

THE RIGHT TO FREEDOM OF ASSOCIATION IN SWAZILAND: A CRITIQUE

Submitted in partial fulfilment of the requirements of the degree LLM (Human Rights and Democratisation in Africa)

BY

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DEDICATION

I dedicate this dissertation to my family and friends.

DECLARATIONS

I, **DUMSANI CHRISTIAN DLAMINI**, do hereby declare, certify and affirm that this research is my own work and that to the best of knowledge, has not been submitted or is currently being considered either in whole or in part, in fulfillment of the requirements of a Masters of Law Degree at any other institution of learning. The ideas used herein have been taken from different scholars, but have been presented in a manner that has not been taken from other literature hence it is deemed original. I assume personal responsibility to the correctness of facts contained herein and to the presentation thereof.

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LIST OF ABBREVIATIONS

ACHPR	African Commission on Human and Peoples Rights
AHRLR	African Human Rights Law Reports
CCPR	International Covenant on Civil and Political Rights
IBA	International Bar Association
INM	Imbokodvo National Movement
IPU	Inter-Parliamentary Union
NNLC	Ngwane National Liberatory Congress
NRM	National Resistance Movement
UNHR	United Nations Human Rights

Chapter 1

“Political parties are one means through which citizens can participate in governance either directly or through elected representatives of their choice. By prohibiting the formation of political parties, the King’s Proclamation seriously undermined the ability of the Swaziland people to participate in the government of their country and thus violated article 13 of the Charter.”¹

1. Introduction

1.1 Background to the study

Freedom of association is defined as the right of persons to join together in groups in order to pursue common objectives or interests.² These groups may be political parties, professional groups, sports clubs, non-governmental organisations, religious groups, trade unions or corporations.³ The right to freedom of association is in many states associated with democracy.⁴ It is the basis upon which political parties, the life blood of democracy, are founded.⁵ The UN Human Rights Commission defines democracy in the following terms:⁶

The Human Rights Commission...declares that the essential elements of democracy include respect for human rights and fundamental freedoms, *inter alia* freedom of association...and also includes access to power and its exercise in accordance with the rule of law, the holding of periodic fair and free elections by universal suffrage and by secret ballot as the expression of the will of the people, a pluralistic system of political parties and organisations....

Mushemaza observes that a number of western states and those who hold the same view argue that there is a link between democracy and a multiparty system.⁷ As a consequence, any system of governance which restricts the right of citizens to choose from one or more political parties is seen as undemocratic.⁸ It is argued that it is the people’s fundamental right to form

¹ Communication 251/2002, *Lawyers for Human Rights v Swaziland*, Eighteenth Annual Activity Report.

² Uganda: Freedom at risk <http://www.hrw.org/backgrounder/Africa/uganda/Uganda/NGO_final_01.htm> (accessed 9 September 2008).

³ As above.

⁴ J Katalikawe ‘Freedom of association: The case for or against the referendum on political parties in Uganda’ (2001) 1 *Law, Social Justice and Global Development* <http://www2.warwick.ac.uk/fac/soc/law/elj/lgd/2001_1/katalikwe/> (accessed 2 October 2008).

⁵ As above.

⁶ Commission on Human Rights Resolution 2003/36, UNDoc E/CN.4/2003/59.

⁷ EJ Mushemeza ‘Issues of violence in the democratization process in Uganda’ <http://www.codesria.org/links/Publications/ad_articles/Mushemeza/> (accessed 6 September 2008).

⁸ As above.

and associate in political parties of their choice without undue restriction.⁹ A denial of the right to freedom of association is an affront to the tenets of democracy. The right to freedom of association is so essential to the functioning of democracy that is recognised in international and regional human rights instruments as well as in national constitutions.

This study argues that the right to form political parties remains elusive in Swaziland in spite of the country's claim that it is democratic.¹⁰ The first assault on the right was through the King's Proclamation to the Nation of 1973 (Proclamation). The Proclamation abolished the Bill of Rights which was contained in the Swaziland Independence Constitution Order of 1968 which established the Constitution of Swaziland and proscribed political parties.¹¹

In the year 2005, the Parliament of Swaziland enacted the Constitution of the Kingdom of Swaziland Act (Constitution) which contains a Bill of Rights.¹² The Bill of Rights does not expressly provide for the formation of political parties but it can be assumed that political parties can organise and participate in the governance of the country by virtue of section 25(1) which provides for the right to freedom of association.¹³ The practical implementation of section 25(1), however, is undermined by section 79 of the Constitution which provides that the system of government for Swaziland is a *tinkhundla*-based system which emphasises individual merit as a basis for election or appointment to public office.¹⁴

Langwenya¹⁵ has defined the *tinkhundla*¹⁶ system in a manner that makes it difficult to conclude that political parties can function under the system. Furthermore, to buttress the argument that the practical implementation of section 25(1) is doubtful, the Constitution does not spell out the conditions for the formation and functioning of political parties nor does it make provision for additional legislation governing the exercise of the right to form political parties. Recently a political party which sought to register was denied registration by government on the

⁹ As above.

¹⁰ Sec 1 of the Constitution of the Kingdom of Swaziland Act of 2005 provides that 'Swaziland is a unitary, sovereign and democratic Kingdom.'

¹¹ Decree No.11 of the Proclamation provides that '[All] political parties and similar bodies that cultivate and bring about disturbances and ill-feelings within the Nation are hereby dissolved and prohibited.'

¹² The Constitution of the Kingdom of Swaziland Act 1 of 2005.

¹³ Sec 25(1) states that '[A] person has the right to freedom of peaceful and assembly and association.'

¹⁴ Sec 79 provides that '[The] system of government for Swaziland is a democratic, participatory, *tinkhundla*-based system which emphasises devolution of state power from central government to *tinkhundla* areas and individual merit as a basis for election or appointment to public office.'

¹⁵ SM Langwenya 'Current legal development- Swaziland (2005) *University of Botswana Law Journal* 171.

¹⁶ According to Langwenya 'this system of government is based on electing members of parliament not because of political party membership or affiliation but on individual merit. It also promotes campaigning for parliamentary seats on developmental as opposed to political topics. Thus members of parliament will win parliamentary seats not on what laws and governmental policies they will make, change and implement but on what developmental projects they will put into effect in their constituencies while in parliament...'

grounds that the ministry responsible does not have authority to register political parties.¹⁷ It appears that the framers of the Constitution did not envisage the existence of political parties under this Constitution. The conclusion that can be made is that the Constitution has not changed the situation that was created by the Proclamation in so far as political parties are concerned. It should be noted that political parties exist in Swaziland although they cannot participate in elections.

Uganda was once in the same situation as Swaziland when President Yoweri Museveni introduced the 'movement system' also characterised as a 'no-party system' as an alternative to a multiparty system of government when he became president in 1986. Political parties were suspended but not banned. Political candidates ran for elections as individuals rather than on party affiliation. The movement system was an all-embracing movement as it extended an invitation to all citizens and political figures from the suspended political parties to form part of a broad-based government.¹⁸

Although the movement system purported to be all-embracing, it increasingly became hostile to dissent from people who opposed its principles.¹⁹ As a consequence, factions and internal squabbles developed within the system which led to its collapse.²⁰ The system was oblivious of the fact that one of the hallmarks of democracy is the right of citizens to exchange divergent views and to elect whether to align or not to align themselves with the ruling government. The movement system is an example of a failed attempt to depoliticise society. The Ugandan experience under the movement system reaffirms Ssenkumba's observation that, although a government can be run efficiently by one like-minded people such a system of administration can only be short-lived.²¹ This is because a political system which is without an effective opposition will corrupt itself and disappear into oblivion.²² This point will be canvassed later in the study. There is a lesson that Swaziland under her *tinkhundla* system can learn from the Ugandan experience under the movement system. Uganda has moved forward and restored a multiparty political system. Registered political parties are now at liberty to operate openly and to participate in elections.

¹⁷ 'EBC mum on AUDP claims' *Weekend Observer* 12-13 July 2008 2.

¹⁸ Ssenkumba 'The dilemmas of directed democracy: Neutralising opposition politics under the National Resistance Movement (1997) 3 *East African Journal of Peace and Human Rights* 242.

¹⁹ S Makara et al 'Turnaround: The National Resistance Movement and the reintroduction of a multiparty system in Uganda in J Kiiza et al (eds) *Electoral democracy in Uganda: Understanding the institutional processes and outcomes of the 2006 multiparty elections* (2008) 271.

²⁰ As above.

²¹ Ssenkumba (n 18 above) 240.

²² As above.

1.2 Statement of the research problem

Swaziland has joined the community of nations by ratifying and acceding to a number of regional and international human rights treaties which guarantee the right to freedom of association. However, the extent to which the right can be exercised, particularly with respect to the formation and functioning of political parties raises some legal questions. This is because section 79 of the Constitution purports to unduly limit the exercise of the right. The Ugandan Constitutional Court determined that freedom to associate does not only entail the right to form a political party but it also 'guarantee the right of such a party once formed to carry out on its political activities freely.'²³ The full enjoyment of the right to freedom of association, particularly as a political right, is undermined by section 79 which guarantees the right in so far as it is within the *tinkhundla* system of government which emphasises individual merit as a basis for election of appointment to public office.

1.3 Research questions

This research will attempt to address the following issues:

- (a) Whether political pluralism is the only means of actualising the right to freedom of association, and
- (b) Whether the limitation imposed on the right to freedom of association by section 79 of the Constitution of Swaziland is justifiable.

1.4 Objectives of the study

This study will analyse the obligations Swaziland has voluntarily assumed by ratifying or acceding to the human rights treaties which guarantee the right to freedom of association. It will also explore the implications of section 79 of the Constitution on the political process based on the experience of Uganda under the movement system. Lastly, the paper will examine the major impediments to the realisation of the right to freedom of association in Swaziland.

²³ *Dr Paul Ssemwogerere & Others v Attorney General Constitutional Petition No.5/2002* (Unreported).

1.5 Literature review

Hatchard et al in *Comparative Constitutionalism and Good Governance in the Commonwealth* (2004) observe that a constitution that seeks to be regarded as legitimate and authoritative must among other things guarantee political pluralism in order to enhance the flow and exchange of divergent ideas.

Ssenkumba in an article titled '*The Dilemmas of Directed Democracy: Neutralising Ugandan Politics under the NRM*' (1998) notes that a political system which is without an effective opposition will corrupt itself and disappear into oblivion. He argues that at the heart of democracy is the right of individuals and groups to hold divergent opinions, to publicly exchange alternative ideas as well as to freely decide not to collaborate with the incumbent government as long as they do this within the law. He points out that if providing alternative packages of policies to the voters is essential to democracy, then political parties should be allowed to campaign openly. It is his view that the concept of individual merit tends to focus on the personal attributes of the political candidates and not on the policies which are critical to addressing developmental and political challenges facing the country.

Fombad in his article '*Challenges to constitutionalism and the constitutional rights in Africa and the enabling role of political parties: Lessons from Southern Africa*' (2007) postulates that in order to avoid tyranny, a constitutional and democratic government must base its authority not only on the popular will of the people but also it must function within restrictions that eliminate capriciousness. He argues that this can only be achieved under a liberal democracy because it permits citizens to vote for an alternative government other than the incumbent.

On the issue of regulation of political parties, Bouckaert in *Hostile to Democracy: The Movement System and Political Repression in Uganda* (1999) notes that the right to form political parties is at the heart of the right to freedom of association. He argues that any limitation on political parties must not negate the nucleus of this right.

Mzizi in *Political movements and the challenges of democracy in Swaziland* (2005) observes that democracy is unthinkable without political parties and that at the same time political parties cannot be expected to function under an environment of authoritarianism. He notes that political parties everywhere have the potential to advance democracy and promote accountability but the political environments in which they operate sometimes pose a challenge.

1.6 Research methodology

This study relied heavily on desk research method, that is, case law, statutes, treaties, and scholarly writings.

1.7 Limitations of the study

The right to freedom of association is wide in scope and this research discussed the right in so far as it is a political right to form political parties. Very little has been written about the underground political parties in Swaziland and therefore this study could not benefit from their experiences under the prevailing political environment in Swaziland.

