Swaziland. Through the *1973 Proclamation*, the JSC was abolished only to be re-established in 1982, under the *Judicial Services Commission Act*, with severely circumscribed powers to appoint, discipline and remove judicial officers.

Under Section 104 of the 1968 *Constitution*, a provision that continued in force by virtue of the *1973 Proclamation*, the High Court is empowered with unlimited civil

---

[17] Hereinafter *African Charter*.

[18] Hereinafter *Latimer House Guidelines.* The guidelines were developed during a Joint Colloquium on Parliamentary Supremacy and Judicial Independence held at Latimer House in the United Kingdom, from 15 - 19 June 1998. Over 60 participants representing 20 Commonwealth countries and 3 territories attended the conference.

[19] Hereinafter JSC.

and criminal jurisdiction to hear and decide matters brought before it. Appeals from High Court decisions proceed directly to the Court of Appeal. With regard to the jurisdiction, power and authority vested in the High Court, according to section 2 of the 1954 *High Court Act*, (Swaziland),

> ***The High Court shall within the limits of and subject to this or any other law possess and exercise all the jurisdiction, power and authority vested in the Supreme Court of South Africa.***

Referring to the *Constitution of the Republic of South Africa*, Act 200 of 1993, section 96 states:

> 96(2) *The judiciary shall be independent, impartial and subject only to this Constitution and the law.*
>
> 96(3) *No person and no organ of state shall interfere with judicial officers in the performance of their functions.*

That the High Court of Swaziland possesses and exercises the jurisdiction, power and authority vested in the Supreme Court of South Africa is confirmed by section 9(2) of the 1970 *Interpretation Act*, (Swaziland), which states,

> *Where a law confers a power, jurisdiction or right... unless the contrary intention appears, that power, jurisdiction or right may be exercised ...*

F. The Court of Appeal

Until 30 November 2002, the Court of Appeal in Swaziland was composed of six retired South African Justices[20] that held two three-week sessions during April and November of each calendar year. According to saved provisions of the 1968 *Constitution* that continued in force, the Swaziland Court of Appeal possesses unlimited civil and criminal jurisdiction to hear and determine appeals from Courts of Swaziland.[21]

The mission team learned of concerns with regard to the composition of the Swaziland Court of Appeal in that it contains retired South African jurists who may not understand local Swazi customs and traditions. As a view postulated by the Swazi Government, the ICJ/CIJL delegation noted that, until the present time, the South African nationality possessed by members of the Court of Appeal raised no serious State or societal concern. The Swazi Government appointed each and every member of the Court of Appeal and prior to the present crisis, Appellate Justices were well regarded and possessed positive relations with the Swazi Government. Although a strong centre of dissent against Executive action, holdings of the Court of Appeal were not openly criticised by the Government. Indeed, despite the nationality of the Appellate Court Justices, their objectivity, impartiality and allegiance to the rule of law had never been questioned.

---

[20] The 1968 *Judiciary Act* authorises appointments to the bench from all Commonwealth countries.
[21] Section 111. See also *The Court of Appeal Act*, s.1, 6 and 14.

If members of the Swaziland Court of Appeal were to be replaced with Swazi-based Justices, potential conflict of interest situations would abound as the Appellate Court sits for six weeks per year while the national legal profession only numbers approximately 100 lawyers. Were the Court of Appeal to consist entirely of Swazi based Justices, these Justices would most likely engage in private practice for a majority of the year, taking time out to perform judicial duties. As such, on assuming their duties as Appellate Justices, they would preside over matters where inevitably, they would be either closely associated or have a direct interest in the outcome, thereby creating a conflict of interest.

G. Judicial Resources

The lack of an independent Court budget, trained support-staff and case management techniques humbles the efficiency of the Roman-Dutch judicial system in Swaziland. Functioning with neglected judicial libraries and case law digest reports that were last issued in 1986, the Court registrar is forced to distribute judgements to the entire legal profession, a practice that forces *stare decisis* to depend on the memory of individual practitioners and Justices. Essential stationary, fax ink and equipment malfunctions have further contributed to severe case backlogs with the result being that defendants may languish in prison for years awaiting trial. Although implored to rectify this situation through additional judicial appointments and increased funding, the Government has not been forthcoming with positive action.

Under *The Latimer House Guidelines*,

> *Sufficient and sustainable funding should be provided to enable the judiciary to perform its functions to the highest standards. Such funds, once voted for the judiciary by the legislature, should be protected from alienation or misuse. The allocation or withholding of funding should not be used as a means of exercising improper control over the judiciary.*
>
> *Appropriate salaries and benefits, supporting staff, resources and equipment are essential to the proper functioning of the judiciary.*

Failing in its responsibility to provide adequate funding for the Roman-Dutch Court system, the Government has criticised these Courts for being inefficient in comparison with the National Court, (customary court), system. This criticism does not reflect the fact that National Courts adjudicate over relatively simple offences, do not operate under formal rules of procedure, ban professional advocates and do not record their judgments.

H. Historical Threats to the Rule of Law and Judicial Independence

Members of the Swazi Government provided assurances to the ICJ/CIJL delegation that, prior to the current rule of law crisis, there had been no conflicts between the Executive and Judicial arms of Government in Swaziland. Questioning the validity of this assertion, the ICJ/CIJL delegation was, however, provided with concrete evidence affirming that the rule of law crisis is indeed rooted in a past whereby the Executive

threatened judicial independence whenever it conflicted with entrenched interests. The following examples are illustrative:

(1) In 1973, the Government attempted to deport a *de facto* opposition Member of Parliament on the grounds that he was not a citizen of Swaziland. In *Ngwenya* v. *The Deputy Prime Minister and The Chief Immigration Officer*, the Court of Appeal held that Mr. Ngwenya was a citizen of Swaziland and thus could not be deported. In response, His Majesty King Sobhuza II created an informal tribunal that overruled the Court of Appeal;

(2) During 2000, labour unions defied an Industrial Court Order by proceeding with a nationwide strike. Against this action, the Swazi Government launched Court proceedings that, if successful, would have imprisoned strike leaders. On technical grounds, the Industrial Court dismissed the application, however, rather than appealing this ruling, late one night, police summoned those parties associated with the adjudication of the labour dispute to a meeting before an informal palace advisory body, His Majesty's Special Committee on Justice. Before the Prime Minister, the Deputy Prime Minister, the Attorney General, the Minister of Justice, Chiefs and other palace advisers, charges were read out against the Chief Justice, the Judge President of the Industrial Court and the Director of Public Prosecutions. Acting as an ad hoc prosecutor, the Attorney General attempted to try the de facto defendants for the political crime of "biting the hand that fed them." Found guilty, the accused were advised that they should remember that they were in the employ of the Government. No further disciplinary action was taken against the Chief Justice, the Judge President of the Industrial Court and the Director of Public Prosecutions.

(3) In *Zwane v. Swaziland Government*, 2002, (judgement on contempt action), an applicant successfully argued before the Industrial Court that a specific employment transfer within the civil service should be halted. In response, as reported in an official Government publication, Prime Minister Dlamini disregarded the Court Order in the name of political expediency.[22] Countering this violation of judicial independence through contempt of Court proceedings, the Judge President of the Industrial Court, Justice Nderi Nduma stated that,

> *the Honourable Prime Minister, set law enforcement officers on a self-destructive mission to subvert the authority and dignity of His Majesty's court. The executive arm of Government resulted to self-help, oblivious and regardless of the consequences to the tenets of the rule of law which is the shibboleth of any modern democracy. In doing so, the Honourable Prime Minister became the complainant, prosecutor and judge in his own cause contrary to the tenets of natural justice.*

[22] *Swaziland Today*, Vol. 8 No.: 5, 08 February 2002, published by the Public Policy Coordination Unit in the Office of the Prime Minister.

Justice Nduma continued that,

> *a modern Government has three arms namely the Executive, the Legislature and the Judiciary. The executive powers of Government are vested in Their Majesties and as lawfully delegated to the Prime Minister, the Cabinet and the Civil service including the law enforcement agencies. The Legislative Powers are vested in members of the House of Assembly and the senate whereas the Judicial authority is vested in the Chief Justice, the judges of the High Court and the Industrial Court, the Magistracy and other courts of the land. This is a trinity that has endured the test of time under the well-known principle of separation of powers. The trinity is the very foundation of the rule of law that has served the Kingdom of Swaziland since its independence.*

Incessant attacks on the Swazi judiciary gave way to Executive attitudes that held the judiciary, the rule of law and the separation of powers in virtual contempt. Within this context *L. Dlamini* v. *Q. Dlamini and Sikondze*, discussed below, is emblematic of how the Swazi Government readily violates the rule of law and judicial independence whenever these democratic constructs attempt to restrain entrenched interests.

