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CONSTITUTIONAL DEVELOPMENTS IN THE KINGDOM OF SWAZILAND 1960-2005

By

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ABSTRACT

This thesis sets out to study constitutional developments in Swaziland from 1960 to 2005. Such a study has not yet been subjected to scholarly enquiry by historians. This thesis therefore sets out to fill this yawning gap in the historiography of Swaziland. In doing this longitudinal study of Swaziland's constitutional developments in the colonial and post-colonial periods, the author took into consideration the historical context, actors and processes involved. She relied heavily on primary sources including parliamentary and senatorial debates, official gazettes of the Swazi Government, Reports of the European Advisory Council and the Swazi National Council, newspapers, and oral interviews. Interviews with selected politicians and a host of legal experts were useful in illuminating cloudy constitutional issues.

This thesis revealed that Swaziland's constitutional developments under British tutelage was shaped by a concatenation of factors including the African political environment in the aftermath of World War II, Swaziland's monarchical structures, its Black-White racial composition, and its geo-political location within the sphere of influence of South Africa. These factors underscored the uniqueness of Swaziland's constitutional history.

The modern political leaders including John June Nquku, Dr. Ambrose Zwane, Sishayi Nxumalo, Clifford Nkosi and Dr. George Msibi formed political parties to capture power in the Kingdom of Swaziland from the departing British colonial authorities. They subscribed to Kwame Nkrumah's radical brand of nationalism which clamoured for immediate independence and 'Africa for Africans' meaning the Africanisation of all sectors and services. While recognising the importance of the monarchy in Swazi society, they felt the Swazi King, as a traditional ruler, was ill-fitted for the business of modern governance and should restrict himself to traditional matters. The White Swazis operating under the European Advisory Council with Carl Todd as their leader, supported the conservative monarchy at the expense of the radical nationalists whose ideology threatened their investments in Swaziland. The Swazi monarch and the White minority, therefore, constituted an alliance to check the rising tide of radical nationalism in Swaziland. The various stakeholders

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could not come to a compromise from 1960 to 1963 over several constitutional issues, especially the future of the Swazi monarchy in a modern state and the issue of the exercise of popular suffrage on the basis of one-man-one vote; Britain therefore decided to impose a Constitution on Swaziland in 1963.

The imposed Constitution failed to satisfy any of the stakeholders. The conservative traditional monarchists cried foul because King Sobhuza was provided a token ceremonial role in the constitution since Britain did not expect a traditional ruler to be engaged in modern politics. The White community under Todd rejected the constitution because equal European representation was not included in it and the traditional monarchy, which they preferred to the radical political parties, was marginalised. The radical political leaders rejected the constitution on grounds that it did not provide for one-man-one vote under universal adult suffrage and also because it introduced the 'federation of races' which favoured the White minority who were disproportionately overrepresented in the Legislature.

Britain ignored the rejection of the imposed constitution and went ahead to announce elections for June 1964. The White United Swaziland Association (USA) party and the Imbokodvo (INM) formed a coalition to contest the elections and received logistical and financial support from apartheid South Africa, while opposition parties contested the elections in dispersed ranks. Not surprisingly, the USA-INM alliance won all the seats. The initiative for the revision of the 1963 imposed constitution, therefore, fell on the two political parties in the legislature, namely the INM and the USA. The exchanges between the two allies during the constitutional debates were heated and bitter over the issue of separate electoral roll for Whites. At the end of the debates, the majority INM had its way with the establishment of a single electoral roll for all. It submitted the 1967 constitutional proposals which the British endorsed. The 1967 constitution was the penultimate constitution enacted in Swaziland which, for the first time, granted the territory full internal self-government based on a bicameral Legislature and which recognised Sobhuza as Head of State and King of Swaziland.

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Swaziland became independent in September 1968 under the British-tailored Westminster Constitution but the Constitution had a short life span of just five years. Two principal reasons explain the collapse of the Independence Constitution. First, Swaziland was not spared of constitutional developments in other parts of the continent where a common tendency among Anglophone independent African states was to amend, revise or alter the British-tailored Westminster Constitution and introduce a single party rule. These developments appealed to the conservative instincts of the Swazi monarchy who was no lover of the Westminster liberal democratic constitution. Second domestic developments in Swaziland led to the collapse of 1968 constitution. A dispute between the government and B. T. Ngwenya of the opposition Ngwane National Libaratory Congress after the May 1972 multiparty elections ended in court with the victory of the opposition. Sobhuza responded to this judicial decision by staging an auto-coup d'état on 12 April 1973 followed by the declaration of a state of emergency. The Kingdom remained without a constitution for the next 32 years, an unprecedented constitutional void that is unrecorded in Africa's recent history. King Sobhuza ruled by the proclamation of decrees and orders-in-council. After his demise in 1982 his son, King Mswati III, continued to rule by decree until a new constitution was promulgated for Swaziland in 2005.

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DEDICATION

This work is dedicated to my parents, Prince Majawonke Dlamini and Inkhosikati Glory Ntombi Dlamini, whom I love so much.

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May I start by thanking the Lord Almighty for the gift of strength, good health, perseverance and hope. To Him be given all the praises and glory.

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To my colleagues and teachers of the University of Swaziland, I remain indebted to you all for giving me the opportunity to acquire teaching experience in the Department of History and also to interact with a wide array of scholars in the university. I wish to thank the Head of the History Department, Professor N.F. Awasom, for all the encouragement he gave me to pursue this thesis as a viable project despite objections from many that it was a topic for political scientists and lawyers and not historians. By making available to me some of his invaluable publications on constitutional history, I was encouraged to embark on this topic for my PhD thesis.

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To my family members, I lack words to say thank you. My father, Prince Majawonke Dlamini, literally became my driver, taking me to Pretoria and to various places in Swaziland for interviews, most of which he arranged for me. My brother Mhlonishwa Dlamini who is newly wedded had to suspend his honeymoon to take me to places in Swaziland for interviews. My mother and aunty had to suspend their duties to accompany me to Pretoria for my presentation. It is not possible for me to have depended on my meagre and overstretched resources without the financial support of my father and mother, and my sister Lenhle.

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LIST OF ACRONYMS

CM ..... Convention Movement
CPP ..... Convention People's Party
EAC ..... European Advisory Council
MCP ..... Malawi Congress Party
MNC ..... Mbandzeni National Convention
NNLC ..... Ngwane National Liberatory Congress
PUDEMO..... ..... People's United Democratic Movement
RCRC ..... Royal Constitutional Review Commission
SDP ..... Swazi Democratic Party
SFTU..... Swazi Federation of Trade Unions
SNA ..... Swaziland National Archives
SNC .....Swazi National Council
SPP ..... Swaziland Progressive Party
SWAYOCO..... Swaziland Youth Congress
USA .....United Swaziland Association
WW II ……. World War II

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CHAPTER ONE

INTRODUCTION

Background

This thesis focuses on constitutional developments in the Kingdom of Swaziland from 1960 to 2005. 1960 marked the beginning of serious Independence Constitutional talks in colonial Swaziland, while 2005 saw the enactment of a new constitution in Swaziland after a 32 year period of constitutional void.

The British bequeathed to Swaziland a governance document or a constitution which was a product of several meetings with Swazis. The term constitution has been defined by different scholars in different ways. On the one hand, Jan-Erik Lane defines a constitution as a compact document that encompasses a number of articles about a state, laying down rules which state activities are supposed to follow.[1] According to this definition, a constitution is simply a list of instructions written in a document for a country. Lane further asserts that a constitution can be regarded as a single document that makes up the bulk of constitutional law.[2] On the other hand, B. O. Nwabueze defines a constitution as a document that has a force of law by which a society organises government for itself and defines and limits its powers and prescribes the relations of its different organs.[3] D. Grimm describes the function of the constitution as follows:

> By submitting all government to rules, a constitution makes the use of public power predictable and enables the governed to anticipate government behaviour vis-à-vis themselves and allows them to face government agents without fear. A constitution

[1] J. E. Lane *Constitutions and Political Theory*, (Manchester: Manchester University Press, 1996), 5.

[2] Ibid, 7.

[3] B. O. Nwabueze, *Constitutionalism in the Emergent States*, (New York: C. Hugh and Company, 1973), 2.

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> provides a consensual basis for persons or groups with different opinions and interest to resolve their disputes in civilised manner and enables peaceful transitions of power.[4]

M. E. Akpan defines a constitution as a political contract between the government and the governed.[5] Ndulo and Kent asserted that a constitution represents the basic structure of any organised society.[6] These authors argued that a constitution can be written or unwritten, however concepts of formality appeared in post-colonial Africa. As a result, a constitution is now described as a single document, a charter for the exercise of political power.[7] In essence, a constitution is that formal governance document that provides checks and balances on the powers of the state and defines the distribution and operation of power amongst the various components of the country.

T. Maseko[8] emphasises that the constitution of a nation is not simply a statute which mechanically defines the structures of government. It is a 'mirror reflecting the national soul', the identification of ideals and aspirations of a nation, and the articulation of the values bonding its people and disciplining its government. A constitution is not the act of a government, but of a people constituting a government; a government without a constitution is power without right. A constitution is an account of the ways in which a people establish and limit the power by which

[4] D. Grimm, 'Types of Constitutions', in M. Rosenfeld and A. Sajo, (eds.), *The Oxford Handbook of Comparative Constitutional Law,* (Oxford: Oxford University Press, 2012), 104.

[5]M. E. Akpan, *constitution and Constitutionalism,* (Calabar: PAICO LTD, 1984), 1.

[6] M. B. Ndulo and R. B. Kent, 'Constitutionalism in Zambia: Past Present and Future', *Journal of African Law*, 40, 2 (1996), 256.

[7] Ibid, 256.

[8] T. Maseko, 'The drafting of the constitution of Swaziland, 2005', African *Human Rights Law Journal*, (2005), 317.

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they govern themselves, in accordance with the ends and purposes that define their existence as a political community. This explains why the process of making a constitution is as important as the product and its observance.[9]

Constitution-making in Africa was an integral part of the decolonisation process that was ushered in by the Second World War (WW II). The factors that contributed to the rapid decline of the colonial empire in Africa and Asia after World War II need not delay us here.[10] Suffice it to state that the Atlantic Charter of 1941 drawn up by President Franklin D. Roosevelt and British Prime Minister Winston Churchill promised self-determination for all peoples at the end of World War II. The concept of self-government was taken by Africans to them also. A small African elite, who had acquired Western education and were familiar with the ideas of self-determination, rose to lead the struggles for independence. In 1957, Ghana gained independence under Kwame Nkrumah, followed by a string of other African countries in 1960. British Prime Minister Harold Macmillan took note of these developments and made his 1960 speech about the unstoppable wind of change that was blowing across the African continent. In the same year the British started the process of establishing a constitution for Swaziland.

[9] Ibid., 317-318.

[10] For details about decolonisation in the post Second World era, see F. Cooper, *Africa Since 1940: The Past of the Present,* (Cambridge: Cambridge University Press, 2002); H. S. Wilson, *African Decolonization,* (London: Edward Arnold Kaapstad, 1994). P. Gifford and W. R. Louis (eds.), *Decolonization and African independence: The Transfer of Power 1960-1980,* (New Haven: Yale University Press, 1988).

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Literature Review

The history of constitutional developments in Swaziland has not yet been subjected to scholarly enquiry by historians and the isolated historical writings on them are far from being thorough. This study, therefore, sets out to fill this yawning gap in the historiography of Swaziland. It is informed by literature on constitutional developments in British Africa in general and Swaziland in particular. The importance of this approach is explained by the fact that the process of Britain's imperial disengagement from Africa was generally similar and was accompanied by the introduction of, and experimentation with, a succession of constitutions and power devolution to Africans, culminating in independence.

Typically, Britain ended up holding constitutional conferences at Lancaster House in London between the African political elite and the British colonial authorities to finalise the constitutional frameworks and the independence of British dependencies.[11] It, therefore, goes without saying that the constitutional history of any erstwhile British dependency cannot be complete without reference to Lancaster House. A study of Swaziland's constitutional developments from the 1960s, thus, requires a background of the history of the making of constitutions in British Africa.

[11] The Nigerian political elite met with the British at Lancaster House in London in 1957 and 1958 to finalise Nigeria's federal constitution and independence. With reference to Kenya, three Lancaster House Conferences were held in 1960, 1962 and 1963 during which constitutional arrangements for Kenya's independence were made. In 1979 the British government and the various political factions in Zimbabwe signed the Lancaster House Agreement which covered the Westminster Constitution among other things (*cf.* G. O. Olusanya, 'Constitutional Developments in Nigeria, 1861-1960', in O. Ikime (ed.), *Groundwork of Nigerian History*, (Ibadan: Heinemann, 1980): 520-524; J. B. Ojwang, *Constitutional Development in Kenya: Institutional Adaptation and Social Change*. (Acts Press, African Centre for Technology Studies, 1990); A. Reynolds, 'Constitutional Engineering in Southern Africa', *Journal of Democracy,* 6, 2 (1995), 86-99; J. Hatchard, 'The constitution of Zimbabwe: Towards a Model for Africa?', *Journal of African Law*, 35, 1-2 (1991), 79-101; B. Raftopuolos and A. Mlambo (eds.), *Becoming Zimbabwe: A History from the Pre-colonial Period to 2008,* (Harare: Weaver Press, 2009).

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Several authors have demonstrated how the British experimented with a succession of constitutions in their dependencies in the run up to independence.[12] Nigeria is a classic example of British constitutional engineering in Africa worth examining and this study has devoted some attention to this case because it provides a framework for further analysis of the Swaziland case. The process of constitution making in Nigeria started in earnest in the context of the Second World War as a response to demands and agitation by some sections of the Western educated elite for self-government and more participation in governance. Consequently, in December 1944, Governor Richards published a proposal for a new constitution. The most distinguished feature of the constitution was the introduction of regionalism and the establishment of a central Legislature which was empowered to legislate for the whole of Nigeria. Three regions, the North, East and West were established, each endowed with a Regional Council.

The Richards constitution took effect in 1946, but the constitution soon ran into problems when the nationalists complained that they were not properly consulted to give their viewpoint and the constitution was, therefore, a *diktat*.[13] The British registered this grievance and consented to consult the African people in revising the constitution. This practice of consulting indigenous

[12] See for instance, K. Ezera, *Constitutional Development in Nigeria*, (Cambridge: Cambridge University Press, 1964); B. O. Nwabueze, *A Constitutional History of Nigeria*, (London: C. Hurst and Company, 1981); N. F. Awasom, 'Politics and constitution-Making in Francophone Cameroon 1959-1960', *Africa Today*, 49, 4 (2002), 3-39; M. O. Adediran, *Constitutional History of Nigeria*, (Ile-Ife, Osun State: Cleanprint, 2004); A. Alao, 'Constitutional Developments, Sub-nationalism and the Political Process in Nigeria', in: A. Alao, (ed.), *The Nigerian States: Language of its Politics: essays in honour of S O Arifalo,* (Lagos: Rex Charles & Collins Publishers, 2006); F. M. Bourret, (ed.), *Ghana, the Road to Independence, 1919-1957,* (Stanford: Stanford University Press, 1960); S. B. Daramy, *Constitutional Developments in the Post-colonial State of Sierra-Leone, 1961-1984*, (Lewiston: Edwin Mellen Press, 1993).

[13] J. S. Coleman, *Nigeria: Background to Nationalism,* (Los Angeles: University of California Press, 1965), 276-278.

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peoples in designing a constitution for them became typical of the British process of the devolution of power. Thus, the agitation against the Richards constitution forced the colonial administration to review it. Governor Macpherson set up a Select Committee of the Legislative Council to review the constitution. This was done through wide consultations by holding conferences in each of Nigeria's three regions, starting from rural communities and district meetings through Provincial and Regional Conferences to the General Conference in Ibadan. Ezera described the processes of constitution making in colonial Nigeria starting from the grassroots as follows:

> Village meetings were the primary level of constitution making . . . . Two or three men were drawn from the village and sent to the Provincial and Divisional Conferences. Provincial Conferences consisted of all representatives from all the divisions in a province. The aim of the Provincial Conference was to send a representative to a regional conference to state the views of the province and take part in the discussions at regional level. From the Regional Conferences three representatives were sent to be members of the drafting committee on the constitutional proposals. The General Conference consisted of the Legislative Council and the representatives of the Regional Conference. The function of the General Council was to study the statements prepared by the Drafting Committee and to suggest changes which it considered necessary.[14]

Thus, constitution making was a thorough and a consultative process. This detailed constitution making processes will inform this study.

The next constitution, the Macpherson constitution, was introduced in 1951. In the course of its implementation, certain shortcomings were revealed which led to its collapse. Suffice it to state that disagreements between Nigerian politicians and between anti-independence conservatives and the pro-independence radicals complicated the functioning of the Macpherson constitution. Protracted deliberations were held between Lagos and London between 1953 and 1954 where the Macpherson constitution was reviewed.

[14] Ezera, *Constitutional Development in Nigeria*, 107-111

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A new constitution, the Lyttelton constitution, was introduced which enshrined the federal system of government in Nigeria. More autonomy was granted to the three regions of the Nigerian Federation. Further constitutional conferences were held at Lancaster House in London in 1957 and 1958 with the full participation of all Nigerian political parties where the federal constitution for an independent Nigeria was prepared. In 1960 the Independence Constitution came into effect, modelled on the Westminster parliamentary model. It provided for a federal parliament made up of Governor-General, a Senate and a House of Representatives. The constitution granted the country political independence, but not full sovereignty since the Queen of England was the titular head of State of Nigeria.

Nwabueze asserts that before Nigerian independence, the Queen of England held jurisdiction over Nigeria by virtue of the British Crown and exercised it on the advice of the British government.[15] After independence, the Queen continued to have sovereignty over Nigeria and exercised it on the advice of the new independent government of Nigeria.[16] Nigeria ceased to be a constitutional monarchy when it became a Republic on 1 October 1963 and a President replaced the Queen as head of state. Nwabueze states that, under the Republican constitution, executive authority of the federation was then vested in the President and the functions of the Queen were passed on to the President of the Republic.[17] In the light of this, this study also seeks to investigate the relationship between the Swazi monarchy and the British crown following the independence of Swaziland.

[15] Nwabueze, A. *Constitutional History of Nigeria*, 73.

[16] Ibid, 73.

[17] Ibid, 77.

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An overview of Nigeria's constitution making history is of relevance to this thesis as it charts the course of events that Britain typically followed in constitution making in its dependencies. With this background, this study seeks to evaluate the extent of British involvement and partnership with the component units of Swazi society in constitution making in Swaziland.

In the making of Cameroon's Independence Constitution, N. F. Awasom drew attention to two important issues: the role of the metropolitan or colonial powers, namely, Britain and France in setting the stage for constitution-making in Africa after 1945, and the participation of African nationalists or colonial subjects.[18] The constitution-making exercise in the Cameroon Trust territory under British and French tutelage, therefore, needed the guidance of the colonial authorities and the participation of Africans who were intended to be the beneficiaries of the constitution. Put differently, the constitution which the departing colonial authorities put in place in Africa with the help of the Africans was intended for the Africans. Awasom's work, like that of Ezera, Nwuabueze, and Alao, highlights the participation of African nationalists in the making of the Independence Constitution which was generally a replica of that of the metropolitan countries. He has critically analysed the nature of the constitutional debates among the Western educated elite and controversies surrounding the constitution making exercise. This study follows Awasom's approach to identify and analyse the various factors that helped shape the Swaziland constitution and the actors involved in Swaziland's constitution making exercise.

[18] N. F. Awasom, 'Negotiating Federalism: How Ready Were Cameroonian Leaders before the February 1961 United Nations Plebiscites?', *Canadian Journal of African Studies/La Revue canadienne des études africaines*, 36, 3 (2002), 425-459; N. F. Awasom, 'Politics and constitution-Making in Francophone Cameroon 1959-1960', *Africa Today*, 4, 4 (2002), 3-39.

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Constitution-making processes in former British dependencies and settler colonies in Southern Africa were similar and dissimilar in certain respects. They were similar in that the British involved the indigenous political elite and ultimately bequeathed to its dependencies the Westminster political tradition. The dissimilarity observed with settler colonies, which this study intends to examine, is explained by White settler presence and interest which appeared to have slowed constitutional developments and independence. The fact that a significant White population had permanently settled complicated the process of power transfer to Africans in settler colonies.

With reference to Swaziland, specifically, historians have not subjected its constitutional history to scholarly analysis. In a paper presented at a Conference in Swaziland in 2003, the historian, B. A. B. Sikhondze examined constitutional developments in Swaziland from the 1970s to 2003 with a focus on the challenges of not having a written constitution. The presentation, however, erroneously assumed that Swaziland had never had a written constitution and that the search for one was paramount.[19] So far political scientists and scholars in the legal field have dominated scholarship on Swaziland's constitutional developments.[20] Their writings are generally epochal,

[19] B. A. B. Sikhondze, 'Factors that have stalled efforts towards a constitution in Swaziland, 1970s to 2003: A Constitutional History', Paper Presented for a Workshop of the Swaziland OSSREA Chapter, 27 November, 2003.

[20] J. Baloro, 'The Development of Swaziland's constitution: Monarchical Response to Modern Challenges', *Journal of African Law*, 38, 1 (1994), 19-34; C. P. Potholm, *Swaziland: The Dynamics of Political Modernization* (London: University of California Press, 1972.); R. P. Stevens, 'Swaziland Political Development', *The Journal of Modern African Studies*, 1, 3 (1963), 327-350; C. Potholm, 'Swaziland under Sobhuza II: The Future of an African Monarchy' The Round Table', *The Commonwealth Journal of International Affairs*, 64, 254, (1974), 219- 227; B. P. Wanda, 'The Shaping of Modern constitution in Swaziland: A Review of some Social and Historical Factors', *Lesotho Law Journal*, 6, 1 (1990), 137-178; T. Maseko, 'constitution Making in Swaziland: The Cattle- byre constitution Act 001 of 2005', Paper presented at African Network of Constitutional Law Conference on fostering constitutionalism in Africa, Nairobi, 2007; T. Maseko, 'The drafting of the constitution of Swaziland, 2005', *African Human Rights Law Journal*, 8, 2 (2005), 312-336; I. G. Dlamini, 'Socio-economic and Political Constraint on Constitutional Reform in Swaziland', MA Thesis, University of West Cape, 2005. T. Maseko, 'The drafting of the constitution of Swaziland,

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covering short time spans or specific topics. This approach has some drawbacks. First, the short time frames do not allow for a comprehensive and a longitudinal view of Swaziland's constitutional developments. Secondly, the studies do not provide detailed and critical analyses of the social groupings or classes engaged in the making of Swaziland's constitutions in order to evaluate what was at stake in the whole process. There is, thus, a need for a study that examines Swaziland's constitutional history over time.

The common denominator of the writings of political scientists, anthropologists and scholars in the legal field is their emphasis on power shifts in favour of the Swazi monarchy. Macmillan and Kuper's characterisation of the emergence and consolidation of the Swazi monarchy from colonialism as an exceptional victory of the Dlamini dynasty in contrast to its counterparts elsewhere in Africa is quite instructive in understanding the foundations of the Swazi monarchical constitutional system.[21] R. P. Stevens examines the constitutional developments in Swaziland in the 1960s from the perspective of the British model and Swazi tradition. J. Baloro examines the increasing power of the Swazi monarchy under Swaziland's constitutions at the expense of the legislative and the judicial arms of government under the Independence Constitution. These studies are useful but are not sufficiently historicised.

2005', *African Human Rights Law Journal*, (2005), 312-336; G. L. Dlamini, 'Socio-economic and Political Constraint on Constitutional Reform in Swaziland', MA Thesis, University of West Cape, 2005.

[21] H. Macmillan, 'Swaziland: Decolonization and Triumph of 'Tradition'', *Journal of Modern African Studies*, 23, 4 (1985), 643-666; H. Kuper, *Sobhuza II Ngwenyama and King of Swaziland: The Story of an Hereditary Ruler and His Country*, (London: Gerald Duckwork and Co.Ltd, 1978).

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Matlosa, Baloro, Dlamini and Maseko examine the overthrow of the Independence Constitution in 1973 and the attempts to return to constitutional order in the 1990s following international pressures which were compounded by the demise of apartheid.[22] This thesis clearly shows that the 1973 overthrow of the Independence Constitution was a royal auto-*coup d'état*[23] which was similar in several respects to a typical military coup in Africa. The protracted constitutional void of more than three decades that followed the 1973 constitution is not sufficiently highlighted by Matlosa, Baloro, Dlamini and Maseko; this study fills this void as an important period in Swaziland's constitutional history. It demonstrates how governance during the period of the constitutional void was carried out by proclamations and orders-in-council, culminating in the establishment of the *Tinkhundla* governance system.

The emergence of political monolithism in the shape of the *Tinkhundla* no-party state that followed the 1973 constitution is shrouded in postulations of Swazi culture and tradition.[24] The author argues that the *Tinkhundla* no-party system was informed by the African political environment and

[22] K. Matlosa, 'Democracy and conflict in post-apartheid southern Africa: Dilemmas of Social Change in Small State', *International Affairs,* 74, 2 (1998), 319-337.

[23] Recent scholarship informed this conceptualization of this category of civilian coup d'états which have taken place elsewhere (See, for instance, C. Sampford, 'Making coups history*', World Politics Review*, 22 (2010), 1-10; J. Protzel, 'Changing Political Cultures and Media Under Globalism in Latin America', *Democratising Global Media: One World, Many Struggles*, (2005), 101-120; M. Hutt, 'King Gyanendra's coup and its implications for Nepal's future', *Brown Journal of World Affairs.* 12, (2005), 111; K. Hachhethu, 'Legitimacy crisis of Nepali monarchy', *Economic and Political Weekly* (2007), 1828-1833; K. M. Dixit, 'Absolute Monarchy to Absolute Democracy', *Economic and Political Weekly* (2005), 1506-1510; M. Hutt, 'Nepal and Bhutan in 2005: Monarchy and Democracy, Can They Co-exist?', (2006), 120-124; D. Kumar, 'Proximate causes of conflict in Nepal', *Contributions to Nepalese Studies*, 32, 1 (2005), 51-92.

[24] This is the official position of the Swazi monarchical class and some authors (See M. A. Mamba, 'Tinkhundla: A Study of A System', MA Thesis: University of Swaziland, 2006; A. M. Mkhatshwa, 'An Assessment of the Tinkhundla System of Government, 1973-2003', BA Project: University of Swaziland, 2004; T. Mkhaliphi, 'The Extent to which the Tinkhundla-Based System of Government Articulates the Decentralization Principles: A Practitioner's Analysis', Paper presented at a Research Seminar, University of Swaziland, 11 February, 2015.

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was Swaziland's response to the single party phenomenon that had gripped the continent in the aftermath of independence.

In the light of the above, it is clear that, while literature on constitutional making in British West Africa is well developed and informative, scholarship on the history of constitution making in Swaziland is still underdeveloped. While several studies on Swaziland's constitutions exist, they do not address Swaziland's constitutional history over time and do not provide comprehensive analyses of the factors that shaped the development of that history. This study seeks to fill this gap in scholarship.

Statement of the Research Problem

The main research problem is to trace and analyse how Swaziland's constitutional history unfolded from 1960 to 2005 and what factors helped shape its development. In attempting to address this problem, the study provides a comprehensive account which traces the development of Swaziland's constitutions over time and examines the various factors, actors and circumstances which shaped and dictated the pace of constitutional developments in the country. The research questions for this study include the following: What political circumstances influenced Swaziland's constitutional history over time? Who were the various actors engaged in the making and unmaking of Swaziland's independence and post-Independence Constitutions? What were their points of agreements and disagreements? How did the African political environment and domestic circumstances lead to the overthrow of the Independence Constitution in 1973 and how was the ensuing period of constitutional void managed?

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Aims and Objectives of Study

This study sets out to investigate constitutional developments in Swaziland from 1960 to 2005. In doing this longitudinal study of Swaziland's constitutional developments, the thesis takes into consideration the historical context, actors and processes involved in each delineated historical epoch, namely: pre-independence years; the period of constitutional monarchy 1968-1973; and the 1973 royal auto-*coup d'état* to the inauguration of the 2005 constitution. The constitution making process in Swaziland started in earnest in 1960 when the British invited various Swazi groupings to submit ideas on the type of constitution they would want for an independent Swaziland. Swaziland's Independence Constitution was, thus, designed under the guidance of the British colonial authorities. Those involved in constitution making in Swaziland included pro-monarchists, the Western educated elite and the White settlers who had gained the status of Swazis. This process culminated in the making of the 1968 Independence Constitution, which proved to be unsatisfactory to the monarchy and was overthrown in 1973. This study seeks to analyse the period of constitutional void until the inauguration of a new constitution in 2005.

In view of the above, the objectives of the study are:

1. To examine the factors and circumstances leading to the making of the Independence Constitution of 1968 and the major role players.
2. To analyse the era of survival of the British-inherited Westminster Independence Constitution from 1968 to 1973.
3. To investigate the factors behind the collapse of the Independence Constitution, and the period by governance by decree and order-in-council.
4. To evaluate the birth of political monolithism under the *Tinhkundla* system of a no-party state and the inauguration of the 2005 constitution.

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Significance of the Study

There is no historical study on the development of Swaziland's constitution to 2005, even though Swaziland stands out in Africa as a traditional kingdom with a peculiar African constitutional order. This study filled this yawning knowledge gap of Swaziland's experiment in constitution making which shows considerable originality. Furthermore, the constitutional question in Swaziland is a topical and hotly contested issue particularly by civil society. In order to arrive at an informed decision about the trajectory of Swaziland's constitutional development there is need for a historical study of this nature.

Research Methodology

The study used a historical research design to trace the development of Swaziland's constitution making process and to investigate the forces that helped shape the country's constitutional history. The design enabled the researcher to collect, verify and synthesise evidence to establish historical facts. A qualitative research method was used where the researcher sought to understand Swaziland's constitutional history by comparing, contrasting, cataloguing, classifying and analysing information collected from a wide variety of sources. The study was based mainly on archival sources, official government documents, newspapers and interviews. In collecting data for this study, the author respected the ethical guidelines of The University of Pretoria.[27]

Archival materials from the National Archives in Lobomba in Swaziland were indispensable in the writing of this thesis. The core documents on constitutional developments included official reports, such as the Swaziland Legislative Council Reports, Swaziland National Assembly

[27] See Appendix 1 for Letter of informed Consent of Interviewee.