1.8 Chapter breakdown

This paper comprises four chapters. Chapter one highlights the basis and structure of the entire study. Chapter two will discuss the nature and justification for political pluralism in the democratisation process. Chapter three will be a critical analysis of states' obligations under the African Charter on Human and Peoples' Rights (African Charter) and the International Covenant on Civil and Political Rights (CCPR). It will also discuss the permissible grounds for limiting the right to freedom of association under these instruments and examine whether the limitation imposed on the right to freedom of association by section 79 of the Constitution of Swaziland is justifiable. Chapter 4 is a conclusion of the entire study and will also make recommendations.

Chapter 2

The nature and justification for political pluralism

2. Introduction

The 'third wave'²⁴ of democratisation unleashed a number of positive changes in the political sphere of almost all African countries. Fombad points out that, most argue that the 'third wave' began in the 1970s.²⁵ It swept across Africa in the late 1980s and early 1990s and was termed the 'second liberation' or 'second revolution.'²⁶ Political changes included but were not limited to the construction of 'democratic institutions', 'the reform of authoritarianism' and the 'extension of basic freedoms.'²⁷ In many African countries, constitutions have been revised and reshaped to reflect 'universally accepted values and principles and new found freedoms.'²⁸ In South Africa, for example, although the Constitution makes provision for the right to freedom of association, it further guarantees in clear terms the right of every citizen to form a political party.²⁹ The bulk of African states have adopted political pluralism and constitutions which provide for the division of political power and authority among multiple bodies within the state.³⁰ The adoption of a new constitutional order has seen a sustained progressive decline in the restrictions imposed by states on civic associational life.³¹ Fombad points out that, perhaps it can be said that Africa is engaged in its third constitution-making revolution.³²

²⁴ The phrase is ascribed to S Huntington in *The Third Wave: Democratisation in the late Twentieth century* (1991) quoted in CM Fombad 'The Swaziland constitution of 2005: Can absolutism be reconciled with modern constitutionalism' (2007) 23 *South African Journal on Human Rights* 95. According to Huntington the 'wave of democratisation' refers to 'a group of transitions from non-democratic to democratic regimes that occur within a specified period of time and that significantly outnumber transitions in the opposite direction during that period.' Huntington refers to two previous waves of democratisation. The first was a long, slow wave which began from 1828 to 1926. The second began from 1943 to 1962.

²⁵ CM Fombad 'The Swaziland constitution of 2005: Can absolutism be reconciled with modern constitutionalism' (2007) 23 *South African Journal on Human Rights* 95.

²⁶ As above.

²⁷ B Rutinwa 'Freedom of association and assembly: Unions, NGOs and political freedom in Sub-Saharan Africa' <www.art19.org> (accessed 16.08.2008).

²⁸ L Sewanyana 'Making human rights a reality in Africa' (2001) 7(2) *East African Journal of Peace and Human Rights* 288.

²⁹ Sec 18 of the Constitution of the Republic of South Africa, 1996 provides that '[Everyone] has the right to freedom of association.' Article 19(a) provides that '[Every] citizen is free to make political choices including the right to form a political party.'

³⁰ As above.

³¹ As above.

³² CM Fombad 'Challenges to constitutionalism and constitutional rights in Africa and the enabling role of political parties: Lessons and perspective from Southern Africa' (2007) 1 *The American Journal of Comparative Law* 2.

One of the main characteristics of a democratic society is the recognition and respect for fundamental rights and freedoms.³³ Among these freedoms are the freedom of assembly and association.³⁴ The evolution of political parties can be sustained under the right to freedom of association which serves as one of the vehicles for furthering democratisation in modern society.³⁵

Despite the 'third wave of democratisation' and the 'third constitution-making revolution', the right of political parties in Swaziland to participate in the government of the country remains elusive.³⁶ This state of affairs negates the argument that one of the most significant developments of the 'third wave of democratisation' was the 'recognition of political pluralism and the legalisation of previously banned political parties.'³⁷ In fact, an argument is made that the clog on the formation of political parties and their participation in the electoral process is an assault on the newly recognised rights to 'associate, vote, and participate in the governance of the state.'³⁸ This chapter will discuss the legal basis for the formation and participation of political parties in modern democratic societies. It will also discuss the right to freedom of association under international law.

2.1 The nature and justification for political pluralism

Freedom of assembly and association are universally recognised not only as fundamental human rights but also as necessary to sustain economic and social progress and a 'basic underpinning of democracy within nations.'³⁹ One of the main concerns of democracy is to

Fombad notes that the first constitution-making revolution is associated with the constitutions that African countries received on independence. He argues that these constitutions were 'negotiated' but were to a large extent imposed by the departing colonial powers. These constitutions, according to Fombad, were, in accordance with the standards of the time, complicated documents which sought in a moment's time to introduce potentially liberal and democratic governments. They failed to accomplish this objective because the illiberal and authoritarian constitutions and institutions which were instruments of the colonial powers did not groom the African leaders to govern in accordance with the independence constitutions. Fombad points out that the lessons of dictatorship were assimilated too well by African leaders. When the independence constitutions were bequeathed, the new African leaders ran wild because they were so excited by the power they wielded. The second constitution-making revolution according to Fombad began after independence. The new African leaders repealed the liberal and democratic independence constitutions on the grounds that Africa had to frame home-grown constitutions. The objectives of the home-grown constitutions which were among other things development and nation-building were never accomplished. It is against this background that Fombad posits that the third constitution-making revolution which began in the 1990s seeks to remedy the mistakes of the past.

³³ Rutinwa (n27 above) 1.

³⁴ As above.

³⁵ 'Freedom of expression, assembly and association' report by the Commonwealth Secretariat.

³⁶ The Constitution of the Kingdom of Swaziland Act 1 of 2005 provides for freedom of association under section 25. Section 87 however prohibits canvassing for votes and this makes it impossible to conclude that political parties can operate within such an arrangement. There is also section 79 which does not envisage political parties.

³⁷ Fombad (n 32 above) 1.

³⁸ Fombad (n 32 above) 2.

³⁹ Rutwina (n 27 above) 1.

respect individuals and to attend to their concerns.⁴⁰ Allowing people to air their grievances by demonstrating or forming political parties is a means to a democratic end.⁴¹ The opportunity to associate or act with like-minded people in order to accomplish goals which are legitimate is critical to the self-realisation of the individual.⁴²

The right to freedom of association encompasses the freedom of individuals to congregate in order to protect their interests by establishing a collective entity which represents them.⁴³ The interests which are protected may be political, economic, religious, social, cultural, professional or labour union interest.⁴⁴ For purposes of this study, the right to freedom of association will be considered in so far as it guarantees the freedom to form political parties.

The right to freedom of association is considered to be closely linked to the exercise of actual representative democracy when it embodies political rights and the right to form and join political parties in order to further certain ideas or opinions in the political life of the nation.⁴⁵ Nsirimovu argues that the entire concept of human rights is strengthened by the recognition and maintenance of the right to freedom of association.⁴⁶ This is because, apart from actual participation of citizens in the government through the ballot, the exercise of the right to freedom of association is one of the most efficient means to exhibit the concerns and grievances of the citizenry.⁴⁷ When the right is manifested in the formation of political parties, it ensures the effectiveness of the ballot.⁴⁸

A political party is defined 'as any political group that presents at elections, and is capable of placing through elections, candidates for public office.'⁴⁹ Two conclusions can be drawn from this definition. Firstly, political parties are not constituents or parts of the state but are formed by citizens of the state and are premised on society and public life.⁵⁰ Secondly, political parties differ from interest groups and civil associations in that, it is only political parties that take part in elections.⁵¹ On the basis of the above conclusions, Fombad argues that political parties may be

⁴⁰ AH Robertson & JG Merrills *'Human rights in Europe: A study of the European Convention on Human Rights'* (1993) 157.

⁴¹ As above.

⁴² Robertson & Merrills (n 40 above) 158.

⁴³ VO Nmehielle *'The African human rights system: Its laws, practices, and institutions'* (2001) 110.

⁴⁴ As above.

⁴⁵ A Nsirimovu *'Human rights: An umbilical cord of participatory democracy'* (1997) 44.

⁴⁶ As above.

⁴⁷ As above.

⁴⁸ As above.

⁴⁹ Fombad (n32 above) 24.

⁵⁰ As above

⁵¹ As above.

regarded as 'the veins through which the blood of political activities flows throughout the body polity.'⁵² The extent to which the political health of the body polity is maintained will be determined largely by how this blood flow is regulated.⁵³

It is argued that the one party system which characterised African politics before the third wave of democratisation had negative implications on the social, economic and political life of the state.⁵⁴ The idea behind political pluralism can be linked to the limitations or restrictions which are synonymous with a political set-up dominated by a single, monolithic political organisation.⁵⁵ It has been demonstrated that such a political arrangement undermines fundamental human rights, restricts freedom of the press and of association and is inimical to individual initiative.⁵⁶ Political pluralism evolved as a concept in order to curb excesses in the political system dominated by a single political entity.⁵⁷ There are three theories which serve as justification for the recognition of the right to freedom of political association, namely political accountability, self-realisation and development. These theories will be discussed below.

2.1.1 Political accountability/ democracy

The UN Human Rights Commission observed that 'the essential elements of democracy include ... transparency and accountability in public administration...'⁵⁸ The Inter-Parliamentary Union (IPU), the international organisation of parliaments has declared that:

Public accountability, which is essential to democracy, applies to all those who hold public authority, whether elected or non-elected, and to all bodies without exception. Accountability entails a public right of access to information about activities of government, the right to petition government and to seek redress through impartial administrative and judicial mechanisms.⁵⁹

A two-dimensional concept of accountability has been proposed, namely answerability and enforcement.⁶⁰ Answerability means that the entity that is publicly accountable has an obligation to give explanations for its actions.⁶¹ Enforcement implies that the entity is liable to punishment

⁵² n 24 above, 25.

⁵³ As above.

⁵⁴ Fombad (n 24 above) 25.

⁵⁵ J Ssenkumba 'The dilemmas of directed democracy: Neutralising Ugandan opposition politics under the NRM' in AO Olukushi (ed) *The politics of opposition in contemporary Africa* (1998) 172-173.

⁵⁶ As above.

⁵⁷ Ssenkumba (n 55 above) 173.

⁵⁸ UN Commission on Human Rights Resolution 2003/36 UN Doc E/CN.4/2003/59.

⁵⁹ Point 14 Universal Declaration on Democracy, Inter-Parliamentary Council, Cairo, 16 September 1997.

⁶⁰ Discussing international standards for democratic governance <<http://www.democratic-reporting.org>> (accessed 6 September 2008).

⁶¹ As above, 18.

if it fails to respond or responds in an unsatisfactory manner.⁶² For example, the electorate can sanction the executive branch of government by voting it out of office.⁶³

A political system dominated by a single political organisation impair democracy as it represents the dominance of one entity yet this should not be the case given that 'society is expressed in a complex variety of ideas, views, groups and organisations.'⁶⁴ Monolithic governments frustrate society's quest to hold them accountable hence society is stuck with the ideologies of a group of individuals which is often unrepresentative.⁶⁵ A plural arrangement with its in-built mechanisms ensures that individuals and institutions charged with public responsibility are accountable to society.⁶⁶

2.1.2 Self-realisation

Political pluralism is receptive to self-determination and allows citizens to participate in the conduct of public affairs 'within a widely differing social, economic and political set up.'⁶⁷ The opportunity to associate or act with like-minded people in order to accomplish goals which are legitimate is critical to the self-realisation of the individual.⁶⁸ A pluralistic democratic society provides an enabling environment for freedom of expression and boosts the ability of citizens to determine their destiny. Khan points out that the will of the people is a shared value and evolves through information and discussion and its manifestation depends on free and full political competition.⁶⁹

The Universal Declaration provides that 'the will of the people shall be the basis of the authority of government.'⁷⁰ Under the Universal Declaration individuals are at liberty to hold opinions without interference, and to seek, receive and to communicate information and ideas.⁷¹ Khan makes an argument that on the basis of the cumulative effect of these provisions the establishment of political parties is a process.⁷²

Political pluralism is favoured in modern democratic societies because it enhances development.