(4) Zena Soraya Mahlangu was born on 29 June 1984. Under Swazi law, all women, even those over the age of 18, are classified as minors. According to Zena Mahlangu's mother, Ms. Lindiwe Dlamini, on 9 October 2002, Zena Mahlangu disappeared from her secondary school.[23] Lindiwe Dlamini subsequently discovered that His Majesty King Mswati III ordered the abduction of Zena Mhlangu to make her his 10th wife. Under Swazi law, males are entitled to engage in polygamous relationships, however, the manner in which Zena Mhlangu was abducted violated Swazi law and custom.[24] After several attempts to contact her daughter were thwarted, Lindiwe Dlamini brought an application before the High Court seeking Zena Mhlangu's release. According to Swazi custom, such a legal challenge was

---

[23] *Dlamini* v. *Dlamini and Sikondze*, (High Court), 2002, (Founding Affidavit).

[24] *Ibid.* As Zena Mahlangu is of Ndebele origin, under Swazi law and custom, she could not be taken for royal duties without the consent of her mother and paternal uncles. Further, as Zena Mahlangu has a twin brother, namely, Musa Sydney Mahlangu, also born on 29 June 1984, according to Swazi law and custom, the Monarch must not take a twin as his bride.

Swaziland is party to the *Convention on the Rights of the Child* and the *African Charter*. As a member of the United Nations, Swaziland is bound by the *Universal Declaration of Human Rights*. These instruments protect children against abduction, slavery and abuse while enshrining their rights to education, liberty, privacy, dignity and moral safety. Articles 7, 12, 16, 20, 26 and 27 of the *Universal Declaration of Human Rights* provide that all human beings, including children, are entitled certain fundamental and inalienable rights. Through articles 16, 19, 20, 28 and 37 of the *Convention on the Rights of the Child*, children are provided with non-negotiable rights to education, privacy, dignity and freedom of association and movement. Under articles 17, 18 and 19 of the *African Charter on Human and People's Rights*, the protection and promotion of children's rights to education, morals and traditional values are emphasised in accordance with global human rights standards. As a member of the African Union, Swaziland dedicated itself to attaining the highest global standards of human rights and to combat national cultural norms repugnant to such natural and fundamental liberties.

unheard of as His Majesty is accorded the authority to determine whether virgins please him enough to be betrothed.

Before three Justices of the High Court, Chief Justice Stanley Sapire, Justice Stanley Maphalala and Justice Jacobus Annandale, the Attorney General, Phesheya Dlamini, applied for standing as His Majesty's representative. This application was refused as the Monarchy is protectively barred from appearing in Court, however, the Attorney General was allowed to submit information before the Court through an *amicus curiae* brief. At no time did the brief submitted by the Attorney General suggest that the High Court lacked jurisdiction to deal with this matter and even went so far as to advise that Zena Mahlangu should obtain a legal representative.

On 30 October 2002, the Attorney General, escorted by the uniformed Head of the armed security forces, Major General Sobantu Dlamini, the Commissioner of Police, Edgar Hillary, and the Commissioner of Correctional Services, Mnguni Simelane, confronted Chief Justice Sapire and Justices Maphalala and Annandale on the steps of the High Court. During the confrontation, the Attorney General threatened the three Justices that, should they not recuse themselves from hearing the application of Lindiwe Dlamini, they were expected to proffer letters of resignation to His Majesty. In response, on 31 October 2002, Chief Justice Sapire advised an open Court that, despite the threat issued by the Attorney General, he and his colleagues would continue with the case and not resign as they were duty-bound to ensure that justice was done.

On 1 November 2002, the Attorney General issued a formal written threat that restated the contents of his 30 October 2002 threat to the High Court and added that,

> *(i)n case your resignation letters are not received as stipulated, the office of the Attorney-General is under strict instructions to submit the relevant instruments for your removal from office.*

After a review of the Attorney General's threatening letter and having interviewed relevant parties, the Director of Public Prosecutions, Lincoln N'garua, formally charged the Attorney General with obstructing the course of justice, attempting to defeat or obstruct the course of justice, contempt of Court and sedition. A subsequent statement issued by His Majesty distanced him from the acts of his Attorney General, advising that the Monarch had no knowledge of, and did not mandate the Attorney General to, threaten the three Justices of the High Court.

On 6 November 2002 it was announced that Zena Mhlangu and His Majesty were officially engaged. This led to an agreement whereby Lindiwe Dlamini's lawsuit was indefinitely adjourned. The charges against the Attorney General, however, remained in force. On 11 November 2002, the Attorney General refused to appear in Court. The next evening during a late night meeting, palace advisers and Government officials threatened the Director of Public

Prosecutions to either withdraw the charges against the Attorney General or face dismissal. Placed in an intolerable position, Lincoln Ng'arua provided notice of his resignation contingent on receiving proper compensation from the Government. The Government denied that officials intimidated the Director of Public Prosecutions, however, they subsequently advised that they were contemplating the re-opening of a motor vehicle accident investigation involving the Director of Public Prosecutions that the police had closed years earlier.

On 19 November 2002, the Government placed advertisements seeking applications for a new Director of Public Prosecutions. That night, Lincoln Ng'arua and his staff were locked out of their offices after an apparent break-in. Upon gaining entry, Mr. Ng'arua discovered a security camera video that captured the Attorney General, the Minister of Justice and a member of the Swazi National Council engaging in black magic style rituals during the course of the break-in. In response to questioning from the ICJ/CIJL delegation, the Attorney General justified the crime by advising that the offices were State property and officials had to gain entry for an undisclosed reason.

In late November 2002, the Government halted proceedings against the Attorney General and in doing so directly supported an overt attack against judicial independence and the rule of law. This attack continued into 2003 as, on 14 April 2003, Lincoln Ng'arua was replaced by Mumcy Dlamini as the Director of Public Prosecutions.

In its conduct towards the Director of Public Prosecutions, the Government of Swaziland violated sections 4 and 5 of *The United Nations Guidelines on the Role of Prosecutors*[25] in that,

> (4) *States shall ensure that prosecutors are able to perform their professional functions without intimidation, hindrance, harassment, improper interference or unjustified exposure to civil, penal or other liability.*
>
> (5) *Prosecutors and their families shall be physically protected by the authorities when their personal safety is threatened as a result of the discharge of prosecutorial functions.*

[25] Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

V. CATALYSTS FOR THE RULE OF LAW CRISIS

A. *Minister of Home Affairs et al.* v. *Fakudze et al.*, (Evictions case)

Eighty percent of the inhabitants of Swaziland reside on communal land under the authority of 300 Chiefs that continue their reign at the pleasure of the Monarch. Violent land disputes coupled with conflicting demands from those who claim that they were lawfully appointed as district Chiefs are common. From the rural villages of Macetjeni and neighbouring Kamkhweli, Chief Mliba Fakudze and Chief Mtfuso Dlamini built a loyal following based on numerous development initiatives that enhanced the quality of village life. Disrupting the status quo in 2000, King Mswati's older brother, Prince Maguga Dlamini, persuaded His Majesty to relieve Chief Fakudze and Chief Mtfuso Dlamini of their titles in order that the Prince could be appointed in their stead. Stripped of their chieftainships, Chief Fakudze and Chief Mtfuso Dlamini refused to pledge allegiance to the new village head, a move that preceded violent village conflicts. In an effort to quell dissent, the army restored order by forcibly transferring 200 residents resisting the chieftaincy of Prince Dlamini to an open field, without shelter and basic necessities, 100 kilometres away from their villages. The displaced villagers were offered the opportunity to return, however, this was contingent on recognizing Prince Dlamini as their Chief. Rejecting this offer, the villagers brought an action before the High Court seeking an order that would allow them to return to their land. Such action represented a turning point in the history of Swaziland as national customs traditionally restrained His Majesty's subjects from challenging royal orders.

Following numerous hearings and interlocutory proceedings, the Court of Appeal allowed the displaced residents of Macetjeni and Kamkhweli to return to their villages on the grounds that the eviction order under which they were removed was defective.[26] Despite this ruling, the Commissioner of the Royal Swaziland Police, Edgar Hillary, repeatedly barred the execution of the Court Order citing reasons related to public security. In following this course of action, Police Commissioner Hillary violated section 7(3) of the 1957 *Police and Public Order Act*, which reads,

> *Every member of the* [Police] *Force shall promptly obey and execute all orders and warrants lawfully issued to him by any competent authority.*

In response to such Court Order defiance, the Commissioner of Police was held in contempt of Court and committed to a 30-day term of imprisonment, however, Edgar Hillary refused to comply with this order and advised that "only God can arrest me".[27] Insulting the Courts by refusing to enforce a judicial Order, the response of the Government to *Minister of Home Affairs et al.* v. *Fakudze et al.*, coupled with its response to *Gwebu and Bhembe* v. *Rex*, detailed below, constitute the most explicit attack on judicial independence and the rule of law in the history of the Kingdom.