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Reports, the Swaziland Senate Reports and the Swaziland Government Gazettes. These reports covered the important debates on constitutional issues among the stakeholders. When Swaziland was endowed with self-government in 1967, the bicameral Legislature became sites of hotly contested debates on the race question, voting rights and the powers of the Swazi monarchy, the *Ngwenyama* of Swaziland, in an independent Swaziland. Government decisions having important consequences, such as the withdrawal of the citizenship of an opposition candidate, B. Ngwenya of the N.N.L.C. and King Sobhuza II's 1973 repeal of the Independence Constitution and Proclamations by decree and Orders-in-Council are captured in the Swaziland Government Gazettes. The official reports of the Swaziland Government were, therefore, indispensable in the writing of this thesis.

The White Swazis, operating under the canopy of the European Advisory Council (EAC), were important players in the constitutional history of Swaziland, particularly during the colonial period. This study benefited from the minutes of the EAC which covered issues on White voters' rights and arguments for and against a common electoral roll in Swaziland. Of equal importance were minutes of the traditional Swazi National Council which reflected the position of the Swazi traditionalists on the constitutional question in Swaziland. Sobhuza's speeches and the minutes of the meetings of the Swazi National Council were useful to this study as they clearly reflected the evolving relationship between King Sobhuza II and the EAC from hostile partners to real friends in need. Before 1960 Sobhuza II and the White community had strained relationships over the issue of land appropriation and the reluctance of the White community to address the issue. But when the decolonisation fever gripped Swaziland, King Sobhuza and the White community realised that they had to cooperate to check the rising tide of radical nationalism in Swaziland

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before it was too late. The documents reveal this thawing of relationships between the Swazi monarchy and the EAC.

Newspaper reports were of great importance to this study. MacDowell notes that newspaper reports offer a day-to-day record of events and are therefore a vital source of historical reconstruction[29], their shortcomings notwithstanding. This author depended heavily on the *Times of Swaziland* obtained from the Swaziland National Archives, the Library of the University of Swaziland and the University of Pretoria. This newspaper which was the principal one in Swaziland enabled this author to have a big picture of Swaziland's constitutional developments. It published communiqués on the outcome of Swaziland's constitutional talks in Lancaster House in London and in Swaziland. The pictures of the constitutional meetings appeared in the *Times of Swaziland* and one could sometimes assess the mood of the meeting by the pictures captured in the media with accompanying headlines. Perhaps some general information of the *Times of Swaziland* should be supplied, given that this newspaper was very central to this study.

The *Times of Swaziland* was founded in 1897 by Allister Miller who became the mouthpiece of White settler interests. Between 1897 and 1909, it was used as a platform for settlers to criticise the colonial government for not doing enough to prioritise settler interests. It stopped publication in 1909 due to a financial crisis and resumed publications again in 1931 as the White settlers' mouth piece. In the 1960s the *Times of Swaziland* became the platform used by White settlers to express their constitutional views on the establishment of the Legislative Council and the rights

[29] W. H. MacDowell, *Historical Research: A Guide*, (London: Longman, 2002), 57; J. Tosh, *The Pursuit of History* (London: Longman, 1991), 37-38.

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and privileges of White voters. Carl Todd, the Leader of the White community, used the *Times of Swaziland* to campaign for the conservative constitutional stance of King Sobhuza and the Swazi National Council. He also used it to mobilise settler support for King Sobhuza II as Swaziland headed towards independence. The editorial policy of the *Times of Swaziland* changed in 1973 when King Sobhuza abrogated the Independence Constitution of 1968 and declared a state of emergency. The *Times of Swaziland* started writing critical reports of the monarchy.[30] Like other sources for historical reconstruction, the *Times of Swaziland* had its shortcomings. Details of the actual constitutional discussions and debates were not usually published in the *Times of Swaziland* but in the official reports of the government of Swaziland.

Oral data was useful in this study and was collected through face-to-face, in-depth and open- ended interviews. The advantage of this method of interview was to allow the interviewees some freedom and flexibility in responding to questions raised about the study. The interviews were recorded through a tablet with the permission of the interviewees.

The selection of interviewees was based on their knowledgeability of the history of Swaziland's constitution. Most of the interviewees were comfortable and conversant with constitutional developments in Swaziland since 1968. Over 20 people were interviewed between December 2014 and December 2015. Thirteen out of the 20 interviewed were people in the legal field, while the rest were politicians. Interviews were later transcribed, analysed and used in the study.

[30] V. S. Hlatshwayo, 'The Reality of Media Freedom in Swaziland under the New Constitutional Dispensation', MA Thesis, University of Cape Town, 2011, 31.

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Most of the interviewees did not want their names to appear in this thesis because they consider it to be based on a politically hot issue. For over a year now, the government of Swaziland has been under intense pressure to democratise its political system along liberal democratic lines which the monarchy has been reluctant to entertain as 'foreign ideas'. Nonetheless, talks have been going on between the European Union and the underground Swazi opposition movement, otherwise referred to as the "progressives". On 8 November 2015, the *Times of Swaziland* carried a story about a select group of Swazis including government and progressive officials on tour to the Kingdom of Morocco and elsewhere to familiarise themselves with the working of multi-partyism. Although the Swazi government appears to be in favour of such talks, government functionaries do not want to be overtly associated with the ideas of the progressives. Swazis do not know who to trust and any type of discussion which touches on the constitution, which is continuously contested by the Swazi civil society as not democratic enough, is treated with caution. People are therefore uncomfortable to publicly express their opinions about the constitution. Where requested by the interviewees, their names are not published in this study.

Focus and Summary of Chapters

CHAPTER ONE introduces the study.

CHAPTER TWO focuses on the major stakeholders in the making of Swaziland's Independence Constitution during the colonial period. It was logical for Britain to oversee the whole process of constitution making by virtue of being the colonial authority. This was done in tandem with the various Swazi stakeholders who can be considered the founding key players of Swaziland's

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Independence Constitution. These included King Sobhuza II and the traditional Swazi National Council, Carl Todd, the leader of the White community operating under the European Advisory Council in Swaziland, the leaders of Swaziland's nascent political parties, namely John June Nquku and Dr. Ambrose Zwane, and South Africa. Whereas these actors had different ideas on the type of political system that the future constitution should reflect, South Africa was also interested in the direction of political change in Swaziland because of its potential political implications for the apartheid regime.

CHAPTER THREE deals with the commencement of the constitutional talks in 1960 up to the deadlock in the talks in 1963. Swaziland took its queue from developments in the continent and started its own constitutional talks in 1960 under the British. The constitutional talks in Swaziland were characterised by a ferocious battle of conflicting ideologies between the conservative Swazi monarchy and their allies, the White community, on the one hand, and the radical Swazi nationalists operating under the banner of political parties, on the other hand. This chapter highlights South Africa's behind-the-scene interference in the constitutional processes in Swaziland as a major stakeholder through its Swazi proxies - the Swazi monarchy and the White community. The protagonists agreed to disagree in Swaziland and at Lancaster House in the United Kingdom on race issues, voting rights, the powers of the Legislature and the future role of the Swazi monarchy and this resulted in a stalemate. This chapter shows considerable jockeying between the key players to capture and dominate space in the new political dispensation that British decolonisation promised.

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CHAPTER FOUR examines how Britain unlocked the stalemate by imposing the 1963 constitution on all the Swazi stakeholders and calling for elections. The 1963 constitution which Britain imposed on Swaziland provided for limited internal self-government, with Her Majesty's Commissioner having veto rights over every subject. The chapter highlights the clash between British constitutional values, on the one hand, and those of the Swazi monarchy and its White Swazi and South African allies, on the other hand, before and after the June 1964 elections. Whereas the British struggled to convince the traditional monarchy to maintain absolute neutrality in modern politics like the English monarchy, the White Swazis and the South African government advised Sobhuza to form a political party and enter modern politics to capture power as an executive leader. The royal party, the Imbokodvo, and the White Swazi party, the United Swaziland Association (USA) swept all the seats in the June 1964 elections at the expense of Swaziland's radical political parties. Thus, Swaziland's first Legislative and Executive Council excluded the radical nationalist parties, leaving them to participate in Swazi politics only outside parliamentary structures. They were therefore excluded from the Constitutional Committee for the revision of the 1963 constitution.

CHAPTER FIVE deals with the making of the 1967 constitution, internal self-government and the 1968 Independence Constitution. It shows how the revision of the 1963 constitution was the sole business the royal Imbokodvo and the United Swaziland Association Party who won the June 1964 elections and constituted members of the Legislative Council from which the Constitutional Review Committee was selected. This chapter shows how the two allies bitterly disagreed over the issue of race and the privileges of the Europeans in parliament. There were also disagreements between the indigenous Swazis and Whites in both the House of Assembly and Senate over the

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Ngwenyama's control of minerals and mineral oils; disagreements that were carried over to the London Constitutional Conference on the Independence Constitution where Britain was reluctant to endorse a constitutional order in which the *Ngwenyama* was elevated to a total autocrat who was above the cabinet in the management of mineral resources. The question which the two sides could not easily resolve was whether a traditional monarchy should be above the constitution in a modern state or whether it should be subjected to constitutional checks and balances. Britain had the last word in these matters before the independence of Swaziland in 1968.

Under the 1967 constitution promulgated in March, elections were held the following month, followed soon afterwards by the inauguration of internal self-government in colonial Swaziland, with Prince Makhosini Dlamini as Prime Minister. Thereafter, both the House of Assembly and Senate debated the White Paper on the 1968 Independence Constitution which the British parliament endorsed as the last step towards independence.

CHAPTER SIX deals with the Westminster modelled 1968 constitution up to its overthrow. The constitution, which provided for a Swazi-type constitutional monarchy, was overthrown in 1973, followed by a constitutional void of over 32 years. Constitutional monarchism, which had a very short life span, was compromised by the African political environment which favoured executive absolutism in the shape of one party dictatorship. Experiments with constitutionalism in the newly independent state of Swaziland resulted in a constitutional crisis culminating in Sobhuza's 1973 auto-*coup d'état*.

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The chapter demonstrates how the crisis of constitutionalism played itself out. The Swazi executive struggled to control the Legislature and Judiciary and to impose its agenda of political monolithism in line with what was in vogue on the African continent. King Sobhuza did not espouse the principle of the separation of powers and felt challenged and ridiculed when the Swaziland Court of Appeal ruled in favour of an opposition candidate whom the government had classified as an 'illegal immigrant". He responded to the standoff with the Court with a coup d'état against the constitution. The *Tinkhundla* political system that was established by an Order-in-Council in 1978 opted for a "party-less" democratic state in Swaziland and re-established a bicameral Legislature and Cabinet. This was Swaziland's response to the emergence and flowering of one-party states and Presidential absolutism in Africa in the aftermath of independence. The constitutional void came to an end with the introduction of a new constitution in 2005.

CHAPTER 7 is the conclusion of the thesis. It is a summary of how the 1968 constitution was inaugurated after a succession of meetings in the colonial period and was overthrown in 1973. After a period of constitutional void of 32 years, another constitution was established in 2005.

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CHAPTER TWO

MAJOR STAKEHOLDERS IN THE MAKING OF SWAZILAND'S INDEPENDENCE CONSTITUTION

Introduction

Any consideration of the processes and nature of decolonisation in Africa in the shape of constitutional developments must be primarily concerned with the imperial authorities as the lead players and the various interest groups because all these actors shape and determine the nature of the constitution-the governance instrument of the modern state in the offing. It is, therefore, important to identify the key players in the constitution-making exercise and highlight their political agenda.

This chapter, therefore, focuses on the key players and various interest groups engaged in the Independence Constitution-making processes in Swaziland. These included the British Colonial Office, the Swazi monarchy and the Swazi National Council (SNC), the minority White community[1], the African educated elite operating under the banner of political parties, and South Africa. Britain actually set the pace, the framework and direction of constitutional developments in Swaziland by virtue of being the colonial authority. This was done in tandem with the various Swazi stakeholders who can be considered the founding key players of Swaziland's Independence Constitution.

[1]This author finds it appropriate to refer to the Europeans who settled in Swaziland as their new found home as the "White minority" rather than as "settlers", a term that is somewhat pejorative. These White Swazis helped shape the constitutional processes leading to independence and played a major role in Swaziland post-colonial politics.

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The key players comprised the Swazi King, the leader of the White community in Swaziland, and the leaders of Swaziland's nascent political parties who were all jockeying for a place in the new political dispensation that independence promised. These players were usually men imbued with ideologies about the type of political society they wanted to bequeath to posterity. What was the political ideology of Swaziland's Independence Constitution makers? What were the core values they wished the constitution to enshrine and what were the outside influences that shaped their ideas?

The Swazi monarchy, sometimes described as a "conservative-traditionalist"[2] monarchy, represented by King Sobhuza II was one such interest group. Given this situation, the question which arises is what role could traditionalism play in crafting the instruments of modern governance, such as Swaziland's constitution? Nevertheless, the traditional monarchy had an interest in joining the bandwagon of the constitutional processes if it expected to remain relevant in Swazi politics. Meanwhile, Carl Todd, the leader of the White community who were the economic foundation of colonial Swaziland, could not be indifferent to the territory's constitutional future. The White community were, thus, determined to have a say in the type of constitution that was to be bequeathed to Swaziland at independence because of their dominant economic role in the territory. On their part, the Swazi educated elite, who had by then formed modern political parties, also had a stake in the future of their country. Inspired by modern African nationalism, they were determined to participate in the political modernisation of their country by engaging in the Independence Constitution-making processes. Lastly, South Africa was also interested in shaping the direction of political change in Swaziland because of its potential political

[2] T. M. J. Zwane described King Sobhuza and the Swazi National Council as 'conservatives-traditionalists' (See Zwane, 'The Struggle for Power in Swaziland', *Africa Today*, 11, 5 (1964), 4.

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implications for the apartheid regime. Thus, various groups were keen to participate in the constitution-making exercise for various reasons, as will be discussed next, starting with the British government.

The United Kingdom as Honest Broker?

Scholars are unanimous on the fact that metropolitan powers often assumed full responsibility in providing constitutions for their erstwhile dependencies before independence.[3] Independence Constitutions were, therefore, isomorphic with metropolitan constitutions. Of course, this isomorphism is explained by the fact that these constitutions were largely metropolitan impositions. The colonial powers had an interest in ensuring that independent constitutions followed their own constitutional model as a way of satisfying their ego in realising their modernisation project modelled on democratic values as the product of Western civilisation. Metropolitan authorities and the local colonial administration wanted to have an honourable exit from Africa by leaving behind institutions which were structured along the same lines as theirs. Colonial powers, thus, employed various methods to ensure constitutional isomorphism and this was clearly reflected in the processes that constitutional making underwent. Consequently, it was the colonial administration that appointed the committee that drafted the constitution from a British constitutional model. Critical decisions on the final outcome of the constitution had to be taken

[3] See for instance, G. O. Julian 'Modeling the State: Postcolonial Constitutions in Asia and Africa', *Southeast Asian Studies*, 39, 4 (2002), 558-583; M. Duverger, 'A New Political Model: semi-Presidential Government', *European Journal of Political Research*, 8, 2 (1980), 165-187; A. Liijphart, (ed.), *Parliamentary versus Presidential Government*, (London: Oxford University Press, 1992); T. O. Elias, *Nigeria: The Development of its Laws and Constitutions* (London: Stevens an & Sons Ltd, 1967); B. Nwabueze, *Constitutionalism in the Emergent States* (London: C. Hurst & Company, 1973); K. Robinson, 'Autochthony and the Transfer of Power', in: K. Robinson and F. Madden, (eds.), *Essays in Imperial Government: Presented to Margery Perham* (Oxford: Basil Blackwell, 1963); M. G. De Winston, 'Decolonisation and the Westminster Model', in: A. H. M. Kirk-Greene (ed.), *Africa in the Colonial Period III. The Transfer of Power: The Colonial Administrators in the Age of Decolonisation* (Oxford: Oxford University Inter-Faculty committee for African Studies, 1979).

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by policy makers in the colonial office in Britain to emphasise the weight of metropolitan factors in constitution-making. There was, therefore, a level of imperial imposition or *diktat* on the independent constitutions of African states.

Beyond colonial imposition was the fact that the African political elite engaged in the drafting of the independent Constitutions were all schooled in the British political tradition. They were guided through the intricacies of Western-style politics and were inspired by metropolitan models. They were, therefore, "converts to Western Constitutionalism" as Nwabueze puts it.[4] Constitutional isomorphism with that of Britain was, therefore, a given because the British stood as a model in the eyes of the colonised and, hence, endeavoured to replicate themselves in the colonies. Colonial imitation or imposition, consequently, explains why the constitutional framework was usually a carbon copy of metropolitan ones with some modifications to local circumstances. The differences in colonial constitutions may be seen in the structure of the government in terms of the distribution of power between the executive and the legislative arms of government and the extent to which the parliamentary or any other inherited system conforms to metropolitan ones.

It is pertinent to note that the constitutional development in Swaziland was comparatively tardy[5] because the British did not intend to oversee the development of the territory as a sovereign polity.

[4] Nwabueze, *Constitutionalism in the Emergent States*, p. 27.

[5] Constitutional developments in Ghana and Nigeria gives us a clue to how comparatively fast these took place in the post Second World War era. In Ghana, the 1946 Burns constitution contained provisions for a Legislative and Executive Council and doubled African representations in these councils. A new constitution in 1951 gave the Executive Council a large majority of African Ministers and an Assembly dominated by Africans. But this was short of full self-government because executive powers still remained in British hands. In February 1951, the first elections were held for the Legislative Assembly under the new constitution and Nkrumah's Convention People's Party won two-thirds of the majority of 104 seats and was invited to form a government as leader of Government Business, which was a quasi-Prime Minister. In 1952 self-government was introduced and the position of Prime Minister was created

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Britain intended to incorporate Swaziland into South Africa but the plan flopped woefully. From the 1909 South African Act of Union to the birth of apartheid under the Nationalist Party, Swaziland, like the other High Commission Territories, was administered with a view of integrating it with South Africa.[6] This explains why Swaziland was administered by British Resident Commissioners for the Protectorate who were responsible to the British High Commissioner in Pretoria, who was the British Ambassador in South Africa, stationed in Pretoria. The South African adoption of apartheid since 1948 reduced the prospects of the integration of Swaziland into South Africa.[7] The withdrawal of South Africa from the Commonwealth and her change to a republic in 1960 invalidated the 1909 Act. The implication of this was that all legal rights that South Africa had to lay claims to the High Commission Territories were rendered null and void because the Republic was no longer a member of the Commonwealth and had severed all ties with the UK.[8] South Africa's withdrawal from the Commonwealth was, therefore, the last straw and Britain had no choice but to prepare Swaziland for independence.

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and the Executive Council became a cabinet. Nkrumah was duly elected Prime Minister in 1952 and in 1957 Ghana became independent. Nigeria also experimented with a succession of Constitutions starting comprising the Richards constitution in 1946, the MacPherson constitution (1951), the Lyteltton constitution (1954) under which power was progressively transferred to Africans leading to independence in 1960 (See F. M. Bourret, (ed.) *Ghana, The Road to Independence, 1919-1957* Vol. 23 (Stanford: Stanford University Press, 1960); B. O. Nwabueze, *A Constitutional History of Nigeria* (London: C. Hurst and Company, 1981).

[6] R. Hyam, *The Failure of South African Expansion, 1908-1948* (Africana Pub, 1972); W. M. H. B. Hailey, *The Republic of South Africa and the High Commission Territories* (London: Oxford University Press, 1963); R. P. Stevens, *Lesotho, Botswana and Swaziland: The Former High Commission Territories in Southern Africa* (London: Pall Mall P, 1967).

[7] R. P. Stevens, 'Swaziland Political Development', *The Journal of Modern African Studies*, 1, 3 (1963), 327-350.

[8] Zwane, 'The Struggle for Power in Swaziland', 4.

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The United Kingdom had to play the role of political midwife in the birth of a sovereign Swaziland with the necessary constitution befitting a modern state. Consequently, Britain presented a draft constitutional document to a constitutional committee composed of the various interest groups for their appreciation and necessary input. What Britain proposed as a draft constitution for Swaziland, as was the case with other British colonial dependencies[9], was the prototypical British parliamentary form of government known as the Westminster system. This is characterised by the fact that the Head of government's authority is dependent on the confidence of the legislature. The Prime Minister, normally the leader of the majority party, is chosen by the Legislature and is dependent on parliament for his survival. The executive is bi-cephalic and includes the Head of Government, usually the Prime Minster, and a ceremonial Head of State who is usually a monarch. The draft also proposed a bicameral Legislature of an upper and lower house.[10] In essence, the British proposed a parliamentary model of government which was a reflection of Britain's political history.

As the political midwife of the birth of new nation states in Africa, Britain bequeathed the Westminster model of government. This was achieved through two main steps: first, the British established a constitutional committee composed of the various interest groups in Swaziland to discuss voting procedures that would lead to the establishment of a Legislative and an Executive Council. Second, the Legislative Council, which would serve as the country's constituent Assembly, would, then, oversee the drawing up of Swaziland's Independence Constitution. It was

[9] In British Africa, the British bequeathed the Westminster parliamentary system of government with a bicameral legislature.

[10] G. O. Julian, 'Modelling the State: Postcolonial Constitutions in Asia and Africa', *Southern African Studies*, 39, 4 (2002), 558-560.

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incumbent on Britain to achieve its political agenda by engaging all the interest groups in colonial Swaziland.

The Swazi Monarchy and the Swazi National Council (SNC)

King Sobhuza II was a key player in the making of Swaziland's Independence Constitution by virtue of his position as a traditional leader and his educational attainment and exposure to modern governance. Elsewhere in Africa, the educated elite, and not the traditional elite, were generally the preponderant interest group at the forefront of post-Second World War constitutional developments in Africa.[11] This was not the same in colonial Swaziland where the traditional monarchy dominated the socio-political space and was firmly entrenched as the interlocutor of their subjects and the colonial administration.

The Swazi King or *Ngwenyama* (the Lion), Sobhuza II, and his Swazi National Council or *liqoqo*, wielded enormous power in Swaziland and were an omnipresent force the British could not circumvent. Two principal reasons may be deduced to explain this preponderance of the Swazi monarchy: first, his position as a towering traditional figure in Swaziland and second, his role as a champion in the fight to retrieve Swazi land confiscated by European colonialists starting from the mid-19th century.

[11] In Africa some of the prominent nationalists including N. Azikiwe, O. Awolowo, K. Nkrumah, J. Kenyatta, J. Nyerere, K. Kaunda, and A. Luthuli were educated elites without any royal connections (See C. Fyfe, 'Africanus Horton as a constitution-maker', *Journal of Commonwealth & Comparative Politics*, 26, 2 (1988), 173-184; G. Arrighi and J. S. Saul, 'Nationalism and Revolution in Sub-Saharan Africa', *The Socialist Register*, 6 (1969); C. Allen, 'Understanding African Politics', *Review of African Political Economy*, 22, 65 (1995), 301-320.

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King Sobhuza II was a towering traditional figure in Swaziland which is a largely homogeneous entity with a common language, custom and tradition and history.[12] This homogeneous ethnic picture of Swaziland can be contrasted with that of other African countries, including Nigeria and Cameroon with over 250 and 200 ethnic groups, respectively,[13] implying that there is no single traditional ruler for each of these countries. The heterogeneity of ethnic groups and traditional rulers in Nigeria and Cameroon, like elsewhere in British colonial Africa, cleared the way for the Western educated elite in these countries to emerge as the uncontested unifying forces to champion the anti-colonial struggle and, ultimately to capture power from the departing colonial authorities. Whereas traditional leaders were perceived as retrogressive and divisive forces, and collaborators of the colonial order, the educated elite were seen as the uniting and progressive forces who were most suitable to succeed the colonial order.

Swaziland represented in Southern Africa what is referred to as a centralised polity[14], which was generally considered and admired as the peak of human historical achievement in governance[15] with the monarchy at the top. The Swazi King works closely with his traditional council, the *liqoqo*, which is composed of about 60 hereditary chiefs and nobles, together with a few commoners. Swaziland has a national body that is the rough equivalence of a parliament called *Libandla*, which meets once a year and is attended by any adult male. Taken together, these

[12] M. Neocosmos, 'Homogeneity and Differences on Swazi Nation Land: Social Relations in Rural Swaziland: Critical Analysis', *SSRU: UNISWA*, (1987); C. P. Potholm, *Swaziland: The Dynamics of Political Modernisation* (Berkeley: University of California Press, 1972).

[15] Ethnologists eulogized centralized polities in contrast to segmentary or acephalous societies (See, for instance, P. Cocks, 'The King and I: Bronislaw Malinowski, King Sobhuza II of Swaziland and the Vision of Culture and Change in Africa', *History of the Human Sciences*, 13, 4 (2000), 25-47; S. N. Eisenstadt, 'Primitive Political Systems: A Preliminary Comparative Analysis', *American Anthropologist*, 61, 2 (1959), 200-220; M. Fortes and E. E. Evans-Pritchard, (eds.), *African political systems* (London: Oxford University Press, 1950).

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traditional councils form the Swazi National Council (SNC) which used to meet periodically with the representatives of the British government when the need arose.

The Swazi generally retained an emotional attachment to their King. For one thing, it was primarily through the leadership of a series of strong kings of the Dlamini dynasty that the Swazi nation came into existence and has maintained its identity. Sobhuza was, therefore, a hereditary monarch and he owed his position to the culture and tradition of dynastic succession in Swaziland.[16] Like the historical European monarchs, Sobhuza's rights were considered divine and were periodically reinforced by a succession of elaborate ritualisation in dance and song during the *incwala* and reed dance ceremonies.[17] Royal and political legitimacy was, therefore, ancestral and not derived from popular suffrage which he resisted to have anything to do with on grounds that it was un-African. The common folk viewed the Swazi King as a mystical figure who had direct association with the health of his subjects and the fertility of the soil.[18]

[16] For more on the hereditary status of Sobhuza II see H. Kuper, *Sobhuza II, Ngwenyama and King of Swaziland: The Story of an Hereditary Ruler and His Country* (London: Africana Publication, 1978).

[17] For more on the traditional rituals of the Swazi monarchy as an instrument of legitimacy see P. Cocks, 'The King and I. Bronislaw Malinowski, King Sobhuza II of Swaziland and the Vision of Culture and Change in Africa', *History of the Human* Sciences, 13, 4 (2000), 25-47; R. Levin, 'Swaziland's Tinkhundla and the Myth of Swazi Tradition', *Journal of contemporary African Studies*, 10, 2 (1991), 1-23; H. Kuper, *Sobhuza II, Ngwenyama and King of Swaziland*; H. Kuper, *An African Aristocracy: Rank Among Swazi* (London: Oxford University Press, 1980).

[18] This is a typical quality among African traditional rulers. See J. Middleton and D. Tait, *Tribes without rulers: studies in African segmentary systems* (London: Rutledge, 2013); P. Skalník, 'Authority Versus Power: Democracy in Africa, must Include Original African Institutions', *The Journal of Legal Pluralism and Unofficial Law*, 28, 37-38 (1996), 109-121.

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Peculiar historical circumstances in Swaziland, particularly developments arising from Swaziland's contacts with Europeans, further reinforced and legitimised the position of the Swazi monarchy. A succession of European settlers that started arriving in Swaziland from the 1840s resulted in the expropriation of large tracts of land. The process of land expropriation was accelerated under King Mbandzeni when Swaziland lost two-thirds of its land space under concessions allegedly granted by the monarchy to Europeans. The Swazi people were generally displaced and were forced to relocate into a patchwork of 32 reserves which came to be known as Swazi Nation land held in communal tenure. Other Swazis were forced to live with the situation by becoming labour tenants to the Europeans who had confiscated their land through various intrigues and established individual title deeds over them.[19]

This massive confiscation of Swazi land created land hunger and generalised discontentment among the Swazi people. Exploiting this general dissatisfaction over land resources, the Swazi monarchy championed the cause of the struggle to retrieve Swazi land 'stolen' by the White settler population in the form of petitions and deputations to the colonial government in London. In 1954, for instance, Sobhuza took up the land issue aggressively with the British High Commission, protesting that the European claim of private ownership of Swazi land is a fraudulent claim because

[19] See K. Matthews, 'Squatters on Private Tenure Farms in Swaziland: A Preliminary Investigation', in: M. Neocosmos, (ed.), *Social relations in rural Swaziland: critical analyses* (Social Science Research Unit, University of Swaziland, 1987); H. S. Simelane, 'The State, Landlords, and the Squatter Problem in Post-Colonial Swaziland' *Canadian Journal of African Studies/La Revue canadienne des études africaines*, 36, 2, (2002), 329-354. It should be noted that the other high Commission territories, Basutoland and Bechuanaland, did not suffer a similar fate like Swaziland. The British restricted the European ownership of land and recognized and protected the vital interests of Africans (see H. Kuper, 'The Colonial Situation in Southern Africa', *The Journal of Modern African Studies*, 2, 2 (1964), 149-150.

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private ownership of land is alien to Swazis.[20] Sobhuza was, therefore, perceived with animosity by the White community in Swaziland for struggling to repossess their land, while he was seen by the ordinary Swazis as a champion of their land rights. The Swazi monarchy and the White community were, therefore, not on friendly terms on the eve of independence because of the land issue, while it was popular with the Swazi population.

Although Sobhuza's legal efforts to recover alienated lands were unsuccessful, he still managed to organise the repurchasing of thousands of acres of lands from Europeans so that over 2,251,000, out of 4,280,000 acres,[21] became Swazi owned and was referred to as the Swazi Nation land. The monarchy, therefore, endeared himself to the Swazi people. The struggle of the monarchy to recover Swazi land from the White community, coupled with the fact that the King and his chiefs controlled one-third of the country's land space, referred to as Swazi Nation Land, placed him in a strong position and made him an important actor in the making of Swaziland's Independence Constitution.

Although a traditional ruler, Sobhuza was also Western educated and well exposed to the rudiments of modern governance through the services of a coterie of White South African advisers. Born in 1880 of the ruling Dlamini clan, Sobhuza ascended the throne in 1921. He attended primary and secondary schools which were the best available in South Africa for non-Whites, and

[20] J. Crush, 'The Culture of Failure: Racism, Violence and White Farming in Colonial Swaziland', *Journal of Historical Geography*, 22, 2 (1996), 177-197; C. P. Youe, 'Imperial Land Policy in Swaziland and the African Response', *The Journal of Imperial and Commonwealth History*, 7, 1 (1978), 56-70.

[21] Stevens, 'Swaziland Political Development', 327.