⁶² As above

⁶³ As above, 19.

⁶⁴ Ssenkumba (n 18 above) 247.

⁶⁵ As above.

⁶⁶ As above.

⁶⁷ As above.

⁶⁸ Robertson & Merrills (n 40 above) 158.

⁶⁹ LA Khan 'A theory of democracy: Beyond the end of history' (2003) 154.

⁷⁰ Art 21(3).

⁷¹ Art 19

⁷² n 69 above, 154.

2.1.3 Development

Political parties present alternative packages of policies to the voters and this establishes a link between political parties and democratic governance.⁷³ There is a strong relationship between political freedom which also include political pluralism and economic development. It is argued that democratic institutions such as political parties which thrive on freedom of speech enable citizens to give feedback to governmental authorities about the value of policies and their effect on the general welfare.⁷⁴ A government which does not allow political pluralism or which is opposed to the free flow of alternative ideas will remain ignorant of how government policies impact on the economy.⁷⁵ The feedback that government receives is an impetus for growth and most governments prosper on this feedback. It is only open democratic regimes that will be open to timely and effective feedback about real or perceived threats to citizens because it helps leaders to avoid catastrophe.⁷⁶ Open democratic institutions have in place mechanisms to circumvent economically destructive policies that would be much difficult to confront in a political system dominated by a single political organisation.⁷⁷

2.2 International and regional standards on the right to freedom of association

The right to freedom of association is so indispensable for the existence and functioning of democracy such that it is recognised in international and regional human rights instruments. The International Covenant on Civil and Political Rights (CCPR) is one of the international instruments that assert the right of everyone to freedom of association.⁷⁸ This right is also recognised under the Universal Declaration of Human Rights (Universal Declaration).⁷⁹ Article 28 of CCPR establishes the UN Human Rights Committee (UNHR Committee) which is a treaty body charged with monitoring compliance by state parties with their obligations under CCPR.

The UNHR Committee has not issued a General Comment on article 22 of CCPR. Since the UNHR Committee has yet to issue a General Comment, the interpretation of the scope and

⁷³ J Kiiza et al 'Organising parties for the 2006 elections' in J Kiiza et al (eds) *Electoral democracy in Uganda: Understanding the institutional processes of the 2006 multiparty elections* (2008) 225.

⁷⁴ R Roll & JR Talbott 'Political freedom, economic liberty, and prosperity' (2003) 14 *Journal of Democracy* 79.

⁷⁵ As above.

⁷⁶ As above.

⁷⁷ As above.

⁷⁸ Art 22(1) of CCPR provides that '[Everyone] shall have the right to freedom of association with others, including the right to form and join trade unions.'

⁷⁹ Art 20(1).

nature of article 22 is to be found mostly in the text of the article, scholarly commentary and relevant concluding observations of the UNHR Committee.⁸⁰

Under the regional systems of protection of human rights, the right is enshrined in three treaties, namely, the European Convention on Human Rights,⁸¹ the American Convention on Human Rights,⁸² and the African Charter on Human and Peoples' Rights (African Charter).⁸³ In 1992, the African Commission on Human and People's Rights (African Commission) adopted a Resolution on the Right to Freedom of Association (Resolution).⁸⁴ The Resolution which states a general principle on this right provides, among other things, that:

- 1) The competent authorities should not override constitutional provisions or undermine fundamental rights guaranteed by the constitution and international standards;
- 2) In regulating the use of this right, the competent authorities should not enact provisions which would limit the exercise of this freedom;
- 3) The regulation of the exercise of the right to freedom of association should be consistent with the states' obligation under the African Charter on Human and Peoples' Rights.

The above Resolution has been subjected to criticism because its aim was to strengthen and clarify the relevant provisions under the African Charter but it failed on the clarification part because it does not define the nature and scope of the right.⁸⁵ The African Commission, however, must be commended for adopting the Resolution as it serves to highlight the seriousness it attaches to the right in issue.⁸⁶ It is expected that the African Commission will take into account the importance it has attached to the right in the Resolution when it interprets article 10(1) of the African Charter.⁸⁷ Nmehielle postulates that there are various aspects yet to be considered by the African Commission when interpreting the right to freedom of association.⁸⁸ For example, he argues that the African Commission has not formulated a working definition of 'association.' It is essential that an unambiguous meaning of association be established under the African Charter. Communications have been submitted to the African

⁸⁰ S Carlson & G Gisvold '*Practical guide to the International Covenant on Civil and Political Rights*' (2003) 133.

⁸¹ Art 11 states that '[Every] individual shall have the right to freedom of association and assembly.'

⁸² Art 16 provides that '[Everyone] has the right to associate freely for ideological, religious, political, economic, labor, social, cultural, sports, or other purposes'.

⁸³ Art 10(1) states that '[Every] individual shall have the right to freedom of association provided he abides by the law.'

⁸⁴ ACHPR / Res.5 (XI) 92: Resolution on the Right to Freedom of Association (1992).

⁸⁵ Nmehielle (n 43 above) 111.

⁸⁶ As above.

⁸⁷ As above.

⁸⁸ Nmehielle (n 43 above) 112.

Commission alleging a violation of the right to freedom of association. In these communications, the African Commission has not made an attempt to define the nature and scope of the right.⁸⁹

2.3 Conclusion

This chapter highlighted that one of the significant developments of the third wave of democratisation was the recognition of political pluralism and the legalisation of previously banned political parties. Political parties are the life blood of democracy and the development of political parties can be realised under the right to freedom of association which serves as one of the vehicles for furthering democratisation in modern states. The right to freedom of association is so fundamental to democracy such that it is guaranteed in regional and international human rights treaties.

⁸⁹ *Civil Liberties Organisation v Nigeria* (2000) AHRLR 186 (ACHPR 1995); *Constitutional Rights Project and Another v Nigeria* (2000) AHRLR 191 (ACPHR 1998); *Jawara v The Gambia* (2000) AHRLR 107 (ACHPR 2000).

Chapter 3

Swaziland's Obligations under international law

3. Introduction

A state which ratifies or accedes to a treaty assumes certain obligations under that treaty. In other words, the state undertakes an international obligation to refrain from encroaching upon the rights enshrined in the treaty. The domestic law of the state must not run counter to its obligations under international law. The right to freedom of association is not absolute and its enjoyment is subject to limitations. The CCPR sets out the permissible grounds for limiting the right and the African Commission has stated that any limitation on the rights contained in the African Charter must be consistent with the provisions of the African Charter.⁹⁰

This chapter is divided into two parts. Part one will discuss the obligations which the CCPR and the African Charter impose on state parties and Swaziland is a state party to these two instruments.⁹¹ It will also examine the permissible grounds for limiting the right to freedom of association as articulated under these instruments. Part two will discuss the impediments to the realisation of the right to form political parties in Swaziland. This discussion will also attempt to determine whether the limitation imposed on the right to freedom of association by section 79 of the Constitution is justifiable. Last will be an exploration of the implications of section 79 of the Constitution based on the experience of Uganda under the movement system.

Part I

3.1 States' obligations under CCPR

The CCPR enjoins each state party to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the Covenant without discrimination of any kind.⁹² Nowak points out that the obligation to respect in article 2(1) points towards the negative

⁹⁰ *Media Rights Agenda and Others v Nigeria* (2000) AHRLR 200 (ACHPR 1998) para 62.

⁹¹ Swaziland ratified the International Covenant on Civil and Political Rights on 26 June 2004 and the African Charter on 15 September 1995.

⁹² Art 2(1).

character of civil and political rights.⁹³ This means that state parties must abstain from restricting the enjoyment of these rights unless restriction is expressly permitted by the Covenant.⁹⁴ On the other hand, Nowak argues that article 2(1) obligates state parties to take positive measures to give effect to these rights and to facilitate the enjoyment of these rights by individuals.⁹⁵ The UNHR Committee notes that apart from the obligation to respect human rights, state parties to the Covenant have also undertaken to ensure that all individuals within their jurisdiction enjoy these rights.⁹⁶ This obligation demands that state parties should, among other things, ensure that citizen know their rights under the Covenant.⁹⁷ Article 25 of CCPR contains political rights which also impose obligations on state parties.

3.1.1 Article 25 of CCPR: political rights

There is a range of political rights recognised under article 25 of CCPR:

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restriction:

- (a) to take part in the conduct of public affairs, directly or through freely chosen representatives;
- (b) to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors...

The UNHR Committee has issued a general comment on states' obligations under article 25 of CCPR:⁹⁸

In order to ensure the full enjoyment of rights protected by article 25, the free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. This implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion. It requires the full enjoyment and respect for the rights guaranteed in articles 19, 21 and 22 of the Covenant, including freedom to engage in political activity individually or through political parties and other organisations, freedom to debate public affairs, to hold peaceful demonstrations and meetings to criticize and oppose, to publish political material, to campaign and to advertise political ideas.

⁹³ M Nowak 'The International Covenant on Civil and Political Rights' in F Gomez & K de Feyter (eds) *International protection of human rights: Achievements and challenges* (2006) 144.

⁹⁴ As above.

⁹⁵ As above.

⁹⁶ General Comment No.3, para 1.

⁹⁷ General Comment No.3, para 2.

⁹⁸ General Comment No.25, para 25.

The UNHR Committee has established a close link between the political rights recognised under article 25 and the right to freedom of association:⁹⁹

The right to freedom of association, including the right to form and join organisations concerned with political and public affairs, is an essential adjunct to the rights protected by article 25. Political parties and membership in parties play a significant role in the conduct of public affairs and the election process. States should ensure that, in their internal management, political parties respect the applicable provisions of article 25 in order to enable citizens to exercise their rights thereunder.

Although the CCPR enjoins state parties to respect the rights contained in the Covenant, it allows derogations from these rights under certain circumstances. This means that any derogation from any of these rights in circumstances not envisaged under the Covenant is not justifiable.

3.1.2 Derogation from article 22 of CCPR

Article 4(1) of CCPR permits derogation from the right to freedom of association and some other rights in certain circumstances.¹⁰⁰ Although article 4(1) allows derogation from the right to freedom of association in times of public emergency, the UNHR Committee has laid down conditions which must be observed.¹⁰¹ The derogations envisaged under article 4(1) are exceptional and temporary measures which can be resorted to only when the situation within the state amounts to a public emergency which threatens the life of the nation and when the state party has officially declared a state of emergency.¹⁰²

The steps which are taken for derogating from the obligations under CCPR are allowed only to the extent that they are strictly required by the exigencies of the situation, that is, the principles of proportionality and necessity must be respected. Before a state party may invoke measures of derogation, it must carefully consider the situation and determine whether and

⁹⁹ General Comment No 25, para 26.

¹⁰⁰ Article 4(1) provides that '[In] times of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, State Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their obligations under international law and do not involve discrimination solely on the grounds of race, colour, sex, language, religion or social origin.'

¹⁰¹ General Comment No.29.

¹⁰² General Comment No.29, para 2.

which derogation measures are necessary.¹⁰³ The state must choose from among several alternatives a measure that will to a large extent not impair the exercise of the right in question.¹⁰⁴ The state party which has resorted to derogations is enjoined immediately to notify other state parties of the provisions of CCPR from which it has derogated and of the reasons for adopting such measures.¹⁰⁵ This stipulation enjoins the state to notify other states at the same time when it issues the declaration of a state of emergency or the adoption of derogation measures.¹⁰⁶ Article 4(1) further obligates a state party to CCPR to comply fully with its other international obligations whenever it derogates from its obligations under the Covenant. Apart from derogations, the CCPR permits limitations on some of the rights guaranteed in the Covenant.