---

[26] The Court found that the law under which the residents were evicted, the 1998 *Swazi Administration Order*, had been invalidly promulgated by the terms of its empowering law, Decree Number 1 of 1998.
[27] United Nations Office for the Coordination of Humanitarian Affairs, Integrated Regional Information Network for Southern Africa, "Weekly Round-Up" 29 November 2002.

B. *Gwebu and Bhembe* v. *Rex*, (Non-Bailable case)

On 26 November 2002, the Appellate Court of Swaziland ruled on an action concerning two accused rape suspects that challenged the validity of Royal Decree number 3 of 2001, a law that denied bail to persons charged with such crimes. In ruling, the Court of Appeal found that, under Swazi law, there was no legal basis under which Swazi Kings could rule by Decree. The Court's reasoning was grounded in the *1978 Order*, an instrument enacted by His Majesty King Sobhuza II. As previously indicated, under the provisions of this instrument, the power of Swazi Kings to rule through Decree was removed until a new Constitution was entrenched. While a draft constitution was promulgated on 13 October 1978, it was not formally presented to the people and thus did not come into force. As such, the Court of Appeal found that a King may only decree laws if mandated to do so and King Sobhuza II explicitly removed this power until a new constitutional framework was established. "That a King's decree can only be made once a new constitution is in place remains an essential requirement," Judge President Charles Leon wrote in the 25-page *Gwebu and Bhembe* v. *Rex* ruling. Rather than invalidating all laws in Swaziland enacted through Royal Decree, the Appellate Court advised that, in future, they would invalidate such Decrees on a case by case basis.

Court of Appeal Justices advised the ICJ/CIJL delegation that, prior to their rulings in *Gwebu and Bhembe* v. *Rex* and *Minister of Home Affairs et al.* v. *Fakudze et al.*, they were summoned before His Majesty and, in an act perceived to be disrespectful and insulting, were made to wait for six hours before the King received them. On obtaining an audience, an unprecedented tirade was launched against the Appellate Justices who were accused of attempting to undermine the Monarchy. Further, in a direct attack on the rule of law, judicial independence and the separation of powers, His Majesty ordered the Justices to not rule against the Government in *Gwebu and Bhembe* v. *Rex* and *Minister of Home Affairs et al.* v. *Fakudze et al*. In response, the Appellate Court Justices advised His Majesty that they had yet to render judgment in these matters and their rulings were not open for discussion.

VI. STATE RESPONSE TO *MINISTER OF HOME AFFAIRS ET AL.* v. *FAKUDZE ET AL.* AND *GWEBU AND BHEMBE* v. *REX* LEADING TO THE EN MASSE RESIGNATION OF THE COURT OF APPEAL

On 28 November 2002, Prime Minister Dlamini publicly announced that the Government would not recognize the Court of Appeal judgments in *Gwebu and Bhembe* v. *Rex* and *Minister of Home Affairs et al.* v. *Fakudze et al*. as the rulings sought to strip His Majesty King Mswati III of powers accorded to Swazi Kings since "time immemorial." The full text of the Prime Minister's speech, as broadcasted by Radio Swaziland is as follows:

> *The Government wishes to express its disappointment at the recent judgments of the Court of Appeal in respect of Decree No. 3 of 2001, and the contempt of court case against the police. The effect of the Court of Appeal's judgments would be to strip the king of some of his powers, and the Government is not prepared to sit idle and allow judges to take from the king's powers which were granted to him by the Swazi nation.*
>
> *Contrary to what has been said in one of the two judgments, the Court of Appeal is in effect emasculating the legitimate authority of the king, an authority which has been accorded to Swazi kings since time immemorial. A decree in the Kingdom of Swaziland is by definition neither debatable nor negotiable. The judges of the Court of Appeal themselves have not acted in accordance with our domestic law when saying that decrees are null and void. Their judgment in fact challenges their own appointment itself made under decree.*
>
> *Furthermore, the Government takes the view that the judgments are not in the interest of the country, and in particular that measures such as the removal of the non-bailable offences legislation and the return of the people to Macetjeni and KaMkhweli would lead to chaos and anarchy.*
>
> *Regarding the 1973 king's proclamation to the nation, it is the Government's view that no judge can question the decision of King Sobhuza II made nearly 30 years ago, a decision with which the Swazi nation has been satisfied over a very long period of time. Decisions such as that should not be questioned in courts.*
>
> *Furthermore, the Court of Appeal judges made certain disparaging remarks about King Sobhuza II. The Government rejects this and wishes to state that Swazis themselves will renounce any attempt to rewrite Swazi history in this respect.*
>
> *It is Government's belief that the judges of the Court of Appeal have been influenced by forces outside our system,* (ie. South Africa), *and that they have not acted independently. While Government deplores*

these judgments of the Court of Appeal, it recognises that judges are human and, therefore, subject to error.

In summary, therefore, Government does not intend to recognise the two judgments of the Court of Appeal. The laws of this country will remain as they are. In other words as if the judgments of the Court of Appeal judges in this respect were not effective. Therefore, it needs to be emphasised that the non-bailable offences legislation remains in force. There will be no release of individuals detained in prison for an offence to which that legislation relates. The appropriate Government agencies have been duly informed and have been instructed to ignore the Court of Appeal's ruling.

Similarly, Government does not accept the judgment of the Court of Appeal in respect of the actions of the commissioner of police and his officers who acted properly and in accordance with Swazi law and custom. The nation shall not allow itself a situation of lawlessness that could definitively lead to bloodshed if the evicted persons were to be allowed to return to the areas concerned. Therefore, the judgment in this regard will not be obeyed. The Government agencies responsible for implementing the Court of Appeal judgment have, therefore, been instructed not to comply with it.

.

This statement should not be viewed as interference with or contempt for the rule of law. It should be acknowledged that we are currently in a transitional stage and Government's position on the above issues will be addressed in the new Constitution which the Swazi nation now eagerly awaits. The non-bailable offences legislation was introduced by his majesty the king responding to the clear wishes of the Swazi nation as has been the case with the other decrees.

It is known that his majesty is currently in seclusion and his wisdom is greatly needed in addressing the situation that has arisen. Therefore, we are all expected in the meantime to respect our culture and custom, and its regard for peace, tranquillity and security during this period while we await his majesty's direction.

In meeting the ICJ/CIJL mission team, Prime Minister Dlamini advised that the parliamentary Cabinet authorised the statement condemning the two Court of Appeal judgments, however, Cabinet members contradicted this assertion. Indeed, Cabinet and State-controlled press sources confirmed that, in response to the Court of Appeal judgments, Cabinet had resolved to clarify the holdings through outside legal sources, however, this body neither supported nor authorised the Prime Minister to proceed with his 28 November 2002 statement to the nation.

On 30 November 2002, the six Justices of Swaziland's Court of Appeal resigned in protest of the Government's public refusal to recognise rulings in *Gwebu and Bhembe* v. *Rex* and *Minister of Home Affairs et al.* v. *Fakudze et al*. The Appellate Justices categorically stated that they would not reconsider their position unless the Prime Minister's statement was unconditionally withdrawn, an apology issued and the Government undertook to follow the aforementioned judgments.

Although it was Prime Minister Phesheya Dlamini who announced that the Government would not abide by the rulings in *Gwebu and Bhembe* v. *Rex* and *Minister of Home Affairs et al.* v. *Fakudze et al*., Justices of the Court of Appeal advised the ICJ/CIJL delegation that, in their opinion, the root of the crisis lay in fact squarely upon the shoulders of Attorney General Phesheya Dlamini.[28]

[28] Prior to 2001, only qualified legal counsel who had practiced for ten years could hold the office of Attorney General. Phesheya Dlamini was admitted as an attorney of the Swaziland High Court in 1997. In an attempt to validate his 2001 appointment to the position of Attorney General, His Majesty issued a Royal Decree designed specifically to confirm Phesheya Dlamini's appointment by weakening the ten-year practice requirement to a period of six years. As Phesheya Dlamini had only practiced for four years, his appointment as Attorney General continues to contravene Swazi law. Under the *Legal Practitioners Act*, it is within the discretion of the Attorney General to commence disbarment proceedings. As legal adviser to the Government and His Majesty, the Attorney General has used the power granted to him under this Act to remove and intimidate legally qualified resistance to the Monarchy. The ICJ/CIJL mission team was advised that the threat of disbarment has been repeatedly employed by the Attorney General to divide and frustrate the Law Society of Swaziland and its membership.