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was, therefore, fairly educated when compared to his counterparts elsewhere in Africa who were largely uneducated.[22] Sobhuza was described as 'intelligent and relatively well-educated . . . [individual] . . . who was fluent in English in speech and writing."[23] Sobuza's education endeared him to the British and they requested him to write and present a treatise on traditional political governance in Swaziland so that it could assist in the introduction of the indirect system of administration. Together with his legal adviser, Pixley Seme, and A. G. Marwick, a long serving British administrator who became Resident Commission in 1935, he prepared a lengthy document tiled: "The Original Swazi Political Organisation". The document illuminated the relative functions of the King, the Queen Mother, the *Liqoqo*, the *libandla* and the chiefs.[24]

Sobhuza acquainted himself with Western politics by spending many hours reading parliamentary papers, together with his legal adviser, Pixley Seme. He also had access to Johannesburg lawyers who clarified political and legal issues to him. His education was, therefore, an asset and his enlightenment saved the Swazi monarchy from being eroded by the aggressive forces of modernity.

The centralised nature of the Swazi traditional governance system fitted properly with the British colonial system of indirect rule. Typically, British policy in Africa was to administer colonial

[22] P. Cocks, 'The King and I, Bronislaw Malinowski, King Sobhuza II of Swaziland and His Vision of Culture change in Africa', *History of Human Sciences*, 13, 4 (2000), 25-47; J. B. Mzizi, 'The Dominance of the Swazi Monarchy and the Moral Dynamics of Democratisation of the Swazi State', *Journal of African Elections*, 3, 1 (2004), 94.

[23] M. Macmillan, 'Swaziland: Decolonisation and the Triumph of 'Tradition'', *Journal of Modern African Studies*, 23, 4 (1985), 648.

[24] Ibid.

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subjects through their indigenous political institutions in the spirit of British indirect rule. In 1950 the *Ngwenyama* and the SNC were recognised as the Native Authority and the source of all delegated powers for matters related to Africans and this indirect rule system of government was given statutory recognition.[25] The *Ngwenyama* and the Swazi National Council needed such recognition in order to remain key political figures during the decolonisation process.

Sobhuza was disturbed by developments that accompanied the decline of colonial regimes and the neutralisation of the authority of African traditional rulers-kings and chiefs-throughout the continent. Radical nationalism championed by the African educated elite often resulted in violence and the nationalist unrest in Nyasaland in early 1959 resulted in the British imposition of a state of emergency in March 1959.[26] This unrest frightened the Swazi monarch who feared it could be copied by Swazi nationalists. In a reactionary speech delivered in May 1959, he condemned radical nationalists for challenging colonial rule and for adopting alien political methods of contestation.

Sobhuza blamed the unrest taking place in Central and North Africa, and especially Nyasaland, on people who had forgotten their African customs and tradition and were imbibing European ways which they did not master. He accused the nationalist leaders as 'power-greedy individuals who were making use of alien Western political practices to capture political power'. Such practices,

[25] The Ngwenyama and the Swazi National Council were recognized by the British in 1950 as the Native Authority in Swaziland.

[26] P. C. Banda, 'The 1959 State of Emergency in Nyasaland: Process and Political Implication', *The Society of Malawi Journal*, 65, 2 (2012), 1-19.

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which were carried out through the medium of multi-party politics, were foreign to the Swazi and were undesirable. Sobhuza stated that the correct procedure for Swazis was to revert to the traditional method of arriving at a consensus by resorting to the *Libandla* traditional gathering of all males.[27]

The Swazi monarchy's reactionary stance did not go down well with the Swazi educated elite and the Swazi Student Union. The student union was an amalgamation of students in institutions of Higher Learning and Secondary Schools who acted as a pressure group and strove to influence the evolution of politics in British Swaziland.[28] Their argument was that the tribal governance structures, namely the *Ngwenyama* and the Swazi National Council, were not meant to deal with the complexity of contemporary political and social matters and that the exigencies of modernity made these institutions archaic. With the advent of Western education and economy, the educated and the working class, especially teachers and clerks, felt they were marginalised by the existing tribal structures which did not serve any useful purpose in modern times because of their conservatism.[29] Both the Swazi students and the educated class tended to be sympathetic to the modernist ideals of the political leaders which they felt were suitable for a modern state. The Swazi monarchy and Council perceived the political party leaders, students and the educated elite, as a threat to their existence as a political authority.

[27] SNA, S.T. 176/1950, Swazi National Council, Lobamba.

[28] Stevens, 'Swaziland Political Development', 339; Zwane, 'The Struggle for Power in Swaziland', 1-4.

[29] Stevens, 'Swaziland Political Development', 330.

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The White Community in Swaziland

The White community in colonial Swaziland were sometimes referred to in historical documents as "South African immigrants" because they crossed from South Africa into landlocked Swaziland and they constituted a conspicuous exclusive ethnic minority. Kuper describes the exclusiveness of the White community as follows:

> The Whites . . . justify their exclusiveness on the grounds that that they have built up, and maintain, 'Western civilisation'. In fact, this Western civilisation . . . is a somewhat vague cultural complex, or syndrome, acquired over many centuries from many lands. It exists in the minds of Whites, for whom it includes monogamy, a monotheistic religion of Judaeo-Christian origin, a 'European language', a capitalist or mixed economy, and a wide assortment of material accessories (dress, building, food, liquors, furnishings and technical equipment . . . .[30]

The importance of the White community in Swaziland lies in the political economy of the territory represented in White and multinational capital.[31] Perhaps there is need here to trace the history of this development in order to demonstrate why and how the White community had high stakes and were so important in Swaziland. The implantation of European settlements in Swaziland commenced in the mid-19th century and, during the peak period of European scramble for African territory in the 1880s, there were over 750 White settlers in Swaziland of whom 450 were of British origin, while the rest were Boers. The indigenous Swazis then numbered around 63,000.[32] As will be shown, this number increased over the years and by 1960, there were over 9,000 Whites in Swaziland.

[30] H. Kuper, 'The Colonial Situation in Southern Africa', *The Journal of Modern African Studies,* 2, 2 (1964), 152.

[31] For details on this situation see J. Daniel, 'The Political Economy of colonial and Post-Colonial Swaziland', *South African Labour Bulletin*, 7, 6 (1982), 90-113; .

[32] H. Kuper, *Sobhuza II: Ngwenyama and King of Swaziland* 26.

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The Whites organised themselves to pursue their common interests since the beginning of their settlement in Swaziland. For instance, in 1887 the Whites established a White Committee of 25 men, with James Forbes as the chairman, to promote White interests. The main responsibility of the White Committee was to resolve civil and criminal disputes among the Whites, subject, in principle, to final authority of the Swazi King. The committee persuaded King Mbandzeni to grant them a charter and he conceded on 1 August 1888.[33] The charter authorised the Whites to form a committee which addressed all White matters. King Mbandzeni's had a special adviser, Shepstone, to assist him in tackling the concession issues. Shepstone prevailed on the King to dismiss the White committee for being unable to manage intra-White conflicts and the King did so.

The Committee was replaced by the Triumvirate Government which existed from 1890-1894. It was composed of British, Boer and Swazi representatives and it established a concession court which operated on the basis of Roman Dutch law which was used in South Africa. The concession court was set up to pass judgment on the validity of the European concessions owing to numerous conflicts over land claims arising between Whites.[34] The Triumvirate Government was disbanded in February 1895 following the implementation of the Third Swaziland Convention under which the British agreed to allow the Boers to administer Swaziland. The Transvaal, therefore, took over the administration of Swaziland.

[33]A. N. Boyce, 'The Swaziland Concessions and their Political Consequences 1876-1908', PhD Thesis: University of South Africa, (1946), 17. J. S. M. Matsebula, *A History of Swaziland,* (Johannesburg: Longman Southern Africa Ltd, 1972), 99-100.

[34] D. H. Gillis, *The kingdom of Swaziland: Studies in Political History*, (Westport: Greenwood Publishing Group, 1999), 55.

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The Boer South African Republic appointed Johannes Krogh as its special commissioner for Swaziland. In May 1895, the same government appointed Louis Botha the resident justice of peace and native commissioner in Mbabane. With Swaziland under the Boers, a prominent White settler, Allister Miller, called for the transformation of Swaziland into a Whiteman's country by convincing the Boers to set aside more land for Europeans. Miller founded many bodies to cater for White interests such as the Mbandzeni Concession Syndicate in 1891, the Swaziland Corporation of 1898, and the Swaziland Mining, Industrial and Commercial Chamber in 1899.[35]

The British Take-Over of Swaziland and the 1907 Partition Proclamation

The historically strained relationship between the British and the Boers degenerated into the Anglo-Boer War (1899-1902) which resulted in the ouster of the Boers and the establishment of a British Protectorate over Swaziland in 1903. With the British now the colonial masters of Swaziland, Allister Miller, a prominent member of the Swaziland Concessions Commission established in 1905, felt comfortable to sell his colonisation agenda with respect to land. Miller wanted to transform Swaziland into a White man's country like South Africa. He did this in two ways. First, he organised a media campaign to attract more Whites from South Africa and overseas to come and settle in Swaziland. Second, he wrote a Report to the British Colonial Administration in which he called for the transferral of up to 90 per cent of Swazi territory to White settlers. His argument was that the White community in Swaziland, like their counterparts in Kenya, South Africa and elsewhere, were the economic backbone of the territory and the Whites needed land for

[35] J. Crush, 'Landlords, Tenants and Colonial Social Engineers: The farm Labour Question in Early Colonial Swaziland', *Journal of Southern African Studies*, 11, 2, (April 1985), 236.

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that purpose.[36] Definitely the White settlers were ruthless and conscienceless in land matters by asking for so much land without thinking of the consequences on the indigenous Swazis.

Miller's Report appears to have influenced the British colonial administration because it became the basis for the ruthless British Land Partition Proclamation of 1907. The Proclamation allocated 43 per cent of the land to White settlers and corporations, 22 per cent to the British Crown and the remaining 33 per cent to the Swazi people.[37] The 1907 Proclamation was clearly engineered by the White settlers who emerged as the biggest land owners in colonial Swaziland. The White settlers had to go beyond the 1907 Proclamation Act to protect their acquisitions by forming a lobby organisation to protect their interests.

Taxation Hike Crises and the Birth of the European Advisory Council (EAC)

World War I was devastating for British colonies owing to the difficult economic situation in which Britain found itself. The aftermath of World War I was a period of economic hardship in the colonies and Britain had to confront this reality by revisiting the general taxation rates in Swaziland. Sir De Symons Montagu George Honey, the Resident Commissioner, and the District Commissioners resolved in May 1921 that all male European residents in the territory should be levied with a poll tax and income tax to raise revenue to run the country. European residents in the territory would be levied personal taxes- a poll tax and surtax on incomes over £1,000, along with a tax on undeveloped mineral concessions. Poll tax was applicable to all adult European males above 21 years and was set at £2 per annum.

[36] Ibid.

[37] Crush, 'Settler Estate Production', 187; Matsebula, *A History of Swaziland*, 184.

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The White Swazis were not happy with the increased tax rates and insisted that they would not submit to taxation without representation in the colonial administration. Their argument was that they wanted to have a voice in the administration like their counterparts in other British colonies. Consequently, they proposed the formation of a European Advisory Council (EAC) which would advise the colonial administration on issues affecting Whites in the territory and the British administration consented.[38]

The British colonial administration consented to the idea of an EAC and it specified how elections were to be organised. The administration decreed that:

1. The advisory council should consist of nine members.
2. The territory should be divided into two- Southern Electoral Division with should consist of five members (This is the territory south of the Great Usuthu River); and the Northern Electoral Division (Territory North of Usuthu River) would consist of four members.
3. Every male British subject of the age 21 years and upwards, other than a person in permanent employment of the Swaziland administration should be entitled to vote.
4. To be eligible for membership, an individual had to own property valued at least at £200, or a general license.
5. The voter should not be a lunatic
6. Any person who had, within the last three years, been convicted of a serious criminal offence and sentenced to imprisonment without the option of a fine and who had not received a free pardon was not eligible to vote. This restriction did not apply to any person who, having been sentenced as above, thereafter, rendered service in the war.

[38] J. Crush, 'The culture of failure: racism, violence and White farming in colonial Swaziland', *Journal of Historical Geography*, 22, 2 (1996), 177-197; M. Z. Booth, 'Settler, missionary, and the State: contradictions in the formulation of educational policy in colonial Swaziland', History *of Education*, 32, 1 (2003), 35-56.

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7. Civil Servants were not eligible to vote.[39]

The EAC came into existence in October 1921. In its first meeting with the Resident Commissioner, the EAC proposed to be transformed into a Legislative Council instead of being a mere advisory council. The White settlers argued that there were Legislative Councils in British colonies such as Kenya and Southern Rhodesia with powers to implement policies without sometimes getting the approval of the colonial state. These Legislative Councils largely resulted in settler autonomy. In response, Honey maintained that the EAC would be purely advisory. This meant that the colonial administration was not obliged to implement recommendations made by the EAC. The reasons why the colonial administration refused to give the EAC legislative powers were that the number of settlers in Swaziland was very small, namely, 2,200 against 110 295 Swazis. Secondly, Swaziland was a territory that had been conquered from the Boers and it was a protectorate of Britain and was not entitled to a Legislative Council.[40] The EAC decided to appeal to the High Commissioner concerning its status.

In July 1922, a deputation consisting of Pierce, Miller and Honey met the High Commissioner, the Imperial Secretary, and Shirley Eels in Cape Town. Pierce complained that justice had not been done to the settlers in Swaziland in that the EAC had been granted only advisory powers which limited their lobbying effectiveness. In response, the High Commissioner insisted that the EAC would be an advisory body on the grounds that legal powers in all British colonies lay with the

[39] Ibid.

[40] SNA, RCS 613/21, Report of the First Meeting of the European Advisory Council, 18-20 October 1921; SNA, RCS 359/22, Suggested Deputation of the European Advisory Council to High Commissioner at Government House Cape Town, 21 July, 1922; SNA, Colonial Annual Reports, 1923.

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Secretary of State for Colonies and he was the only authority to rule on such matters.[41] The EAC was, therefore, unsuccessful in lobbying for a Legislative Council similar to the ones elsewhere in British Africa.

The Whites were refused a Legislative Council in colonial Swaziland but they were the biggest land owners in Swaziland and their interest lay, essentially, in maintaining the land apportionment provisions of 1907 Proclamations which allowed them to retain their land with title deeds and the economy of the country in general. They owned nearly 50 per cent of the agricultural land and virtually 100 per cent of the mines, industries, businesses and trading enterprises. Their skills and capital, consequently, set the territory on the path to economic development.[42] The Whites, therefore, legitimately claimed to belong to the country in which they had invested so heavily and, as a result, were determined to have a strong say in the political arena to protect their interests during the period of decolonisation in Swaziland.

The contest for Swaziland's political future among the various interest groups can also be explained by the assumed potentials of the territory's mineral wealth. Swaziland had rich iron ore, coal, and asbestos deposits which made it an enviable territory for Whites and multinational companies. Of the three High Commission territories, Swaziland was classified in the early 1960s

[41]RCS 359/22, Suggested Deputation of the European Advisory Council to High Commissioner at Government House Cape Town, 21 July, 1922; SNA, Colonial Annual Reports, 1923.

[42] Stevens, 'Swaziland Political Developments', 333; J. Daniels, The Political Economy of Colonial and Post-colonial Swaziland', *South African Labour Bulletin*, 7, 6-7 (1981), 113; J. S. Crush, 'The Parameters of Dependence in Southern Africa: A Case Study of Swaziland', *Journal of Southern African Affairs*, 4, 1 (1979), 56.

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as the only one that had any real prospect of becoming self-governing on account of its mineral wealth.[43]

The power and privileges of the Whites, in contrast to the indigenous Swazis, increased significantly over the years. However, the Whites had to depend on black labour to achieve their prosperity. The number of Swazi workers was ever increasing and the Swazi easily assimilated European standards, values and ways of doing things although they remained underdogs and suffered oppression in the hands of the Whites in terms of their working conditions and wages. The relationship between the Whites and indigenous Swazis during the colonial period was, essentially, one of masters and servants. African nationalism and its scathing criticism of White exploitation of blacks had the potential of creating labour unrest in Swaziland. White investments in Swaziland were scared off by nationalist propaganda. Whites condemned trade unionism because they felt it targeted them. They also mistrusted Swazi political leaders whom they labelled communists, demagogues and power hungry individuals.[44]

The White lobby organisation, the EAC, had the mandate of advising the Resident Commissioner on matters directly affecting European residents and on any matter specifically referred to the Council by the Resident Commissioner. Although not a Legislative Council, the European Advisory Council still managed to exercise considerable influence on government policy by virtue

[43] Zwane, 'The Struggle for Power in Swaziland', 4.

[44] These labellings were common in the *Times of Swaziland* particularly from 1960-1963 when the constitutional debates were unfolding.

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of the economic weight of the White residents.[45] The most influential leader of the EAC in the 1960s was Carl Todd. He was a director of more than 30 large companies in South Africa and had extensive land holdings in Swaziland.[46] Under Todd's leadership, the Whites jockeyed for political positioning by virtue of their economic relevance to the territory. At the beginning of constitutional discussions in Swaziland in 1960, there were over 9,000 Whites against 270, 000 indigenous Swazis. Although a minority in statistical terms, they were an economic force to reckon with.

The Swazi Modern Nationalists or the Radicals

The Swazi modern nationalists were the educated elite who formed political parties from 1960 with a view of shaping the politics of colonial Swaziland and eventually capturing power. They operated outside the traditional monarchical structures and imbibed Western modernist ideas of democracy and the Nkrumah brand of nationalism. They wanted to see the wholesale implementation of the Westminster constitutional frame and the ideologies of modern African nationalism in Swaziland. They subscribed to the idea of popular sovereignty and black majority rule and the immediate independence of Swaziland. Because of their ideology, they were generally referred to as 'Progressives' and 'radicals' by the Swazi monarchy and the European Advisory Council. They were therefore an antithesis of the Swazi monarchy and the Swazi National Council who were totally opposed to Western brand democracy and its corollary, universal adult suffrage.

[45] Daniel, 'The Political Economy of Colonial and Post-Colonial Swaziland', 90-113; Stevens, 'Swaziland Political Development', 333.

[46] Ibid.

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Popular sovereignty in its modern sense dates from the social contract school represented by Thomas Hobbes (1588-1679), John Locke (1632-1704) and Jean-Jacques Rousseau (1712-1778). The central tenet of popular sovereignty is that legitimacy of governance or the law is derived from the consent of the people through elections. Republics and popular monarchies were theoretically based on popular sovereignty exercised in elections through the party system.[47] The Swazi nationalists were inspired by Nkrumah's example in Ghana where his Convention People's Party stood in a series of elections in Ghana in the 1950s and won against other competing parties and was invited to lead Ghana to independence in 1957. The Progressives in Swaziland intended to use modern political parties as instruments of obtaining popular support from the people.

Just as South Africa's Dr. H. F. Verwoerd played[48] a behind-the-scene role in Swazi politics during the decolonisation phase, by containing the rise of radical nationalism in Swaziland as will be shown in the next chapter, so did Ghana's Nkrumah play a similar role for African nationalists on the African political scene. Nkrumah was the chief ideologue of the dominant brand of African nationalism which pervaded the modern African political class. His example to African nationalists across the continent was his use of his political party, the Ghana Convention People's

[47] For more on the idea of popular sovereignty see S. Chambers, 'Democracy, popular sovereignty, and Constitutional legitimacy', *Constellations*, 11, 2 (2004), 153-173; R. Falk and A. Strauss, 'On the creation of a global peoples assembly: legitimacy and the power of popular sovereignty', Stan. *Journal of International Law*, 36, (2000), 191; F. M. Deng, (ed.), *Sovereignty as responsibility: conflict management in Africa* (Washington DC: Brookings Institution Press, 1996); M. Mamdani, 'The social basis of Constitutionalism in Africa', *The Journal of Modern African Studies*, 28, 03 (1990), 359-374; D. Strang, 'From dependency to sovereignty: An event history analysis of decolonization 1870-1987', *American Sociological Review*, (1990), 846-860.

[48] Dr. H. F. Verwoerd was the Minister of Native Affairs in 1951-1958. He became Prime Minister of the National Party in 1958-1966.

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Party (CPP) to mobilise the masses to protest against British colonial injustices and to demand for self-government and independence, which Ghana obtained in 1957.

Nkrumah argued that African workers and peasants needed to reclaim their dignity and independence and advocated the use of force if necessary. On attaining independence, Nkrumah proclaimed that the independence of Ghana was meaningless until the entire continent was free from European imperialism and united as a single country. In 1958 he organised the All Party African Congress which attracted African nationalists from all over Africa, including the Progressives from Swaziland, and during which he underscored the need for the liberation of the African continent from European rule and its unification as one country. Africa for the Africans became the slogan for the Africanisation or nationalisation of all natural resources.[49] In essence, Nkrumah's intense abhorrence of colonial rule, zealous enthusiasm for independence and his ideal of a United States of Africa made him popular among Africans throughout the continent. Africans were, consequently, determined to take full control of their destinies in the political and economic domains as soon as possible.

At the United Nations, Nkrumah's Ghana was very active in the Afro-Asian bloc that called for the end of colonialism and was instrumental in the 1960 United Nations resolution to that effect.

[49]The brainchild of the Africa for Africans slogan was Marcus Garvey and his United Negro Improvement Association (UNIA) in the 1920s. For more on Nkrumah's political ideology see G. Shepperson, 'Notes on Negro American influences on the emergence of African nationalism', *The Journal of African History*, 1, 2 (1960), 299-312; K. Nkrumah, *Handbook of revolutionary warfare: a guide to the armed phase of the African revolution*, Vol. 17. (New York: International Publishers, 1969); K. Nkrumah, *Towards colonial freedom* (London: Heinemann, 1962); K. Nkrumah, *Neo-colonialism: The last stage of imperialism*, (London: Thomas Nelson & Sons, 1965); K. Nkrumah, R. Arrigoni, and G. Napolitano, *Africa Must Unite*, (London: Heinemann, 1963); K. Nkrumah, *Class struggle in Africa*, (New York: International Publishers, 1970).

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Ghana became the ideological training ground and pilgrimage centre for Africa's educated political elite who were still under colonial rule and the Nkrumah government gave financial support to these political leaders.[50] The Nkrumah brand of the modern African nationalist ideology was clearly radical and it threatened White minority interests in Southern Africa, in general, and Swaziland, in particular, and Swaziland's Progressives were, consequently, treated with scorn by the Whites and the conservative Swazi monarchy.

Swaziland's Progressives generally subscribed to Nkrumah's brand of nationalism which called for immediate independence and universal adult suffrage and were, therefore, classified as radical nationalists by the Swazi monarchy and White minorities. These Progressives started forming political parties from the 1960s in opposition to the conservative Swazi monarchy with the aim of shaping the Independence Constitution and capturing political power. The first Swazi political party to be formed was the Swaziland Progressive Party in 1960 and which represented the general aspirations of contemporary African nationalism. J. J. Nquku was its founding President, while Dr. A. P. Zwane was its General Secretary and M. O. Mabuza was an executive committee member.

Although the party came into existence only in 1960, its roots can be traced to the Progressive Association, which was established by the colonial government in 1929 as a forum to bring together the British administrators and educated Swazis to discuss matters of common interests.[51]

[50] Stevens, 'Swaziland Political Development', 338.
[51] SNA, Swaziland's Report on the constitution.

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Swazi traditionalists viewed the organisation with suspicion because it operated outside the tribal framework. King Sobhuza intervened and the colonial administration decreed that the organisation should be affiliated to the traditional Swazi National Council. The organisation made constructive recommendations on issues dealing with taxation and labour.[52]

The Progressive Association was transformed into a political party in 1960 by John J. Nquku who had been its president since 1945. Nquku was born in 1899 in Pietermaritzburg, South Africa, of Zulu parents and held various teaching and supervisory positions in Black schools in South Africa. He was appointed the first African inspector of schools in Swaziland in 1930 and he founded a vernacular newspaper *Izwi Lama Swazi* (The Voice of Swazi) in 1934 and served as its editor until it was taken over by the Bantu Press in 1954. He became an active member of the SNC and was responsible for educational affairs. In 1955, he founded a paper, the *Swazilander*, and became its first editor. His outlook was considerably widened by his travels to Europe and America in 1957 and his contacts with radical African nationalists, especially Nkrumah. Nquku transformed the Progressive Association into the Swaziland Progressive Party, following the decision of the British Resident Commissioner to initiate constitutional talks in Swaziland. He found the traditional tribal framework to be grossly inadequate to handle matters on Swaziland's proposed constitution.

It was not easy to maintain the unity of Swaziland's nascent political party as it was soon faced with internal feuds like its counterparts elsewhere in Africa.[53] By the end of 1961 a split occurred

[52] Ibid.

[53] Nascent nationalist parties had the tendency of breaking up into factions under different names. In Zimbabwe, the Zimbabwe African People's Union split into two and the Zimbabwe African National Union was formed. See A. S.

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within the leadership of the SPP. Dr. Zwane, the Secretary General of the party, and Clement D. Dlamini, the party's youth leader, accused Nquku of totalitarian tendencies and lack of transparency in the management of party funds and decided to remove him as president of the party in February 1961. This split should be seen as the result of personality clashes and not political ideology.

Nquku resisted dismissal and, in a bid to avoid any confusion, Dr. Zwane announced in May 1963 that his own political party would, henceforth, be called the Ngwane National Liberatory Congress (NNLC). Macdonald Maseko, a former ANC leader in South Africa who had been banned by Dr. Verwoerd, became Vice-President of the party. Dr. Zwane became an outstanding political leader in Swaziland in the 1960s and there is need to present his profile in some detail.

Dr. Zwane was born on 30 April 1924 in Swaziland. His father, Amos Zwane was a traditional physician. Dr. Zwane attended Roman Catholic primary schools in Swaziland. For higher studies he attended Inkanga High School in Natal in South Africa. He then studied medicine at the University of Witwatersrand. After graduating in 1951, he worked as a medical doctor in Mbabane. In April 1960, he resigned from practising medicine and took to politics full time by joining the newly formed Swaziland Progressive Party in July 1960 and became the secretary

Mlambo, *A History of Zimbabwe*, (New York: Cambridge University Press, 2014), 147; In Botswana, the Bechuanaland People's Party broke into factions in 1964. The splinter party was called the Bechuanaland Independence Party. See R. Nengwekhulu, 'Some Findings on the Origins of Political Parties in Botswana', *Pula: Botswana Journal of African Studies*, 1, 2 (1979), 71-72.

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general of the party. Owing to bitter disagreements with Nquku, he formed his own party, the Ngwane National Liberatory Congress (NNLC).[54]

Zwane's NNLC followed Nkrumah's footsteps by organising strikes for better working conditions and protesting the colonial order. So the strikes were not only for general economic change, but also for political reforms. On 20 January 1963, Prince D. Dlamini, the Secretary of the NNLC, addressed a large number of workers at Big Bend. He advised the workers not to go back to work but to march to the company offices and stage a mass demonstration of their dissatisfaction with the conditions of work at the Ubombo Ranches. When the demands of the workers were not met, the leaders, Prince Dumisa, Dr. Zwane, Macdonald Maseko, and Stephen Twala called for a strike on 18 March 1963. The workers on the estate, including office staff and domestic servants, went on strike until 27 March 1963. The strike at Big Bend ignited other strikes at Peak Timbers in April, Havelock Asbestos Mine in May.[55]

Both Nquku and Dr. Zwane's parties had close relations with Ghana and they sent members of their political parties for training at the Nkrumah Ideological Institute. These nationalists demanded immediate independence and wanted Africa for the Africans in line with Nkrumah's style of nationalism.

[54] 'British Government Knows Our View-Nquku', *Izwi Lama Swazi*, January 19, 1963.

[55] SNA, Swaziland Government Big Bend Strike Report 1963: A Report of the Commission Appointed to Inquire into the Causes and Circumstances of the Strike which took place in Big Bend area during March 1963, p.10.

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In March 1962 emerged the Swazi Democratic Party (SDP) under Simon Nxumalo. The party was nurtured, advised and financed by a handful of White liberals. The SDP claimed to be the only non-racist party in Swaziland and condemned the other political parties as racist and for subscribing to exclusivist Pan-African ideals as well as receiving outside financial assistance from Ghana.

In July 1962 another political party, the Mbandzeni National Convention (MNC), was formed. It was, actually, an amalgamation of the Mbandzeni Party led by Clifford Nkosi and Dr. Msibi's Convention Movement. The MNC claimed that Swaziland had never lost its independence and insisted that its sovereignty must be reasserted. Dr. Msibi became the leader of the MNC. He had received training in India for nine years and later furthered his education in Japan. He set out to establish a non-racial state. Before the London constitutional talks in 1962, Dr. Msibi joined Dr. Zwane in demanding for the independence of Swaziland.

Swazi political leaders generally espoused ideals of modern African nationalism and Pan-Africanism as articulated by Nkrumah and this did not find favour with the White minorities and the conservative Swazi traditional monarchy. The call for independence and one-man-one-vote leading to black majority rule was viewed with suspicion in Swaziland by the White minority and the conservative Swazi monarchy and this bifurcated the political class in Swaziland into the so-called "moderates" and "progressives" or "radicals".

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The White minority and Swazi monarchy claimed to be moderates as opposed to the modern Western-educated political leaders. They argued that the political economy of the colonial state should not be radically transformed through the adoption of universal suffrage and Africanisation because it would discourage investors and negatively impact on the economic growth of Swaziland. The moderates, through the voice of the EAC, defined themselves as "Swazilanders" who were concerned with the economic welfare of the territory as opposed to the "Progressives" who were in a rush to destroy it. As Todd commented in a 1962 newspaper report:

> Swazilanders of all racial origins who love Swaziland, to whom Swaziland is home, who hope to see it prosper, to see rising standards of living and better opportunities in life for the Swazi; and who see only too clearly how those hopes can be imperilled by the reckless demands of extremists. This moderate element, conservative if you like, has never had any sympathy for reactionaries and diehards. It has never opposed political advance for the Swazis; it has stood for a programme of advance by stages, commensurate with the spread of education and growth of political maturity. It has pressed for the immediate deletion from the statute book of all kinds of racially discriminatory legislation, and for the abolition of all practices of this nature in our way of life. It has urged the government and industry to take steps to open up more avenues of skilled, more highly paid and more responsible employment for educated Swazis.[56]

The Whites advocated gradualism in the political transfer of power and not a rush because, they argued, Africans needed time to adjust to European political values. The White community and the Swazi monarchy, therefore, posed as moderates because they preferred the piecemeal introduction of political reforms and argued that rushing matters was dangerous for Swaziland. The EAC differentiated themselves from Swaziland's nascent political party leaders as follows:

> Politically, the difference between us and the Progressives is the difference between moderation and extremism. But a more fundamental difference is that to us daily bread is as important as the vote, economic progress as important as political advance. To the Progressive, if the utterances of their more voluble members are any guide, industry,

[56]'Todd's Thoughts on Constitutional Proposals', *The Times of Swaziland*, March 23, 1962.