3.1.3 Limitations to the right to freedom of association under CCPR

Article 22(2) of CCPR provides that restrictions on the exercise of the right to freedom of association under the Covenant are permissible only if they are ‘prescribed by law’ and ‘necessary in a democratic society’ and must be ‘in the interest of national security or public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedom of others.’ It is argued that the proscription of political parties is not ‘necessary in a democratic society’ because, traditionally the evolution of democracy has been associated with political parties vying for political power by way of free and fair elections.¹⁰⁷

The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms notes that, a limitation to the right to freedom of association is justifiable only in the circumstances envisaged under article 22(2) of CCPR.¹⁰⁸ In the absence of those circumstances, the right to freedom of association should remain the rule and any restriction the exception.¹⁰⁹

The restriction of political party activity is allowed only if it is compatible with the standards recognised in international human rights instruments. Since the right of political association is

¹⁰³ Report of Special Rapporteur on the promotion and protection of fundamental rights and freedoms while countering terrorism <<http://web.abo.fi/institut/imr/SR/A.61.267%20GA20%report.pdf> > (accessed on 9 September 2008).

¹⁰⁴ As above.

¹⁰⁵ General Comment No.29, para 17.

¹⁰⁶ P Bouckaert ‘*Hostile to democracy: The movement system and political repression in Uganda* (1999) 18.

¹⁰⁷ Bouckaert (106 above) 17.

¹⁰⁸ Report of Special Rapporteur (n 103 above) 8.

¹⁰⁹ As above.

central to the right to freedom association, limitations imposed on political parties must be rigorously examined in order to ensure that they do not negate the 'core values' of this right.¹¹⁰ The UNHR Committee has noted in one of its cases that, some restrictions imposed on political parties tend to be excessive and thus diminish the very content of the right to freedom of association. In one of its concluding observations the UNHR Committee observed that:¹¹¹

The Committee is deeply concerned about excessively restrictive provisions of Uzbek law with respect to the registration of political parties as public associations, by the Ministry of Justice (article 6 of the Constitution, Political parties Act, 1991). This requirement could easily be used to silence political movements opposed to the government, in violation of articles 19, 22 and 25 of the Covenant.

The interpretation of the limitation clauses contained in Article 22(2) of CCPR is supported by the Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights (Siracusa Principles).¹¹² While the Siracusa Principles¹¹³ do not have the force of law, they constitute an authoritative guidance to the meaning of the terms used in the Covenant, particularly in areas where the UNHR Committee has not issued General Comments.¹¹⁴ Apart from outlining the various grounds for limitation of rights, the Siracusa Principles, contain 'general interpretative guidelines for the justification of limitation of CCPR rights.'¹¹⁵

Article 22(2) of CCPR provides that restrictions on the right to freedom of association must be 'prescribed by law.' This means that state authorities must limit the enjoyment of the right on the basis of a law that is in force such as an Act of Parliament and the law must be compatible with the Covenant.¹¹⁶ For example, the UNHR Committee, in a case that related to the right to freedom of expression, determined that the state authorities in Finland were in breach of their obligations under the Covenant because there was no law which authorised them to restrict this right.¹¹⁷ The complainant in this case sought to raise a banner in protest against a visiting head

¹¹⁰ Bouckaert (n 106 above) 21.

¹¹¹ Concluding Observations of the UNHR Committee, Uzbekistan, UN Doc CCPR/CO/71/ UZB (2001) para 23.

¹¹² These principles were developed by a panel of 31 distinguished international law experts who met in 1984 at Siracusa, Sicily, Italy in order to adopt uniform set of interpretations of the limitations clauses contained in CCPR, including the limitations clauses contained in article 22(2) of CCPR.

¹¹³ United Nations, Social and Economic Council, Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, UN Doc E/CN.4/1985/4, Annex (1985).

¹¹⁴ Report of Special Rapporteur (n103 above) 9.

¹¹⁵ Bouckaert (n 106 above) 21.

¹¹⁶ Siracusa Principles, para 15.

¹¹⁷ Communication 412/1990, *Auli Kivenmaa V Finland*, UNHR Committee (10 November 1993), UN Doc CCPR/C49/D/468/1990.

of state. The restriction must be ‘necessary in a democratic society.’¹¹⁸ It is implicit in this requirement that the limitation must be in response to a pressing public need. The limitation must be ‘proportional and be oriented along the basic democratic values of pluralism, tolerance and broad-mindedness and people’s sovereignty.’¹¹⁹ The state authorities must strike a balance between the severity of a measure and the particular reason for limitation.¹²⁰ When applying a measure, a state must not employ more restrictive measures than are necessary for the accomplishment of the purpose of the limitation.¹²¹

Article 22(2) further provides that the right to freedom of association may be limited in the interest of national security or public safety. States may invoke national security to justify measures limiting certain rights only when they are taken to protect the existence of the nation or its territorial integrity or political independence against force or the threat of force.¹²² States may not invoke national security as ‘a reason for imposing limitations to prevent merely local or relatively isolated threats to law and order.’¹²³ National security may not be invoked ‘as a pretext for imposing vague or arbitrary limitations and may only be invoked when adequate safeguards exist and effective remedies against abuse.’¹²⁴ The UNHR Committee noted in a case involving the detention of a political activist by the authorities of Cameroon that there was no fundamental connection between the detention and the aim of preserving national security. The UNHR Committee noted that:¹²⁵

The Committee further considers that the legitimate objective of safeguarding and indeed strengthening national security under difficult political circumstances cannot be achieved by attempting to muzzle advocacy of multiparty democracy, democratic tenets and human rights; in this regard, the question of deciding which measures might meet the ‘necessity’ test in such situation does not arise.

The Siracusa Principles define ‘public safety’ as ‘protection against danger to the safety of persons, to their life or physical integrity or serious damage to their property.’¹²⁶ The

¹¹⁸ Siracusa Principles 19-20 stipulate that ‘necessary in a democratic society’ shall be interpreted as imposing a further restriction on the limitation allowed. The state imposing the limitation so qualified bears the onus to demonstrate that the limitation does not prejudice the democratic functioning of society.

¹¹⁹ n 2 above.

¹²⁰ As above.

¹²¹ As above.

¹²² Siracusa Principles, para 29.

¹²³ Siracusa Principles, para 30.

¹²⁴ Siracusa Principles, para 31.

¹²⁵ Communication 458/1991, *Womah Mukong v Cameroon*, UNHR Committee (10 August 1994), UN Doc CCPR/C/51/D458/1991 (1994).

¹²⁶ Siracusa Principles, para 33.

maintenance of public order is one of the permissible grounds for limiting the right to freedom of association. Public order (*ordre public*) as used in the Covenant refers to ‘the sum of rules which ensure the functioning of society or the set of fundamental principles on which society is founded.’¹²⁷ The UNHR Committee has emphasised the importance of adhering to the principle of proportionality when the right to freedom of association is limited on the basis of public order. In the case of *Laptsevich v Belarus*,¹²⁸ a citizen of Belarus was barred from distributing pamphlets relating to the independence anniversary. The authorities seized his pamphlets and he was penalised because he had not registered his pamphlet with the authorities. The UNHR Committee determined that the authorities had ‘failed to explain why this requirement was necessary’ and pronounced that these requirements ‘cannot be deemed necessary for the protection of public order (*ordre public*) or for the respect of the rights or reputation of others.’

The right to freedom of association may also be limited for ‘the protection of public health or morals’. Public health constitute a legitimate ground for limiting certain rights in order to allow a state to adopt measures to address conditions which pose a threat to the health of the population or individual members of the population.¹²⁹ An argument is made that a limitation based on public health will be justifiable if the activities of an association pose a serious threat to the health of the population.¹³⁰

Finally, limitations may be placed on the right in order to protect the rights of others. This provision is seen as complimentary to or should be read with article 20(2) of CCPR which proscribes ‘any advocacy of national, racial or religious hatred’ and article 5(1) of CCPR which declares that the Covenant shall not protect any act or activity ‘aimed at the destruction of any of the rights and freedoms recognised’ in the Covenant.¹³¹ The rights and freedoms of others which may be invoked in order to limit the rights enshrined in the Covenant are not limited to the rights contained in the Covenant.¹³² There are general principles which are pertinent to the interpretation of limitations on the rights of political parties.¹³³ The above discussion serves to

¹²⁷ Siracusa Principles, para 22.

¹²⁸ Communication 780/1997, *Laptsevich V Belarus*, UNHR Committee (13 April 2000), UNDoc CCPR/C/68/D/780 (2000).

¹²⁹ Siracusa Principles, para 25.

¹³⁰ n 2 above.

¹³¹ Communication 117/1981, *MA v Italy*, UNHR Committee (21 September 2008), UN Doc CCPR /A/39/40 (1984). This case concerned among other things the reorganising of the dissolved Italian fascist party. The UNHR Committee noted that ‘the acts... were of a kind which are removed from the protection of the Covenant by article 5 thereof and which were in any event justifiably prohibited by Italian law having regard to the limitations and restrictions applicable to the to the rights in question under the provisions of articles 18(3), 19(3), 22(2) and 25 of the Covenant.’

¹³² Siracusa Principles, para 35.

¹³³ According to Siracusa Principles:

emphasise the importance attached to the right to freedom of association as well as other rights contained in the CCPR. On that basis, the CCPR has laid down permissible grounds for limiting these rights. State parties cannot therefore invoke their domestic laws to override these international human rights standards. The African Charter also imposes obligations upon state parties.

3.1.4 States' obligations under the African Charter

Article 1 of the African Charter enjoins state parties to recognise and give effect to the rights contained in the African Charter.¹³⁴ This does not mean however that the rights recognised under the African Charter cannot be subjected to limitations.

3.1.5 Limitations to the right to freedom of association under the African Charter

Article 27(2) of the African Charter can be used or serve as a general limitation clause for all the rights recognised under the African Charter.¹³⁵ Furthermore, some of the provisions which protect civil and political rights have internal limitations which restrict the compass of that particular right.¹³⁶ Article 10(1) of the African Charter which guarantees the right of freedom of association contains a claw back clause. Article 10(1) asserts the right of everyone to freedom of association provided that he 'abides by the law.'

The scope of the limitation referred to in the Covenant shall not be interpreted so as to jeopardize the essence of the right concerned (para2). All limitations shall be interpreted strictly and in favour of the rights at issue (para 3). Whenever a limitation is required in the terms of the Covenant to be 'necessary', this term implies that the limitation: is based on one of the grounds justifying limitations recognised by the relevant article of the Covenant;

- (a) responds to a pressing public or social need;
- (b) pursues a legitimate aim; and
- (c) is proportionate to that aim (para 10).

Any assessment of the necessity of a limitation shall be made on objective considerations. In applying a limitation, a state shall use no more restrictive means than are required for the achievement of the purpose of the limitation (para 11).

¹³⁴ Art 1 provides that '[The] member states of the Organisation of African Unity parties to the present Charter shall recognise the rights, duties and freedoms enshrined in this Charter and shall undertake to adopt legislative or other measures to give effect to them.'

¹³⁵ C Henyns 'Civil and political rights in the African Charter' in M Evans & R Murray (eds) *The African Charter on Human and Peoples' Rights: the system in practice, 1986-2000*(2001) 139.

¹³⁶ As above.

The African Commission has determined that the words 'subject to law' when they are employed as a clawback clause refer to international law as opposed to municipal law:¹³⁷

In regulating the use of this right [freedom of association, under article 10], the competent authorities should not enact provisions which would limit the exercise of this freedom. The competent authorities should not override constitutional provisions or undermine fundamental rights guaranteed by the constitution and the international human rights standards.

The interpretation by the African Commission suggests that a state cannot invoke its municipal law to limit freedom of association if the domestic law is incompatible with international human rights law.

The African Commission has reiterated its standpoint on the interpretation of clawback clauses in a number of cases:¹³⁸

With these words the Commission states a general principle that applies to all rights, not specifically to the right to freedom of association. Government should avoid restricting rights, and take special care with regard to those rights protected by constitutional or international human rights law....