VII. JUDICIAL DEFENCE AGAINST STATE ATTACKS ON THE RULE OF LAW

Despite the Swazi Government's statement that it would not recognize the Court of Appeal ruling in *Gwebu and Bhembe* v. *Rex*, on 30 December 2002, the Attorney General brought a High Court application seeking a declaratory order to the effect that, as Decree No. 3 was invalid by virtue of *Gwebu and Bhembe* v. *Rex*, Decree No. 2, the law that further restricted the exercise of fundamental rights while providing virtual impunity of Executive action, was operational. In ruling on this application, three Justices of the High Court responded to the Government's 28 November 2002 statement, or in their words, the "diatribe… that reflects a total misunderstanding and misconstruction of the Court of Appeal judgment."[29]

> *To suggest that the Judges of the Court of Appeal have "not acted in accordance with domestic law when saying that Decrees are null and void" and that "it is Government's (sic) belief that the Judges of the Court of Appeal have been influenced by forces outside our system and that they have not acted independently" is a scandalous and scurrilous statement, which questions the probity, integrity and the dignity of the learned judges.*

Further, the High Court commented that the Government's statement was,

> *Contemptuous of the court and reflect(s) the Executive's disdain of Court Orders not to its liking.* [It violates] *the dignity, repute and authority of the Courts. Furthermore, the statement calls upon officials, who are according to the statutes of this kingdom enjoined to comply with or to enforce Court Orders, not to. That the whole body of existing legislation must be jettisoned for the sake of political expediency is a cause for grave concern.*

The High Court advised that it would refuse to entertain both present and future legal applications from the Swazi Government until the Prime Minister unconditionally retracted the objectionable statement, apologised to the Court and complied with the Court of Appeal rulings. Further, the High Court offered the following warning to the Government,

> *A Government that publicly and unabashedly declares that it will defy Court Orders, whatever the purported justifications; and there are none in casu, must be ashamed to stand tall in the Community of Nations, Continental and regional. Such conduct deserve(s) to be frowned upon. Governments must be exemplary in both word and behaviour. For a Government to make such a bald declaration and be quick to warn its citizens not to do so is hypocrisy of the highest order. It is an exemplification of the phrase, "Do not as I do, but do as I say."*

---

[29] *Gwebu and Bhembe* v. *Rex*, Case No. 3699/02, (19 December 2002 Judgment).

VIII. DOMESTIC REACTION TO THE RULE OF LAW CONTROVERSY

A. General Population

Coping under conditions of poverty, the effects of drought and the burdens associated with the second highest HIV/AIDS infection rate in Africa, in the eyes of the general population, the rule of law crisis facing Swaziland is subordinate to the satisfaction of basic needs. Within this environment, the crisis has done little to affect the love that the Swazi people hold for the Monarchy. This affection, however, is dedicated to the institution rather than the individual presently holding reign and towards whom there is mounting anger. Contributing to this anger are those exclusive advisers of His Majesty who have not warned him to heed the cries of his loyal subjects to engage in meaningful political reform.

B. Civil Society Organisations

While civil society organisations are relatively weak and inactive in Swaziland, the rule of law crisis has served to galvanise many organisations against State efforts to strengthen its power by emasculating the judicial arm of Government. Despite open State threats against such organisations, Lawyers for Human Rights, (Swaziland), has been particularly vocal in advising the nation that,

> *(t)he Government is hell bent to deliberately mis-inform the nation about the judgments by contending that the Court of Appeal sought to challenge the King's powers to administer customary law and make law by decree. All the court was concerned about is the interpretation of the law; the constitutional law of Swaziland, and in doing so found that his majesty lacks authority to promulgate law by decree… (T)he contention that Government maintains its stand to endorse the unchallengeable authority of His Majesty to administer Chieftainship matters and or promulgated Royal Decrees suggest that Government is keen to make the King an absolute autocrat with unlimited inhibition.*[30]

Although requests by Lawyers for Human Rights (Swaziland) for an audience with His Majesty, the Prime Minister and the Attorney General went unanswered, this organisation has both repeatedly and publicly attempted to convince the Government to respect the integrity and reputation of the judiciary and the rule of law.

In direct response to the rule of law crisis, a potentially powerful civil society lobby group, the Swaziland Coalition of Concerned Civil Organisations, was formed with a manifesto calling for an end to the abuse of State power, adherence to the rule of law and the institution of good governance practices to restore the positive image of the Kingdom. Comprised of central business, trade union and religious groups,[31] this

---

[30] 16 January 2003, *Times of Swaziland*, Lawyers for Human Rights (Swaziland) Press Statement.

[31] Members include the Federation of Swazi Employers, the Swaziland Chamber of Commerce and Industry, the Association of the Swaziland Business Community, the Swaziland Federation of Trade Unions, the Swaziland Federation of Labour, the Church, the Law Society, the Co-ordinating Assembly of Non-Governmental Organisations and the Swaziland National Association of Teachers.

coalition of so many disparate organisations is unprecedented and may serve as a powerful force for political change.

C. Trade Unions

Under the terms of the 1996 *Industrial Relations Act*, trade union activities and freedoms have been severely restricted. Targeted for State harassment that has included police raids on the homes of prominent union representatives, the ill-treatment of unarmed demonstrators/striking workers by security forces and arrests of prominent trade union officials, the Swaziland Federation of Trade Unions, (SFTU), and the Swaziland Federation of Labour, (SFL), have persevered as powerful socio-political forces in Swaziland.

In response to the rule of law crisis, the SFTU and SFL scheduled a 19-20 December 2002 mass strike despite official warnings that the Government would deal with strike action "swiftly and decisively". Advising that the rule of law crisis created an illegal and uncertain environment that retarded economic development, the strike action was supported by the Swazi business community. On 19 December 2002, over 1,000 protesters gathered in Mbabane, the capital of Swaziland to demand a return to the rule of law and protest State interference in the judicial system. Though the turnout was relatively low, the protest action drew domestic and international attention to the national crisis. Further labour stay-away action was undertaken on 4-5 March 2003 with the largest street marches and public protests seen during His Majesty's reign. While the Government remained unmoved, labour representatives asserted that the mass action was a turning point for the country and an indication to the Government that the Swazi people were against its anti-rule of law policies.

D. Opposition Political Parties

Banned as un-African and un-Swazi under the terms of the *1973 Proclamation*, underground political parties critical of official policies have continued to organize. In 1988, the People's United Democratic Movement, (PUDEMO), emerged to clandestinely criticise the Government and call for democratic reform. Given its status as an illegal organisation, members of PUDEMO have remained vulnerable to arbitrary detentions, politically motivated prosecutions, ill treatment and harassment. In August 2002, Mario Masuku, the leader of PUDEMO was acquitted of sedition charges alleging that he advocated for revolution and insulted King Mswati III during a peaceful November 2000 protest. On previous occasions, Mr. Masuku has been detained, prosecuted and acquitted of treason and sedition. The instant acquittal, which followed a lengthy trial, was a vindication of the accused and his right to participate in non-violent political activities. It was also confirmation of the integrity of the judicial process.

Supporting the reinstitution of the rule of law and political reform, PUDEMO has called for the resignation and arrest of the Attorney General for his "outrageous behaviour in attempting to subvert the administration of justice."[32] On 25 April 2003, PUDEMO gave King Mswati III a seven-day ultimatum to respond to a call for organised democratic elections, the removal of all oppressive laws, the drafting of a

[32] Reuters News Service, 25 April 2003 at http://wwwb.rbb.reuters.com.

legitimate constitution and an affirmation that the independence of the judiciary would be respected. In the absence of a positive response, PUDEMO is set to engage in a rolling program of action that will include border blockades and civil demonstrations. The ICJ/CIJL mission delegation believes that if the general call of the Swazi people for reform is not heard and implemented, future events may be uncontrollable.

IX. INTERNATIONAL REACTION TO THE RULE OF LAW CONTROVERSY

A. South Africa

On 3 November 2002, South African judicial authorities condemned Swazi Prime Minister Sibusiso Dlamini's Government for announcing that it would ignore Court of Appeal judgments. Writing on behalf of Southern African Development Community[33] Judges, Chief Justice Arthur Chaskalson and Deputy Chief Justice Pius N. Langa issued a public statement concerning events in Swaziland:

> *The decision of the Government of Swaziland to ignore the judgments of its highest Court is in effect a declaration that the Government of that country does not respect the role of the courts and the judiciary and does not consider itself to be bound by the law. When that happens courts are not able to discharge their duties of upholding the law without fear or favour. Citizens are no longer protected by the law and there is a grave risk of lawlessness and arbitrary action.*
>
> *The conduct of the Government of Swaziland left the Judges of Appeal with no choice other than to resign, and unless appropriate action is taken urgently to correct what has been done, other judges and magistrates will be placed in an impossible position in which their authority and independence will be questioned.*[34]

Reinforcing the position taken by SADC Justices, the SADC Lawyers Association advised that the rule of law crisis facing Swaziland was not simply a domestic issue as the independence of the judiciary and the respect of the rule of law are fundamental to the economic and social stability in the region. Further, the Lawyers Association unequivocally advised that Judges should be independent from Government interference so that they can adjudicate on matters in a fearless and objective manner.