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> commerce, finance are irrelevancies. The only worth considering [sic] is immediate universal suffrage and majority rule; and blow the consequences to industry, finance or anything else.[57]

Essentially the tension between the stakes of the EAC and the Swazi monarchy, on the one hand, and those of the Progressives, on the other hand, was clear. The two camps were poised to contest each other in the struggle for political hegemony in colonial Swaziland.

The Republic of South Africa

The Republic of South Africa was a key behind-the-scene player in the decolonisation politics of Swaziland for the simple reason that the territory was almost entirely surrounded by South Africa and was a geographical and ethnic continuum of South Africa. There was no way South Africa could keep out of the politics of Swaziland. The South African establishment had often seen Swaziland as eventually becoming part of South Africa on the basis of the provision of the South African Act of Union (1909) which provided for the incorporation of the Protectorates at some undefined future.[58] South Africa, therefore, argued for incorporation in subsequent years but this was complicated by South Africa's racial policies. As noted, South Africa's departure from the Commonwealth in 1960 further compounded the prospects of incorporation. However, that should not be taken to mean that South Africa had given up its designs on Swaziland. South Africa had an eye on two groups in Swaziland as possible bridges to use to achieve its incorporation dream: the Swazi Monarchy and the immigrant White South Africans that had taken up residence in

[57] Ibid.

[58] Hyam, *The Failure of South African Expansion, 1908-1948;* Hailey, *The Republic of South Africa and the High Commission Territories*; Stevens. *Lesotho, Botswana and Swaziland: The Former High Commission Territories.*

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Swaziland. Verwoerd's Bantustanisation project envisaged Swaziland as part of the unfolding South African political system because of its structured traditional political system with King Sobhuza II at the apex. The Tomlinson Report of 1954, which was actually the blueprint of Verwoerd's Bantustan project, was contained in the Promotion of Bantu Self-Government Act (1959) which limited African political rights to Black reserves.[59] The scheme planned for 10 such reserves, which were referred to as Black homelands or Bantustans, to be established on an ethnic basis.[60] The Bantustans were granted 'autonomy' partly in response to the wave of African decolonisation that begun with the independence of Ghana in 1957 and which had the effect of putting international pressure on Verwoerd to provide South Africa's African population with political rights.[61] Verwoerd promised to increase the powers of the Swazi monarchy if Swaziland were to enter the Republic. To the apartheid regime, Swaziland was essential to "the scientific creation of a Swazi Bantustan." The extension and increase in the powers of the Swazi King could involve a gift of land occupied by Swazis in the Republic as a positive benefit to be derived from cooperating with the apartheid regime.[62] South Africa had become increasingly distressed by rising nationalism in Swaziland and elsewhere which it labelled as subversion and which constituted a challenge to the principles of apartheid. Universal adult suffrage and black majority rule were anathema to the apartheid regime.

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[59] R. B. Beck, *The History of South Africa,* (California: ABC-CLIO, 2014), 144-146; D. H. Houghton, *The Tomlinson Report: a summary of the findings and recommendations in the Tomlinson Commission Report*, (South African Institute of Race Relations, 1956).

[60] Ibid. These Bantustans included Ciskei and Transkei for the Xhosa, and one for each of the other ethnic groups (The Venda, Shangana/Tonga, South Ndebele, North Ndebele, North Sotho, South Sotho, Tswana, Swazi and Zulu).

[61] Beck, *The History of South Africa,* 144-145.

[62] Stevens, 'Swaziland Political Development', 343-344.

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South Africa was also opposed to pan-Africanism of the Nkrumah brand being advocated by the modern African nationalists in Swaziland owing to the numerical inferiority of the White population in Africa and the threat such an ideology posed to the apartheid system. Kuper maintained that 'Whites constituted five per cent of the total population of Africa South of the Sahara, and over 80 per cent of them [were] located in South Africa and the Rhodesias."[63] South Africa, therefore, had to contain nationalist developments in Swaziland through its allies-the White minority and the Swazi monarchy[64], who were equally threatened by radical nationalism.

Conclusion

This chapter introduced the main actors in the deliberations leading to the crafting of Swaziland's Independence Constitution. There were four main stakeholders: (i) the British colonial authorities; (ii) the Swazi traditionalists under King Sobhuza II and the SNC, (iii) the EAC under Carl Todd, (iv) the educated elite operating under the canopy of political parties and (v) the South African Republic which was a behind-the-scene player. The chapter has demonstrated that the stakeholders had different and conflicting ideologies and agendas. On the one hand were the "conservative-traditionalist" Swazi monarch and his traditional council who considered themselves the legitimate leaders of the Swazi people and who derived their powers from inheritance according to Swazi culture and tradition. They felt legitimacy was conferred on them

[63] H. Kuper, 'The colonial Situation in Southern Africa', *Journal of Modern African Studies*, 2, 2 (1964), 149-164.

[64] There is some popular discussion in Swaziland after the demise of apartheid that the Swazi monarchy did assist the ANC in the liberation of South Africa. Such reconstruction of history in the present does not give a full picture of Swaziland's real relationship with South Africa during the liberation years which is captured in Chapter four, footnote 59.

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by custom and tradition and that this qualified them to occupy the expanding political space created by the decolonisation processes. King Sobhuza II found support from Carl F. Todd, the leader of the EAC, who was a wealthy South African businessman who had settled in Swaziland. The Swazi monarch and the White minority, therefore, constituted the conservative camp who were disturbed and frightened by the African nationalist ideology of the nascent Swazi political parties.

On the other hand, there were the Western educated elite who had formed political parties to champion their cause. They were the typical African nationalists of the radical Nkrumah school who clamoured for immediate independence and 'Africa for Africans'. They shunned traditionalism and felt that the traditional Swazi monarchy was ill-fitted to assume the complicated task of modern governance. These radical nationalists frightened both the Swazi monarchy and the White community in Swaziland who were concerned about the future security of their investments in the event of a radical nationalist take-over of the reins of the state from the departing colonial authorities. The White community and the Swazi monarch therefore had an interest in collaborating against the radical nationalists.

However, the White liberals and the Swazi Student Union supported the platform of radical nationalists. Britain was confronted with the dilemma of how to collaborate with her traditional ally, the Swazi monarchy, in the indirect rule system of administration and in the exigencies of a modern state system. Elsewhere in Africa, traditional rulers were not a problem in the institutionalisation of a modern governance system because the obvious candidates were the educated elite, but the situation in Swaziland was different.

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An important actor in Swaziland's constitutional development, which is also examined in this chapter, was apartheid South Africa which played a "behind-the-scene" and not a forefront role. The geographical position of Swaziland, which was almost entirely enclosed by South Africa, was such that the Republic could not be indifferent to the decolonisation processes in the territory. The discourses of the radical nationalists in Swaziland were anathema to the philosophy of the apartheid regime and had to be contained by every means. South Africa was, therefore, an important actor because the Republic felt duty bound to lend support to the White minority in Swaziland and to the conservative Swazi monarchy which represented an ideal Bantustan in the eyes of the Boers. The next chapter will focus on the battle of conflicting ideologies between the conservative-traditionalists and the radical nationalist over the type of constitution to be formulated for Swaziland.

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CHAPTER THREE

FROM THE COMMENCEMENT OF THE CONSTITUTIONAL CONFERENCE TO THE CONSTITUTIONAL DEADLOCK 1960-1963

Introduction

This chapter looks at the circumstances that led to the making of Swaziland's pre-Independence Constitution and argues that the decolonisation processes in Swaziland were not an isolated event but were a continuum of the phenomenon in Africa that was spreading like a wild fire. It is further contended that constitutional developments in Swaziland were characterised by a ferocious battle of conflicting ideologies between the conservative Swazi monarchy and their allies-the White community, on the one hand, and the radical Swazi nationalists operating under the banner of political parties, on the other hand. It highlights South Africa's behind-the-scene interference in the constitutional processes in Swaziland as a major stakeholder through its proxies-the Swazi monarchy and the White community.

Before the British engaged the various groups in Swaziland for constitutional talks, the Swazi monarchy and the White minority had long drawn up constitutional proposals with the assistance of the South African Nationalist Party in order to pre-empt the development of radical nationalism and an unfriendly ideology to the racist bastion. South Africa, therefore, competed effectively with Britain, through its proxies, in dictating the nature of constitutional developments in Swaziland.

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Once the British colonial administration resolved that Swaziland had to be prepared for eventual self-government and independence, the floodgates were thrown open to the various key players in Swaziland to articulate their viewpoint. The main issues under consideration between the Swazi monarchy and the White community, on the one hand, and the radical nationalists, on the other hand, were racial inclusivity, the question of universal franchise and one man one vote, and the position of the Swazi monarchy in the new constitutional order. These issues were understandably hotly debated in the media and in the constitutional meetings because of the conflicting interests and the threats each social category posed to the other. The protagonists agreed to disagree on race issues, voting rights, the powers of the Legislature and the future role of the Swazi monarchy and this resulted in a stalemate. The arguments of the protagonists had direct implications on their vested political and economic interests. There was, therefore, considerable jockeying between the key players to capture and dominate space in the new political dispensation that British decolonisation promised.

Circumstances Leading to the Decolonisation of Swaziland

A combination of factors explains why and how the wind of change blowing over the African continent eventually arrived in Swaziland. The decolonisation movement was really contiguous and unstoppable once unleashed. The Second World War provided the necessary ammunition to African nationalists to make claims of self-government from metropolitan powers. In 1941 United States President F. D. Roosevelt and British Prime Minister W. Churchill signed the widely acclaimed Atlantic Charter document which recognised the rights of all people to self-determination. After the war this principle "fired the zeal and aspirations of [African] nationalists

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everywhere to be free . . . ."[1] Nationalist elements interpreted this declaration "to mean that after the war they would have the right to choose their own form of government, namely, self-government and the independence."[2] They challenged the imperial presence in Africa and clamoured to be compensated for their services to the British Empire with greater economic and political opportunities.[3]

Nationalism and the call for self-determination in Swaziland were not an isolated development but were a direct consequence of developments in West, East and Central Africa. In 1950 Nkrumah's Convention People's Party (CPP) orchestrated a campaign of civil disobedience in support of self-government now and this gained him imprisonment for a brief period.[4] Further nationalists agitation led to the independence of Ghana with Nkrumah as Prime Minister in 1957. Nkrumah immediately became the spokesman for anti-colonial movements in Africa aimed at delivering the whole of Africa from colonial bondage. He advocated pan-Africanism or the idea of the unification of the whole continent.[5]

[1] K. Ezera, *Constitutional Developments in Nigeria*, 39.

[2] Ibid.

[3] B. Ibhawoh, 'Second World War propaganda, imperial idealism and anti-colonial nationalism in British West Africa', *Nordic Journal of African Studies*, 16, 2 (2007), 221-243; M. Sherwood, ''Diplomatic platitudes': The Atlantic charter, The United Nations and colonial independence', *Immigrants & Minorities*, 15, 2 (1996), 135-150.

[4] K. Firmin-Sellers, 'The concentration of authority: Constitutional creation in the Gold Coast, 1950', *Journal of Theoretical Politics*, 7, 2 (1995), 201-222.

[5] See K. Botwe-Asamoah, *Kwame Nkrumah's Politico-Cultural Thought and Politics: An African-Centered Paradigm for the Second Phase of the African Revolution* (New York: Routledge, 2013).

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In 1958 Guinea Conakry gained independence from France and in 1960 a string of French-speaking West African states, Nigeria, and Congo Kinshasa gained independence.[6] In Kenya the Mau Mau rebellion[7] put pressure on Britain to accelerate the independence of that country in 1962. These waves of independence increased agitation in Central and Southern Africa for similar developments. The problem with British colonies in Central and Southern Africa was that they had significant settler White populations who dominated local politics and the economy. These Whites feared that independence and black majority rule would jeopardise their economic privileges and they convinced the British government to consolidate colonial rule in these territories at the expense of independence.[8] The reluctance to grant black majority rule and the domination of Africans by White settlers led to racial tensions and nationalist agitation. In January 1959 there was wide spread rioting in Nyasaland which prompted the British to declare a state of emergency and the arrest of nationalist leaders including H. Banda of the Malawi Congress Party (MCP).[9]

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[6] O. Enwezor and C. Achebe, *The Short Century: Independence and Liberation Movements in Africa, 1945-1994,* (Munich: Prestel, 2001).

[7] The Mau Mau rebellion was a bloody uprising against British colonial rule in Kenya, championed by the Kikuyu ethnic group, which lasted from 1952 through 1960 and helped to hasten Kenya's independence. The uprising was caused by the expulsion of Kikuyu tenants from White settler farms, the loss of land to White settlers, poverty, and lack of true political representation for Africans. The revolt caused the lives of 32 White settlers and about 200 British police and army soldiers. Over 1,800 African civilians were killed. White settlers in Southern Africa were very concerned about the revolt. (See W. O. Maloba, *Mau Mau and Kenya: an analysis of a peasant revolt* (Oxford: James Currey, 1993); F. Furedi, *Mau Mau War in Perspective* (London: James Currey 1989).

[8] In the Central Federation established in 1953, for instance, the Whites entrenched themselves in power at the expense of the Black majority and struggled to contain surging African nationalism (See Mlambo, *A History of Zimbabwe,* 119-127).

[9] Dr. K. Banda's Nyasaland African Congress (NAC) organised widespread disturbances starting in early 1958 in Nyasaland. This radical African nationalism took the form opposition to the Federation of Rhodesia and Nyasaland, particularly its farming and rural conservation policies, and demands for speedy progress towards majority rule. The British colonial government declared a state of emergency in March 1959which lasted until June 1960. Dr. Banda and 1,300 people were detained without trial. Over 2,000 were imprisoned for offences related to the emergency and

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Although Britain was able to contain violent local opposition to its rule in certain cases in the 1950s, there was growing concern among policy makers in the colonial office that similar confrontations might get out of hand in the future as African nationalists were becoming more and more successful in mobilising popular support. These fears were reinforced by the domestic and international instability that accompanied the French reversals in its colonial wars in Algeria and Indochina.[10]

The local demonstrations against British colonial rule and the repressive response of the British colonial government gave a justification to imperial critics on the international scene that colonialism was evil and must come to an end. The United Nations which was established in 1945 increasingly supported oppressed colonial peoples as more and more African and Asian nations obtained independence and became members of the international body. In 1960, these countries, now forming the Afro-Asian bloc, secured the passage of General Assembly Resolution 1514 (XV) on the Granting of Independence unconditionally to Colonial People. The United Nations demonstrated some muscle on colonial issues for the first time by establishing the Special Committee on Colonialism and asserting the right of all peoples to self-determination irrespective of any inadequacy of political, economic, social or educational preparedness. The UN defined the

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the Congress itself was banned. A total of 51 people were killed by colonial troops. Dr. Banda was released from detention 1960 and the Federation was dissolved in 1963 (See P. C. Banda, and G. W. Kayira, 'The 1959 State of Emergency in Nyasaland: Process and Political Implications', *The Society of Malawi Journal*, (2012), 1-19. O. J. M. Kalinga, 'The 1959 Nyasaland State of Emergency in Old Karonga District', *Journal of Southern African Studies*, 36, 4 (2010), 743-763); K. M. Phiri, J. McCracken and W.O. Mulwafu, *Malawi in Crises: The 1959/60 Nyasaland State of Emergency and Its Legacy* (Zomba: Kachere Series, 2012).

[10] France was defeated in Indochina at Dien Bien Phu in 1954 and the Algerian War of independence started in 1954 culminating in the independence of Algeria in 1962.

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principle of self-determination to include the transition of colonial dependencies to independent states. Imperial powers were, therefore, expected to grant independence to their colonies without further delay.[11] The stance of the United Nations on decolonisation was a source of great pressure on Britain which had to address the racial situation and the decolonisation of East, Central and Southern Africa.

Containing the Decolonisation Whirlwind: South Africa, the Swazi Monarchy and the European Advisory Council (EAC)

South Africa was not indifferent to the wind of decolonisation and nationalist agitation. In fact, the struggles for independence on the African continent made South Africa determined to checkmate the development of radical nationalism in Swaziland, a landlocked territory which was almost totally sandwiched by the Republic. Two main reasons explain South Africa's interest in the political developments in Swaziland. First, for the apartheid regime to remain unscathed and for stability to be maintained in the Bantustans, South Africa had to contain the wind of radical nationalism from Swaziland at all costs.

Second, South Africa envisaged the eventual incorporation of Swaziland into its territory as provided for by the 1910 Union Act. Therefore, South Africa did not want to see developments in Swaziland which would contradict the White supremacist philosophy of the apartheid regime, particularly the concept of universal suffrage allowing for one-man-one vote or black majority rule. Therefore, South Africa privately devised an apartheid-like political system which, it hoped, might be adopted for Swaziland. Consequently, in the 1950s, the Nationalist party, in

[11]H. W. Barber, 'The United States vs. the United Nations', *International Organisation*, 27, 2 (1973), 139-163.

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collaboration with the Swazi monarchy and the White minority who were concerned about their security, worked out a containment plan to stifle radical nationalism in Swaziland. The envisaged political system privileged autocratic traditional political systems of government, regarded as traditionally African, at the expense of the educated elite and the notion of universal adult suffrage for Africans.

A prominent South African Nationalist Party lawyer Van Wyk de Vries assisted King Sobhuza and the EAC to draw up apartheid-like constitutional proposals[12] in anticipation of constitutional reforms which Britain would inevitably initiate. These proposals, which Sobhuza eventually presented in April 1960 in a speech calling for a Legislative Council for Swaziland,[13] were tailored to marginalise and eclipse the radical nationalists operating under the banner of political parties, who were seen as K. Nkrumah's disciples and as a threat to both White economic interests and the survival of the Swazi monarchy. The proposals were clearly designed to protect the White minority and to insulate the traditional monarchy, which was favourable to the racist regime, from any dangers. In essence, the proposals gave equal seats to the black majority and White minority in the envisaged Legislature as a way of giving them political leverage in the post colony. They also provided for different voting systems for Blacks and Whites. Indigenous Swazis were to vote according to the traditional African way which required the Swazi monarchy to hand pick those

[12] Zwane, 'The Struggle for Power in Swaziland', 5; C. P. Potholm, 'Changing Political Configuration in Swaziland', *The Journal of African Studies,* 4, 3 (1966), 316. The hand of South African in designing the Sobhuza draft constitutional proposal is corroborated by the opposition in a petition in which Nquku categorically stated that the SNC was never involved in writing Sobhuza's constitutional proposal and that it was the handiwork of the EAC, South Africa and Sobhuza. The document was, therefore, imposed on the SNC (Also see SNA, Swaziland Progressive Party, "Swaziland: Report on Constitutional Proposals", Swaziland Progressive Party, 1961).

[13] King Sobhuza's speech is captured in: 'The Ngwenyama, Sobhuza II C.B.E. Gives Expression to His Views on the Constitutional Future of Swaziland', *The Times of Swaziland,* July 1, 1960.

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he wanted to sit in the legislature. Whites were to be elected on another electoral roll on basis of universal adult suffrage. Thus, Blacks and Whites were to be treated differently according to their respective traditional political culture.

The equal Black and White representation in the envisaged Legislature made nonsense of the idea of universal adult suffrage on the basis of the one-man, one vote principle basis with regard to African political participation by empowering King Sobhuza to handpick Swazi members of the Legislature so that the radical nationalists would be eliminated. The justification for rejecting universal adult suffrage for Africans was, ostensibly, that the practice ran contrary to African culture and tradition. Not surprisingly, the apartheid regime was determined to push its version of separate development or the federation of races on Swaziland on grounds that Africans and Europeans are different and should pursue different paths of development. King Sobhuza's SNC and Todd's EAC subscribed to the South African proposals for their own reasons. Before the British Colonial Office authorised the commencement of constitutional talks in Swaziland, the conservative Swazi monarchy and the reactionary White minority had already crafted constitutional proposals with the technical assistance of apartheid South Africa.

Stakeholders' Public Positions on the Future Constitution of Swaziland

Although Swaziland was generally quiet in 1959 against a background of nationalist stirrings, there was a strong rumour circulating about impending constitutional reforms as a step towards self-government and independence.[14] This propelled the various stakeholders to start taking a public

[14] Zwane, 'The Struggle for Power in Swaziland', 5.

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stance on decolonisation with an emphasis on the establishment of a society free of racial discrimination and an inclusive racial Legislative Council. Unlike other High Commission territories in Southern Africa, Swaziland had never had a representative legislative body.[15] On Matters affecting Swazi inhabitants, the Resident Commissioner had, hitherto, relied on the *Ngwenyama* (the Swazi King) and the Swazi National Council. On matters concerning Europeans, the Resident Commissioner relied on the European Advisory Council. The Resident Commissioner also relied on the technical expertise of special commissions set up for particular purposes. In 1959, for instance, the British Colonial Office despatched an Economic Survey Mission, headed by Professor Chandler Morse, to visit the three High Commission Territories and make recommendations concerning their economic development. The Chandler Morse Commission published "A Report of the Economic Survey Mission of Swaziland" which advocated that the establishment of a joint advisory body with elected membership of all races was necessary for the sound economic advance of the territory. Composed of both Africans and Whites, the body's main role would be to advise government on the best economic policies to adopt for the territory. The Report stated that the economic welfare of all the groups in the Territory was interdependent and should be the objective of a single integrated plan.[16] Meanwhile, a memorandum from the *Ngwenyama* to the Secretary of State for colonies on the vexing question of land and mineral rights, which were controlled by the White minority,[17] emphasised the

[15] Legislative Councils had been established in Bechuanaland and Basutoland in 1960 but none existed in Swaziland (See J. E. Spence, 'The New States of Southern Africa', *The Journal of Modern African Studies*, 5, 4 (1967), 541-555).

[16] SNA, Swaziland Progressive Party, "Swaziland: Report on Constitutional Proposals", Swaziland Progressive Party, 1961.

[17] Kuper, *Sobhuza II: Ngwenyama and King of Swaziland*, 207.

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importance of dialogue with Sobhuza and prodded the EAC to take the initiative in calling for a Legislative Council which would include blacks before it was too late.

The European Advisory Council Call for a Legislative Council

In a bid to avert the emergence of radical nationalism or bloody rebellion like that of Kenya's Mau Mau, in 1959 the White community petitioned the British High Commissioner in South Africa P. Liesching to transform the EAC into a Legislative Council. Their fears were further underscored by J. J. Nquku' overseas trips to England, the USA and several European countries and Nkrumah's Ghana and his return to Swaziland with radical ideas of democracy and Swaziland's progress towards independence. The EAC call for a Legislative Council similar to the one established in Southern Rhodesia in 1923 did not find favour with the British Resident Commissioner. He rejected the idea on grounds that Swaziland was a Protectorate and that the rights and institutions of the Swazis had to be respected.[18]

Realising that political reforms in Swaziland could not be undertaken without the Africans and that the time for political change had come, the EAC indicated that collaboration with King Sobhuza II, the conservative traditional authority, was preferable, lest the demand for change was picked up by incipient Swazi Western educated political leaders, who might now dictate the terms of the new arrangement. Consequently, on 18 January 1960, the EAC requested for a Joint Advisory Council between the EAC and the Swazis in which both European and Swazi interests would be represented.[19] In a memorandum presented to the Resident Commissioner for

[18] Kuper, *Sobhuza II: Ngwenyama and King of Swaziland,* 209; Matsebula, *A History of Swaziland*, 232.

[19] See Appendix 3: Swazi Constitution Presented to Parliament by the Secretary of State for Colonies by command of Her Majesty, May 1963.

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transmission to London, the EAC stated that ". . . the time has been reached . . . for the examination of a multi-racial council in which both European and Swazi interests should be represented." It urged the Swazi National Council (SNC) to nominate its Swazi representatives to be considered for inclusion.[20] It further proposed that a Joint Advisory Council be established to include Whites and Swazis. Perhaps not surprisingly, the EAC supported the incorporation of Swaziland into South Africa in a manner which would allow the *Ngwenyama* to enjoy increased political powers than those he had under the British.[21] The EAC communicated the proposal for a joint Advisory Council to the *Ngwenyama* for his approval.

The Ngwenyama's April 1960 Constitutional Proposal

Before the Secretary of State could reply to the EAC memorandum, the *Ngwenyama* seized the initiative to make demands for political reforms in Swaziland and the establishment of a Legislative Council. As noted, the *Ngwenyama*'s constitutional stance was the handiwork of the apartheid regime and he was, therefore, acting as a proxy. He proposed the following reforms against a background of nationalist stirrings in Africa which he was aware of from newspapers and radio reports and the general restive mood of Swazi workers and educated class.

The *Ngwenyama* invited the local British government Officials, members of the Swazi National Council, and prominent White businessmen to his Palace on 23 April 1960 to give his views of Swaziland's future constitution. The invitees included Acting Resident Commissioner, the Secretary for Swazi Affairs, Dr. D. Hynd, and W.G. Lewis. Members of the Council invited were

[20] SNA, Government of Swaziland, Proposals for the Swazi Constitution (March 1962), 12.
[21] Ibid.

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Prince Magongo, Prince Madevu, Councillor S. Matsebula, Councillor B. Simelane, Councillor S. A. Sibiya, Councillor M. Sukati, the Lisolenkosi (Councillor J. M. S. Matsebula), Prince Matsafeni, Councillor A. K. Hlophe and Councillor M. Nhlabatsi.[22] The *Ngwenyama*'s April Speech is of enormous importance in the constitutional annals of Swazi history because it constituted the framework that was used by the Swazi constitutional Planning Committee when it was eventually established by the British.[23] The EAC expectedly endorsed the *Ngwenyama*'s speech and it was later endorsed also by the Swazi National Council in June 1960 as the official position of the Swazi nation.[24] The SNC was, however, not a party in the drafting of Sobhuza's constitutional proposal. Although the speech had its behind-the-scene backers, it was essentially a unilateral Sobhuza document.

The *Ngwenyama*'s proposed constitutional reforms for Swaziland were timely, given that political change was in vogue across the continent. While agreeing with Macmillan's 'Winds of Change' speech, he expressed the wish that Africans should be allowed to operate their own system of government. He stated that Swaziland was not exempted from nationalist explosions that were occurring in Africa and he called for vigilance. He attributed the on-going unrest in Africa to nationalist agitation and the tense relations between Whites and blacks.

[22] Excepts of this speech are published in: "The Ngwenyama, Sobhuza II C.B.E. Gives Expression to His Views on the Constitutional Future of Swaziland", *The Times of Swaziland*, July 1, 1960; Also see appendix 4 for the full reproduction of this speech given the fact it constituted an important milestone in the constitutional history of Swaziland.

[23] See Appendix 4.

[24] Ibid.

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The *Ngwenyama* stated that the upsurge of nationalist agitation in Central and North Africa, and particularly in Nyasaland was because of the fact that Africans had forgotten their culture and tradition and were adopting European norms that they were not used to. He accused the African educated elite at the forefront of nationalist agitation of being 'power-greedy individuals' who were using Western political ideology to arrogate power to themselves. Such agitation was tied to modern political parties which were foreign to Swazis and were undesirable. Sobhuza stated that the correct political procedure was the traditional one which required all Swazis to be brought to the *Libandla* (a traditional gathering in the form of an informal parliament) for discussion and for a proper decision to be taken by the assembly on the basis of consensus.

According to Sobhuza, Swazis needed the White settlers for the economic development of the territory and, therefore, their properties must be protected. Without identifying the radical Swazi nationalists by name, Sobhuza stated that those who were advocating the nationalisation of private property were 'victims of bad upbringing . . . they had been brutally and badly brought up and were now acting to their early treatment." He stated that Africans must co-exist with White immigrants because Swaziland was also their country.[25]

Concerning the White community's invitation to the monarchy to send representatives to the proposed European Advisory Council, Sobhuza rejected the idea on the grounds that it would mean a derogation of Swazi power because the Swazi National Council (SNC) already had legislative

[25] Ibid.

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and executive powers, whereas the EAC was only advisory. In his estimation, the SNC was superior to the EAC. He stated:

> We regard the European Advisory Council as having a lower status than our Council. We cannot meet the Advisory Council in the present stage as an Advisory Council; and in order that we should join it, let its status be raised to that of Legislative Council. Only then can we come together.[26]

Sobhuza agreed to the idea of the formation of a legislative council for Europeans and Swazis. Sobhuza underscored differences between Europeans and Africans in terms of political culture and suggested how the two groups could be selected for the Legislative Council as follows:

> I think a solution to that should be that the Advisory Council, the European Public, should elect their own men under their system of election, and we should get our own men chosen in the way we are wont to do, and then these men will meet and legislate for the country. They join together. I think it would be better to call the method that of federation, where we would not count how many represent so and so and how many represent that unity, but they will merely meet in a federation together.[27]

Sobhuza strongly advocated what he called the African system of voting in contrast to the European one. He stated:

> I don't see how we can try to adopt the European ways of doing things we don't know. It is quite true that we should copy those good practices that the Europeans have, but when you come to consider that this democracy of which they speak you ultimately get lost in the idea…. When people speak of democracy one wonders what democracy it is they want to maintain because we, the Africans, as a matter of fact, have bigger numbers than the other people but cannot understand what is meant by democracy when one thinks on those lines…. Let us regard this as a European practice…. I think it would be better democracy if people went into it the same way de Gaulle took up his position in France.[28]

[26] Ibid.

[27] Ibid.

[28] Ibid.

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Sobhuza had problems with universal suffrage and democracy because they were alien ideologies which did not fit properly in the African worldview. He maintained that the European electoral franchise system carried with it the principle of 'one man one vote' and this was totally unfamiliar to the African and there was no reason why such practices should be forced on them. Sobhuza submitted that the Africans did not understand what Europeans meant by democracy, given the multiplicity of definitions of democracy by European countries which only helped to confuse Africans.