Perhaps the African Commission's position in respect of limiting rights recognised in the African Charter on the basis of domestic law is lucidly and succinctly portrayed in the following words:

According to Article (9)(2) of the Charter, dissemination of opinions may be restricted by law. This does not mean that national law can set aside the right to express and disseminate one's opinions; this would make the protection of the right to express one's opinions ineffective. To allow national law to have precedent over the international law of the Charter would defeat the purpose of the rights and freedoms enshrined in the Charter. International human rights standards must always prevail over contradictory national law. Any limitation on the rights of the Charter must be in conformity with the provisions of the Charter.¹³⁹

¹³⁷ *Civil liberties (in respect of the Nigerian bar Association) v Nigeria* (2000) AHRLR 186(ACPHR) para 16.

¹³⁸ *Constitutional Rights Projects and Another V Nigeria* (2000) AHRLR 191(ACPHR 1998) para 58.

¹³⁹ *Media Rights Agenda and Others V Nigeria* (2000) AHLR 200 (ACHPR 1998) para 66.

The African Commission has determined in one of its cases that the banning of political parties infringes article 10(1) of the African Charter:

Also the banning of political parties is a violation of the complainants' rights to freedom of association guaranteed under article 10(1) of the African Charter...¹⁴⁰

The following part of the chapter will discuss the challenges to the realisation of the right to freedom of association in Swaziland.

Part II

3.2 Challenges to the realisation of the right to freedom of association

3.2.1 Swaziland

Although the right to freedom of association is recognised in the Constitution, there are two major impediments to the enjoyment of the right in so far as it guarantees the formation and functioning of political parties. These are the *tinkhundla* system of governance and the institution of the monarchy.

3.2.2 The *tinkhundla* system of governance

The idea behind the *tinkhundla* system of governance is that as each *inkhundla*¹⁴¹ is an assembly of several chiefdoms, political debate can take place and developmental projects can be discussed at the grassroots level with the input of every citizen under that *inkhundla*.¹⁴² The *tinkhundla* system of government is designed to blend the modern Westminster democracy with Swaziland's own traditional system. Before the *tinkhundla* system of government is indicted, a brief outline of how Swaziland eventually adopted this system will be made. It should be noted that the Constitution¹⁴³ which Swaziland received from the British on independence permitted political parties. In fact, the elections that produced the parliament that was in office when Swaziland received independence in 1968 were multi-party elections.¹⁴⁴ The second elections

¹⁴⁰ *Jawara v The Gambia* (2000) AHLHR 107 (ACPHR) para 68.

¹⁴¹ *Tinkhundla* is the plural of *Inkhundla* which refers to a meeting place and this term is used to refer to rural areas of administration. There are of course *tinkhundla* in urban areas but the bulk of *tinkhundla* are in the rural areas.

¹⁴² JB Mzizi 'Political movements and the challenges to democracy in Swaziland' (2005) 33.

¹⁴³ The Swaziland Independence Order of 1968. This was a Westminster-type constitution which promoted parliamentary democracy.

¹⁴⁴ Mzizi (n 142 above) 2.

which were held in 1972 were also multi-party elections. The then Swazi king, King Sobhuza II had his own political party, the Imbokodvo National Movement (INM) which he established after the British colonial government had rejected the King's assertion that Swazis were ready for independence based on the Swazi monarchy system.¹⁴⁵

During the first five years of independence, the INM was the only party in parliament having won the elections by a landslide victory. During this time the idea of abolishing political parties seems not to have crossed the King's mind. It was the 1972 elections that ignited the abolishment of political parties. In this election, the opposition party, the Ngwane National Liberatory Congress (NNLC) won three parliamentary seats.

The INM was opposed to the fact that it would now have an opposition in parliament as it viewed the NNLC's victory as an 'affront to the King's authority and image.'¹⁴⁶ In view of the fact that the INM would now have an opposition in parliament, King Sobhuza II, through the King's Proclamation to the Nation of 1973 (Proclamation), repealed the Independence Constitution, proscribed all political parties and dissolved parliament.¹⁴⁷

In the Proclamation, the King condemned the Independence Constitution. He criticised the Independence Constitution because it had allegedly caused, among other things, highly undesirable political practices which were incompatible with the Swazi way of life.¹⁴⁸ This criticism was directed to the liberalisation of political parties which King Sobhuza II had objected to even before independence.¹⁴⁹

For five years after the repeal of the Independence Constitution Swaziland did not have a parliament. In 1978, King Sobhuza II promulgated the Establishment of Parliament Order which established the *tinkhundla* system of government. In 1981, the King issued a Proclamation¹⁵⁰ which reaffirmed the existence of the *tinkhundla* system of government and declared that

¹⁴⁵ Mzizi (n 142 above) 33.

¹⁴⁶ Mzizi (n142 above) 2.

¹⁴⁷ Decree 11 of the King's Proclamation provided that '[All] political parties and similar bodies that cultivate and bring about disturbances and ill-feelings within the nation are hereby dissolved and prohibited.' Decree 12 provided that '[No] meeting of a political nature and no procession or demonstration shall be held or take place in any public place without the prior written consent of the Commissioner of Police...' Decree 13 stated that '[Any] person who forms or attempts or conspires to form a political party... shall be guilty of an offence...'

¹⁴⁸ Para 2 of Preamble.

¹⁴⁹ Mzizi (n 142 above) 12.

¹⁵⁰ King's Proclamation 1 of 1981.

Swaziland was a no-party state.¹⁵¹ In 1992, the Establishment of the Parliament of Swaziland Order of 1992 was enacted and it reaffirmed the system of legislative representation through *tinkhundla*.

The new Constitution of the Kingdom of Swaziland provides that the system of government for Swaziland is a *tinkhundla*-based system.¹⁵² Section 79 makes it impossible to see how political parties can function under the *tinkhundla* system. Furthermore there is section 87(5) which provides that 'there shall be no canvassing for votes as persons are nominated (that is, invited to serve) on the basis of their being known to the community.' This provision ultimately excludes 'political parties and other political activities associated with competitive politics such as canvassing and campaigns.'¹⁵³ Instead, it is the *tinkhundla*-based system which is entrusted with promoting democracy on the basis of individual merit which provides the only competitive space for electing members of parliament.¹⁵⁴

An argument is made that the words 'democratic, participatory...system' as they appear in section 79 are deceptive because the *tinkhundla* system of government is not accommodative to political party participation and this undermines the right to freedom of association.¹⁵⁵ It should be noted that the concept of democracy has the potential to and often does obscure the exercise of political power by a clique that perpetuate itself in office even though it may seem to adhere to the democratic structure.¹⁵⁶ It is for this reason that it is argued that democracy should not merely be regarded as only involving the right of citizens to vote for a government or as the recognition of 'formal legal provisions in state constitutions.'¹⁵⁷ Nyong'o argues that in order to ensure that democracy does not benefit a small group, it is essential that the concept is seen in a broader sense which embodies a myriad of concerns that are critical to ensuring that citizens have the means to control their destinies and in so doing hold those in authority accountable.¹⁵⁸ Liberal democracy as opposed to illiberal democracy permits citizen 'not only to vote but to vote for an alternative government to that in power.'¹⁵⁹

¹⁵¹ Sec 8.

¹⁵² Sect 79 provides that '[The] system of government for Swaziland is a democratic, participatory, *tinkhundla*-based system which emphasises the devolution of state power from central government to *tinkhundla* areas and individual merit as a basis for election or appointment to public office.'

¹⁵³ Fombad (n 25 above) 102.

¹⁵⁴ Fombad (n 25 above) 103.

¹⁵⁵ S Gumedze 'Human rights and the rule of law in Swaziland' (2005) 5 *African Human Rights Journal* 268.

¹⁵⁶ RL Sklar '*Developmental democracy*' (19 87) quoted in Ssenkumba (n 55 above) 173.

¹⁵⁷ Ssenkumba (n 55 above) 173.

¹⁵⁸ PA Nyong'o '*Popular struggles for democracy*' (1987) quoted in Ssenkumba (n 55above) 173.

¹⁵⁹ Fombad (n32 above) 9.

It was pointed out that right to freedom of association is recognised under section 25 of the Constitution:

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

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

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

(a) that is reasonably required in the interests of defence, public safety, public order, public morality or public health;

(b) that is reasonably required for the purpose of protecting the rights and freedoms of others; or

(c) that imposes reasonable restrictions upon public officers, except so far as that provision or, as the case may be, the thing done under the authority of that law is shown not to be reasonably justifiable in democratic society.

As was mentioned in chapter 2, one of the most significant developments of the third wave of democratisation was the recognition of political pluralism and the lifting of the bans on previously proscribed political parties. One of the outstanding characteristics of most African constitutions that were crafted after 1990 is that they form the basis for law that permits the formation and functioning of political parties.¹⁶⁰ The logical expectation was that the Constitution of Swaziland being the latest on the continent would unambiguously permit political pluralism.¹⁶¹ It is logical to infer that section 25 forms the basis for the right to form and join political parties. It should be pointed out; however, that section 25 should not be read in isolation but should be read with section 79. When the provisions of these two sections are strictly interpreted it becomes clear that political pluralism was not envisaged under the Constitution of Swaziland.¹⁶² This proposition is supported by Langwenya who opines that the provisions of section 79

¹⁶⁰ Fombad (n 25 above) 102.

¹⁶¹ As above.

¹⁶² As above.

undermine the implementation of section 25.¹⁶³ She makes a strong argument that this state of affairs thumbs its nose at Swaziland's obligations under the relevant regional and international treaties to which Swaziland is a party.¹⁶⁴

3.2.3 Limitation imposed by section 79

It is argued that, when section 25 and section 79 are read together, it can be inferred that the right to freedom of association is guaranteed in so far as it is within the *tinkhundla*-based system of government which does not accommodate multiparty democracy.¹⁶⁵ It is on the basis of these observations that an attempt will be made to determine whether the limitation imposed on the right to freedom of association by section 79 is justifiable.

The Attorney-General of the Kingdom of Swaziland who was also Secretary to the Constitution Drafting Committee argues that section 79 of the Constitution 'represents a fundamental choice by the people, a choice that individuals not groups may participate in the governance of the country.'¹⁶⁶ He points out that the Swaziland's Constitution 'which rests entirely on section 79 as its pillar represents the Swazi way of thinking and that it is the way of life of the people or the soul of the nation.'¹⁶⁷ The argument that a provision of the law which limits the enjoyment of the right to freedom of association has been approved by the majority of the citizens has no basis in international law. This is because it fails to take into account that human rights are not conditional upon majority mandate.¹⁶⁸ The essence of human rights law is to make certain fundamental rights and freedoms not amenable to the dictates of majority opinion.¹⁶⁹

Human rights law also seeks to protect those who may find themselves in the minority.¹⁷⁰ The CCPR and the African Charter as discussed above provide legitimate grounds for limiting the exercise of the right to freedom of association and majority opinion is not envisaged as a permissible ground for limitation.¹⁷¹ All human rights serve a recognised purpose and it defeats the very purpose of human rights law if governments have the liberty to enforce certain human

¹⁶³ Langwenya (n 15 above) 170.

¹⁶⁴ As above.

¹⁶⁵ Gumedze (n 155 above) 276.

¹⁶⁶ 'AG tells judges to back off' *Times of Swaziland* 25 July 2008 4.

¹⁶⁷ As above.

¹⁶⁸ Bouckaert (n 106 above) 15.

¹⁶⁹ As above.

¹⁷⁰ As above.

¹⁷¹ As above.

rights and flout other human rights obligations with impunity.¹⁷² Even if majority consensus were one of the permissible grounds for limiting political rights, it would be inappropriate to invoke it to justify the limitation imposed by section 79. This is because it is debatable whether or not the majority of the citizens are opposed to political parties. No referendum has been held to ascertain the views of the Swazi citizens on political parties. The view that Swazis have rejected political pluralism is premised on conclusions drawn on an ad hoc basis from submissions of individuals to royal commissions instituted to solicit the opinion of the citizenry on improving the *tinkhundla* system of government.¹⁷³

The Attorney-General of the Kingdom of Swaziland, posits that under the Constitution political parties cannot contest for public office.¹⁷⁴ He points out that ‘they can exist but they can only come to government as individuals.’¹⁷⁵ It is contended that it was not in the contemplation of the framers of the Constitution or the ruling regime that political parties should be recognised under the Constitution. This argument is based on the fact that the Constitution has been in existence for three years now. In the three years of its existence, the government of Swaziland has not enacted any law to regulate the formation and registration of political parties. It is not clear then how political parties are expected to exist and carry out their functions when there is no enabling legislation. The absence of legislation governing the formation and functioning of political parties may be explained by the limitation imposed by section 79 which emphasises individual merit as a basis for election or appointment to public office.