On 19 December 2002, Nkosazana Dlamini-Zuma, the Foreign Minister of South Africa, advised that his nation, the largest trading partner to Swaziland, was not a

---

[33] Hereinafter, SADC. The SADC was formerly known as the Southern African Development Co-ordination Conference (SADCC), which was established in July 1979 to harmonise economic development amongst countries in Southern Africa. The Declaration and Treaty establishing SADC was signed in 1992. A Declaration and Treaty establishing a new SADC confirmed that member States are expected to act according to the following principles:

* Sovereign equality of all member States;
* Solidarity, peace and security;
* Human rights, democracy, and the rule of law;
* Equity, balance and mutual benefit;
* Peaceful settlement of disputes.

The headquarters of the SADC are located in Botswana but each member state has responsibility for overseeing an economic sector. Diplomatic missions of member states also act as SADC diplomatic representatives in a number of key countries in Europe, the Far East, and North America.

[34] 3 December 2002 "Statement by the Chief Justice and the Deputy Chief Justice of South Africa concerning events in Swaziland."

policeman and would not intervene in Swaziland's rule of law crisis unless requested to do so by the Swazi Government.

B. The United States and the Commonwealth

James McGee, the United States Ambassador to Swaziland, advised the ICJ/CIJL delegation that the Kingdom's position that the Court of Appeal did not understand Swazi law and custom was as an excuse to subvert the rule of law and as a result, the Government had "lost total control." Colin Powell, the United States Secretary of State, advised the Swazi Prime Minister that the Kingdom's trade benefits with Washington hinged on the Government's commitment to reform. Such a loss would deprive the Swazi economy of substantial income and lead to further socio-economic problems.[35] Expressing similar concerns, on 12 March 2003, the Secretary-General of the Commonwealth, Don McKinnon, warned His Majesty to uphold the rule of law or face expulsion from the Commonwealth.

C. The European Union

Standing as Swaziland's largest donor, the European Union, (EU), has committed itself to providing the nation with 30 million Euros in development aid over the next five years. Further assisting development, the EU provides Swaziland with beneficial access to its markets for Swazi agricultural products. Through the *Cotonou Agreement*, a successor to the *Lomé Convention*, Swaziland is exempt from paying tariffs for most of its agricultural exports to the EU. While a major objective of the *Cotonou Agreement* is poverty reduction, emphasis is also placed on democratic principles that include the rule of law, respect for human rights, and good governance. In the event that these principles are violated, sanctions may be imposed. The Swazi Government has been advised that the proposed purchase of the private jet and disregard for the rule of law threatens EU-Swazi trade relations, a loss that would greatly contribute to the further impoverishment of the nation.

D. The United Nations

On 4 December 2002, the United Nations Special Rapporteur on the independence of judges and lawyers, Dato' Param Cumaraswamy, expressed grave concern over the deterioration of the rule of law in Swaziland. The Special Rapporteur found that the Swazi Government's failure to honour decisions of the constitutionally constituted courts violated international law. He also viewed the crisis with grave concern for the South African region as it could affect the New Economic Partnership and Development Initiative, a program of action dedicated to the redevelopment of the African continent. In an effort to resolve the rule of law crisis, the Special Rapporteur urged the Swazi Prime Minister to revoke his 28 November 2002 press statement, respect the judgments of the Court of Appeal and restore the rule of law in Swaziland.

---

[35] 16 January 2003, *Times of Swaziland* "GSP Loss to Affect 300,000 Swazis".

X. CONTINUING ATTACKS ON THE RULE OF LAW AND JUDICIAL INDEPENDENCE

On 4 December 2002, in an attempt to influence the Court of Appeal to return to the bench, the Swazi Government announced a 60 percent salary increase and additional professional allowances to all High Court and Court of Appeal Justices. Court of Appeal Justices categorically replied that they would not reconsider their resignations until the Prime Minister's 28 November 2002 statement was withdrawn, an apology issued and Appellate Court judgments reinstated.

The Swazi Prime Minister and the Attorney General advised the ICJ/CIJL delegation that the Judge President of the Court of Appeal should approach the King as part of wider consultations dedicated to resolving the rule of law crisis. Immediately following the Prime Minister's 28 November 2002 statement, the Government attempted to hold consultations with the Chief Justice, Judge President of the Industrial Court, Court of Appeal Justices and the Head of the Law Society, however, these consultations were refused by all parties except for Chief Justice Sapire.

Appellate Court Justices advised the ICJ/CIJL delegation that the Attorney General went so far as to say that the Court of Appeal was guilty of a dereliction of duty and rule of law violations as they did not consult the King prior offering their resignations from the bench. A 17 January 2003 issue of *Swaziland Today*, a Government newsletter, advised that, in an effort to resolve the rule of law crisis, the Prime Minister had consulted various stakeholders, however, no consultations were held with members of the legal community.[36]

Opening the Houses of Parliament on 7 February 2003, His Majesty King Mswati III avoided mention of the on-going rule of law crisis and declared only that, "We abide by rule of law, and we will continue to do so." His Majesty's address was followed by a 17 March 2003 declaration by the Prime Minister wherein he stated that the Court of Appeal had no authority to repeal Swazi laws. The Prime Minister further commented that Courts were duty bound to offer advice, however, they could not undertake the substantive action referenced in *Gwebu and Bhembe* v. *Rex*.

On 1 April 2003, Magwagwa Mdluli, a former Minister for Natural Resources was appointed as the new Minister of Justice. In his first appearance before the Swazi Senate, His Honour Mdluli advised of his opinion that the Roman-Dutch Courts were anti-Government. Expected to take a hard line in the showdown between the Monarchy and the judiciary, two days after His Honour Mdluli's appointment, Swaziland's highest judicial officer, Chief Justice Stanley Sapire, resigned after being threatened with demotion. On 4 April 2002, His Majesty appointed Justice Jacobus Annandale as the acting Chief Justice while demoting Justice Thomas Masuku, a staunch rule of law advocate, to a lower Court. Justices Josiah Matsebula and Stanley Maphalala remain on the High Court despite being at the forefront of criticism against the Government for subverting the rule of law. In protest over the forced removal and demotion, the Swaziland Law Society resolved that lawyers should refuse to appear before the new Chief Justice.

---

[36] *Swaziland Today, The Voice of the Swaziland Government*, vol. 9, no.: 1, 17 January 2003.

In a further move that confirms the continuing nature of open attacks against the rule of law in Swaziland, two senior members of the Law Society including its President, Paul M. Shilubane, have been threatened with deportation for holding dual citizenship. Mr. Shilubane has been a vocal critic of State efforts to eliminate the rule of law in Swaziland. The Law Society of Swaziland serves as Swaziland's bar association and represents the interests of its approximately 100 registered members. Constituted under the 1964 *Legal Practitioners Act*, all persons admitted and enrolled as legal practitioners in Swaziland are obliged to become members of the Law Society. Under the *Legal Practitioners Act*, the objects and functions of the Law Society include:

(i) Representing the views of the profession;

(ii) The initiation and promotion of reforms and improvements in any branch of law, the administration of justice, the practice of law and in the formulation of legislation;

(iii) Upholding the integrity of legal practitioners;

(iii) Maintaining and enhancing the prestige, status and dignity of the legal profession; and

(iv) Dealing with all matters relating to the interests of the profession and the protection of those interests.

Under *The Latimer House Guidelines*, "an independent, organised legal profession is an essential component in the protection of the rule of law. The executive must refrain from obstructing the functioning of an independent legal profession…" Clearly, through continuing Executive actions that threaten the rule of law, the Government of Swaziland has violated the *Legal Practitioners Act* and does not share the vision embodied in international principles applicable to Swaziland.

Subsequent to a 17-18 May 2003 meeting between the Government and former Court of Appeal Justices, the Justices issued a statement wherein they agreed to continue discussions with the State provided that all individuals granted bail by the Courts were released within 48 hours. The Attorney General issued a companion statement advising that the Government unconditionally retracted the 28 November 2002 statement that Judges of the Court of Appeal were influenced by external forces in their work and that they were not independent. On 19 May 2003, the Prime Minister advised that the State would not release suspects granted bail by the Courts and would not implement the judicial reform recommendations submitted to Government by the former Justices of the Court of Appeal as "the country has a better way of dealing with such issues."[37]

[37] "Nothing Changes, Says PM", 19 May 2003, *The Swazi Observer*. See also, *The Times of Swaziland*, 20 May 2003.

XI. REAL POLITICAL POWER IN SWAZILAND

In times of crisis, Swazi Kings have historically gathered and relied on the collective wisdom of hundreds of Chiefs, Princes and Princesses. Breaking with tradition, the ICJ/CIJL delegation was advised that His Majesty King Mswati III currently exercises power through consultations with numerous individuals and palace advisory bodies that include:

A. The Queen Mother

His Majesty consults the Queen Mother, Her Majesty Queen Ntombi, on all matters of national importance. The Queen Mother grounds her opinions through a body of traditional advisers from her royal residence and the King's court.