He further argued that because both Western democracies and the communist bloc claimed to be democracies, Africans were left in a quandary as to which path to follow. In any case, he maintained, Africans did not understand the system which allowed prospective members of parliament to solicit votes as opposed to the African system under which a man was selected by his fellow compatriot by consensus after discussions. Sobhuza argued that the policy of 'one man one vote' was fatal for Africa because the majority race would swallow the minority and do away with their rights and nationalise their institutions. Such 'a winner takes it all' politics was the root of conflicts and instability in Africa. He invited people to tell him if he was wrong and to criticise him. He recognised the fact that the West had come to terms with the fact that "the old idea of imperialism and colonialism should give way to the granting of independence to subject states so that they might work out their own destinies". He advocated peaceful co-existence of all the groups living in Swaziland.

The *Ngwenyama* advocated a legislative council which would have no jurisdiction over Swazi custom and tradition or land and mineral rights. He advocated a separate ballot based on race and

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a Federal Legislative Council which became known as Sobhuza's version of 'the federation of races' very similar to the one advanced by Sir De Villiers Graaf of the United Party of South Africa.[29]

Sobhuza's political ideology was disguised apartheid, as it hinged on the separation and federation of races and pointed to the hand of South Africa in the formulation of such a constitutional proposal. Apartheid ideology enforced the separation of races and their distinct ways of life. That is why South Africa enforced and encouraged traditional chieftains to position themselves in the Bantustans.[30] Sobhuza's constitutional proposal presented Africans as devoid of the capacity to master Western democracy because it was alien and too complicated for them to comprehend and argued that Africans should carry with them their traditional methods of selecting their representatives into the modern state. The King would, thus, have to handpick those he deemed fit to represent the Swazi people in the spirit of traditional democracy.

Sobhuza's apartheid-inspired political ideology was constructed under fear of the educated elite and the rising proletariat. The Swazi monarchy and the SNC, which represented the traditional elite, felt threatened by the spread of the more radical form of African nationalism from north of the Limpopo and from South Africa into Swaziland and the emerging large labour force which could emulate industrial action from other African countries and arrogate to themselves alternative

[29] Ibid.

[30] For more on bantustanisation policy see R. B. Beck, *The History of South Africa*, (California: Library of Congress Cataloguing-in publication Data, 2014), 144-146.

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centres of political influence other that the monarchy. Consequently, Sobhuza was against multiparty democracy in favour of the African consensual system of consultation in which the last word lay with the traditional authorities. He was also against the idea of one man one vote because it could potentially threaten the traditional monarch, as had already happened elsewhere in Africa in the last years of colonial rule[31] and would certainly submerge the White minority in the territory. Sobhuza's political stance expectedly found sympathy with the White minorities and multinational business interests but not with the educated elite and White liberals. The White community would be more comfortable with the question of land and mineral rights being excluded from the jurisdiction of the Legislative Council and left in Sobhuza's hands, since they could more easily manipulate him than a Legislative Council they could not trust.

The Progressives' Stance

The Progressives espoused the radical nationalism which was in contrast to Sobhuza's position. In August 1960, the Swaziland Progressive Party (SPP) under Nquku's leadership issued a manifesto which hinged on four cardinal points and was in total opposition to Sobhuza's April constitutional proposal. First, it advocated a non-racial society which would bring about democratic enfranchisement of all Swazi inhabitants irrespective of race, colour or creed; second, it opposed the incorporation of Swaziland by South Africa; third, it adopted the United Nations Declaration of Human Rights; and, lastly, it advocated for complete integration in every walk of

[31] See M. Crowder and O. Ikime, (eds.), *Their changing Status Under Colonial Rule and Independence* (New York: Africana Publishing Corporation, 1970); R. Rathbone, 'Kwame Nkrumah and the Chiefs: The Fate of Natural Rulers under Nationalists Governments', *Transactions of the Royal Historical Society*, 10 (2000), 45-53.

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life and the ending of all forms of racial discrimination[32] which was the hallmark of settler colonies. The position of the Progressives is understandable when one takes into consideration the fact that Swaziland was a settler colony and White discriminatory practices and South African influence were all pervasive.

By calling for universal suffrage when advocating the enfranchisement of all peoples, the Progressives showed that they felt that the traditional structures advocated by the Swazi monarchy and the SNC were inappropriate for modern governance and needed to be streamlined in the modern constitution in such a way that there would be an opening for modern political development. British political institutions and practices were their reference points. By alluding to the United Nations, the Progressives wanted to have international pressure brought to bear to bring about genuine political developments in Swaziland with respect of human rights and equality for all, irrespective of race. The United Nations had taken a position in favour of decolonisation and it was logical for the progressives to invoke this institution.

The Galvanising Impact of the 'Wind of Change" Discourse

The demands for a Legislative Council were being made at a time the British government was drumming up the discourse of the need for the transfer of power to Africans before it was too late. The most eloquent evidence of this was Prime Minister H. Macmillan's public statements in South Africa, the bastion of White minority rule during his official visit to the country in 1960. Macmillan, made the famous 'wind of change' speech on 3 February 1960 in Cape Town against a background of increasing political pressure for rapid decolonisation, a speech which 'represented

[32] SNA, Swaziland Progressive Party, 'Swaziland: Report on Constitutional Proposals', Swaziland Progressive Party, 1961.

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a defining moment in the history of the British Empire in Africa . . . .'[33] In the words of Macmillan, "the wind of change is blowing through this continent and whether you like it or not, this growth of national consciousness is a political fact."[34] In a press conference, Macmillan emphasized that time had come for the existing groups in the colonies to reach a mutual understanding on peaceful co-existence. In his words: "We should understand the other chaps' point of view as well as our own. Each group should recognise the needs and rights of others." He further warned that:

> Angry words, partisan feeling, trying to score political points, whether at home or overseas; won't help: extremists' people [sic] holding entrenched positions – that won't do. What we have to do is to go quietly along with people of good will, trying to solve these difficult problems.[35]

The challenge that Macmillan was referring to was recognising the needs and rights of others Africans, something which the Europeans in Swaziland resented mostly because, for much of the colonial period, they had been entrenched in the position of masters, while Swazis were treated in a subordinate position as servants. Macmillan's speech particularly targeted White settler communities which were resisting power-sharing with blacks and the notion of independence under black majority rule. The speech also fired the enthusiasm of black nationalists and in Swaziland Sobhuza's speeches were full of references to Macmillan's 'wind of change' discourse.[36]

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[33] S. Ward, 'Run before the Tempest. The 'Wind of Change' and the British World', *Geschichfe und Gesellschaft*, 37, 2 (2011), 198.

[34]Cited in S. Ward, 198.

[35] 'Prime Minister Returns to United Kingdom: Press Conference', *Times of Swaziland*, February 20, 1960.

[36] In expressing his views on 23 April 1960 on the constitutional future of Swaziland, King Sobhuza stated that he was in agreement with Macmillan's speech to the Union Parliament in Cape Town and admonished that Africa should stay clear of East-West ideological confrontations (See, 'The Ngwenyama, Sobhuza II C.B.E., Gives Expression to his Views on the Constitutional Future of Swaziland', *Times of Swaziland*, July 1, 1960.

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As was expected, the White minority in Swaziland were not comfortable with the speech. They considered it a direct incitement of the educated African elite to revolt against Whites and to engage in the processes of political change culminating in black majority rule.[34] The Whites were scared of such an eventuality and had to devise a means of managing it. The African educated elite were seen as a threat to both the monarchy and the White minority and both were convinced that the British administration was bent on sacrificing their interest to the notion of modern African nationalism and black majority rule. The SNC/EAC call for the establishment of a Legislative Council in Swaziland should be seen in this context of growing African nationalism.

The British Colonial Office and the Methodology of Decolonisation

By the late 1950s the British colonial administration in Swaziland was ready to act because of pressures from nationalists and the disposition of the colonial office towards rapid decolonisation. As is now evident, it was the colonial official who, often, directed and managed the decolonisation process during the transfer of power after World War II. Indeed, the pace of decolonisation was set from the top in the Colonial Office in London; those at the bottom only did what they were told.[35] There was also a noticeable clear shift in the nature of groups with which British colonial administrators 'collaborated' in Africa with reference to the transfer of power. Whereas the British had relied on the traditional elite in executing their indirect rule policy in Africa, they were no

[34] Ibid.

[35] A. H. M. Kirk-Greene (ed.), *The Transfer of Power: The Colonial Administrator in the Age of Decolonisation* (Oxford: Inter-Faculty Committee for African Studies, University of Oxford, 1979), 51.

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longer prepared to go along with them in the decolonisation era. The British preferred the modern elite-the educated class-as the inheritors of colonial power because they were seen as a unifying and modernising force.[36] Put differently, the British were keen to partner with the educated elite rather than traditional rulers in executing their political modernisation project in the shape of power transfer before quitting Africa.

Andrew Cohen, an important figure in Colonial Office from 1943-1952, helped shape British decolonisation policy that administrators in the field had to adhere to. He proposed the democratisation of local governments and the successive introduction of legislative and executive councils that would culminate in the election of a responsible government chosen on party lines that would lead the African territory to independence.[37] Cohen indicated that economic growth and political changes would depend on the new educated urban elite rather than on traditional rulers who had been collaborators of the colonial government, hitherto. Africa would inevitably undergo economic changes that would create a new class of workers with grievances and this would strengthen the hands of radical leaders. The safe thing to do to handle this development and ensure an orderly decolonisation would be to transfer power to the Western educated elite. They would be expected to win elections through the mobilisation of a mass following among the uneducated, communalistic rural masses who constituted the majority of the population.[38]

[36] R. Robinson, 'Andrew Cohen and the Transfer of Power in Tropical Africa', in W. H. Morris-Jones, and G. Fischer, (eds.) *Decolonisation and after: the British and French experience* (New York: Frank Cass and Company Limited, 1980), 50-72.

[37] Ibid, 63.

[38] Ibid.

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To what extent could these directives be applied to Swaziland where political developments were tardy and where the first Native Authority was established only in 1950 with Sobhuza and his Council as the recognised Native Authority? Swaziland was clearly a totally different terrain from that of West Africa and the British administrators on the ground had to advice the colonial office on how to go about the issue of the transfer of power.

Swaziland's Maiden Constitutional Committee and the Commencement of Constitutional Talks

On 16 June 1960, the British Secretary of State for the Colonies Alexander Douglas-Home directed the British Resident Commissioner in Swaziland Brian Marwick, through the High Commissioner in Pretoria, to initiate formal constitutional talks in the territory. The Secretary of State authorised the establishment of a Constitutional Committee in Swaziland whose terms of reference were:

- To examine the circumstances which militated against common purpose and co-existence;
- To consider what form of constitution was desirable for Swaziland and to draft it accordingly;
- To consider the need for subordinate or local forms of government in Swaziland at the district level and in urban centres.[39]

The British Resident Commissioner held separate talks with representatives of Sobhuza's SNC and the EAC and it was agreed to set up a Constitutional Committee under the chairmanship of the Resident Commissioner. The Committee was composed of 28 members and included British Officials of the Swazi colonial government and representatives of the SNC, the EAC and the

[39] See Appendix 3: SNA, File 3497/1 Swazi Constitution Presented to Parliament by the Secretary of State for Colonies by command of Her Majesty, May 1963.

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Swaziland Combined Executives Association.[40] The full Constitutional Committee appointed by the British consisted of the following people as documented in Table 3-1:

Table 3-1:
Members of the Swazi Constitutional Committee

	Name	Rank	Affiliation
1	Brian Marwick	Resident Commission in Swaziland	Government Representative
2	A. E. Long	Government Secretary	Government Representative
3	J. F. B. Furcell	Secretary of Swazi Affairs	Government Representative
4	W. E. C. Fitcher	Director of Education	Government Representative
5	H. D. G. Fitzpatrick	Ex-Government Official on Pension	European Member
6	C. F. Todd	Member of the European Advisory Council	European Member
7	A. S. Hubbard	Director of Colonial Development Corporation	European Member
8	R. P. Stephens	Director of Peak Timbers	European Member
9	S. W. J. Gaiger	Proprietor of Swazi Inn Hotel, Mbabane	Affiliated European Member
10	B. P. Steward	Treasury Department. Famer and Member of the EAC	
11	J. D. Weir	Farmer and Member of EAC	
12	B. Bordihn	Farmer and Member of EAC	
13	C. S. Bowman	Farmer and Member of EAC	
14	Chief J. M. Dlamini	(Swazi) Chief of Enkungwini area	Member of the Swazi Royal House.
15	D. L. Dlamini	(Swazi) Member of the Swazi Royal House	Secretary of the Swazi National Council
16	A. K. Hlope	(Swazi)	Private Secretary of King Sobhuza
17	D. Lukhele	(Swazi)	Lawyer with headquarters in South Africa
18	J. S. M. Matsebula	Swazi (Iselenkosi or the eye of the King	Senior African Protectorate Officer
19	M. P. Mhlabatsi	Son-in-law of King Sobhuza	Member of the Swazi National Council

[40] Ibid.

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20	J. M. B. Sukati	Commander of the Swazi Royal Regiment	Senior African Protectorate Officer
21	S. T. M. Sukati	Brother of J.M.B. Sukati	Senior African Protectorate Officer
22	Chief L. Dlamini	Chief of Royal House. Chief of Embo area	Member of SNC
23	Chief S. Dlamini	Chief of Valozizwani area	President of the Swazi High Court of Appeal
24	Prince D. M. Somhlolo	Swazi	Member of SNC
25	Dr. A. M. Nxumalo	Cousin of King Sobhuza	Medical Officer
26	J. J. Nquku	President	Swaziland Progressive Party
27	Dr.. A. P. Zwane	General Secretary	Swaziland Progressive Party
28	O. M. Mabuza	Member of Executive Committee	Swaziland Progressive Party

Source: Compiled from SNA: Constitutional Proposals: Written Comments of the Public Chapter XIV, Membership of the Swaziland Constitutional Committee, 1962.

Table 3-1 reveals that Europeans were in the majority in the committee, followed by the representatives of the Swazi National Council. The representation was ridiculous since a total of 9000 Whites were given a greater voice than 270 0000 Swazis in the country. However, the committee membership did not reflect the community that had a greater say in the constitutional talks as the discussion below will reveal.

Of great significance is the fact that the *Ngwenyama* appointed the SNC delegates to the Constitutional Committee, including the three Progressive Party leaders, namely: J. J. Nquku, Dr. A. P. Zwane and O. M. Mabuza.[41] It should be understood that, at this point, the Swazi monarchy considered all Swazi elite as members of the SNC. The Progressives had to belong by virtue of their social standing in Swazi society and the monarchy had to recognise this fact. They were,

[41] Swaziland Progressive Party, 'Swaziland Report on Constitutional Reforms', Cape Town, 1961.

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therefore, members of the committee "in their capacity as members of the *Libhandla* [or SNC] and not as members of the Swaziland Progressive Party."[42] Moreover, the British would not have endorsed the exclusion of the educated elite whom they considered an important element in the transfer of power. Sir Charles Arden-Clarke, an official of the British Colonial Administration in Swaziland, was the constitutional adviser. The Coloured community, otherwise referred to as Euro-Africans, were not accorded any representation, notwithstanding the fact that they comprised a substantial minority and were treated under the laws of race-sensitive colonial Swaziland as a separate group possessing a separate status.

Constitutional Committee Deliberations

The first meeting of the Constitutional Committee started in earnest on 4 November 1960 in Mbabane. The Committee had to consider the agenda of the meeting established by the Secretary of State and the British proposal for a Legislature based on universal suffrage and on a "one-man one-vote" arrangement with no reserved seats and no racial qualification for voting.[43] The British idea of universal adult suffrage was based on the logic that the beneficiary of power transfer from the colonial government to the post-colonial government should emerge from the ballot box. In other words, the sovereign will of the Swazi people should dictate the post-colonial government of modern Swaziland according to democratic principles. The political playing ground would be level for all interested political contestants to solicit the mandate of the Swazi people. The logic of the British was that the attainment of political modernity in the shape of a constitution for the modern Swaziland nation-state should be achieved through the instruments of a modern political

[42]Ibid.

[43] 'Constitutional Advance in Swaziland', *Times of Swaziland*, November 11, 1960.

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culture and not African traditionalism. Consequently, popularly adult suffrage should allow the sovereign Swazi people to decide the individual operating under a political party who was to inherit the instruments of governance. This position of the British was agreeable to Swaziland's nascent political leaders who knew how effective popular suffrage could be and how it was the channel Nkrumah pursued to ascend power in Ghana.

The Swazi monarchy and the White community were totally against the idea of universal adult suffrage because they felt threatened. As for the Swazi monarchy, King Sobhuza II rejected the principle of elections on grounds that Swaziland was a Protectorate under a traditional monarch who inherited his powers from the Dlamini dynasty and did not owe his authority to an election process. As far as the monarchy was concerned, political power in Swaziland was not open to contestation because it was not the Swazi way of doing things. It was anathema for Swazi political culture to be sacrificed on the altar of modernity. There was, therefore, the feeling among the royal class that the British were out to invite every Tom and Dick to contest political power with the dynastic Dlamini monarchy. In the words of Prince Masitsela, a member of the Swazi National Council, in siSwati*: EmaNgisi ajika live etulu,*[44] which can be loosely translated as "the British are throwing up the country for anyone to "catch" and "lead it". He stated that the British made it clear that they were not just going to hand over Swaziland directly to the King Sobhuza after their departure. They were going to "throw it up in the air" for anyone who had the support of the people to take it.[45] This modern practice did not tally with Swazi culture and tradition and King

[44] Interview with Prince Masitsela at Emafini, on 25 January 2015. For details on information on all interviewees, see bibliography.

[45] Ibid.

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Sobhuza II was against being placed on the same footing with other Swazis to contest political power when he was already a King.

The White minority were not necessarily traditionalists or admirers of African political traditionalism. They were against popular elections for another reason. As a minority, they were scared they would be swamped in the Legislature and their economic interests would be jeopardised by the black majority whom they could not trust. They preferred to support the Swazi monarchy to have his powers intact and undiluted because they trusted Sobhuza would defend their economic interests against the rising radical nationalists who were threatening them with nationalisation. It is, therefore, important to appreciate the conflicting viewpoints of the protagonists because this divergence of interests complicated the constitutional talks in the early 1960s and soon led to a stalemate.

In order to proceed with its business of constitution-making, the Constitutional Committee appointed a small Working Committee, which invited submissions from interested parties. However, the British Administration relied largely on King Sobhuza's April Constitutional Proposal as a basis for discussions. It should be pointed out that the British were charmed by Sobhuza's literacy and his ability to articulate his political ideas, unlike traditional rulers elsewhere in Africa who were largely illiterate and had no understanding of the mechanisms of modern governance.

When the Constitutional Committee started seriously discussing the constitution for Swaziland, a conflict developed between two distinct camps, namely, the traditionalists headed by King Sobhuza II and their ally, C. Todd, the leader of the European Advisory Council, on the one hand,

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and the three members of the Progressive Party, on the other hand. The dispute was based on the following issues.

First, the three members of the Progressive wing of the Committee wanted to participate in the constitutional talks freely without any restraint and to be guided by common logic and their conscience. They wished to express their party's views without any restrictions. The traditionalists retorted that a true Swazi should speak through the mouth of the *Ngwenyama* and not independently of him. The Progressives rejected this reactionary traditionalism that impeded free debates.

Second, the Progressives espoused multiparty politics that was in vogue in Africa as the best way to gauge people's preferences. Freedom of association was the hallmark of modernity and development. Their opponents argued that there was no room for multiparty politics for Africans in Swaziland on grounds that the *Ngwenyama* had not endorsed such a political culture. The traditionalists stated that multiparty politics were against the strong wishes of the *Ngwenyama.*

Third, the Progressive Party resented the charge contained in the working paper, presented by the Working Committee, that the Progressive Party had not been approved by the *Ngwenyama* on grounds that political organisations existing outside the Swazi National Council were inimical to the traditional ethnic structure of the Swazi state. They insisted that the last word on the authorisation of the formation of political parties was the exclusive prerogative of the colonial state, and not a tribal chieftain.

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Lastly, the Progressive Party were upset by the suggestion of the British administration that discussions for constitutional reform would take place within the framework of King Sobhuza's proposals. The leader of the EAC, C. F. Todd expectedly supported Sobhuza's proposals as a basis for discussion. He admonished members of the Committee that they were expected to make comments within the framework of the *Ngwenyama's* April Speech on Constitutional Proposals for Swaziland. Todd reminded the Progressive leaders that their views on adult universal suffrage were unacceptable to the *Ngwenyama* who had argued that it was un-African.

Whereas the British proposal for adult one-man, one-vote was welcomed by the Progressives, it was out rightly rejected by the conservative SNC and the EAC. The Swazi monarchy and the White minority were not happy with the British constitutional proposals for adult universal suffrage which created room for nationalist agitation in Swaziland. Both were convinced that "the British administration was bent on sacrificing their interests to the causes of modern African nationalism and majority rule."[46] Under the British constitutional arrangement, the Whites would be wiped off the political scene and Sobhuza's reign would be compromised by the competing political parties, as had happened elsewhere in Africa where traditional rulers were steadily relegated to the background in modern politics.[47] These four issues were compounded by a fifth one, which was a proposal for a 50-50 representation in the Legislature for Europeans and Swazis and that the two groups would be selected separately according to European and African political traditions. The 50-50 arrangement was so bitterly opposed by the political parties and so strongly

[46] C. P. Potholm, "Changing Political Configuration in Swaziland", *The Journal of African Studies*, 4, 9 (1966) 314.

[47] R. Rathbone, 'Kwame Nkrumah and the Chiefs: the Fate of Natural Rulers under Nationalists Governments', *Transactions of the Royal Historical Society*, 10, (2000), 45-63; E. A. B. Van Rouveroy van Nieuwaal, 'Chiefs and African states: Some introductory notes and an extensive bibliography on African chieftaincy', *The Journal of Legal Pluralism and Unofficial Law*, 19, 25-26 (1987), 1-46.

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supported by Sobhuza's Swazi National Council and Todd's European Advisory Council that the constitutional talks dragged on for almost two years. This issue remained a bone of contention and could hardly be resolved.

The British proposal on the method of voting members of the Legislature raised a storm because it touched directly on the issue of empowerment and disempowerment and political ideology. The White minority, who were the economic backbone of the territory, would be eclipsed in the event of the introduction of universal suffrage. Given the performance of the educated elite elsewhere in Africa at the polls, with the radical Nkrumah who was swept to power in elections in Ghana in 1950 as a classical example, the Swazi monarchy was not comfortable with the idea of elections organised on basis of one man one vote. This was further compounded by the fact that British colonial policy in the post-war era envisaged the transfer of power to the educated elite at the expense of traditional rulers.[48]

The Swaziland constitutional meeting was held behind closed doors because it was expected to be stormy since the political viewpoints of the various protagonists had been topics of elaborate discussion in the media and were, therefore, well known. The disagreements between the two camps were so intensive that the constitutional committee concealed them from the public, and the media was mute about the deliberations. The silence on the constitutional talks caused the Swaziland's Student Union to complain about the fact that all the deliberations were conducted

[48] See Robinson, 'Andrew Cohen and the Transfer of Power in Tropical Africa', 50-72.

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behind closed doors and that the only information they could get was that there was an agreement to terminate racial discrimination.[49]

It soon came to the open in February 1961 that the constitutional discussions were to proceed according to the proposals of Sobhuza's SNC and the EAC, which accorded equal representation in the Legislature to blacks and Whites and endorsed the traditional method of selecting indigenous Swazi legislators by royal appointment and not elections on the basis of universal suffrage. Carl Todd supported the Swazi traditional system of voting so that Swazi culture and tradition and the monarchy would not be destroyed. The Progressives under Nquku raised protested vehemently against the proposal to accord equal representation to Whites and blacks in the Legislature and to have different voting systems for the two races. Meanwhile, the SNC denounced the Progressives for contesting Sobhuza's constitutional proposals and for disrespecting the traditional monarchy.

Since the SNC had appointed Nquku to the Constitutional Committee, it quickly suspended him, but not before his progressive ideas had caught media attention. Other Progressive elements in the Constitutional Committee were unhappy with Nquku's suspension for having opposing views to those of the monarchy. Consequently, in June 1961 Dr. Zwane - the Secretary General - and Mabuza decided to resign from the Constitutional Committee.[50] Dr. Zwane explained that the position of the Progressive members on the Constitutional Committee was untenable. In his resignation and protest letter addressed to the Resident Commissioner, Dr. Zwane stated that the

[49] Stevens, 'Swaziland Political Development', 336; Also see 'All quiet on Constitutional front: A widening gulf?', *Times of Swaziland*, January 26, 1962.

[50] Swaziland Progressive Party, 'Swaziland Report on Constitutional Reform', Cape Town, 1961.

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Progressive members in the Committee were expected to surrender their convictions on constitutional matters in deference to opinions put forward by the conservative traditionalists. He stated that if they failed to speak out, they would have given the public the wrong impression that the Swaziland Progressive Party had a hand in shaping the new constitution for Swaziland when, in fact, it was the handiwork of the monarchy. Dr. Zwane stated:

> If we are to be discouraged from speaking out, as in Mr. Nquku's case, we will be false to our convictions while giving the public the misleading impression that the Swaziland Progressive Party is having a hand in the shaping of the new constitution when, in fact, the position is quite different.[51]

The Progressives resigned from the Committee, leaving behind the SNC and the EAC. Since the Progressives were on the committee as members of Sobhuza's SNC, they now formally made a request to the Resident Commissioner to be admitted into the Constitutional Committee in their own right as the Swaziland Progressive Party but this was refused.[52] The British were, apparently, partisan in this case by refusing to include political party leaders who represented a special social category-the educated class and the rising proletariat. This protest resignation was a way of indicating that the Progressives did not endorse what the monarchy and the EAC were formulating. The Committee dispersed in acrimony and did not sit again until 17 February 1962 but still made no progress.

The exit of the Progressives allowed Sobhuza's SNC and Todd's EAC to continue as the sole members of the Constitutional Committee. This meant the final document of the Constitutional Committee was the exclusive viewpoint of the conservative Swazi monarchy and its White allies.

[51] Cited in H. Kuper, *Sobhuza II: Ngwenyama and King of Swaziland*, 339.

[52] Ibid.

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Meanwhile, the exit of the Progressives did not mean they had abandoned their participation in the formulation of Swaziland's future constitution. The Progressives decided to hire the services of Professor D. V. Cowen, an expert of Comparative Law at Cape Town University, to assist them articulate their constitutional viewpoints which they packaged and sent to the British Colonial Office for consideration and necessary action. With the assistance of the legal luminary, the Progressives articulated their constitutional positions in clear terms. They argued that the Swazi Legislative Council should be established through universal adult suffrage and that there should be a provision for a common voters roll, including African Swazis, White Swazis and Coloured. They advocated:

(i) the establishment of a non-racial, as against a multi-racial, Swaziland in the political, economic and social spheres and the elimination of all legislation that enforced racial discrimination in Swaziland;
(ii) the constitutional entrenchment of a court-enforced Bill of Human Rights, including full freedom of association, particularly political organisation.
(iii) the peaceful integration of the traditional Swazi monarchical institution into the modern democratic structures of government;
(iv) the recognition of Swaziland as a Protected State and the establishment of the Swazi monarchy's position as a head of State with a similar status of the Sultan of Zanzibar which was merely ceremonial;
(v) the establishment of a responsible government;
(vi) the establishment of a democratic form of government, especially in the main townships in Swaziland.[53]

[53] Ibid.

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In essence, as is evident from the above, the Progressives stood for universal suffrage, a non-racial society and the integration of the monarchy as a mere ceremonial head in the new political dispensation like that in Zanzibar or the United Kingdom.

The SPP drafted a petition based on the advice of Professor Cowen and forwarded it to the Colonial Office in London.[54] The petition called for the establishment of a Legislative Council on the basis of a common voters roll on basis of universal adult suffrage. The SPP requested the abolition of racism in all the spheres of life in Swaziland. There were a large number of racially discriminatory laws, some of which dated back to when Swaziland was subjected to the jurisdiction of the Transvaal Republic in the nineteenth century. The SPP asked for an entrenched clause in the constitution on the Bill of Rights, including full freedom of political association,[55] an issue which the conservative Swazi monarchy, with the support of the EAC, was reluctant to agree to it asked for the integration of the traditional monarchy into the modern democratic structures of government similar to that of the UK - a request Sobhuza was against, for he preferred the monarchy to be at the apex of the political system. The Party requested that the urban agglomerations in Swaziland should be run by democratically elected local governments. Furthermore, Swaziland was to be recognised as a Protected State and the position of the traditional monarchy, referred to in the sources as Paramount Chief, was to be a Head of State in the form of a constitutional monarchy.

[54] See SNA, File 3311/1 Newsletter: Swaziland Democratic Party, No. 5, Vol. 1, 5th October 1962, Mbabane.

[55] Ibid.

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The issue of Swaziland's status as a protectorate arose from the erroneous argument that Swaziland had never lost its independence which was recognised in the European Conventions of the 1880s and was later taken over by Britain as a protected territory.[56] Sobhuza then argued that the territory should be handed over to him and not to a political party and was opposed to the SPP's attempt to neutralise his powers in any way. Since historically Swazi kings were effective rulers, and not figure heads, Sobhuza found it difficult to accept the stance of the SPP to render him a ceremonial Head of State. The petition of the SPP to the colonial office in London received no response. The British government waited for the deliberations of the Constitutional Committee from which the Progressives had been expelled. As can be expected, the SPP were not happy with the Colonial Office.

The resistance and hostility of the Swazi monarchy to the Progressives and their marginalisation on the Swazi political scene was clear. The Progressives then decided to go on the international offensive as a way of keeping their agenda alive and courting international sympathy. Both Nquku and Dr. Zwane, who had earlier fallen out, travelled abroad to solicit support for their progressive agenda and the condemnation of the Swazi monarchy as a retrogressive colonial lackey.[57] In May 1961 Nquku testified before the Committee on Non-Self-Governing territories of the United Nations about the political situation in Swaziland being manipulated by imperial forces through traditional chiefs and White settlers. At the end of May 1962, both Nquku and Zwane left for the All African People's Conference in Accra,

[56] Matsebula, *A History of Swaziland,* 82-85.

[57] Stevens, 'Swaziland Political Development', 338.