The Ministry of Justice has declined to register a political party known as the African United Democratic Party on the grounds that it had no authority to register political parties.¹⁷⁶ It would seem that the Attorney-General’s argument that political parties can exist is a reaction to the pressure exerted by those who argue that section 25 of the Constitution should be interpreted to permit political pluralism. Section 79 and 87(5) of the Constitution are not in harmony with political pluralism. The recognition of the right to freedom of association on the one hand and the absence of legislation governing the formation and registration of political parties on the other hand, offends international standards on the regulation of political parties. The UNHR Committee determined in one of its cases that the absence of regulation or legislation governing the formation and registration of political parties ‘runs counter to the provisions of article 25 of

¹⁷² As above.

¹⁷³ Mzizi (n 142 above) 4.

¹⁷⁴ n 166 above, 4

¹⁷⁵ As above.

¹⁷⁶ n 16 above, 2.

CCPR, as it may affect adversely the right of citizens to participate in the conduct of public affairs through freely chosen representatives.¹⁷⁷

The argument that political parties are allowed to exist but cannot contest for public office is open to objection. The fact that political parties are denied the right to participate in the conduct of public affairs negates the core aim of their existence and this amounts to a limitation on the right to freedom of association which is unjustifiable under international law. It should be noted that the primary aim of political parties is to contest for political power in order to govern or rule if voted into office. One of the most important functions of political parties is to nominate candidates to public offices, such as the office of president and the members of parliament.¹⁷⁸ The denial of space within which they can compete for political office is tantamount to a denial of their existence in the first place.¹⁷⁹

The denial of space within which they contest for political power makes them non-functional and this was articulated by Mpagi-Bahigene JA in the Constitutional Court of Uganda in the following terms:¹⁸⁰

The freedoms to assemble and associate...do not only concern the right to form a political party but also guarantee the right of such a party once formed to carry out on its political activities freely.

The limitation imposed on the right to freedom of association by section 79 is not justifiable because none of the permissible grounds for limiting the right as contained in the ICCPR and the African Charter can be invoked to justify the limitation. The limitation is not necessary in a democratic society and Swaziland purports to be one. It is not intended to maintain public health nor is it aimed at preserving public safety. The African Commission has made it clear that:

In regulating the use of this right, [the right to freedom of association] the competent authorities should not enact provisions which would limit the exercise of this freedom. The competent authorities should not override constitutional provisions or undermine fundamental rights guaranteed by the constitution and international human rights standards.¹⁸¹

¹⁷⁷ Concluding Observation of UNHR Committee, Democratic Republic of Korea, UN Doc CCPR/CO/72/PRK (2001).

¹⁷⁸ J Kiiza et al 'Organising political parties for the 2006 elections' in J Kiiza et al (eds) Turnaround: The National Resistance Movement and the reintroduction of a multiparty system in Uganda (2008) 220.

¹⁷⁹ M Masuku 'Engaging the content of the new Swazi constitution' (2007) 6 *Open Space* 11.

¹⁸⁰ *Dr Paul Ssemwogerere and Others v Attorney General Constitutional Petition No.5/2002* (CC)(Unreported)

¹⁸¹ *Civil Liberties (in respect of the Nigerian Bar Association) v Nigeria* (2000) AHRLR 186(ACPHR 1995) para 16.

Section 79 blatantly offends the recommendation of the African Commission. The limitation imposed by section 79 is only meant to entrench the *tinkhundla* system of government. The *tinkhundla* system is hostile to political party activity not by accident but by design. Since the ban on political parties in 1973, there has been an interaction between Swaziland's parliamentary system and the traditional set-up whose main objective is to make the modern parliamentary system submissive to 'tradition' or by inference, the king.¹⁸²

Mzizi points out that the entrenchment of the *tinkhundla* system is not a result of a referendum or any other universally acclaimed method.¹⁸³ He argues that the *tinkhundla* system was imposed on the Swazi people through the Order of 1978 and the Proclamation of 1981. Mzizi points out further that after the imposition, the ruling aristocracy sought to legitimise the system through:

Carefully designed national consultations in which the beliefs and powers of the monarchy, which encapsulated the country's values and ethos, were favourably contrasted with the eventual intention of political parties to challenge and destabilise the authority and prestige of the monarchy. After King Sobhuza's death in 1982, Mswati III succeeded to the monarchy on his majority in 1986 and promised to follow in his father's footsteps.¹⁸⁴

It should be noted that Swaziland finds herself between a traditional and modern form of government.¹⁸⁵ This state of affairs creates a conflict as Swaziland has to choose between the application of democratic principles and values and the preservation of Swazi customary law.¹⁸⁶ Section 79 of the Constitution strengthens the 'wishes of the ruling aristocracy and completes the ideological onslaught on political party activity in Swaziland.'¹⁸⁷

The Supreme Court of Swaziland, which is the highest court in the land, has recently been seized with a case in which section 39 of the Constitution was challenged for allegedly being in conflict with section 25 which guarantee the right to freedom of association.¹⁸⁸ Although this case did not involve political parties, it is instructive because it was the first case in which the Court sought to resolve the alleged conflict between two constitutional provisions. The facts of the case were that the appellants who are members of the correctional services sought to

¹⁸² Mzizi (n 142 above) xii.

¹⁸³ Mzizi (n 142 above) 13.

¹⁸⁴ Mzizi (n 142 above) 13.

¹⁸⁵ Gumedze (n 155 above) 268.

¹⁸⁶ As above.

¹⁸⁷ Mzizi (n 142 above) 33.

¹⁸⁸ *Khanyakweze Mhlanga & Others v The Commissioner of police & Others* (Unreported Civil Case No 12/08).

establish a trade union on the basis of section 25. They argued, among other things, that section 39(3) which provided that in relation to a member of the disciplined force ‘nothing contained in or done under the authority of the disciplinary law of that force shall be held to be inconsistent with...any of the provisions of this Chapter...’ contradicted section 25. Section 25 is one of the provisions of the Chapter in issue. The disciplinary laws of the correctional services which were also challenged for constitutionality prohibit the formation of a trade union by members of the force.

In the course of its judgment, the Court observed that exceptions in a constitution which guarantee fundamental rights must be given a strict and narrow construction. The Court went on to refer to the Constitutional Court of South Africa which stated the following:

A Court must endeavour to give effect to all the provisions of the Constitution. It would be extraordinary to conclude that a provision of the Constitution cannot be enforced because of an irreconcilable tension with another provision. Where there is tension the courts must do their best to harmonise the relevant provisions and give effect to them.¹⁸⁹

The Court stated that the importance of the implementation of fundamental rights and freedoms in Swaziland cannot be over emphasised. However, the Court noted that while the courts in Swaziland can have recourse to the pronouncements of foreign courts this must be done with caution given the different contexts in which other constitutions were framed and the social structures existing in other countries. The Justices stated that the Court cannot rewrite the Constitution. In sum, the Court cited a case of the Constitutional Court of South Africa where it was stated that:

We must heed Lord Wilberforce’s reminder that even a constitution is a legal instrument, the language of which must be respected. If the language used by the lawgiver is ignored in favour of the general resort to “values” the result is not interpretation but divination.¹⁹⁰

The Court dismissed the appellants’ argument and held that section 39(3) was an exception to section 25. The Court’s reluctance in this case to uphold the fundamental right to freedom of association raises the question of whether this would be the approach of the if there Court were to decide on case in which it is argued that section 25 should prevail over section 79. Would the Court, in interpreting these two provisions, take into account the context in which the

¹⁸⁹ *United Democratic Movement v President of the Republic of South Africa* 2003 1 SA 495 (C).

¹⁹⁰ *S.V Zuma & Others* 1995 2 SA 642 (CC).

Constitution was framed and the social structures existing in Swaziland and hold that section 79 should prevail.

3.2.4 The monarchy as an obstacle to freedom of association

Another major impediment to the actualisation of the right to freedom of political association in Swaziland is the institution of the monarchy. By institution of the monarchy is meant the king, the queen mother, the royal family and the traditional advisory bodies to the king and the queen mother. The Kingdom of Swaziland is governed by a monarch, the king, who rules with his mother, the queen mother.¹⁹¹ In keeping with its policy of indirect rule, the British government permitted Swaziland's traditions and traditional structures to subsist alongside the modern system. During the colonial era, matters related to customary law fell in the domain of the King and when independence was granted to Swaziland traditional institutions continued to gain strength.¹⁹² King Sobhuza II's objection to political parties was premised on his reasoning that traditional authority was at great risk in post-independent Africa.¹⁹³ The King was aware of how Kwame Nkrumah of Ghana had destroyed traditional kingdom institutions by a national referendum run on a one-man-one-vote basis.¹⁹⁴ Wanda notes that King Sobhuza II and the traditional Swazi leaders, therefore:

Wished at all costs to prevent Swaziland from the taking the same political course. They feared that if a constitution based on the principle of one man one vote were granted to Swaziland, political power would pass to so-called political agitators and extremist leaders who would pose a serious threat to traditional leadership as well as give rise to political unrest in the country. They thus spared no effort in discrediting and criticising the formation of political parties which they branded as foreign and irreconcilable with African tradition and in particular with Swazi tradition where the custom was to discuss all matters... and for all decisions to be arrived at by consensus.¹⁹⁵

The view of King Sobhuza II supported by traditional Swazi leaders was that Africa's traditional authority and institutions should have dominance over the values of modern governance.¹⁹⁶ In King Sobhuza II's opinion, the major threat to traditional authority and

¹⁹¹ Mzizi (n 142 above) 29.

¹⁹² BP Wanda 'The shaping of the modern constitution of Swaziland: A review of some social and historical factors' (1990) 6 *Lesotho Law Journal* 138.

¹⁹³ 'The 12 April, 1973 King's Proclamation to the Nation' *Times of Swaziland* 12 April 2001 37.

¹⁹⁴ As above.

¹⁹⁵ Wanda (n 192 above) 152.

¹⁹⁶ Mzizi (n 142 above) 28.

traditional institutions was the existence of political parties.¹⁹⁷ On 25 April 1967 which was the first national Flag Day King Sobhuza II remarked that:

This is a day of rejoicing...It is the tradition of all African Kingdoms that their kings are leaders as well as kings. It is also true for Swaziland. Now rightly or wrongly some people have mistaken this dual capacity as a dictatorship. I would like to assure you here and now that the king both leads and is led by his people....There can be no peaceful progress without the cooperation of the people; if the people are divided into camps and go to the extent of undermining one another, such a state is doomed to catastrophe no matter how good and wise the leader may be.¹⁹⁸

The King in his speech spoke strongly against political parties. He accused them of being after power and splitting the nation by 'holding the elusive banner of liberty and democracy.'¹⁹⁹

It is contended that the enjoyment of the right to freedom of association in Swaziland is undermined by the institution of the monarchy. At present, the monarchy is opposed to political pluralism. The King and his advisory councils dominate all spheres of political and legal life in Swaziland.²⁰⁰ Important decisions and processes which have the potential to influence national policy and chart a way forward are initiated, deliberated upon and concluded in the traditional quarters.²⁰¹ The problem with this is that the traditional bodies charged with taking decisions are not constituted in a manner that is open, transparent and democratic in order to represent the various segments of Swazi society.²⁰² They are also not accountable to the citizens. The King's apathy for political pluralism was manifested when parliament was debating the Constitution of the Kingdom of Swaziland Bill of 2004 (Bill). The King issued a special communication to parliament in terms of which the words 'political' and 'civic' under section 58 of the Bill were to be removed.²⁰³ The King is also reported to have said that the country was not ready for political parties.²⁰⁴

¹⁹⁷ As above.

¹⁹⁸ n 193 above, 36.

¹⁹⁹ As above.