B. Cabinet

The appointed Parliamentary Cabinet includes the Prime Minister, Deputy Prime Minister, Attorney General and Minister of Justice. This appointment process ensures that Cabinet exercises power at His Majesty's pleasure. Dependent on the Monarchy, in real terms, the political power of Cabinet is illusory.

C. The Standing Committee of the Swazi National Council

The Standing Committee of the Swazi National Council is a 29 member palace appointed advisory body composed of individuals ostensibly intended to represent various clan, cultural, class and minority interests in Swaziland. Serving at His Majesty's pleasure, the Standing Committee possesses no power independent of its relationship with King Mswati III.

D. His Majesty's Special Committee on Justice

His Majesty is free to consult any adult member[38] of Swazi society and/or royal advisory bodies on matters of importance to the nation. From numerous sources, the ICJ/CIJL delegation was advised that His Majesty's Special Committee on Justice, commonly known as the Thursday Committee,[39] is a royal advisory body of considerable importance in Swaziland.

(1) Membership

Constituted neither through legislation nor Royal Decree, the membership of the Thursday Committee is fluid. Present members include: Moi Moi Masilela,[40] the Attorney General, the Minister of Justice, the Commissioner of Police, the

---

[38] It was traditional practice in Swaziland for the King to consult adult male members of the Swazi nation, and in fact, he could summon any male, at any time, for consultation. This practice was altered by His Majesty King Sobhuza II to include adult women among those to which the King could consult.

[39] So named as it assembles Thursday mornings and is granted an audience with His Majesty on Thursday afternoons.

[40] Moi Moi Masilela is one of the most influential advisers to His Majesty King Mswati III. A former footballer and natural orator, Mr. Masilela enjoys His Majesty's confidence as his parentage includes a potent royal medicine man and the sister of His Majesty King Sobhuza II. Mr. Masilela holds membership in most, if not all, royal advisory bodies.

Commissioner of the Anti-Corruption Unit, the Commissioner of Correctional Services, the Director of Public Prosecutions, former Chief Justice Sapire, representatives of different ethnic clans and families and members of the Judicial Services Commission. Prime Minister Dlamini is the Committee's Chair.

(2) Function and Source of Power

Possessing neither a formal nor informal mandate, the functions of the Thursday Committee are relatively unknown, however, the ICJ/CIJL delegation was advised that this body subverts Parliament and holds substantive political power over all matters of national importance. Operating with unlimited jurisdiction and posing as the guardian of justice, the Thursday Committee has introduced a cast of powerful actors into Swazi politics that rejects the rule of law alleging that it presents a threat to the power of His Majesty. Furthermore, the members of the Thursday Committee, and those beholden to them, control access to His Majesty and silence progressive voices. As such, they have benefited from the rule of law crisis, which has effectively granted them impunity of action.

(3) Attacks on the Judiciary

It is widely reported that the Thursday Committee has moved against the Director of Public Prosecutions and Roman-Dutch Court Justices who are perceived to be hostile to His Majesty. It appears also that the Thursday Committee effectively controls the appointment and removal of High Court Justices and manipulates their conditions of employment. Furthermore, judicial decisions that are adverse to the interests of the members of the Thursday Committee are attacked as being contrary to State interests. A case in point is that the Government, as controlled by the Thursday Committee, launched subtle attacks against the judiciary prior to the issuance of the rulings of that Court in *Gwebu and Bhembe* v. *Rex* and *Minister of Home Affairs et al.* v. *Fakudze et al*. in order to ensure that these rulings were favourable to entrenched interests. It was reported to the ICJ/CIJL delegation that through such direct intervention, the Thursday Committee achieved some success in co-opting former Chief Justice Sapire to occasionally sacrifice judicial independence in favour of Thursday Committee membership. As a result of this pressure and intimidation, Chief Justice Sapire, as he then was, recused himself from High Court proceedings that conflicted with entrenched interests and, at times, acted in a less than impartial manner when presiding. In one notable example, during a High Court hearing of *Minister of Home Affairs et al.* v. *Fakudze et al.*, the former Chief Justice ruled against State interests. Subsequently summoned before the Thursday Committee, the former Chief Justice returned to the bench and attempted to overturn his own ruling, an action disallowed by the Court of Appeal. Despite these lapses, the former Chief Justice staunchly defended judicial independence and the rule of law in numerous judicial pronouncements.

Effectively removed from office on 3 April 2003, Chief Justice Sapire was replaced by Justice Jacobus Annandale who was recruited from South Africa in 2001 on a fixed, short-term contract. Justice Annandale was appointed to the bench under the signature of Moi Moi Masilela, a member of the Thursday Committee.

The ICJ/CIJL urges the new Chief Justice of Swaziland to respect the *Bangalore Principles of Judicial Conduct*,[41] which state,

> Principle 1.2 *A judge shall be independent in relation to society in general and in relation to the particular parties to a dispute which the judge has to adjudicate.*
>
> Principle 1.3 *A judge shall not only be free from inappropriate connections with, and influence by, the executive and legislative branches of Government, but must also appear to a reasonable observer to be free therefrom.*
>
> Principle 1.4 *In performing judicial duties, a judge shall be independent of judicial colleagues in respect of decisions which the judge is obliged to make independently.*
>
> Principle 2.1 *A judge shall perform his or her judicial duties without favour, bias or prejudice.*
>
> Principle 2.2 *A judge shall ensure that his or her conduct, both in and out of court, maintains and enhances the confidence of the public, the legal profession and litigants in the impartiality of the judge and of the judiciary.*
>
> Principle 3.1 *A judge shall ensure that his or her conduct is above reproach in the view of a reasonable observer.*
>
> Principle 4.8 *A judge shall not allow the judge's family, social or other relationships improperly to influence the judge's judicial conduct and judgment as a judge.*
>
> Principle 5.2 *A judge shall not, in the performance of judicial duties, by words or conduct, manifest bias or prejudice towards any person or group on irrelevant grounds.*

(4) Justification for the Rule of Law Crisis

Traditionalist sectors led by the Thursday Committee have emphasised that the present rule of law conflict was caused by a clash between Swazi customary law and Roman-Dutch law. The prevailing State attitude holds that the unwritten traditional structure should prevail over the Roman-Dutch law that has operated in Swaziland in a fair and impartial manner since independence. Further, this position flies in the face

---

[41] *The Bangalore Principles* establish standards for ethical conduct of Judges. They are designed to provide guidance and afford the judiciary a framework for regulating judicial conduct. They are also intended to assist members of the Executive, the Legislature, lawyers and the general public to better understand and support the judiciary. These principles presuppose that Judges are accountable for their conduct to appropriate institutions established to maintain judicial standards, which are themselves independent and impartial, and are intended to supplement and not to derogate from existing rules of law and conduct which bind the Judge. The Principles were drafted by the Judicial Group on Strengthening Judicial Integrity, which was composed of legal experts and Justices representative of a wide diversity of legal traditions from around the world.

of written law and practice whereby Swazi law and custom is subordinate to both common and statutory law.

Past practice in Swaziland also confirms that Swazi customary is subordinate to Roman-Dutch law. For example, in the case of *Sobhuza II* v. *Allister Miller* of 1926 - 53, "painful as it was, King Sobhuza II abided by the judgment of the Privy Council where he had appealed in an attempt to get back the two third's of land which was then in the hands of white settlers."[42] As borne out through practice, the contention that the present rule of law conflict was caused by a clash between Swazi-customary law and modern/western culture and law is thus misdirected, without basis and intentionally misunderstands Court of Appeal judgments and the general hierarchy of national laws.

[42] 16 January 2003, *Times of Swaziland*, "Stand by what is Rights Lawyers Urge King".

XII. INTERNATIONAL STANDARDS

Of the major international human rights treaties, Swaziland is a party only to the *Convention on the Elimination of All Forms of Racial Discrimination* and *the Convention on the Rights of the Child*. Swaziland is not a party to either *the International Covenant on Civil and Political Rights* or the *International Covenant on Economic, Social and Cultural Rights* (and, consequently, none of their *Optional Protocols*). Swaziland has not ratified the *Convention on the Elimination of All Forms of Discrimination against Women*, the *Convention against Torture* and either of the *Optional Protocols to the Convention on the Rights of the Child*.

In the African system, Swaziland has ratified the *African Charter on Human and Peoples' Rights* and the *Convention Governing the Specific Aspects of Refugee Problems in Africa*. Furthermore, it has signed but not ratified the *African Charter on the Rights and Welfare of the Child*.