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Ghana, which was chaired by Kwame Nkrumah, the radical pan-Africanist.[58] Thereafter, both leaders visited the Soviet Union, then the anti-imperialist champion.[59]

In October 1962 Nquku flew to New York to petition the United Nations to intervene in the constitutional stalemate in Swaziland. Again in January 1963, Nquku returned to the United Nations in New York to protest the composition of the Constitutional Committee which had excluded Progressive forces in favour of the conservatives and South African White immigrants. At the meeting of the United Nations Fourth Committee which dealt with the problems of non-self-governing territories, including Swaziland, Nquku made an urgent appeal to the United Nations to intervene in Swaziland and establish an effective United Nations presence there. He told the committee that the future of Swaziland depended on the rapid implementation by the United Nations General Assembly of the declaration on the granting of independence to colonial countries and peoples and of those UN resolutions aimed at eliminating aggression in all its forms. He explained that the gravity of the situation in Swaziland was due to the failure of the United Kingdom to live up to its obligation under the United Nations Charter. Nquku claimed to be speaking as a leader of the Progressive Party on behalf of the Swazi people and drew a distinction between the Swazi people and the Swazi Nation. To him the Swazi nation was ruled by chiefs and civil servants who were simply puppets at the beck and call of imperialists and White settlers.

[58] See H. E. Kloman, 'African unification movements', *International Organisation*, 16, 2 (1962), 38- 404.

[59] Stevens, 'Swaziland Political Development', 338.

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He claimed that the real leaders of Swaziland were the Progressives who spoke freely on behalf of all the inhabitants of the territory, regardless of race, colour or creed, and who had the interest and well-being of all its inhabitants. According to him, the political development of Swaziland was being stalled by the British and White settlers who sought only to promote their interests. He accused the British government and White settlers of denigrating Swazis as inexperienced, immature and unfit to take over the administration of their country. He stated that the Swazi National Council was led by the puppets of the White settlers interested only in increasing their own rights and privileges, with the connivance of the British. Lastly, he complained about the eviction of Africans from their lands and the influx of White settlers from South Africa into Swaziland to further marginalise the Swazi people.[60] Thus, outside the Constitutional Committee, the Progressives remained a powerful political force to be reckoned with; their international credentials added weight to their relevance in Swazi politics. Nonetheless, the Constitutional Committee went ahead to prepare a Report in the absence of the Progressives.

The Euro-Africans were also as unhappy as the Progressives with the processes of making Swaziland's constitution because of their exclusion. The Euro-African Welfare Association, which represented the Coloured Community in Swaziland, also hired the services of Professor D. V. Cowen of the University of Cape Town to make constructive proposals on Swaziland's constitutional developments. The Coloured community emphasised the fact that they were a substantial minority group who were in danger of being forgotten. They paid taxes like Swaziland's Whites but they were not given any political representation in the Constitutional

[60] 'Nquku's Petition for U.N. Intervention', *The Times of Swaziland,* January 18, 1963.

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Committee. They were legally excluded from the SNC and were not regarded as part of the country's political structure. They did not have any financial support for their school going children and the government opened schools for Whites only and others for Swazis only but none for the Coloured. They regretted the fact that they were not given representation in the Constitutional Committee despite the fact that they had a contribution to make and the laws of Swaziland recognised their special status as a separate group.

In giving evidence to the Constitutional Committee on request, the Coloured people asked for special provision to be made for them under Sobhuza's constitutional proposal. They feared they would be bundled together on a common roll with Whites who largely outnumbered them. The Coloureds felt they were a group only by rejection, exclusion and legal definition. Because of this, they did not wish to perpetuate group or racial distinction and they favoured the eradication of discriminatory laws which treated them as a separate group. The Coloureds therefore clamoured for the introduction of a common voters' roll on a wide suffrage, which would include Swazis as well as Whites and Coloureds.[61] What they were advocating for outside the Committee was exactly what Sobhuza was opposed to, for he did not want a common voters' roll. The Coloureds were craving for recognition within a wider Swaziland nation in which there would be no discrimination on the basis of ethnicity or race. The protests of the Coloureds pointed to the fact that the British colonial administration had a made a grievous omission in its constitution of the Constitutional Committee. The inclusion of the

[61] Ibid.

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Coloureds in the committee could possibly have strengthened the Progressives' opposition to the conservative royalists.

The 1961 EAC/SNC Delegation to London

A delegation of the EAC and SNC and members of the British colonial administration in Swaziland left for London in December 1961 to present the Report of the Constitutional Committee to the Colonial Secretary of State. The EAC/SNC delegation comprised C. Todd, D. Fitzpatrick, M. Dlamini and A. K. Hlophe. The Resident British High Commissioner in Swaziland Marwick travelled separately taking with him confidential reservations about the EAC/SNC constitutional proposals.[62]

The Report indicated that there was unanimity over its contents by its signatories, which included the members of the SNC and the EAC. But the Chairman and the Government Officials in the Committee indicated that they were reservations on certain aspects of the Report with particular reference to the composition and powers of the Legislative Council. The Report recommended an Executive and a Legislative Council for Swaziland. The Executive Council was to consist of the Governor, three ex-officio members, one official and four nominated members, with additional four unofficial members (two Swazis and two Europeans). The Legislative Council was to consist of equal numbers of Swazis (chosen by traditional method of acclamation) and European members (elected by Western methods of voting). This meant that Swazis and Whites were to be equally represented despite the

[62] 'Points of view on Constitutional Reforms: Mr Todd Replies', *Times of Swaziland*, February 2, 1962.

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disparity in the population of the two communities: 270,000 Swazis as opposed to only 9,000 Whites.[63] The special place of the Swazi monarchy in the constitution was to be recognised, giving him rights to withhold his consent to bills, which would be reserved for the Queen of England's pleasure. In matters affecting Swazi law and custom, Swazi land and minerals and Swazi institutions were to be excluded from the purview of the Legislative Council and left exclusively to the *Ngwenyama'*s discretion.

Finally, a Bill of Rights was included to protect personal liberties, such as freedom of expression and assembly but also to prevent any major change in the socio-political framework, by pledging to maintain the position of the monarchy and the property rights of racial groups, and specifically excluding constitutional reforms which would conflict with these principles.[64] The EAC/SNC took time to qualify the 'freedom of expression and assembly' with the clear intention of preventing the formation of political parties by Swazis outside the SNC and beyond the control of the Swazi monarchy.

The British Official Members of the Constitutional Committee were not in total agreement with the Report from the SNC/EAC alliance. In a "Note of Reservations", they pointed to the Colonial Secretary that Sobhuza's idea of 'racial federation' was 'inimical to the achievement of the ultimate objective of a non-racial state envisaged by the UK. The preferred goal of the British was the achievement of a democratic non-racial stable form of government provided with checks and balances to safeguard all civil liberties. To achieve this they considered it

[63] Stevens, 'Swaziland Political Developments', 327.
[64] Ibid.

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necessary to build one nation according to Western political procedures. Brian Marwick relied heavily on the advice of senior officials in the service who had worked on the British model of constitution-making in other African territories. Brian Marwick pointed out that the British were anxious to transform what has been described as the feudal Swazi society and also a top heavy monarchy into a modern democracy under a constitutional King.

The proposal that Europeans and Swazis should have equal representation in the Legislature was an arrangement that was difficult to justify and the Resident Commissioner and Official members of the British colonial administration in Swaziland felt that it was time for the Europeans to give up such ridiculous claims of equality with blacks which did not tally with their tiny population on the territory. They warned that such a provision for a 50 per cent representation for the White minority would be wrestled from Whites as soon as Swaziland became independent. The argument being advanced by Sobhuza and the Whites that potential investment in the territory depended on a 50-50 arrangement was described as 'illusionary and ridiculous'; it was outweighed by the advantage of recognising the true position of the European minority.[65]

The Resident Commissioner and the Official members of the Constitutional Committee had serious reservations about the 50-50 racial federation and the exclusion of modern political organisations which were an integral part of the modernisation agenda. Sir Brian Marwick revealed that he was at pains to convince Sobhuza that in the modern world it was impossible

[65] SNA, DPMO 12, A.G. 100/316/56, 26 July 1979.

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to prevent people from forming political organisations according to their own persuasion. He had told Sobhuza that if he wanted to participate in Swazi politics, he could use his supporters to form a political party because entry into modern politics was only through political parties.[66] Marwick later wrote to H. Kuper that the acceptance of the idea of a racial federation and a 50-50 principle would be tantamount to an unforgivable betrayal of Her Majesty's Government responsibilities as the Protecting Power and would compound the processes of attempting to satisfy Swazi grievances over the land issue caused by the expropriation of Swazi land by Whites and the erosion of Swazi institutions in the future. Marwick felt that the 50-50 principle would not favour indigenous Swazis and would further imperil the objective of ensuring that Swazi interests eventually predominated.[67] This important point might not have been evident to Sobhuza who was according equal legislative weight to Whites who were responsible for the Swazis' land hunger. Put differently, Sobhuza was giving Whites legislative instruments to obstruct the implementation of any land reforms which would disfavour Whites for the benefit of the Swazis. The Secretary of State for Colonies could, therefore, not agree with the constitutional proposals of the EAC/SNC alliance which was, evidently, a bad document.

The Official Members tried to take a middle of the road position by proposing that eight Swazi members should be nominated by the *Ngwenyama*, eight Europeans on a European roll, four officials (with voting powers) nominated, and 12 members (eight Swazis and four Europeans) elected on a common roll with qualified franchise. The Official members were not comfortable

[66] Ibid.

[67]Kuper, *Sobhuza II: Ngwenyama and King of Swaziland,* 216-217.

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with the committee's proposal to restrict the legislature's competency to deal with matters affecting Swazi Law and Custom, Swazi institutions, and Swazi land and minerals. The members felt the Legislature should have a complete say in these matters.[68]

The remarks of the official members were taken seriously by the British Secretary of State for Colonies. He commented elaborately on them in the form of a letter to the British High Commission in Swaziland which was published with the report of the Constitutional Committee in March 1962. He rejected the recommendation of the EAC/SNC that the British Official Members of the Council should have no vote. While recognising that certain matters should be reserved for the *Ngwenyama*-in-Council, he expressed serious concerns that too great a reservation had been made of interests vital to the whole country which should have come under the scrutiny of the Legislature. He warned that a very powerful monarchical system which privileged the monarchy over other institutions of state was dangerous and a clear path to unbridled dictatorship.

The Secretary of State did not agree with the SNC/EAC's proposal that the Legislature should be prevented from passing 'laws that might affect Swazi law and custom or from general legislation in respect of land and minerals.' He insisted that the Legislature, and not the monarchy, should have the final say in the resources of the country. The Secretary of State pointed out that the danger in allowing the monarchy to have monopoly over such matters, including Swazi land and minerals, was that the ordinary Swazi would come to regard the

[68] SNA, Constitutional Proposals Comments of the Public 1962. This file is rich in the reactions of the public to the constitutional proposals.

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Legislative Council as worthless and as something of very little interest to him. The Secretary of State was of the opinion that the Swazi people, through the legislature, should have the final say in such matters.

The issue of the franchise was also addressed. The Secretary of State felt that the educated class constituted an important element in Swazi society that could not be ignored. Consequently, he declared that a common roll, or something along those lines, would undoubtedly be required to cater for the educated non-tribal elements in Swazi society.

The British officials were critical of the way the Progressives were treated and considered it 'unrealistic and wrong' to force them to comply with the traditional monarchical system which hindered their right to participate in the modern democratic process in the Legislature. They felt the Progressives should have a place in the new political dispensation the British were trying to construct for Swazis.[69]

The British Colonial Office in London took cognisance of the irregularities in the report and decided to attach the reservations made by the British officials in Swaziland to the Report. The Constitutional Report was sent back to Swaziland with instructions that the public should be invited to make inputs.[70] The Secretary of State indicated that he would await the reactions

[69] SNA, Constitutional Proposals Comments of the Public 1962. This file is rich in the reactions of the public to the constitutional proposals; Kuper, *Sobhuza II: Ngwenyama and King of Swaziland*, 225.

[70]SNA, Constitutional Proposals Written Comments of the Public 1962. This file is rich in the reactions of the public to the constitutional proposals.

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both to the Constitutional Proposals and his comments before taking a final decision. This was because the constitution being designed was for the Swazi people and the British wanted them to take ownership of it. By sending the report back to Swaziland and inviting the public to comment on it, the British were indirectly indicating that they were not totally satisfied with the EAC/SNC constitutional proposal. What this reflects is that the British Colonial administration and the Progressives, on the one hand, had found loopholes in the Constitutional Report which needed to be addressed. On the other hand were the SNC and the EAC who, as authors of the report, were satisfied with it and were unhappy with the criticisms of the Colonial Office and local British Administration in Swaziland. Inviting the public to comment on the report was another way of opening the debate on the future constitution of Swaziland. The field was, therefore, open to the key players to sell their constitutional standpoints to the populace.

Public Reactions to the EAC/SNC Constitutional Proposal

The way the EAC/SNC Constitutional Proposals were drafted was bound to raise a lot of opposition once it was made public. The Constitutional Proposals were given wide publicity in the media in the early months of 1962 as instructed by the Colonial Office and elicited various reactions. Public opinion[71] pointed to the fact that the 50-50 political formula which would give the country's minority Whites an equal voice with the black majority was ridiculous and would be difficult for Britain to endorse because it was far off the mark of democratic principles. This 50-50 proposal was viewed by a growing number of politically

[71] Public opinion was gauged from letters and opinions expressed in the *Times of Swaziland* and in a file which contains written comments from various individuals from various works of life in society.

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conscious Swazis, Progressives and White liberals as nothing more than a devise to perpetuate the privileges of the conservative Swazi monarchical order and the minority Whites who were essentially South African immigrants. This arrangement allowed Whites to exist as a separate community from blacks and this state of affairs would hinder racial integration.[72]

A group of White Liberals under Vincent Rozwadowski, a Polish immigrant from Poland, who relocated from South Africa to Swaziland,[73] supported the programme of the Swazi political parties considered radical by the EAC and the monarchy. Rozwadowski argued that a more egalitarian society was more relevant for Swaziland that one constructed to protect White privileges as a distinct group. These liberals criticised the EAC/SNC Constitutional Proposals on the grounds that the proposed racial division strongly resembled apartheid and would entrench social and racial differences.[74] The proposal was far from being democratic and was backward looking in every sense of the word. Carl Todd did not take the criticism kindly and reacted by presenting the *Ngwenyama* as the only authority to make statements on behalf of Swazis and explained how British political theorists had no right to impose on Swazis what they did not desire. He wrote:

> I am personally influenced by my thinking on the Constitutional proposals to give great weight to the wishes of the Ingwenyama-in-council [sic], as it is the only truly established Swazi authority which has Constitutional rights visa-vis the Europeans and the British government in the protectorate state of Swaziland. We have no right to force upon them our views but must carry them with us by argument and agreement. As a traditionalist I support orderly development in political affairs and would prefer the safe course of carrying the bulk of people with me than introducing innovations that may have support

[72] SNA, Constitutional Proposals Written Comments of the Public 1962.

[73] Rozwadowski moved to Swaziland because of racism in South Africa.

[74] 'Points of View on Constitutional Reform: the Rozwadowski statement', *Times of Swaziland*, 2 February 1962.

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> from a minority of theorists. We wish to have a constitution in Swaziland of our own choosing and not one forced upon us by political theorists . . . . Advanced political theorists applied to Africans and exploited by demagogues have proved disastrous elsewhere in Africa . . . . Europeans should cooperate with Ingwenyama-in–council to maintain a traditional system to which the Swazis are accustomed and to uphold their institutions as being a stabilizing force in the political and economic development of the territory and we should collaborate with them in perfecting the system in order to ensure that it is equal to the needs of a developing society rather than destroy it.[75]

Basically, Carl Todd struggled to defend traditionalism and conservatism and claimed to be a 'traditionalist". To him, those propagating democracy in Swaziland were demagogues and theorists and were irrelevant to the Swaziland situation. He underscored his unalloyed support to King Sobhuza and the EAC/SNC Constitutional Proposal. Todd accused the Colonial state, White liberals and Progressives of being "anti-settler."[76]

Carl Todd argued that the Constitutional Proposals were not farfetched and actually reflected the will of the people. In order to demonstrate European support for it, Todd decided to organise a referendum among over half the European voting community (1,368 persons were on the voters' roll) and an overwhelming majority endorsed the proposals. Registered voters were asked to say yes or no to the following question: 'are you in favour or against the proposals for the constitution for Swaziland as recommended by the European Advisory Council?" A cross had to be placed in a square which recorded the decision of the voter and the paper had to be signed. Voters were urged to vote in favour of the committee's proposals. The results of the referendum were as documented in Table 3-2.

[75] 'Points of View on Constitutional Reform: Mr Todd's Reply', *Times of Swaziland*, February 2, 1962.

[76] Ibid.

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Table 3-2
Results of the EAC's Referendum on Constitutional Committee's Proposals for a Constitution for Swaziland

Constituency	Number of registered voters	Number of votes cast	In favour of the committee's recommendation	Against committee's recommendation	Percentage Poll.
Pigg's Peak	134	66	66	Nil	49.1
Mbabane	316	156	145	11	49.36
Mankayane-Usutu	103	39	39	nil	37.8
Manzini District	119	63	58	5	52.9
Manzini Urban	171	88	88	Nil	51.46
Stegi	116	66	63	3	56.9
Hlatikulu	60	39	39	Nil	65.0
Goedgegun-Dwaleni	194	121	121	Nil	62.23
Mhlotsheni-Mooihoek	52	14	14	Nil	26.9
Hluti-Gollel	103	64	64	Nil	62.2
Totals	1 363	716	697	1952.23	

Source: 'Constitution Referendum: 697 for and 19 against 52.3 per cent roll', *Times of Swaziland*, May 18, 1962.

It is not surprising that the overwhelming number of Whites voted for the Constitutional Committee's proposals, given the fact that proposals were designed to protect the dominance of Whites in the economy. It was only logical that Whites should support such a constitution which upheld their interests and marginalised the overwhelming majority of the Swazi people who were suffering from land scarcity for their survival. The referendum was, therefore, meaningless because the Swazi people who were the victims of the colonial order and who suffered multiple deprivations because of that order were not consulted. Carl Todd's referendum was, thus, a farce.

Todd, expectedly, supported the Constitutional Proposals of the SNC/EAC on the grounds that the duly constituted authority representing the Swazi people was the *Ngwenyam*a and his Council.

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He stated that the EAC did not recognise any other authority with whom they could enter an agreement to protect their interests. He belittled any agreement with the Progressives, Liberals and any other political party as not worth the paper on which it was written and as not binding to anybody.

Todd stated that a Bill of Rights protecting the Europeans committed a duly established authority and does not 'bind a political party and especially a politician who claims that he was not a party to the arrangements". Todd indicated that the *Ngwenyama*-in-Council had offered Europeans equal partnership and was opposed to the Westminster form of franchise which he feared was going to destroy the Swazi Traditional Council and its authority, as had happened elsewhere in Africa.

Todd warned that the future of the White minority in the type of constitution the Progressives and White liberals were demanding would be in jeopardy. He stated that Government Officials were also supporting the stance of the Progressives. Todd declared that he would prefer to rely on agreements with the Swazi Council and the provision for equal representation in the Legislature instead of relying on the British government and their officials who cannot protect European interests against radical politicians who do not respect the rights of White minorities and the true interests of Swaziland. Todd warned that the promising economic future of Swaziland would be jeopardised if Europeans were marginalised in the legislature. He referred to the importance of Whites in the economies of Kenya and the Rhodesia and argued that it would be vital for Swaziland to retain the confidence of foreign investors, especially Europeans.

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Todd indicated that the *Ngwenyam*a fully supported the economic argument of the EAC. For this reason, he was full of praises for the *Ngwenyama* when he stated:

> *Ngwenyama* is such a wise friend of the Europeans that we [the EAC] should support and strengthen his position and not undermine it, and it is politically wise to collaborate with the friends we know and trust than to try out experiments with politicians who are responsible to no one. We can move to a more advanced stage of political thinking after we have worked together in the new legislature, but it is unwise in the present stage of Swazi development to jump into a European franchise system from which you cannot withdraw once it is established.[77]

Todd concluded by calling on the public to support the constitutional proposal and to resist being influenced by 'political agitators'; a term he used to describe the Progressives. He assured Europeans that the constitution would protect their stakes in the territory.[78]

The educated Swazis were, however, not happy with the constitutional proposals and when a gathering was convened two days after the release of the report to look into its contents, it broke up in chaos. Civil society attacked the proposals, as a united front of political parties, trade unions, academic bodies and the Anglican Church protested against the racial basis of the proposed constitution.

The Catholic Church, through the voice of Father P. Burtwell, protested against the exclusion of the educated elite in these terms:

[77] 'Todd's Thoughts on Constitutional Proposals', *The Times of Swaziland*, March 23, 1962.

[78] Ibid.

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> I must resist any constitutional proposals that give representation to Europeans and to the tribal Swazis while ignoring the small [independent-minded] educated African class which has separated itself from tribal ways. To ignore these men is an offence against every man's God-given duty, to spend his life here on earth using God's gift fully to the Glory of God….[79]

Dr. D. Hynd, who was a medical doctor and represented special interest groups in Swaziland, disapproved the 50-50 representation in the SNC/EAC Constitutional Proposal. He argued that the both the EAC and the SNC represented an oligarchy and that the European representatives would represent only about 3% of the population in Swaziland. On the other hand, the Swazi representatives represented an oligarchy of the Black Swazis. With regard to the position of the *Ngwenyama*, Dr. Hynd suggested that he should assume the position of a constitutional ruler and be much in the same relationship to the Legislative Council as the Queen of England was to the parliament of the United Kingdom.

Swaziland students under the canopy of the Swaziland's Students' Union rejected 'unreservedly and unconditionally both the work of the Constitutional Committee and the Committee itself'. The students pointed out that the EAC-SNC alliance, in effect, produced a document that protected White and monarchical interests at the expense of those of the Swazi people. The *Guardian* newspaper commented on this as follows:

> A constitutional committee of local worthies, black and White, has put forward proposals for a timid advance towards communally elected legislative council which would entrench all the conservative characteristics of the [Swazi] Paramount Chief [*Ngwenyama*'s] regime.[80]

[79] 'Priest Replies', *Times of Swaziland*, March 16, 1962.
[80] The *Guardian* (Manchester), 7 March 1962.

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Sobhuza campaigned for the acceptance of the 50-50 principle among Swazis to no avail. In February 1962 he convened a popular meeting of Swazi men at Lobamba and addressed them on the Committee's proposals and they overwhelmingly rejected the proposal. The Swazi youths were so rude that Sobhuza could hardly believe it, since they had the habit of being respectful towards royalty.[81]

The Swazi National Council decided to hold another meeting in April but it broke up in confusion as the Progressives and the monarchists clashed on almost every point, particularly over the issue of equality between Whites and Swazis in the envisaged legislature. Sobhuza did not give up and he convened another meeting at a local i*nkhundla* (meeting place) at Mbabane and the crowd was hostile to the idea. On 3 July 1962 he called another meeting of all adult Swazis at Lobamba to discuss the matter. Swazis turned out in large numbers and this seems to have intimidated him. The King and the SNC addressed the people on several issues without touching on the constitutional proposal because they were suspicious of the reaction of the crowd. The monarchy preferred to privately interrogate the leaders of the SPP who were summoned to appear before the executive Council of the SNC – the *liqoqo*. They refused to budge from their position and the monarchy resorted to threats and denounced all those who embraced the ideas of political parties that ran contrary to that of the monarchy. Several similar meetings continued in August without achieving anything until people soon got tired and stopped attending the meetings.[82] This means that there was a total deadlock on the

[81] Zwane, 'The Struggle for Power in Swaziland', 2-5.
[82] Kuper, *Sobhuza II: Ngernyama and King of Swaziland.*

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constitutional talks in Swaziland even among Swazis who refused to support Sobhuza's constitutional proposals which favoured the White minority in terms of equal representation with the black majority.

The Looming Prospects of an Imposed Constitution

In view of the deadlock, the British Colonial Office planned for a constitutional conference on Swaziland at Lancaster House in London in 1963 to which all Swazi political leaders would be invited to resolve the impasse. Meanwhile, among the Swazi, there was the fear that the British colonial administration might end up imposing a constitution on Swaziland if no negotiated solution could be found. In a letter published on June 1 1962 in the influential *Times of Swaziland*, a mouthpiece of the White community in Swaziland, the editor of the paper suggested that round table talks should be held with the various dissenting parties to arrive at a compromise before the British government stepped in**,** a *deus ex machina*, to impose on a constitution on Swaziland.[83]

The *Times of Swaziland* editor was directly targeting C. F. Todd, the influential chairman of the EAC, who was a hardliner and a close ally of the Swazi monarchy. Todd did not favour the idea of a round table conference in Swaziland before the London meeting with British officials. He believed that all differences between the parties and with the British government would be resolved in London. He explained that the Swazis were still to communicate their position to the *Ngwenyama* and, therefore, did not see any use of a constitutional conference

[83] 'Todd Replies to Times Leader', *Times of Swaziland*, June 15, 1962.

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with the Resident British High Commissioner which would, in any case, not produce any better results than the existing constitutional proposals. He recognised the fact that the five official members of the constitutional committee were totally at loggerheads with the EAC but insisted that their dissenting views were not binding on the British government's position on the matter. While agreeing that delays at arriving at a consensus on a constitution were intolerable, Todd pointed out that they could not be avoided. The EAC was not in a position to break the deadlock with the five government officials but he disapproved their dissenting views which were not necessarily those of the British government.

Todd further pointed out that the delays in making progress with the constitutional talks were having a negative effect on the economy and that one of the major contributions to economic stagnation was the threat contained in the permanent officials' dissenting views that Europeans should be reduced to a minority in the legislature, despite their economic weight. This factor would restrict European investment in the territory. Todd indicated that the EAC was not ready for any compromise on the issue of equal European representation in the envisaged Legislative Council and he stated that he had the full backing of the *Ngwenyama*-in-Council. He said Europeans had already expressed their opinion on the constitutional proposal that the committee drafted in the referendum.[84] The EAC through its leader, Todd, were not ready to budge from their position and were not ready for any round table conference.

[84]Ibid.

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Todd's argument that the dissenting views of the British Official Members might not necessarily be those of the British government appeared plausible at face value. However, a perusal of the despatch of the British Colonial Secretary containing his preliminary views on the proposed constitution shows that he was in total agreement with the position of the British Official Members in colonial Swaziland. In essence, the views of the British Official Members on the constitutional committee were similar to those of the British Colonial Office. The EAC deliberately ignored this fact. They were not ready to budge an inch on the 50-50 representation in the Legislative Council and negotiate with the Progressives whom they consistently belittled and disregarded as senseless radicals. But the constitutional viewpoints of the political party leaders had effectively shaped the thinking of the British officials in Swaziland and in London.

It is against this background of a constitutional deadlock that the British Secretary of State for Colonies, R. Maudling, appointed D. S. Stephens in July 1962 as a legal and constitutional adviser to the Resident British High Commissioner in Swaziland, B. Marwick, to assist in the evaluation of public opinion in Swaziland on the proposed constitution and make recommendations. Stephens had been Crown Counsel in Nigeria from 1948 and Senior Crown Counsel from 1952. In 1957 he was appointed Legal Secretary in Malta and served there until 1962. His advice to the British government was similar to that of the Official Members of the constitutional committee.[85] He advised that the proposed 50-50 White-Swazi representation in the legislative Council, the whole idea racial federation and the exclusion of modern political organisations should not be considered. He also stated that 50-50 principle would not favour

[85] 'Constitutional Adviser from UK Due in Swaziland this week', *Times of Swaziland*, July 13, 1962.

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indigenous Swazis and would further imperil the objective of ensuring that Swazi interests eventually predominated. He supported the middle of the road position by proposing that eight Swazi members should be nominated by the *Ngwenyama*, eight Europeans on a European roll, four officials (with voting powers) nominated, and 12 members (eight Swazis and four Europeans) elected on a common roll with qualified franchise. He also emphasised the supremacy of parliament in controlling the actions of the government.

The EAC/SNC alliance did not like the position of the British legal advisor and, in a funny twist of events, they issued a joint statement on 14 September 1962 stating that the 50-50 proposal was acceptable to an overwhelming majority of the people of Swaziland. The joint statement also requested Her Majesty's government to promulgate the recommendations of the EAC/SNC constitutional proposals as the constitution of Swaziland as a matter of urgency because it had been accepted by an overwhelming majority of the people of Swaziland.[86] Todd's referendum concerned Whites only and the overwhelming majority voted in favour of the 50-50 constitutional proposal. Indigenous Swazis were overwhelmingly opposed to the draft constitution contrary to what Sobhuza was purporting and that was clear to the British colonial administration.

After taking into account the public reactions to the Constitutional Proposal in Swaziland and the opinion of the British legal and constitutional adviser, on December 8 1962, the Secretary of State invited the various stakeholders to Lancaster House in London for constitutional talks

[86] '50-50 Accepted by Swazis and Europeans: joint Statement', *Times of Swaziland,* September 14, 1962.

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on the future of Swaziland. The holding of a constitutional conference in Lancaster House, London, between the British colonial office and the Swazi nationalists is a typical aspect of British decolonisation processes, as various African colonies participated in constitutional conferences at the same venue as a prelude to their independence.[87]

The Lancaster House Constitutional Conference on Swaziland 28 January to12 February 1963

The announcement of the British Colonial Office that a constitutional conference for Swaziland would be held in Lancaster House in London was welcomed by Progressives in the belief that the constitutional deadlock created by the obstinacy of the SNC/EAC alliance would be unlocked. The Progressives saw the London conference as an opportunity to speak directly to the Colonial Office about their position on the constitution for Swaziland. The SNC/EAC alliance was sceptical of the Lancaster House Conference owing to the unpredictable attitude of British liberals and the prevailing anti-colonial mood in the UK. The British Liberal Party and liberals in general were in favour of a liberal democratic system tailored along Westminster lines and that was precisely what the SNC/EAC alliance was against. So they preferred that the talks should be held in Swaziland so that they could control matters and not in the UK.[88]

[87] With reference to British Nigeria, for instance, the African political elite attended the Lancaster House Constitutional conference in 1949, 1951, 1954, 1958 and 1959. In British Kenya the African political elite attended the Lancaster House constitutional conference in 1960, 1962 and 1963 during which constitutional arrangements for Kenya's independence were made. (For British Nigeria, see G. O. Olusanya, 'Constitutional Developments in Nigeria, 1861-1960', in O. Ikime, (ed.), *Groundwork of Nigerian history* (Ibadan: Heinemann Educational Books, 1980), 520-524. In the case of Kenya, see for instance, J. B. Ojwang, *Constitutional Development in Kenya: Institutional Adaptation and Social Change* (Nairobi: Acts Press, African Centre for Technology Studies, 1990).
[88] Stevens, 'Swaziland Political Development', 348.