²⁰⁰ Mzizi (142 above) 20.

²⁰¹ As above.

²⁰² Applicants' Heads of Argument in *Jan Sithole & Others v The Prime Minister & Others* (Unreported Civil Case No.2792/06).

²⁰³ Masuku (n 179 above) 11.

²⁰⁴ Fombad (n 25 above) 102.

An argument is made that all political reforms that have been undertaken by the late King Sobhuza II and particularly the reigning monarch, King Mswati III, have been calculated to rid Swaziland of party politics. This argument is aptly articulated by Mzizi who states that:

This being said, the fact is that all reform processes have been the preserve of royalty in the sense that the king's brothers have been appointed to head the various commissions and all the commissions have reported to the king. At the end of the day, therefore, the outcomes have conformed to a tradition that is understood and approved by royalty. Royalty uses the power of tradition to perpetuate itself. Equally, an ideological innovation not to the taste of royalty is rejected on the grounds that it violates Swazi law and custom. Superficially, therefore, tradition is always seen to triumph over modernity, with power remaining centralised in the monarchy.²⁰⁵

Mzizi's sentiments are shared by Phiri who points out that King Mswati III is the absolute leader of the Swazi nation and that political, social and cultural authority resides in him.²⁰⁶ In short, the King is the ultimate decision-maker.²⁰⁷ The absolute powers enjoyed by the King of Swaziland render the enjoyment of the right to freedom of association futile. On a parting note Mzizi points out that:

While it is true that kings represent etiquette and all the epidemic dimensions of a nation, they too have self-interests, which should be analysed and seen in perspective. Their self-interests might be based on the corrupting or enriching qualities of economic power or simply on the desire to wield unlimited power, which is the pastime of all dictatorial regimes.²⁰⁸

The implications of section 79 of the Constitution of Swaziland on the political process in Swaziland can best be explained with reference to the Ugandan experience under the movement system of government. Irrational depoliticisation of society will always fail.²⁰⁹ The movement system of Uganda is an example of a failed attempt to depoliticise society as will be shown below.

3.3 Uganda's movement system of government

Uganda has also in the past stifled the enjoyment of the right to freedom of association. After gaining independence in 1962, Uganda experienced a series of political upheavals. These turbulent times which also led to economic and social decay were attributed to poor governance

²⁰⁵ Mzizi (n 142 above) 41.

²⁰⁶ S Phiri 'The problem with Swaziland' (2007) 6 *Open Space* 57.

²⁰⁷ As above.

²⁰⁸ Mzizi (n 142 above) 6.

²⁰⁹ Fombad (n 25 above) 144.

and 'the lack of commitment to democratic practices and constitutional rule' by the then leaders.²¹⁰ The successive illiberal and authoritative regimes from Obote I (1964-1971), the Amin regime (1971-1979) and the reinstallation of Obote II (1980-1985) were brought to an end by a civil war that was fought from 1981-1986. It is this war that brought the incumbent president into power in 1986. When President Museveni and his National Resistance Movement (NRM) came into power he introduced the 'movement' or 'no-party' party system as an alternative to a multi-party system of government. President Museveni did not define what the movement system was.

The Odoki Constitutional Commission defined the movement system of government in the following terms:²¹¹

The movement political system is a unique initiative introduced in Uganda by the NRM administration since January 1986. It is based on democratically elected resistance councils from the village level to the National Resistance Council (Parliament). It is founded on participatory democracy which enables every person to participate in his or her own governance at all levels of government...It is all-embracing in its approach and vision. It has a manifesto of its own, apart from the commonly agreed upon programme. It does not recruit members, since all people are presumed to be members of the village resistance councils. At all times it aims to give expression to the people's sovereignty. During elections people vote for candidates based on their own merit and not on the basis of their party affiliation.

It is argued that the fact that political parties present 'alternative packages of policies' which the voters can choose from is central to democracy and for that reason they should be allowed to organise and market their policies freely.²¹² The concept of individual merit does not take this fact into account. Furthermore, there are disadvantages which are associated with a political system which does not allow the participation of political parties in the government of a country. The rejection of open campaigns particularly before elections stifles the consideration of policies and instead the focus is on the personal attributes of the candidate and not on the policies which are critical to the 'developmental and political challenges facing the country.'²¹³ In the movement system, the formulation of policies was the preserve of the top leadership.²¹⁴

²¹⁰ http://dp.vidc.org/fileadmin/Bibliothek/DP/pdfs/parliament_uganda.pdf (accessed 6 September 2008).

²¹¹ Bouckaert (n 106 above) 16.

²¹² Kiiza et al (n 178 above) 225.

²¹³ Ssenkumba (n53 above) 186.

²¹⁴ As above.

When the NRM came into power in 1986 it suspended existing political parties. The reasons for the suspension were that political parties:

Rested on narrow and exclusivist religious and ethnic foundations which prevented the possibility of the creation of a harmonious multi-ethnic political order; the parties then exploited the divisions which they helped to create or reinforce to the point where they completely poisoned Uganda's political climate and brought the nation-state to the brink on several occasions. They were accused of not having clearly defined secular ideological positions or platforms, and, therefore, could not help but continue to appeal to decisive parochial loyalties which brought out the worst in Ugandans.²¹⁵

Mushemeza posits that western countries have a tendency to equate democracy with a multiparty system of government.²¹⁶ He argues that according to this standard any system that does not avail citizens of the opportunity to choose from one or more political parties is seen as undemocratic. In his opinion, the 'lived experience' and the practice of politics take the view that democracy cannot be measured by the number of political parties. Mushemeza points out that in terms of the 'lived experience' approach what is paramount is whether the system serves the in the interest of the people. It is important to determine the people whose interests the system of government purports to champion.²¹⁷ Furthermore, it is essential to establish whether the governed enjoy the liberty to choose a system of government that they think will best serve their interest.²¹⁸ He notes that this is the position that informed the leaders of the NRM when they studied the history of Uganda critically. Mushemeza's argument does not take into account that at the heart of rational politics is the ability of citizens to exchange opposing views.²¹⁹ Ssenkumba argues that democracy is rooted on the 'right to differ, to discuss, and to choose either to cooperate with the government of the day or to oppose it.'²²⁰ It is difficult to see how the right to differ and to choose to collaborate with or to oppose the government of the day can be exercised in a non-pluralistic system even if the government of the day operates in the interest of the people in accordance with Mushemeza's 'lived experience' approach.

The *tinkhundla* system of government which like the movement system of government is not accommodative to opposition will not sustain itself. This is because liberal democracy supports the idea that the existence of structures for the exchange of divergent views is crucial to the

²¹⁵ Ssenkumba (n 55 above) 179.

²¹⁶ EJ Mushemeza 'Issues of violence in the democratization process in Uganda <http://www.codesria.org/Links/Publications/ad_articles/mushemeza> (accessed 6 September 2008).

²¹⁷ As above.

²¹⁸ As above.

²¹⁹ Ssenkumba (n 18 above) 240.

²²⁰ As above.

conduct of rational politics.²²¹ Any system of government which denies this fact is the architect of its own destruction. The movement system of government took the same route and proved unsustainable and consequently imploded.

3.3.1 The collapse of the movement system of government

The Ugandan experience under the movement system lends support to the assertion that, as much as society can be governed by one like-minded group exercising complete power, this system of government can only be short-lived.²²² This is because a system of government which lacks opposition and which deny citizens the opportunity to 'freely and systematically challenge those in power' will corrupt itself even if it is the most efficient political system.²²³ The movement system of government was all-inclusive in nature. It was a paternalistic system which co-opted a few individuals from the suspended political parties and appointed them to ministerial offices and other political posts.²²⁴

Although the movement system purported to be an all-embracing organisation, it became intolerant of people who were opposed to its ideology, those whose were opposed to the system on political grounds and those who questioned President Museveni's style of leadership.²²⁵ This led to the mushrooming of groups within the system. Makara et al point out that the factions were made up of the state's armed and police forces, 'movement historicals' who are veteran NRM supporters.²²⁶ They argue that the veteran NRM supporters consisted of politicians who publicly supported political pluralism and castigated President Museveni's centralisation of power.²²⁷ The third group consisted of young parliamentarians who are credited for speaking strongly against corruption and the NRM leadership's hostility towards criticism and political reform.²²⁸ Perhaps the year 2000 marked a watershed in the movement politics in so far as electoral politics are concerned.²²⁹ Parliamentarians in the movement system, for the first time, candidly interrogated the government.²³⁰

²²¹ Ssenkumba (n 55 above) 171.

²²² As above.

²²³ As above.

²²⁴ Ssenkumba (n 18 above) 240.

²²⁵ Makara et al (n 19 above) 272.

²²⁶ Makara et al (n 19 above) 267.

²²⁷ Makara et al (n 19 above) 268.

²²⁸ Makara et al (n 19 above) 273.

²²⁹ As above.

²³⁰ R Tandri & A Mwenda 'Politics, donors and the effectiveness of anti-corruption in Uganda' (2 006) 44 *Journal of Modern African Studies* 110.

It should be noted that as time went by the division within the movement system deepened. It is argued that the movement system lacked experience to democratically deal with dissenting views.²³¹ Dissidents were viewed as subversives.²³² The political differences within the leadership of the NRM were provoked by deep-seated corruption and the concentration of power and resources in President Museveni and his family.²³³ The emergence of a new crop of parliamentarians with their own plan dealt the movement system a severe blow.²³⁴

As has been pointed out above, a system that does not allow citizens to freely and systematically challenge those in power will slide into decay. The movement system of government suffered the same fate. It is argued that the collapse of the movement was as result of internal power struggles within the system²³⁵ Panebianco points out that, political movements or parties are largely influenced by conditions in existence within the organisation.²³⁶ He argues that all organisations are coalitions to some extent. This is more applicable in the case of all-embracing social organisations which are 'loosely organised and less focused ideologically.'²³⁷ The effect of this arrangement is that when an all-inclusive movement is converted into a political party the different factions within the party will scramble for control of the party.²³⁸ When the party settles in and the reasons for its existence disappear the different factions within the organisation will hold different opinions regarding the way forward.²³⁹ It is against this background that it is argued that from an institutional point of view, the movement system's turn on multiparty democracy was a reaction to the dispute between different groups in the movement.²⁴⁰ There is a plethora of authority to support the proposition that parties will change if there is an event which poses a challenge to their organisation.²⁴¹ The decision by Dr Besigye, a former ally of President Museveni, to oppose him in the presidential elections in 2001 was a kick in the teeth of the ruling regime, prompting it to re-evaluate the future of the movement system of government.²⁴²

²³¹ JA Okuku 'Beyond third term politics: Constitutional reform and democratic governance in Uganda' (2005) 11 *East African Journal of Peace and Human Rights* 199.

²³² As above.

²³³ Makara et al (n 19 above) 276.

²³⁴ As above.

²³⁵ Makara et al (n 19 above) 267

²³⁶ A Panebianco '*Political parties: Organisation and power*' (1988) quoted in Makara et al (n 19 above) 267.

²³⁷ Panebianco (n 236 above) 268.

²³⁸ As above.

²³⁹ As above.

²⁴⁰ Makara et al (n 19 above) 268.

²⁴¹ As above.

²⁴² As above.

There is a lesson that Swaziland can learn from the Ugandan experience. There lesson is that, at the heart of modern democracy is the right of citizens to exchange alternative views, to discuss and the freedom to cooperate with or to oppose the incumbent government.²⁴³ A government which denies this principle will slide into decay even if it is based on majority mandate. This is the major ground on which the ruling aristocracy in Swaziland bases its restriction on political pluralism.