Apart from the obligations arising from international and regional treaties, internationally accepted standards regarding the independence of the judiciary and other legal professionals are as follows: the 1980 *United Nations Principles on the Independence of the Judiciary*; the 1990 *Basic principles on the Role of Lawyers*; the 1990 *United Nations Guidelines on the Role of Prosecutors*; *The Bangalore Principles of Judicial Conduct*; and *The Latimer House Guidelines.*

XIII. RECOMMENDATIONS

A. Reform of the Legal System

1. The Review of National Legal Standards

- The spirit of constitutionalism must be breathed into Swaziland. A lasting solution to the difficulties besetting the country lies in the development of a constitution which incorporates international human rights standards such as those contained in the African Charter on Human and Peoples' Rights to which Swaziland is a party. The ICJ/CIJL was gratified to learn that, on 31 May 2003, His Majesty King Mswati III released a draft constitution that contains a Bill of Rights guaranteeing various human rights and freedoms.[43] It is recommended that provisions relating to multi-party democracy be strengthened.

- The alleged clash between customary law and Roman-Dutch law is false as Swaziland formally accepted that the former is subordinate to the latter. This legal hierarchy must be reaffirmed.

- Swazi law and custom must be codified as its exact content remains unclear and is subject to varying interpretations.

2. Withdrawal of Attacks on the Rule of Law

- While the Swazi Government has not yet unequivocally retracted its 28 November 2002 statement, there are indications that progress is being made to address the rule of crisis. This is indeed a very positive development. However, the Government must go further and demonstrate it will herewith abide by all court rulings, including those that currently remain outstanding.

3. Guarantees Ensuring Judicial Independence

- Judicial independence is a pre-requisite to the rule of law and must be protected by the Constitution. Constitutional guarantees should enable judges to exercise their functions freely from any extraneous influences, inducements, pressures, threats or interference, direct or indirect, from any quarter or for any reason. As such, the Government must protect judicial independence by not requiring judges to serve on either formal or informal Executive decision-making bodies such as the Thursday Committee.

Judicial Appointment, Discipline and Removal

- The Judicial Services Commission, (JSC), as established under Chapter IX, Part III of the 1968 *Constitution* to independently recommend appointments, exercise disciplinary control and recommend the removal of judicial officers in Swaziland, should be reconstituted. It should be empowered to recommend the terms and conditions of service for Justices and other judicial officers and ensure that

[43] "Democratic Gains in New Constitution" 2 June 2003 in AllAfrica.Com, http://allafrica.com/stories/200306020818.html

judicial appointments are based on merit with appropriate provision for the appointment of Swazi-based Justices. The appointment process should be designed to guarantee the quality and independence of mind of those selected for appointment at all levels of the judiciary. The JSC should have direct access to His Majesty to directly avail him of its recommendations and the appointing authority should act in accordance with its recommendations. In cases where a Justice is at risk of removal, the JSC should institute a procedure whereby the Justice will have the right to: (1) be fully informed of the charges; (2) be represented at a hearing; (3) make a full defence; and (4) be judged by an independent and impartial tribunal which should consist of a majority of peers. Grounds for removal of a judge should be limited to either an inability to perform judicial duties and/or serious misconduct. The deliberations and recommendations of the JSC should be transparent through publication in the Government gazette.

Judicial Tenure and Remuneration

- Judicial appointments should be permanent until a mandatory retirement age or with the expiry of term of office where such exists. Whilst in some jurisdictions contract appointments may be inevitable, such appointments should be subject to appropriate security of tenure. The current state of affairs in Swaziland where salaries are established on an ad hoc and arbitrary basis is unacceptable. Reasonable contractual conditions of service for judicial officers should be established by law and administered by the JSC.

Funding for the Judicial System

- Appropriate support staff, resources and equipment are essential to the independent and proper functioning of the judiciary. Sufficient and sustainable funding should be provided to enable the judiciary to perform its functions to the highest standards. Case law reports, discontinued in 1982, should be reinstituted. Funding for the Courts should be protected from alienation or misuse. The allocation or withholding of funding should not be used as a means of exercising improper control.

Code of Judicial Conduct

- A competent, independent and impartial judiciary is essential if the courts are to fulfil their role in upholding constitutionalism and the rule of law. It is crucial that judges, individually and collectively, respect and honour judicial office as a public trust and strive to enhance and maintain confidence in the judicial system. To this end, the Swazi judiciary should develop a Code of Ethics and Conduct as a means of ensuring independence, impartiality and accountability. This Code should include provisions that mandate Justices to: perform their judicial duties without favour, bias or prejudice; exhibit and promote high standards of judicial conduct to reinforce public confidence; and minimise occasions on which it will be necessary for them to be disqualified from hearing or deciding cases. The *Bangalore Principles of Judicial Conduct* can serve as a model

4. Resignation of the former Chief Justice

- The circumstances surrounding the resignation of the former Chief Justice cause grave concern. Although the tenure of the former Chief Justice was served in very difficult circumstances due to pressure from the Government, in many respects, he effectively served Swaziland for a long period of time. As such, it would have been appropriate for the former Chief Justice to have resigned or retired with honour and dignity together with his retirement benefits, if any, intact.

5. Acting Chief Justice of the High Court

- A Chief Justice should avoid all inappropriate connections with, and influence by, the Executive. While dialogue between the judiciary and the Government may be desirable or appropriate, in no circumstances should such dialogue compromise judicial independence.

- The ICJ/CIJL delegation was encouraged to find that the High Court is composed of well qualified, principled and courageous Swazi Justices, any of whom would be well-qualified to be appointed as the Chief Justice of Swaziland. Such an appointment would eliminate allegations by unprincipled elements that foreign Justices are unfamiliar with Swazi law, tradition and custom.

6. The Status of Magistrate's Courts

- The State should pay particular attention to improving the professional status of Magistrate Court Justices who are presently regarded as civil servants and whose Courts are under-resourced.

7. The Review of Legal Education

- Swazi authorities should conduct a comprehensive review of the legal education of judges with regard to improving the administration of justice. Increased resources should be devoted to the development of legal training.

8. Support for the Law Society of Swaziland and Civil Society Organisations

- The Executive must refrain from obstructing the functioning of an independent legal profession. In particular, harassment and intimidation of the Law Society and other members of the legal profession should immediately cease.

- The Law Society and civil society organisations should be allowed to play a key role in the dialogue for enhancing good governance and the rule of law. Adequate funding and resources should be made available to these organisations to assist them in the discharge of these functions.

B. Political Reform

1. Strengthening Legitimate Institutions

- The Swazi Government should desist from promoting political conditions that have the net effect of threatening the survival of the Kingdom. This requires an immediate strengthening of State political power structures in order to restore domestic and international confidence in the political process. The legitimate institutions of Government should replace informal advisory bodies as the vehicle for public decision-making as abuse of power is easy when it is exercised through clandestine, informal and unaccountable bodies. These informal bodies also provide an opportunity for unscrupulous individuals to make decisions based upon personal allegiances and power. It is therefore crucial that the roles of legitimate institutions and offices be more clearly established and defined. The Constitutional Review Commission should continue to provide an opportunity to clarify and strengthen such legitimate institutions and offices with a view to making it clear where public decision-making rests. The success in executing reforms will require the strong support and leadership of His Majesty King Mswati III.

- Parliamentary procedures should be enacted to provide for public accountability with regard to the responsible exercise of Executive power. Procedures for the preliminary examination of proposed Royal Decrees and parliamentary legislation should be adopted and published in order that political issues are both communicated to and debated by the public.

2. Enhancing the Relationship of the Government with the Judiciary

- Attacks on the judiciary have emanated from the highest office in Government, the Prime Minister. It is important that the Prime Minister be supportive of the judiciary in order to enhance public confidence in judicial independence and the rule of law. The current attitude of several high-ranking office holders toward the judiciary undermines the Government and is wholly inappropriate to their position.

C. Regional and International Mechanisms

- The African Commission on Human and Peoples' Rights should assist in promoting and protecting the rule of law by demanding that Swaziland submit its overdue State report. Furthermore, the African Commission should invoke article 58(1) of the *African Charter* to bring the rule of law crisis in Swaziland to the attention of the Heads of State of the African Union.

- Non-Governmental organisations in Swaziland should utilise the right of individual complaint under article 55 of the *African Charter* to assist victims of abuses in Swaziland to bring their cases before the African Commission. Such cases could cite Swaziland before the African Commission for violations of judicial independence pursuant to article 26 of the *African Charter*.

- The United Nations Special Rapporteur on judicial independence, who has denounced the current situation, should continue to focus on the rule of law crisis. Other United Nations mechanisms such as the *UN Special Rapporteur on Freedom of Expression* and the *UN Special Rapporteur on Human Rights Defenders* should be invited to Swaziland.

D. Ratification and Compliance With International Instruments

The ICJ/CIJL urges the Swazi Government to,

- Implement all those treaties to which it is a party, namely, the *Convention on the Elimination of All Forms of Racial Discrimination* and the *Convention on the Rights of the Child.*

- Ratify all international and regional treaties to which it is not a party such as the *International Covenant on Civil and Political Rights* and the *International Covenant on Economic, Social and Cultural Rights* and, consequently, their *Optional Protocols*. The Government should also ratify the *African Charter on the Rights and Welfare of the Child*, the *Convention on the Elimination of All Forms of Discrimination against Women*, the *Convention against Torture* and the *Optional Protocols to the Convention on the Rights of the Child*.