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Nonetheless, they did not have much of a choice because the directives came from the Colonial Office in Britain.

In preparation for the London conference, the Progressives decided to coordinate their tactics and approach. On the initiative of the Swazi Democratic Party leader, S. Nxumalo, the political leaders, including Dr. Zwane and H. Y. Samketi, issued a four point programme calling for the establishment of a non-racial democratic state, a sovereign and independent Swaziland, the recognition of the *Ngwenyama* as a constitutional monarch, and universal adult suffrage. The Progressives protested vehemently against the inclusion of people holding dual citizenship in the EAC delegation and requested the government to give each party a minimum of four delegates.[89]

It is important to note, at this point, that the Swaziland political party protests were taken very seriously by Swazis and some of the hard core monarchists. For instance, just barely a fortnight before the opening of the London constitutional talks on Swaziland, a trusted and leading figure of the Constitutional Committee, Dr. Allen M. Nxumalo withdrew his support for the 50-50 arrangement that placed Whites and Swazis at par in the Legislature. Dr. Nxumalo, who had come under the influence of the arguments of the Progressive political leaders, felt that such an arrangement was unfair to the Swazi people with a population of 270,000 in contrast to Whites who were barely 9,000. He charged that there was no sincere intention on the part of

[89] Ibid., 'Bid to get Dr. Zwane to London fails, Mr. Nquku to represent the Progressives', *Times of Swaziland*, January 18, 1963.

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the Swazi monarchy of allowing the Swazi people to have a frank and honest discussion on the constitutional document, and getting a real mandate from the people. He charged that the Swazi monarchical scheme of a federation of races was simply disguised apartheid in Swaziland.[90] The SNC/EAC coalition was hard hit and embarrassed by Nxumalo's attacks. Essentially, before the London constitutional talks on Swaziland, there were cracks on the SNC grouping, as some members felt Sobhuza was not prepared to listen to the voice of the Swazis. Meanwhile, the hope of a compromise of all Swazi nationalists was pinned on the Lancaster House, London Constitutional Conference.

Choosing Delegates for the Lancaster House

The Government Secretary, A. Long, was responsible for selecting the delegates to the London Constitutional Conference. The British ensured that all the stakeholders, such as the members of the SNC, EAC, the Progressives, the Euro-Africans, and Special Interest groups were included. The Secretary of State for Colonies, D. Sandys, issued invitations to delegates to attend the constitutional conference as follows: two delegates to represent the government, six representatives of the Swazi National Council, four representatives of the European Advisory Council, one representative of the Swaziland Progressive Party, one representative of the Swaziland Democratic Party, one representative of the Mbandzeni National Convention, and a representative of the Eurafrican Community. Dr. D. Hynd, a European missionary long resident in Swaziland, was also invited. He was the head of a Christian Mission Station in Swaziland which ran schools, a teacher training college, a nursing training college, a large

[90] 'Political Alliance', *Times of Swaziland*, January 18, 1963. Stevens, 'Swaziland Political Development', 348

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hospital and several clinics. He represented missionary opinion in Swaziland. Table 3-3 contains a list of all the delegates to the Lancaster House Conference and their affiliation.

Table 3-3:
Delegates to the Lancaster House, London, Constitutional Conference on Swaziland in January 1963

	Name	Affiliation
1	B. Marwick	British Resident Commissioner in Swaziland
2.	M. Fairlie	Secretary for Social and Political Affairs in the Swaziland Government
3	P. L. Dlamini	Swazi National Council
4	B. A. Dlamini	Swazi National Council
5	A. K. Hlope	Swazi National Council
6	M. P. Nhlabatsi	Swazi National Council
7	S. T. M. Sukati	Swazi National Council
8	J. M. B. Sukati	Swazi National Council
9	C. Todd	Leader of the European Advisory Council
10	B. Habbard	European Advisory Council
11	R. P. Stephens	European Advisory Council
12	D. Fitzpatrick	European Advisory Council
13	J. J. Nquku	Progressive Party of Swaziland
14	Dr. G. L. M. Msibi	Mbandzeni National Party of Swaziland
15	S. Nxumalo	Swaziland Democratic Party
16	A. Sellstroom	Euroafrican Welfare Association
17	Dr. D. Hynd	Missionary, Freelance, not tied to government or political party

Source: Compiled from *The Times of Swaziland*, January 18, 1963.

It should be pointed out that the choice of delegates to the Lancaster House talks was more representative of Swazi society that the members of the Constitutional Consultative Committee. The Coloureds, operating under the Euro-African Welfare Association, had protested to the colonial administration about their exclusion and they were now represented in the Lancaster House talks. Dr. Hynd, who represented missionary interest, was also included.

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The constitutional deliberations started in earnest on 28 January 1963 and there was an air of optimism as the delegates were visibly excited at the prospects of independence and Britain's commitment towards that goal.[91] The opening session was presided over by the British Colonial Secretary of State Sandys, while the subsequent meetings were presided over by Lord Lansdowne, Minister of State for Commonwealth Affairs. After welcoming the delegates, Sandys announced that the British had no preconceived plan but would try to look into the views of all concerned parties and put forward a compromise formula on both the political and economic fronts. When the recommendations of the SCN/EAC over which there had been a deadlock were tabled, the mood of the delegates became grim. The contentious 50-50 proposal split the delegates into two camps. On the one hand were the political parties, the Euro-Africans and Dr. Hynd, who were ferociously against the proposal, while on the other was the SNC/EAC alliance who were in favour. Neither camp was prepared to change its mind.

The EAC delegates expressed their wish to see the incorporation of Swaziland into or, at least, for it to be part of federal arrangement with South Africa. They felt that this could be better achieved with the assistance of the Nationalist Party which was then in power in the neighbouring country. The SNC supported their ally and calculated that they could successfully stem the ride of radical African nationalism by accepting a Bantustan status within the protective shield of South Africa.[92] The British ignored the request to hand over Swaziland to the apartheid regime. Meanwhile, the

[91]The pictures in *The Times of Swaziland* showed the delegates all smiling and the caption read as follows: 'Talks Begin with Smiles But End in Deadlock', (see Appendix 5 and 6).

[92] Stevens, 'Swaziland Political Development', 328. It should be noted that this author was resident in Basutoland. Consequently he was very close to the events he is describing and knew most of the actors.

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British government and the Progressives wanted mineral rights to be vested in the Legislative Council and not in an individual, while the SNC/EAC alliance wanted Sobhuza to be in control of them. The British Government rejected the SNC-EAC constitutional proposal and tried to propose a formula which would allow for a degree of universal adult suffrage, the African traditional method of voting and European universal adult suffrage, but this was rejected by all delegates. When discussions seemed to be getting nowhere, Sandys became increasingly impatient. In the words of Kuper,

> On Sunday 12 February, about 10.00 pm, [Sandys] came into the meeting and announced harshly that since agreement could not be reached; he would have to impose a constitution. There was a brief stunned silence.[93]

Sandys then adjourned the meeting and when it resumed, Lord Lansdowne took the chair, but there was no progress. On 13 February the Lancaster House Conference ended in a deadlock and the delegates returned home.[94] The Lancaster House conference had failed to resolve the Swaziland constitutional deadlock.

Back to Swaziland: The Struggle Continues.

The delegation returned to Swaziland frustrated by the stalemate. The SNC delegation reported back to Sobhuza. Thereafter, Todd and Sobhuza embarked on a feverish series of political

[93] Kuper, *Sobhuza II: Ngwenyama and King of Swaziland*, 232-233. Kuper was in a position to give a graphic account of what transpired in Lancaster House in London because of her close relationship with Sobhuza for decades and because she was the *Ngwenyama*'s official biographer. She therefore had privileged information about the day-to-day activities of the *Ngwenyama*. Her book, therefore, contains a lot of first hand reporting.

[94] 'Talks begins with smiles but end in deadlock', *Times of Swaziland,* February 15, 1963; 'Constitutional Talks End', *Izwi Lama Swazi,* February 23, 1963. Also see Stevens, 'Swaziland Political Development', 22.

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manoeuvres to pressure the British colonial office to revisit its position to impose a constitution on Swaziland. Todd reacted angrily to Sandys' suggestion that a constitution would be imposed on Swaziland. He warned that an imposed constitution would not work and would simply be a dead letter. He also stated that he had the full support of the SNC to speak on its behalf and that it had been agreed by both the EAC and the SNC that a monarchical form of government should be established in which the Swazi King would be King of all the people of Swaziland and not only indigenous Swazi people.[95]

Todd also reported to Sobhuza his own version of events that transpired at Lancaster house in London and told the *Ngwenyama* that the King had to demonstrate that nation was behind the constitutional proposal that the British had rejected. He suggested that Sobhuza should write a letter to the Resident Commissioner asking the government to conduct a referendum of the entire population on the constitutional proposal which the British had rejected. On Sobhuza's request, Todd drafted the letter for the Resident Commissioner on the question of the referendum, which the *Ngwenyama* then discussed with the SNC.[96] It was improbable that the British Resident commissioner could permit the organisation of a referendum on the Swazi constitutional question because the matter had already been examined at a higher level in London and the colonial Office had already taken a decision that a constitution was going to be imposed on Swaziland since there was no unanimity among the delegates. The Resident Commissioner could not, therefore, act

[95]'Todd on the Talk in United Kingdom: An Imposed Constitution Would not Work', *Times of Swaziland,* March 1, 1963.

[96] Kuper, *Sobhuza II: Ngwenyama and King of Swaziland,* 233. Kuper was in a position to give a graphic account of what transpired in Lancaster House in London because of her close relationship with Sobhuza for decades and because she was the *Ngwenyama*'s official biographer. She therefore had privileged information about the day-to-day activities of the *Ngwenyama*.

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against the decision of his boss. The Swazi public had been generally very critical of Sobhuza's proposal of a racial federation with equality of indigenous Swazis and a handful of Whites in the legislature. A free and fair referendum on the SNC/EAC constitutional proposal did not stand a chance of being adopted and Sobhuza could not, therefore, envisage such a political risk.

Sobhuza proceeded to mobilise Swazi opinion in favour of the rejected constitutional proposal by back tracking on the unpopular 50-50 equality clause of legislative representation between Whites and blacks and by sending out some of the younger trusted members of the SNC to sound the people's opinion on the constitutional proposal which had been submitted to the British colonial authorities. With reference to the equality clause, Sobhuza tried to be manipulative. He stated that, by representation on an 'equal basis', he did not mean numerical equality between Whites and indigenous Swazis in the Legislature but equality in the general representation of black and White interests in the territory. He stated that he could not accept "the non-racial system" where minorities were ignored and would be swallowed by majorities because it was wrong. Furthermore, he stated that he could also not accept the full implementation of the Westminster European system of governance anchored on universal adult suffrage which was being offered by the British because it would erode essential Swazi values.[97]

In a bid to mobilise Swazi opinion in favour of the constitutional proposals, Sobhuza's SNC decided to send 12 men for a tour around the country to emphasise to Swazis the importance of national unity under the *Ngwenyama* and the need for stability in a world endangered by strife

[97] Ibid, 233-237.

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from radical nationalism. On their return from their sensitisation campaign, the delegation reported to the *Ngwenyama* that the people were solidly behind him and they rejected Western ideas of democracy. A committee of seven men were then selected to draft a national resolution to be submitted to the British.[98] On 9 March 1963, it was the turn of the Swazi constitutional delegates from the abortive Lancaster House Conference to address a crowd of over 4000 people at Lobamba on what happened in London. They praised the SNC/EAC constitutional proposal as a good document for the consolidation of Swazi values and national unity that needed to be supported by Swazis.

While the Swazi monarchy was struggling to propagate the merits of the rejected SNC/EAC constitutional proposal to be people, the British colonial administration stood firm in its resolution to impose a constitution on Swazis. On 13 March 1963, the Resident Commission communicated to Sobhuza the provisional conclusions of the Secretary of State for colonies on the rejection of the SNC/EAC constitutional proposal and the determination of the British administration to impose a constitution on Swaziland because of the stalemate in Lancaster House. The Swazi monarchy had a quick response for the British. On 14 March, on behalf of the SNC, Prince Masitsela responded to the Resident Commissioner as follows:

> We, the members of the SNC herein assembled in the Council Chambers, Lobamba, this 14 March, 1963 resolve that:
>
> 1. We are very grateful for the Report on the Constitutional Talks in London, notably, the provisional conclusions of the Secretary of State for colonies.

[98] Ibid.

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2. As they are a complete departure from our proposals of a Legislative Council (LEGCO) based on racial federation or communal representation, these provisional conclusions of the Secretary of State must be referred to the people for whom we speak who will give us a fresh mandate.
3. Another meeting will be called for the 15th of April 1963 to crystallise these ideas.
4. Government will be furnished with the views of the Swazi Nation by the 23rd April 1963.[99]

Meanwhile, Todd also tried to keep the White constituency firmly in support of the SNC/EAC constitutional proposals. He polled the opinion of the White community on the committee's constitutional proposals in May 1963.

The Sobuza-Todd political manoeuvrings were an indication of how nervous the two leaders were about the impending imposed constitution. Their worry was that space could be opened up to the political parties who would compete for power and influence with them. That Sobhuza and Todd could disagree so consistently with the British over the details of the Swazi constitution shows the extent to which they were determined to protect their interests. However, the British had the last word.

Conclusion

It has been demonstrated in this chapter that the constitution making processes in colonial Swaziland were triggered by the rise of nationalism in West, East and Central Africa that characterised the post-Second World War era. The decolonisation wind was accompanied by the

[99] Ibid, 233-234.

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clamour for self-government and independence and this affected Swaziland, thereby setting the terrain for the various stakeholders to position themselves.

The constitutional debate in colonial Swaziland was hinged on one question: should the transition to political modernisation be achieved through popular sovereignty exercised by the nascent political parties or through the traditional structures of the Swazi monarchy? The response of the constitution-making elite reflected their profound grounded interests. The Swazi monarchy and the SNC in the territory were against political modernisation in the shape of popular sovereignty and ballot box democracy and were determined to inherit the post-colonial state at the expense of the political party leaders. They were supported in their conservative political stance by the White community who had vested economic interests in the territory and were a powerful force to reckon with. The Whites trusted the traditional monarchy as a reliable ally who could protect their economic interests, unlike the radical nationalists of the Nkrumah brand whose ideology was a threat to their economic investments. Behind the Swazi monarchy and the White community was the apartheid South African government. South Africa had an important stake in Swaziland owing to the fact that the territory was largely sandwiched by the republic. South Africa nursed the fear of the development of radical modern African nationalism because of the unsettling spill-over consequences it could have on the apartheid regime.

For the South African regime to enjoy tranquillity, it had to replicate itself in Swaziland through its proxies-the traditional Swazi monarchy and the White immigrant community who were largely of South African origin. South Africa achieved this objective by tele-guiding the constitutional standpoint of Sobhuza's Swazi National Council and Todd's European Advisory Council.

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The Sobhuza-Todd constitutional proposals, essentially, were intended to stymie the rise of radical nationalism which was an anathema to Swazi political traditionalism, the economic interests of the White community in Swaziland and the South African apartheid regime. Radical nationalism represented by the leaders of the nascent political parties echoed themes such as universal adult suffrage and a single electoral roll, equality of all races, nationalisation, Africa for Africans, and pan-Africanism. The Sobhuza-Todd constitutional proposal was, therefore, designed to contain and neutralise these tendencies.

The Sobhuza-Todd constitutional proposal envisaged an equal 50-50 representation of indigenous Swazis representing a population of 170,000 and the White community of just 9,000, in the Legislative Council. In a spirit of an apartheid-like ideology referred to as the 'federation of races', Sobhuza proposed that Europeans would vote on a separate roll following universal adult suffrage, while indigenous Swazis would vote on a separate roll according to the African practice of acclamation of candidates who would have to be endorsed by the monarchy. The Sobhuza-Todd constitutional proposal also provided for the exclusion of a list of subjects, such as land and minerals, from Legislative control and in favour of the monarchy. The White community trusted the conservative Swazi monarchy as the guarantor and insurer of their economic interests rather than the legislature. Todd's European Advisory Council, therefore, lobbied for overwhelming powers to be vested in the Swazi monarchy.

The radical political leaders countered the constitutional stance of the Sobhuza-Todd alliance and were either fired or forced to resign from the Constitutional Consultative Committee. For over

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three years, no consensus could be reached on the details of a constitution for Swaziland owing to unbridgeable differences between the conservative stance of the Sobhuza-Todd alliance and the modernist stance of the nascent political parties. In essence, Sobhuza, with the support of Todd, wanted to enter modern politics with the political culture and tradition of Swaziland intact. This political stance smacked of historical anachronism and disguised apartheid by emphasising separate African and European political cultures. However, the White community was comfortable with Sobhuza's conservatism at the expense of the stance of Swaziland's modern political leaders. When the Sobhuza-Todd constitutional proposals were sent to the colonial Office in London for approval, they were largely rejected and sent back to the territory to have inputs from the general public.

By the time the British Government invited the various protagonists in Swaziland for the Lancaster House Conference in early 1963, no agreement had been reached owing to the intransigence of the Swazi monarchy and the White community in refusing to make any concessions, and the successful propaganda the radical political parties launched against the apartheid-like constitutional proposal. The Lancaster House conference expectedly ended in smoke despite the efforts of the colonial administration to strike a compromise. It was because of its frustration with the protagonists that Britain promised to impose a constitution on Swaziland. The next chapter deals with the British solution to the constitutional stalemate and further constitutional developments.

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CHAPTER FOUR

THE 1963 CONSTITUTION AND SWAZILAND'S FIRST LEGISLATIVE AND EXECUTIVE COUNCIL

Introduction

This chapter examines how Britain assumed full responsibility as the administering colonial authority by imposing the 1963 constitution on all the parties and calling for elections as a way of ending the constitutional deadlock. The constitutional stalemate at the Lancaster House Conference was caused by disagreements over the issues of the nature of the electorate, universal adult franchise and the exact role of the monarchy in Swaziland.

The 1963 constitution which Britain imposed on Swaziland provided for limited internal self-government, with Her Majesty's Commissioner having veto rights over every subject. All the key players complicated matters for the British by unanimously rejecting the constitution for different reasons which are explored in this chapter. The chapter highlights how these problems were further compounded by the clash between British constitutional values, on the one hand, and those of the Swazi monarchy and its White Swazi and South African allies, on the other hand, before and after the June 1964 elections. Whereas the British struggled to convince the traditional monarchy to maintain absolute neutrality in modern politics like the English monarchy, the White Swazis and the South African government advised Sobhuza to form a political party and enter modern politics to capture power as an executive leader.

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The intense political manoeuvrings before the 1964 elections are highlighted to underscore the importance of the elections to Swaziland's constitutional developments. It was from Swaziland's maiden Legislature emerging from this election that a constitutional Committee was selected to revise the British-imposed constitution. The contest for access to the Legislature among the various political groupings was pronounced, as this was important for their political survival and because the winner of the contest would shape the nature and direction of Swaziland's constitutional development.

Circumstances which led to the Swazi monarchy entering modern politics against the wishes of the British and the transformation of the European Advisory Council into a political party are explored in this chapter because of their implications for constitutional developments in Swaziland. The royal party, the Imbokodvo, and the White Swazi party, the United Swaziland Association (USA) swept all the seats in the June 1964 elections at the expense of Swaziland's radical political parties. Thus, Swaziland's first historic Legislative and Executive Council excluded the radical nationalist parties. The composition of the constitutional Committee for the revision of the 1963 constitution was, therefore, favourable to the conservative order, while the radical nationalist parties languished as the extra-parliamentary opposition.

Towards the Imposed 1963 Constitution for Swaziland

The failure of the British government to reconcile differing opinions during and after the Lancaster House constitutional talks in early 1963 left the British Secretary of State with no choice but to assume his fully responsibilities. On 20 May 1963 the British Government announced that a constitution, which would be a compromise taking into account the viewpoints of the Swazi

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traditional monarchy, the European Advisory Council and the political party leaders who were not adequately represented in the tribal structures, would be promulgated for Swaziland.

The traditional monarchy and White minority had stood for a constitution in which the Legislative Council membership would be evenly divided between those members chosen by indigenous Swazis through the traditional method of acclamation and by the White minority on a purely White roll based on universal adult suffrage. This 50-50 arrangement did not go down well with the British and the nascent political parties who advocated for a constitution which provided for a Legislature based on universal adult suffrage and a 'one-man-one vote' arrangement with no reserved seats and no qualification for voters on racial grounds. The British compromise envisaged a constitution in which the membership of the Legislative Council would be chosen by three distinctly separate methods to please the Swazi traditionalists, the White minority and the Swazi political leaders. One third of the members of the Assembly would be chosen by the indigenous Swazis in their traditional way of acclamation, one third would be chosen by the White minority on a single, territory-wide European roll, while the remaining third would be chosen by all qualified voters on a national roll. The British expected to satisfy all the stakeholders by this tripartite plan.

The Secretary of State presented the proposed constitution for Swaziland to the British Parliament. Both Houses of British Parliament released a White paper on the constitution for Swaziland on 30 May 1963. On 31 May 1963, the White paper began with the statement that the constitution provided for Swaziland was in line with the Swaziland Order-in-Council of 1903 which established the British Protectorate over Swaziland. The Order-in-Council, which provided for a new constitution for Swaziland, was finally enacted on 20 December 1963. It was published in the

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Swaziland Government Extraordinary Gazette on 2 January 1964 and came into operation the following day.[1]

The constitution provided for an Executive and Legislative Council. Executive powers were to be exercised by Her Majesty's Commissioner (formerly the Resident Commissioner) who was to be assisted by an Executive Council of 3 ex-officio members plus 5 others appointed by Her Majesty's Commissioner. The 3 ex-officio members were to be the Chief-Secretary, the Attorney General and the Secretary for Finance and Development. One appointed member would be an official and the other 4 would be appointed from among the members of the Legislative Council. It was stated in the White Paper that Her Majesty's Commissioner had a right to veto any decision of the Council if he deemed it necessary to do so. In such a case, he would have to report the matter to the Secretary of State and give reasons for his actions. This meant that Her Majesty's Commissioner had the last word in matters of the overall governance of the territory.

The status of the Her Majesty's Commissioner was equivalent to that of a Governor in other British dependencies. Her Majesty's Commissioner was to legislate by proclamation until the Legislative Council was formed under the new constitution after the holding of elections in the territory. Since executive power was vested in Her Majesty's Commissioner, power was still in the hands of the British.

[1] SNA: Swaziland Government Gazette Extraordinary, Vol. III, Mbabane, Thursday 2nd January, 1964; No. 15 'New Swaziland constitution Comes into Force Today: Order in Council Published', *Times of Swaziland*, 3 January, 1964.

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The Legislative Council was to consist of the Queen's Commissioner, the Speaker, 24 elected members and 4 officials and nominated members. Her Majesty's Commissioner was entitled to use his discretion when appointing the Speaker who was from outside of the Legislative Council. A complicated electoral process was introduced in a bid to accommodate the viewpoints of those in favour of universal adult suffrage and those against. In the light of this, the 24 members were to be elected as follows:

(i) 8 Swazis certified by the *Ngwenyama*-in-Council as elected by traditional methods;

(ii) 8 Europeans, four of whom would be elected by voters on European roll and four of whom would be elected on national roll.

(iii) 8 persons on any races elected by voters on a national roll.[2]

In addition, the government would appoint up to three more persons to represent minority interests. Adult tax payers and their wives who were British subjects or British protected persons and had lived in Swaziland for at least three of the previous five years could register on the national roll. A bill passed by the Legislative Council could not become a law until Her Majesty's Commissioner had assented to it. The Commissioner had a right to assent, refuse to assent or reserve the Bill for the signification of Her Majesty's pleasure.

Traditional matters were to be regulated by Swazi law and custom. These included the following:

(i) The office of the *Ngwenyama*

(ii) The office of the *Indlovukazi* (the Queen Mother)

[2] 'Swaziland constitution Announced', *Izwi Lama Swazi*, June 8, 1963, 3; 'Swaziland constitution Announced, 8 Seats reserved for Whites out of 24 elected members', *Times of Swaziland*, May 31, 1963.

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(iii) The appointment, revocation of appointment and suspension of chiefs

(iv) The composition of the Swazi National Council, the appointment and revocation of appointment of members of the Council and the procedure of the Council

(v) The Incwala ceremony

(vi) The Libufto (regiments).[3]

What powers did the *Ngwenyama* wield under the 1963 constitution? The *Ngwenyama* was clearly an ambitious man who did not want to be overtaken and emptied of his powers by the politics of constitution-making in colonial Swaziland. In this struggle, he had the support of the resident White community in Swaziland, the South African government and multinational capital but not that of the British colonial administration. The *Ngwenyama* was more trustworthy in the eyes of investors because of his conservatism unlike the radical politicians who espoused the principles of radical African nationalism, especially the Africanisation and nationalisation of private property. Of the three High Commission Territories, Swaziland was the most important in terms of its economic potentials. Swaziland was believed to be endowed with mineral wealth, unlike the other High Commission Territories, which the multinationals were interested in.[4] Colonial investors, mainly the Commonwealth Development Corporation (CDC),[5]were the major investor in Swaziland's Forestry and Sugar industries which employed thousands of Swazi workers and had an interest in the maintenance of political stability which was conducive for capital accumulation.

[3] SNA: Swaziland Government Extraordinary Gazette, 2 January 1964; 'constitution Now in Operation', *Times of Swaziland*, January 3, 1964.

[4] J. Daniel, 'The Political Economy of Colonial and Post-Colonial Swaziland', *South African Labour Bulletin*, 7, 6 (1982), 90-113.

[5] Macmillan, 'Swaziland: Decolonisation and Triumph of Tradition', 661.

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The political economy of Swaziland dictated the type of support the Swazi traditional monarchy was given by White economic interest groups who were convinced it was easier to deal with the conservative Swazi monarchy than the radical nationalists who could not be trusted. Against a background of the wind of radical nationalism blowing over Africa, which threatened private, investments and the Swazi traditional authorities who were seen as an impediment to modernisation, it is easy to understand the establishment of an alliance between the economic investors in Swaziland and the conservative Swazi monarchy. The *Ngwenyama*, was, therefore, confident enough and had the temerity to challenge the British who instructed him to stay out of modern politics because of the backing of the White business class and multinational interests in Swaziland.

The approach of the investors and the British to constitutional matters in Swaziland was clearly dictated by their respective interests. The investors saw the *Ngwenyama* as the protector of their interests and, therefore, supported a political order which would catapult him into the arena of modern politics and, at the same time, insulate him from the dangers of parliamentary democracy which could deplete his powers. The British approach to constitutionalism was totally different and was dictated by their own historical experiences and their ambition to bequeath a modern operational parliamentary political system to Swaziland with a titular monarchy. The British insisted that the Swazi traditional monarchy should be restricted to a ceremonial role. In defining British policy towards African traditional rulers and decolonisation, Lord Cohen of the British Colonial Office stated clearly in 1951 that the beneficiaries of the transfer of power in British dependencies to the post-colonial modern states should be the Western educated elite through the

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instrument of multiparty political contestation and not African traditional rulers.[6] African Chiefs and Kings were to be restricted to the domain of culture and tradition, no more, no less. The supremacy of parliament that had to emanate from multiparty elections was underscored. Because of British insistence on the election of a Legislature and the supremacy of Cabinet as a cardinal point of its political modernisation project throughout the decolonisation phase in Swaziland, there is need to present a précis of British constitutional history with reference to the relationship between the British monarchy and the House of Commons (parliament).

During the reign of Queen Elisabeth I (1533-1603) of England a conflict started between the monarchy and the House of Commons. The Monarchy believed in the Divine Rights of Kings and opted for absolutism while the elected members of the House of Commons claimed they had the right to deal freely with all matters of grievances and policy as the peoples' representative. When King James I ascended the throne in 1603, he challenged the claim of parliamentary supremacy and asserted royal supremacy over parliament but it was under his successor that the conflict degenerated into a civil war. In January 1642 his son, Charles I attempted to arrest and impeach five members of Parliament for challenging royal authority and was resisted by the House. This conflict deteriorated into a civil war between the King and Parliament and it resulted in the triumph of the parliamentary army over the royalists. The English King was tried and executed in 1649 and a period of chaos followed. The conflict was finally resolved in 1689 when the British monarchy accepted the Declaration of Rights which upheld the supremacy of parliament over the

[6] See Robinson, 'Andrew Cohen and the Transfer of Power in Tropical Africa 1940-1951', J. Flint, 'Planned decolonization and its failure in British Africa', *African Affairs*, 82, 328 (1983), 389-411; R. C. Crook, 'Legitimacy, authority and the transfer of power in Ghana', *Political Studies*, 35, 4 (1987), 552-572.

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monarchy, meaning that only the Commons could make laws.[7] This background explains British political thinking about the supremacy of parliament in governance and the ceremonial role of the monarchy. The British colonial administration also wanted that the Swazi monarchy should play a mere ceremonial role like the British monarchy and stay clear of partisan politics.

The British-crafted 1963 constitution provided that the *Ngwenyama* would be entitled to see all papers sent to the Executive Council and would receive a copy of each Bill passed by the Legislative Council. He could bring matters of interest to him before the Executive Council for consideration. With reference to the country's land and minerals, ownership was invested in the *Ngwenyama* on behalf of the Swazi Nation but the Legislative Council was given power over their allocation.[8] Put differently, the Legislative Council and not the King had control over minerals. Effective powers were, therefore, not in the hands of the *Ngwenyama;* his real importance lay in handling Swazi traditional and cultural matters.[9] This did not please the *Ngwenyama* and the investors, including the White minority, who saw him as their insurance against any encroachment on their property rights by radical nationalists. The 1963 constitution, in essence, excluded the *Ngwenyama* from the newly created public spaces of modern politics. He was relegated and

[7] For more on the conflict between the British monarchy and parliament in the 17th century see D. C. North, and B. R. Weingast, 'Constitutions and Commitment: the Evolution of Institutions Governing Public Choice in Seventeenth-Century England', *The Journal of Economic History,* 49, 04 (1989), 803-832; C. J. Davis, 'Blair Worden, Roundhead Reputations: The English Civil War and the Passions of Posterity', *Parliamentary History,* 21, 3 (2002), 397-398; C. Hill, 'Parliament and People in Seventeenth-Century England', *Past and Present,* 92, (1981), 100-124.

[8] SNA: Swaziland Government Extraordinary Gazette, 2 January 1964; Stevens, 'Swaziland Political Development', 22.

[9] 'Constitution Now in Operation', *Times of Swaziland,* January 3, 1964.