The Ugandan experience under the movement system lends credence to Ssenkumba's argument that, it is rarely possible to have 'uniformity or conformity of ideas and action among all people.'²⁴⁴ As a consequence, he points out that we must be tolerant of divergent views and genuinely seek basic lines of unit.²⁴⁵

3.4 Conclusion

This chapter sought to determine whether the limitation on the exercise of the right to freedom of association imposed by section 79 of the Constitution of Swaziland is justifiable. To this end, the obligations of state parties to the CCPR and the African Charter were examined followed by a discussion of the permissible grounds for limiting the right under these instruments. It emerged that the limitation imposed by section 79 was not premised on any of the legitimate grounds for limiting the right. Section 79 flies in the face of the recommendations of the African Commission regarding the limitation of rights recognised in the African Charter. The impediments to the enjoyment of the right to freedom of association in Swaziland were also discussed. This chapter also explored the implications of the section 79 on the political process in Swaziland based on the experience of Uganda under the movement system of government. It was noted that there is a lesson that Swaziland can draw from the Ugandan experience. The lesson is that a system of government which is without an effective opposition cannot last even if it the most efficient government.

²⁴³ Ssenkumba (n55 above) 172.

²⁴⁴ Ssenkumba (n 55 above) 171.

²⁴⁵ As above.

Chapter 4

Conclusion and Recommendations

4. Final conclusion and recommendations

This study has shown that in spite of the third wave of democratisation which swept across Africa in the late 1980s and early 1990s and the third constitution-making revolution, the implementation of the right to freedom of association in Swaziland remains doubtful. It was pointed out that one of the most significant developments of the third wave of democratisation was the recognition of political parties and the legalisation of previously banned political parties. It was noted that the development of political parties is possible under the right to freedom of association which permits association with others for a political purpose. The right to freedom of association is so essential for the functioning of democracy that it is recognised in international and regional human rights treaties as well as in national constitutions. Three theories, namely, political accountability, self-realisation and development were identified as justifications for political pluralism.

This paper pointed out that the agitation for political pluralism in Africa was to a certain extent influenced by the evils of colonialism. Colonialism was unreceptive to competition and stifled individual initiative, freedom and liberty. It was expected that the legalisation of political parties would provide an impetus to the development of an environment that would nurture the 'emergency of more transparent political processes, a multiplicity of individual and group initiatives, individual freedom, and the accountability of rulers to the citizenry.'²⁴⁶

This study noted that at the heart of democracy is the right of individuals and groups to exchange and hold divergent opinions. Citizens also have the right to choose to align themselves with the government of the day or to oppose it so long as this is done in accordance with the law. It was argued that, as much as the body polity can be efficiently governed by like-minded persons who possess unlimited power, such a system of government can only be short-lived because a government which has no culture of democratically tolerating people with opposite fundamental beliefs will corrupt itself and disappear into oblivion. To support this argument, reference was made to the movement system of government in Uganda which is an example of a failed attempt to depoliticise society. The movement system purported to be an all-

²⁴⁶ Ssenkumba (n 53 above) 175.

inclusive system of governance which embraced Ugandans of all shades but over the years it proved unsustainable and consequently imploded. This paper discussed the obstacles to the realisation of the right to freedom of association in Swaziland and came to the conclusion that there is a lesson that Swaziland under the *tinkhundla* system, which also has closed its doors to competition and opposition, can learn from the Ugandan experience under the movement system.

An attempt was made to determine whether the method that appears to be prescribed for the exercise of the right to freedom of association under the Constitution of Swaziland is justifiable. The CCPR and the African Charter set out permissible grounds for limiting the exercise of the right. The conclusion reached was that recognition of the right to freedom of association in so far as it is within the confines of the *tinkhundla* system which emphasises individual merit as a basis for election to public office is incompatible with international standards for limiting the right.

This study recommends that the monarchy must take it upon itself to introduce genuine political reforms, since the wave of democratisation cannot be held to ransom in perpetuity. The clamp down on democracy is likely to work to the disadvantage of the monarchy in the long term run.

The Commission on Human Rights and Public Administration which is a body established under the Constitution of Swaziland should become a strong advocate for the implementation of international recognised rights.

Restrictions which the law imposes on the exercise of the right to freedom of association should not undermine the right of all Swazis to participate in the governance of the country. Restrictions should not undermine the ability of political parties to participate in the electoral process. Limitations on the right should be consistent with international standards.

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BIBLIOGRAPHY

Books

Bouckaert, P (1999) *Hostile to democracy: The movement system and political repression in Uganda* New York: Human Rights Watch.

Carlson, S & Gisvold, G (2003) *Practical guide to the International Covenant on Civil and Political Rights* London: Transnational Publishers.

Hatchard, J; Ndulo, S & Slinn, P (2004) *Comparative constitutionalism and good governance in the commonwealth* Cambridge: Cambridge University Press.

Merrils, JG & Robertson, AH (1993) *Human rights in Europe: A study of the European Convention on Human Rights* London: Henry Moore Foundation.

Mzizi, JB (2005) *Political movements and the challenges of democracy in Swaziland* Johannesburg: EISA.

Nsirimovu, A (1997) *The African human rights system: An umbilical cord of participatory democracy* Niger Delta Region: Fair & Square Publication Press Limited.

Nyong'o, PA (1987) *Popular strategies for democracy in Africa* London: Zed Books.

Orlu Nmehielle, VOO (2001) *The African human rights system: Its laws, practices and institution* The Hague: Martinus Nijhoff Publishers.

Chapters from books

Henyns, C 'Civil and political rights in the African Charter' in M Evans & R Murray (eds) (2001) *The African Charter on Human and Peoples' Rights: The system in practice, 1986-2000* Cambridge: Cambridge University Press.

Kiiza, J; Svasand, L & Tabaro, R 'Organising parties for the 2006 elections' in Kiiza, J; Makara, S & Rakner, L (eds) (2008) *Electoral democracy in Uganda: Understanding the institutional processes and outcomes of the 2006 multiparty elections* Kampala: Fountain Publishers.

Makara, J; Rakner, L & Svasand, L 'Turnaround: The National Resistance Movement and the reintroduction of a multiparty system in Uganda' in Kiiza, J; Makara, S & Rakner, L (eds) (2008) *Electoral democracy in Uganda: Understanding the institutional processes and outcomes of the 2006 multiparty elections* Kampala: Fountain Publishers.

Ssenkumba, J 'The dilemmas of directed democracy: Neutralising Ugandan opposition politics under the NRM' in AO Olukushi (ed) (1998) *The politics of opposition in contemporary Africa* Sweden: Nordiska Afrikain Institutet Uppsala.

Nowak, M 'The International Covenant on Civil and Political Rights' in de Feyter, K & Gomez, F (eds) (2006) *International protection of human rights: Achievements and challenges* Bilbao: Publicaciones de la Universidad de Deusto.

Articles

Burklin, W; Dalton, RJ & Drummond, A 'Public opinion and direct democracy' (2001) 12(4) *Journal of Democracy* 141.

Fombad, CM 'Challenges to constitutionalism and constitutional rights in Africa and the enabling role of political parties: Lessons and perspective from Southern Africa (2007) 1 *The American Journal of Comparative Law* 1.

Fombad, CM 'The constitution of Swaziland of 2005: Can absolutism be reconciled with modern constitutionalism?' (2007) 23 *South African Journal on Human Rights* 93.

Gumedze, S 'Human rights and the rule of law in Swaziland' (2005) 5 *African Human Rights Journal* 266.

Langwenya, SM 'Current legal developments-Swaziland' (2005) 2 *University of Botswana Law Journal* 170.

Masilela, Z '2008 Election: A window of opportunity' (2007) 1 *Open Space* 14.

Masuku, M 'Engaging the content of the new Swazi Constitution (2007) 1 *Open Space* 6.

Okuku, JA, 'Beyond "third term" politics: Constitutional reform and democratic governance in Uganda' (2005) 11(2) *East African Journal of Peace and Human Rights* 182.

Phiri, S 'The problem with Swaziland' (2007) 1 *Open Space* 57.

Sewanyana, L 'Making human rights a reality in Africa' (2001) 72 *East African Journal of Peace and Human Rights* 288.

Ssenkumba, J 'The dilemmas of directed democracy: Neutralising opposition politics under the National Resistance Movement (NRM) (1997) 3(2) *East African Journal of Peace and Human Rights* 240.

Talbott, JR & Roll, R 'Political freedom, economic liberty, and prosperity' (2003) 14(3) *Journal of democracy* 75.

Wanda, BP 'The shaping of the modern constitution of Swaziland: A review of some social and historical factors (1990) 6(1) *Lesotho Law Journal* 137.

Reports

Discussing international standards for democratic governance <<http://www.democratic-reporting.org>> (accessed 6 September 2008).

<http://dp.vidc.org/fileadmin/Bibliothek/DP/pdfs/parliament_uganda.pdf>(accessed 6 September 2008).

International Bar Association 'Striving for democratic governance: An analysis of the draft Swaziland Constitution' (2003)

Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism <<http://web.abo.fi/institut/imr/SR/A.61.276%20GA%20report.pdf> > (accessed 6 September 2008).

Rutinwa, B 'Freedom of association and assembly: Unions, NGOs and political freedom in Sub-Saharan Africa <<http://www.art.19>> (accessed 16 August 2008).

Resolutions of regional and international bodies

ACHPR/Res.5 (XI) 92: Resolution on the Right to Freedom of Association 1992.

Commission on Human Rights Resolution 2003/36 UNDoc E/CN. 4/2003/59.

Concluding Observations of UNHR Committee

Concluding Observation of UNHR Committee, Democratic Republic of Korea, UNDoc CCPR/CO/72/PKR.

Concluding Observation of UNHR Committee, Kuwait, UNDoc A/55/40(2000).

Concluding Observation of UNHR Committee, Uzbekistan, UNDoc CCPR/CO/71/UZB (2001).

Cases

Communication 412/1990, *Auli Kivenmaa v Finland*, UNHR Committee (10 November 1993), UNDoc CCPR/C49/D/468 (1990).

Communication 117/1981, *MA v Italy*, UNHR Committee (21 September 2008), UNDoc CCPR A/39/40 (1989).

Civil Liberties (in respect of the Nigerian Bar Association) v Nigeria (2000) AHRLR186 (ACPHR 1995).

Constitutional Rights Project and Another v Nigeria (2000) AHRHL 191 (ACPHR 1998).

Dr Paul Ssemwogerere and Others v Attorney General Constitutional Petition No.5/2002 (CC)(Unreported).

Jawara v The Gambia (2000) AHRLR 273 (ACPHR 2000).

Khanyakweze Mhlanga & Others v The Commissioner of Police & others (Unreported Civil Case 12/08).

Media Rights Agenda and Others v Nigeria (2000) AHLR 200 (ACHPR 1998).

S v Zuma & Others 1995 2 SA 642 (CC).

United Democratic Movement v President of the Republic of South Africa 2003 1 SA 495 (CC).

News papers

'AG tells judges to back off' *Times of Swaziland* 25 July 2008 4.

'EBC mum on AUDP claims' *The Weekend Observer* 12-13 July 2008 2.

Others

Katalikawe, J 'Freedom of association: The case for or against the referendum on political parties in Uganda' (2001) 1 *Law, Social justice and Global Development* <http://www2.warwick.ac.uk/fac/soc/law/elj/igd/2001_1/katalikawe/> (accessed 2 October 2008).

Mushemeza, EJ 'Issues of violence in the democratisation process in Uganda' <http://www.codesria.org/links/publications/ad_articles/Mishemeza> (accessed 6 September 2008).

Uganda: Freedom at risk <http://www.hrw.org/backgroundunder/Africa/uganda/NGOfinal_01.htm > (accessed 9 September 2008).

United Nations, Social and Economic Council, Siracusa Principle on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights UNDoc E/CN.4/1985/4 (Annex 1985).

International instruments

African Charter on Human and Peoples' Rights

Universal Declaration on Democracy, Inter-Parliamentary Council, Cairo, 16 September 1997.

American Convention on Human Rights.

International Covenant on Civil and Political Rights

The European Convention on Human Rights

Universal Declaration of Human Rights

Domestic legislation

The Constitution of the Kingdom of Swaziland Act 1 of 2005.

The Constitution of the Republic of South Africa, 1996.

The Establishment of Parliament Order, 1978.

The Establishment of the Parliament of Swaziland Order, 1992.

The King's Proclamation 1 of 1981.

The King's Proclamation to the Nation of 12 April 1973.

The Swaziland Independence Order of 1968.