- Governing non-treaty standards that the Government should respect are: the *United Nations Principles on the Independence of the Judiciary*, the *United Nations Basic Principles on the Role of Lawyers*, the *United Nations Guidelines on the Role of Prosecutors*, and the *Latimer House Guidelines.*

XIV. CONCLUSION

The ICJ/CIJL has taken notice that within the context of an HIV/AIDS epidemic and chronic food shortage, effective Government in Swaziland has been subverted by individuals that sacrifice national welfare and the survival of the Monarchy in favour of their own interests. Silencing dissent, they have engaged in an-all out assault on judicial independence and the rule of law. The resignation of the Court of Appeal in protest of State attacks on judicial decisions and the ensuing crisis within the legal profession and civil society should alert the Kingdom to the dangerous long-term consequences of its actions and serve as a signal that meaningful reform is urgent. As recently stated by Lawyers for Human Rights, (Swaziland), quoting Robert Kennedy:

> *Robert Kennedy succinctly put that Government must respect the law on 8 June 1966 in an address to the Johannesburg Bar and he said, "The lawyer understands the rule of law. He knows that law begins with its observance by Government. For in the words of Justice Brandies of our Supreme Court, 'Government is the potent, the omnipotent teacher. For good or ill, it teaches the whole people by its example. If the Government becomes a lawbreaker, it breeds contempt of law. It invites every man to become law unto himself. It invites anarchy. To declare that in administration of the criminal law the end justifies the means, would bring terrible retribution'. This the lawyer knows, and therefore he has the special responsibility to uphold the rule of law and make it the voice of progress and justice, a repository of ancient ideals and a channel of peaceful change towards those ideals.*[44]

The ICJ/CIJL is gratified that His Majesty King Mswati III released a draft constitution on 31 May 2003. However, the Government must fully retract its 28 November 2002 statement and abide by all court decisions including pending decisions so as to restore the independence and dignity of the judiciary and the rule of law.

We are grateful to all who assisted and gave of their time to the successful completion of this mission.

---

[44] 16 January 2003, *Times of Swaziland*, Lawyers for Human Rights (Swaziland) Press Statement.

ANNEX "A"

Intervention - ICJ/CIJL Alarmed at Attacks on the Rule of Law

4 December 2002

His Majesty King Mswati III
Office of the King
PO Box 1
Lobamba, Swaziland

Fax:+ 268 404 2669

Your Excellency,

The International Commission of Jurists (ICJ) consists of jurists who represent all the regions and legal systems in the world working to uphold the rule of law and the legal protection of human rights. The ICJ's Centre for the Independence of Judges and Lawyers (CIJL), is dedicated to promoting the independence of judges and lawyers throughout the world.

We are deeply concerned that the Government's disregard for decisions of Swaziland's Court of Appeal has caused six judges of that court to resign. As you are aware, the six South African judges of the Court of Appeal resigned on Saturday in protest over a Government decision to ignore two court judgements they issued. In addition, we have received information that Swaziland's lawyers may also strike.

Regarding the en masse resignation of the judges, Prime Minister of Swaziland, Dr. B.S.S. Dlamini, declared in a press statement issued on 28 November that,

"...Government does not intend to recognise the two judgements of the Court of Appeal. The laws of this country will remain as they are - in other words, as if the judgements of the Court of Appeal judges, in these respects, were not effective."

The Prime Minister also states that,

"The effect of the Court of Appeal judgements would be to strip the King of some of his powers and Government is not prepared to sit idle and allow judges to take from the King powers which were granted to him by the Swazi nation...The Court of Appeal is, in effect, emasculating the legitimate authority of the King - an authority which has been accorded to Swazi kings since time immemorial"

He adds that,

"It is Government's belief that the judges of the Court of Appeal have been influenced by forces outside our system and that they have not acted independently."

We are alarmed at these statements emanating from the highest quarters of Government which indicate profound disregard of fundamental international

principles on the separation of powers and the independence of the judiciary. Disregarding the decisions of judges- who are charged with upholding the law - on the ground that they "emasculate the legitimate authority of the King" points to a serious breakdown in the rule of law.

We remind you of the 1985 United Nations Basic Principles on the Independence of the Judiciary which state respectively in Principles 1 and 4 that,

It is the duty of all Government and other institutions to respect and observe the independence of the judiciary.

There shall not be any inappropriate or unwarranted interference with the judicial process, nor shall judicial decisions by the courts be subject to revision.

We ask that immediate steps be taken to remedy this situation and ensure respect for the decisions and independence of the judiciary, thereby upholding the rule of law.

Yours sincerely,

Louise Doswald-Beck
Secretary General

cc: Dr. S B Dlamini, Prime Minister of Swaziland,
Government House, PO Box 395,
Mbabane, Swaziland

Fax: +268 404 3943

Hon. Abednigo Ntshangase,
Minister of Foreign Affairs and Trade
Ministry of Foreign Affairs and Trade,
PO Box 518, Mbabane, Swaziland

Fax:+ 268 404 2669

ANNEX "B"

Swaziland - International Commission of Jurists to Visit Swaziland

Independence of Judges & Lawyers - Newsroom
10 January 2003

An ICJ delegation will visit Swaziland from 12-20 January to gather information on the functioning of the judiciary and legal profession. The ICJ is particularly concerned by a recent Government decision to disregard two rulings of the Court of Appeal. In protest, six South African judges of the Appeal Court resigned.

Swazi officials justified their defiance of the judiciary by alleging that judges of the Court of Appeal "have been influenced by forces outside the [Swazi] system and have not acted independently."

The ICJ mission will examine the relationship between the Monarchy and the judiciary in Swaziland, as provided under law, and as demonstrated through practice. The mission team will seek to meet with the King, Government officials, members of the judiciary, lawyers, parliamentarians, academics and other members of civil society in order to undertake a full and fair evaluation of the state of judges and lawyers. The ICJ will publish a report containing its findings and recommendations to the Government.

The ICJ delegation is composed of three international experts: Justice George Kanyeihamba of the Supreme Court of Uganda; Professor Michelo Hansungule, a Raoul Wallenberg Visiting Professor at the University of Pretoria, Centre for Human Rights; and Professor Edward Ratushny of the Faculty of Law, University of Ottawa and President of ICJ-Canada. The Rapporteur will be Edwin Berry, Legal Officer, ICJ Secretariat.

The ICJ will be undertaking some of its mission activities in tandem with the International Bar Association (IBA) which will also will be conducting a mission in Swaziland.

ANNEX "C"

Swaziland : Attacks on Rule of Law Continue

Independence of Judges & Lawyers - Newsroom
23 April 2003

With the Legal System on the verge of collapse, King says that democracy is not good for his country.

The Centre for the Independence of Judges and Lawyers (CIJL) of the International Commission of Jurists (ICJ) today expressed its deep regret at the unabashed disrespect for the rule of law and the erosion of the integrity of the legal system in Swaziland.

The CIJL/ICJ is disappointed to learn that King Mswati reportedly told worshippers at an Easter service on 19 April that "Although the whole world is preaching democracy, it does not mean we have to follow them." He added, "Democracy is not good for us because God gave us our own way of doing things."

Swaziland has been besieged by resignations of judges and protests by lawyers. Most recently, Chief Justice Stanley Sapire of the High Court resigned from his position. The Chief Justice can only be replaced by an appellate court judge, however, this is impossible as all such judges resigned *en masse* in November 2002. Other recent developments which undermine the justice system include the move to demote Justice Thomas Masuku; threats to deport the President of the Law Society, Mr. Paul Shilubane, on grounds that he holds dual citizenship; and recent protests by members of the Law Society.

"We are extremely concerned that these latest developments have brought the justice system in Swaziland to a halt," said Linda Besharaty-Movaed, CIJL/ICJ Legal Adviser. "King Mswati is ruling as if he has a mandate from heaven. He has virtually destroyed any semblance of respect and protection for the judiciary and the rule of law" she added.

The dysfunctional nature of the justice system in Swaziland is largely the result of the country's ambiguous constitutional order. Although the Constitution of 1968 was repealed by a proclamation of the King in 1973, numerous subsequent decrees have created an environment of legal uncertainty. Further compounding this problem, was the formation of a shadowy body referred to as the "Thursday Committee" which has largely usurped the powers of the Judicial Services Commission, the constitutional body charged with overseeing the administration of the judiciary. The CIJL/ICJ sent a fact-finding mission to Swaziland in January to gather information on the role of the judiciary and legal profession. A report will be issued shortly.

The lack of a clear separation of powers, stemming from an environment of constitutional uncertainty severely undermines the administration of justice in Swaziland and violates international human rights standards such as the *UN Principles on the Independence of the Judiciary*.