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restricted to the domain of culture and tradition in line with British political thinking about the governance of a modern state.

In essence, the proposed constitution took into account the racial configuration of Swaziland and the fact that many Swazis were outside the tribal framework. It allowed the Swazis and the tribal elements, jointly, to lead the way, and they could only be checked by the reserved powers of Her Majesty's Commissioner and the Crown. The contentious 50-50 proposal was changed to the 30-30-30 which allowed for the election of 8 indigenous Swazis according to the traditional method, 8 Europeans on a territorial-wide European electoral roll and 8 other people on a national roll on basis of universal adult suffrage on a one man, one vote basis.

The 1963 constitution was the first constitution in colonial Swaziland and was the first clear step towards the introduction of full self-government leading to independence. Although Swaziland remained a Protectorate state in which Her Majesty the Queen of England possessed full jurisdiction, some degree of power devolution was effected under the constitution in favour of the inhabitants of Swaziland. The constitution introduced limited self-government in a mono-cameral Legislature since the British High Commission had veto powers in both the Executive and legislative Councils.[10] The responsibility for defence, external affairs, internal security, finance

[10] Elsewhere in British Africa like Ghana for instance, internal self-government was instituted in 1951 under the Burns constitution with K. Nkrumah as leader of Government Business. In 1957 Ghana became independent with Kwame Nkrumah as its first Prime Minister. This is in contrast to the situation in Swaziland in 1963 where the head of the Executive Council was still a British. (For more on Ghana's constitutional development during the colonial period see Bourret, (ed.), *Ghana: the road to independence, 1919-1957*; W. R. Louis, and R. Robinson, 'The imperialism of decolonization', *The Journal of Imperial and Commonwealth History*, 22, 3 (1994), 462-511.

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and the civil service was reserved to Her Majesty's Commissioner. Nonetheless, it was an important preliminary step in taking colonial Swaziland into modern governance.

The 1963 constitution had certain glaring weaknesses, however. Although a compromise document, the constitution endorsed the idea of a federation of races by allowing Whites to be on a separate electoral roll and to enjoy adult universal suffrage, while the same was not true for all blacks. The constitution was also not gender sensitive in the sense that widows, unmarried women, and women in a polygamous set-up who were married after the first wife were not enfranchised. According to Matsebula, the inclusion of a clause which excluded many eligible women caused a great deal of consternation among the Swazis because they regarded it as an attack on their tradition.[11] Swazi women protested against disenfranchisement. They argued that the unmarried women were being punished for not getting married, while widows were punished for the death of their husbands.[12] They suggested that this restriction should be removed.

The Order-in-Council caused division among Swazi families because a Swazi man with many wives had to choose one wife to vote. Prince Masitsela, a member of the Swazi National Council and the first Legislative Council, pointed out that this arrangement brought chaos to families. He recalled that, of his three wives, he had to choose the senior wife, LaMalaza to vote and this

[11] Matsebula, *A History of Swaziland*, 237.

[12] 'Ngwenyama Urges all to Register: Swazi Women demand the vote', *Times of Swaziland*, February 14, 1964; Interview with Prince Masitsela, Emafini, 25 January 2015.

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brought pain to the others.[13] This was, indeed, a problem because all the three women were legally married to him according to Swazi law and custom.

The Reactions of the Key Players to the constitution

In trying to please all the stakeholders through the 30-30-30 formula to incorporate White Swazis, the conservative monarchists and the radical political leaders, the British ended up pleasing no one. The Swazi monarchy, the White community, and the political party leaders generally faulted the constitutional document for different reasons. The 1963 constitution was, therefore, not a uniting document as all the protagonists took a shot at it. The SNC/EAC alliance was totally against the constitution, so were radical political parties.

King Sobhuza and the Swazi National Council

The *Ngwenyama* appeared to be the greatest loser under the new constitutional dispensation because he was given no significant role in modern governance beyond being allowed to manage cultural and traditional matters. The *Ngwenyama* called the SNC to a meeting to discuss the White Paper on Swaziland's constitution which treated him so shabbily. The meeting discussed certain clauses in the proposed constitution that clashed with the wishes of the SNC which wanted to see the Swazi monarchy given a more prominent role in the constitution. The *Ngwenyama* decided to send a petition to the British Government to protest his marginalisation. Sobhuza sent a three member delegation to London to submit the petition to the House of Commons. Prince Makhosini led the delegation which included Polycarp Dlamini, the Secretary to the Swazi Nation, and A. K. Hlophe, the Private Secretary to the *Ngwenyama*. The delegation left Jan Smuts Airport on 14

[13] Interview with Prince Masitsela, Emafini, 25 January 2015.

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July 1963.[14] The *Ngwenyama* objected to the following matters which were not new namely, that the new constitution:

(i) sought to impose a system of electing members of the Legislative Council which was wholly unsuitable to and unacceptable by the people of Swaziland;

(ii) ignored the Protectorate status of Swaziland;

(iii) ignored the petitioner's rightful position as King of Swaziland.

(iv) took right to land and minerals away from the Swazi Nation; and also

(v) took away from the Swazi Nation, the Swazi National Council, and the *Ngwenyama*-in-council powers in regard to its own institutions.[15]

The *Ngwenyama* also pointed out that the method of conducting elections was confusing in the sense that it seemed that one person on the electoral roll should vote three times. The *Ngwenyama* suggested that there should be a Swazi traditional system and European voter's roll and a national roll. He pointed out that "any qualified European should have a right to choose to be registered either on the European roll or on the national roll, but not on both."[16] Any qualified Swazi should participate in the traditional way of conducting elections but would also have a right at any time to claim to be registered on the national roll and cease to take part in the traditional roll. Coloured people would have a choice of either participating in the traditional roll, or the European roll. In

[14] Historical Paper Research Archives, Collection Number AD 1715, News from Swaziland, 15 July 1963, http://www.historicalpapers.wits.ac.za/inventories/inv_pdfo/AD1715/AD1715-29-3-4-001-jpeg.pdf (Accessed 22 January 2015).

[15] 'Ngwenyama's Petition to the Commons: Wants Changes Made in the constitution', *Izwi Lama Swazi*, November 30, 1963.

[16] Ibid.

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essence, the *Ngwenyama* was unhappy because he was given little recognition in the constitution and was reduced to the role of manager of culture and tradition. The *Ngwenyama* was literally neutralised in the 1963 constitution and reduced to a figure head like a British monarch.

The Minister of State for Colonial Affairs, Lord Landsdowne received the Swazi delegation. The SNC delegation requested Conservative British Member of Parliament, Major Sir Patrick to present a petition on their behalf to the House of Commons. Following the presentation of the Swazi petition, Sir W. Teeling asked Sandys, the Secretary of State for Colonial Affairs, whether he would:

- Recognise the *Ngwenyama* as King of Swaziland;
- Grant an interview to the Swazi delegation representing the *Ngwenyama* in the next ten days to discuss the proposed constitutional changes in Swaziland;
- Modify the constitutional proposals for Swaziland contained in the White Paper by providing that the ultimate decision as to mineral concessions should be with the Swazi Nation;
- Modify the constitutional proposals for Swaziland contained in the White paper by providing that the High Commissioner should not have power of unlimited nomination of members of the elected Legislative Council, but that his powers should be restricted to the constitution.[17]

In response, Sandys made it clear that he was not prepared to reopen constitutional negotiations with the Swazis any more. He stated that the White Paper on the 1963 constitution was a result of three years of exhaustive consultation with different parties in Swaziland. The delegates were told

[17]Historical Paper Research Archives, Collection Number AD 1715, News from Swaziland, http://www.historicalpapers.wits.ac.za/inventories/inv_pdfo/AD1715/AD1715-29-3-4-001-jpeg.pdf (Accessed January 25, 2015).

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that the constitution was devised as the first step towards self-government. They were advised to go home and to make sure that the constitution worked.[18] The stance of the British Colonial Secretary was not good news for Sobhuza and his EAC allies. Todd advised Sobhuza not to give up the fight and to organise a referendum similar to the one he had organised to test European opinion on the constitutional proposal of the SNC/EAC.[19] It was believed that the people's endorsement of the *Ngwenyama*'s petition in a referendum might influence British opinion to change in favour of the *Ngwenyama*.

The *Ngwenyam*a and the SNC, therefore, decided to organise a referendum in order to show the support of the Swazi people for the King's petition against the 1963 constitution. The EAC expectedly endorsed the plebiscite while the political parties rejected it and tried to persuade people from participating in it. The British Colonial Administration made it clear that it would not recognise the plebiscite because it was of no value. During the campaign for the referendum, the SNC and Swazi Chiefs accused political parties of being disloyal to the Swazi King and of attempting to cause a civil war and divide the Swazi nation. They alleged that the Colonial Administration also wanted a civil war because it supported the political parties. Among the Swazi traditionalist and rural population it became anathema to be associated with political parties referred to in siSwati as *Uyiphathi,* a label for traitor.[20]

[18] Ibid.

[19] Ibid.

[20] Ibid.

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Since the level of literacy was low in the 1960s with less than 70 per cent[21] of the people educated, the electorate were asked to choose between two symbols: a reindeer and a lion. Only 30 per cent were educated. The political parties were depicted in the symbol of the reindeer - a strange animal with horns lacking a straight direction. The reindeer stood for the rejection of the King's petition while the lion stood for the support of the *Ngwenyama*'s petition against the 1963 imposed constitution. The Swazis, of course, could easily relate to the lion since the King in Swazi culture is also referred to as the lion and his children are referred to as cubs. The result was an overwhelming majority vote for the lion, meaning the people supported their King's petition against the 1963 imposed constitution.

Table 4-1
Referendum Results

	Lion	Reindeer
Swazis	122 505	154
Europeans	1 400	8
Eurafricans	313	0

Source: 'Sandys Answers Questions on the Referendum', *Times of Swaziland* February 28, 1964.

Those who voted for the *Ngwenyama*'s petition against the 1963 constitution were 124,218 people, while 162 voted for the imposed constitution.[22] The *Ngwenyama* was pleased with the results which he interpreted as a vote of confidence in him by the Swazi people.[23] Unfortunately, the referendum did not change anything as the British Government distanced itself from it and rejected

[21]The 70% statistics of the illiteracy rate in Swaziland in contained in the petition written by the President of the Swaziland student Union (SSU) to the British Secretary of State in 1967 (See, 'Student Leader Attacks constitution', *Times of Swaziland,* May 12, 1967.

[22] Matsebula, *A History of Swaziland*, 240.

[23] Interview with Prince Masitsela, Emafini, 25 January 2015.

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both the petition and the referendum.[24] The British Government tenaciously stuck to the 30-30-30 voting arrangement for the legislative elections scheduled for June 1964.

Todd and the European Advisory Council

Similarly, Todd was opposed to an imposed constitution on the grounds that "this constitution gave opportunities for the growing Swazi elite and professional class to exert their influence" which was not always favourable to the business class and investors.[25] He endeavoured to mobilise Whites in Swaziland to support Sobhuza's constitutional proposals. In June 1963 Todd went to the United Kingdom to seek modifications to the franchise plan.[26] He suggested the inclusion of South Africans on the national roll, but was turned down. One commentator, referring to his efforts, described him as 'Roy Welensky'[27] because of his uncompromising position and insistence on the rights of the White minority.[28] Again in August 1963, Todd came up with yet another plan. He suggested that Sobhuza conducts a referendum and then inform the colonial government that "Swazis have turned down the White Paper.[29] Sobhuza first recommended that Todd organise the

[24] 'Make the Constitution Work: Urges Fletcher', *Times of Swaziland,* September 13, 1963.

[25] 'Todd on the Talk in United Kingdom: An Imposed constitution Would not Work', *Times of Swaziland,* March 1, 1963.

[26] 'Todd Off to United Kingdom: Seeks Modifications of Franchise Plan', *Times of Swaziland,* July 5, 1960.

[27] Roy Welensky was the Prime Minister of the federation of Rhodesia and Nyasaland from 1956-1963. He distinguished himself as a hard-fighting and stubborn politician who stood for White supremacy and resisted attempts by the black majority to achieve an inclusive democratic system of government (see Mlambo, *A History of Zimbabwe,* xxxii).

[28] 'Todd Doomed to Same Eclipse as Welensky', *Times of Swaziland,* July 12, 1963.

[29] 'Todd: White Paper Turned Down by SNC: A New approach Suggested', *Times of Swaziland,* August 30, 1963.

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referendum but, later, decided to do it himself. A week later, the referendum was complete and Sobhuza used its outcome to petition the British Government. The *Times of Swaziland* commented:

> Following Todd's recommendation there has been a dramatic change of things in which the Swazi National Council says that practically the whole population was unanimous in rejecting the White Paper. Seemingly, the referendum was conducted some time back. [30]

The British government's refusal to accept the proposals from Sobhuza's Swazi National Council was disappointing for Todd as it was his last-ditch attempt to fight the British-imposed constitution. Addressing the Swazilanders Todd claimed that:

> [he had] spent a great deal of time of the past year negotiating with the British Government in London and with the Swazi National Council and Swazi leaders in trying to find a compromise that would be acceptable to the people of Swaziland and ensure a constitution that would give confidence to the bulk of their people in their future wellbeing. Unfortunately the British Government [had] pursued an uncompromising policy of imposing their will without reference to the vast majority of the people and this policy [had] brought the government into conflict with the Swazi nation led by the *Ngwenyama*.[31]

Todd maintained that he was sceptical of British Westminster democracy being applied to Swaziland as events in other parts of Africa had shown how impossible it was for minority interests to be protected under such a political system.[32] A pro-royalist, Prince Mfanasibili, described Todd as somebody who was open minded and was a staunch supporter of King Sobhuza II. Todd always

[30] 'SNC Petitions the Queen: Cable Sent to Sandy', *Times of Swaziland*, September 6, 1963.

[31] SNA, 'Letter from Carl Todd to Swazilander', Minutes of the Forth Reconstituted European Advisory Council Held 15 and 16 October, 1963.

[32] Ibid.

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feared that the law in Swaziland could be amended in a way that White businesses would be jeopardised. So he preferred to be always close to the *Ngwenyama* and to be possibly incorporated within Sobhuza's fief than lose his investment in Swaziland.[33]

White Interest Groups

Some White interest groups accepted the White paper proposal on the constitution. Michael Fletcher, the President of the Swaziland Chamber of Industries in Swaziland, urged the nation to accept the constitution and give it a trial.[34] Fletcher pointed out that the main concern was the uncertainty about the political future which was harmful to industrial progress. He, therefore, urged the nation to make the constitution work in order to achieve political stability which was essential to industrial development in Swaziland.

S. Gaiger, President of the Swaziland Chamber of Commerce and Industries, asserted that the constitution had recognised the contribution that the White community had made to the economic wellbeing of Swaziland. He pointed out that the nation should put aside any political differences with the object of building a prosperous nation.[35] Essentially, certain quarters in the White community which were concerned with protecting White economic interest felt that it was worthy giving the constitution a chance.

[33] Interview with Prince MfanasibiliDlamini, at Coates Valley, Manzini, 7 March, 2014.

[34] 'Make Constitution Work Urges Fletcher', *Times of Swaziland*, September 13, 1963.

[35] 'Reactions to the Constitution: Whites say let's do our best to make it work', *Times of Swaziland*, June 7, 1963.

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The Radical Political Party Leaders

The radical political parties, otherwise referred to as the Progressives, and the Swazi educated class were not happy with the constitution mainly because of the separate electoral roll for one set of blacks and Whites and another electoral roll for another set of electorates. The reservation of one-third of the Legislative Council seats for the minority European Community and the inclusion of the traditional methods of electing 8 Swazis were unacceptable to the Progressives.

The SDP disapproved of the constitution but indicated its intentions to cooperate in order to make it work.[36] The NNLC called an urgent National Executive Committee meeting on 1 June 1963 at Msunduza Hall in Mbabane to discuss the constitution. At that meeting, the party resolved to boycott the constitution. It rejected the constitution on the grounds that:

(i) It was discriminatory and 'racialistic' in that it allowed White South Africans to vote, while it denied the vote to the thousands of Swazis who work in the Republic of South Africa.

(ii) It blatantly and openly allowed separate voting of the "White settler minority" from that of the indigenous African majority in order to give the former more political power in addition to their present economic control of the territory.

(iii) It gave the Resident Commissioner or Her Majesty Commissioner enormous and uncontrolled power, while the position of the *Ngwenyama* as King of Swaziland was unsatisfactory.[37]

[36] 'The Constitution: A fresh Start Even Now', *Times of Swaziland*, September 6, 1963.

[37] 'The Ngwane National Congress Rejects the Constitution', *Izwi Lama Swazi*, October 5, 1963.

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The NNLC maintained that they wanted a democratic system of governance based on universal adult suffrage with the *Ngwenyama* as King of Swaziland. They pointed out that the *Ngwenyama* should not only be the King of the Swazis, but of Swaziland to whom all citizens irrespective of colour, race or creed owe allegiance.

In reaction to the constitution, the SPPS sent a letter to the Resident Commissioner, Brian Marwick, signed by the Party's President, J. Dlamini and the Secretary General, O. M. Mabuza, stating that the executive powers should not be vested in Her Majesty's Commissioner alone but should be shared with the Executive Council.[38] The party appealed for a change in the Legislative Council, suggesting that, of the 24 members, 16 should be elected on a national roll under the direct control of the *Ngwenyama.*

Apartheid South Africa

When it seemed obvious that the Sobhuza-EAC alliance were far from getting what they wanted, Dr. Verwoerd, the South African Prime Minister, moved swiftly and offered to incorporate the High Commission Territories, including Swaziland, into the Republic of South Africa. Verwoerd was pressing in September 1963 the claims of South Africa to the guardianship of Swaziland and the other High Commission Territories which would be led to independence under the system of "natural native democracy". This "natural native democracy" meant the system of the rule by African chiefs through Bantu authorities.[39] The EAC viewed the incorporation of Swaziland as a

[38] 'Reactions to the Constitution', *Times of Swaziland,* June 7, 1963.

[39] Macmillan, 'Swaziland: Decolonisation and the Triumph of tradition', 661.

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necessity for the White farmers who were hoping to benefit from the open market and other advantages given to South African farmers.[40] At the opening of the Transvaal Congress of the National Party in Pretoria on 3 September 1963, Verwoerd suggested that the territories should be allowed to develop to independence under the guardianship of South Africa instead of Britain. He said: "I am making an offer, almost a challenge," that "if South Africa were to become a guardian of these territories we could lead them to independence and economic prosperity far more quickly and more efficiently than can Britain." Verwoerd was particularly more interested in Swaziland than the other High Commission Territories because of its "White settler and Afrikaner farming populations"[41] and he, therefore, wanted to annex Swaziland if he had his way. If he could not do so, he was determined to insulate South Africa from simmering African nationalism in Swaziland and viewed the independence of the High Commission territories under Britain as a threat to the apartheid state.

Verwoerd's government had a master plan in which Swaziland would become a Bantustan-pattern state if incorporation was impossible.[42] It was planned that this Swazi-stan would be linked with the *projischoff* (or the other Bantustan projects). Verwoerd's aim was no doubt meant to exploit the problems Britain was having with the major political actors in establishing a constitution. British response to past South African demands for the incorporation of the High Commission Territories was always that pledges made to the inhabitants could not be broken and that they

[40] Stevens, 'Swaziland Political Development', 334.

[41] P. H. Bischoff, 'Why Swaziland is Different: An Explanation of the Kingdom's Position in Southern Africa', *The Journal of Modern African Studies*, 26, 3 (1988), 459.

[42] Zwane, 'The Struggle for Power in Swaziland', 4-6.

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would have to be consulted on whether they wished to become part of apartheid South Africa or not. Verwoerd's offer seemed to have been designed to undermine Britain's position in Swaziland given its poor relationship with the Swazi monarchy.[43] He claimed that the path to multi-racialism that Britain was pursuing was doomed to fail in Swaziland as it had failed elsewhere in Africa. South Africa was suspicious of Britain's policy of allowing the growth of Black Nationalism in the High Commission Territories and was determined to maintain stability in the Bantustans which would be insulated from African nationalism. South Africa was more than ever determined to influence developments in Swaziland even if legal incorporation was impossible.

Todd and R. P. Stevens supported Verwoerd's offer because of economic advantages to be derived if Swaziland were to be incorporated into the Republic of South Africa. They maintained that Swaziland was already economically dependent on South Africa. Todd supported this offer and claimed that:

> [Swaziland] may very well be able to find a basis of co-existence with Dr. Verwoerd by establishing a form of government that is not in line with his Bantustan policy but which has objections of universal pattern on a Universal Suffrage on the Westminster. . .[model] . . . And particularly to defend [Swaziland's] economic wellbeing and avoid South African discrimination in Swaziland. Advantages [would] be that [Swaziland would] be a substantial winner of foreign exchange, all of which accrues to the Republic and a right to demand should be shared with [Swazis]. [Swaziland would] take advantage of Pongola dam which is flooding which can be used as a bargain over our water resources which is threatened. [44]

[43] Ibid.

[44] 'People Impressed by Verwoerd's Offer Says Todd', *Times of Swaziland*, October, 25, 1963.

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It seems most likely that this was a way the EAC wanted to hit back at the British government for the imposed constitution. Todd argued that a good neighbour policy was called for and that this would free Swaziland from economic threats, such as export duties which inhibited free passage of persons and goods and all the other prejudices of an independent antagonistic state.[45] He, therefore, proposed that Swaziland should become a protected state, with Great Britain and South Africa acting in collaboration as protectors of the state under a defined treaty.[46] It is clear that Todd had a sense of insecurity and that is why he felt South Africa was a partner to be considered seriously for a form of association. The problem with Todd's proposal was that Britain could not endorse it owing to South Africa's racial policies.

Dr. Zwane's NNLC reacted to Verwoerd's offer negatively. Zwane suspected South Africa was scared of a democratic Swaziland because it would pose a serious threat to the apartheid system of government and its belief in the master race theory. He stated that "nothing would be [more] undermining to Dr. Verwoerd than to have a Swaziland on his boundaries in which Whites are equal to blacks."[47] Zwane was not surprised that Todd was eager for incorporation into South Africa because Todd was a strong supporter of Verwoerd because he had one foot in Swaziland and the other in South Africa. He was a South African-based businessman who spent most of his time in South Africa and so he was bound to have interest in developing the South African

[45] Ibid.

[46] Ibid.

[47] 'NNLC's Reaction to Dr.. V's Offer', *Times of Swaziland,* December 13, 1963.

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connection because of his businesses. The British government ignored both Todd and Verwoerd's overtures.

The fact that the various stakeholders in Swaziland's constitution-making processes opposed the 1963 constitution persuaded the British authorities to revisit the constitution. The British colonial administration, therefore, called for elections in June 1964 to be held under the constitution in order to establish governance structures which would, then, determine the future of the constitution.

The June 1964 Elections and the Establishment of Swaziland's First Legislative and Executive Council

The June 1964 elections were crucial for all the stakeholders because the outcome was to determine the direction of constitutional change. As far as the British colonial administration was concerned, the *Ngwenyama* was not a consideration because he was a traditional ruler who was expected to remain neutral in modern politics. Britain banked on the nationalist political parties to participate in the 1964 elections. The White community, the multinational investors and apartheid South Africa did not subscribe to the British policy of neutralising the *Ngwenyama* in modern politics because they were more comfortable with the *Ngwenyama* than the radical nationalists operating under the banner of political parties.

The stakes of the June 1964 elections were high because of the far reaching implications they had on the politics and economy of the territory. The elections were expected to produce the Legislative Council from which a constitutional Committee was to be selected to formulate a new constitution. The elections were, therefore, of crucial importance to the pro-conservative

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traditionalist Swazi National Council which wanted to see the inclusion of the *Ngwenyama* as a central figure in the political life of Swaziland; the White minority who favoured the emergence of a conservative monarchical order who was likely to protect White privileges; and the radical modernist nationalists whose agenda included a constitutional monarchy, universal adult suffrage and one-man-one vote and the rapid Africanisation of Swaziland.[48]

Two major issues which heightened the fears of White investors and the Swazi monarchy preceded the June 1964 elections. The first was labour unrest orchestrated by the radical opposition parties and the second was British opposition to King Sobhuza forming a political party and entering modern politics. The Swaziland Progressive Party and the Ngwane National Liberatory Congress organised a series of industrial strikes in 1963 before the elections which exposed the agenda of these radical nationalists. Swazi workers had come under the influence of the radical political parties and became more conscious of their rights and became determined to make their voices heard through industrial action.[49] Workers had been operating under the traditional *indvuna* system[50]cleverly instituted by the conservative Swazi National Council in which the *tindvuna* or senior advisors were appointed by the Council, instead of being elected, to handle workers' interests. This traditional system which Sobhuza instituted was intended to be a substitute for trade unions which was looked at with scepticism because of their propensity to organise strikes. In

[48] The political manifesto of the radical opposition parties published in the *Times of Swaziland* before the June 1964 elections was clear on a single electoral roll for all, and rapid Africanisation among other issues (See 'N.N.L.C. Chooses Candidates; Manifesto', *Times of Swaziland*, May 15, 1964.

[49] R. Levin, *When the Sleeping Grass Awakens: land and Power in Swaziland,* (Johannesburg: University of Witwatersrand Press, 2001) 65.

[50] A traditional method of using senior advisors to monitor the performance of group workers in a work place.

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practice, workers looked to the traditional *tindvuna* established by the Swazi monarchy for assistance even with domestic problems. Trade unions were not only an alternative source of power and a threat to Swazi traditional authorities; they were also a threat to all investors, particularly the investments of the CDC in Forestry and Sugar industries.[51] Swazi workers felt the *indvuna* system was too traditional for their liking and did not represent their interests, so they started forming trade unions in the early 1960s with the encouragement of the radical political parties.[52]

On 18 March 1963, over 2,500 sugar cane workers in Big Bend went on strike demanding a monthly wage of R30 instead of the R7 they were receiving. In early April 1963, the newly formed Pulp and Timber Workers Union called a strike at Usuthu Pulp Mill after demands for a minimum wage were not met and two union members had been dismissed.[53] In response, the company's 800 workers supported the strike and only returned to work after having been promised higher wages.[54] The Usuthu Pulp Mill strike was successful and paved the way for further strikes in 1963. Workers of the railway station responsible for the transportation of iron ore to the port in Mozambique held a one day strike over low wages and challenged the relevance of the Swazi National Council's

[51] Macmillan, 'Swaziland: Decolonisation and Triumph of Tradition', 661.

[52] For details on labour consciousness in Swaziland and the 1963 strike see S. Hlandze, 'The Evolution of Workers' Consciousness in Swaziland: The Case of Usuthu Pulp Company, 1948-1963', MA Thesis: University of Swaziland, 2013. Also see Levin, *When the Sleeping Grass Awakens: land and Power in Swaziland*, 66.

[53] Ibid.

[54] Ibid.

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indvuna who were supposed to protect their interests.[55] In August 1962, the Swaziland Mining Workers Union was formed at Havelock asbestos mine.

The SPP and the NNLC engineered the pre-election 1963 strikes as a way of projecting themselves as champions of workers' cause. In June 1963 the radical parties were able to use local grievances to instigate a general strike in Mbabane, the capital, in which over 8,000 Swazis were involved and this led to the arrest and temporary incarceration of its ring leaders, Dr. Zwane and Prince Dumisa Dlamini.[56] The fears that the Swazi monarchy and the White community had often nursed about the radical nationalists were confirmed by the strikes. Of great significance was the fact that the strikes served notice to the White employers that politics and labour could find a common cause.[57] The strikes alarmed King Sobhuza who saw them as driven by an agenda to destabilise Swaziland, the result of manipulation of political parties and a setback to the independence agenda.

> [He] wondered whether [there was] no more to the strikes in Mbabane and Havelock than a demand for higher wages. Strikes were usually engineered by people in industry but the document before him giving the resolution passed at the meeting in Msunduza Township last Sunday came from people in political parties. What puzzles me is what to call this thing that is happening. Shall we call it a demonstration for a certain purpose? Or shall we call it a strike? What is it? We should make it perfectly clear in this council what the aim of all this is.' [The *Ngwenyama*] . . . said that when people gathered together in such large crowds a small spark could cause a big conflagration, and such damage could be done for no cause whatever . . . . Are we going to have strikes or are we going to talk

[55] Macmillan 'Swaziland: Decolonisation and Triumph of Tradition', 661; Hlandze, 'The Evolution of Worker's Consciousness in Swaziland'.

[56] Potholm, 'Changing Political Configuration in Swaziland', 317.

[57] Ibid.

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> amicably? What [do] they want [me] to do? . . . . Is this the way you will get your independence? . . . . I think this a setback for our people'.[58]

The strike exposed the dangerous balance Sohhuza attempted to hold between the colonial state and the White investors he was expected to protect, on the one hand, and the Swazi workers he was supposed to defend against exploitation by White and multinational interests, on the other. His sympathy tilted towards the White investors and not the Swazi people he was supposed to protect against exploitation.

Sobhuza and the White community feared that the strikes, which the radical nationalists were sponsoring, had the potential of reducing the inflow of White capital so essential for the development of Swaziland and of undermining traditional leadership. To allow the radical nationalists to dominate the public space through their political organisations was dangerous. In the face of Britain's determination to organise legislative elections in June 1964 which were open to participation by the political parties, Sobhuza was forced to backtrack and form a political party which he had, hitherto, been opposed to and which Britain did not approve because of her opposition to the participation of traditional rulers in party politics.

Sobhuza's formation of a political party was not actually his original idea. Like his counterparts in other parts of Africa, the Swazi monarchy initially found it difficult to form a political party to contest elections when the origin of his power was hereditary and not the ballot box. The local

[58] Ibid, 69.

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White community and Apartheid South Africa[59] persuaded Sobhuza to form a political party because they preferred him to the radical political leaders and because staying out of modern politics would result in the monarchy being eclipsed by the radical political leaders. As Potholm puts it, "The White leadership [in Swaziland], feeling that they could deal most effectively with the traditional authorities, pressed the King to form his own political party, which could contest the national roll seats".[60] Sobhuza was easily impressed by the arguments that that the Swazi political parties were a distinct threat to the traditional monarchy and Swazi society. The programme of the radical political parties scared the *Ngwenyama* because it called for an overhaul of the traditional status quo, the nationalisation of much of Swaziland's infrastructure, and an end to racialism and tribalism. Sobhuza was further frightened by opposition party rallies of thousands of Swazis in 1963 and the opposition's ability to marshal mammoth strikes.[61]

[59] There is this apparent contradiction between South Africa's pro-Sobhuza policy and the Swazi monarchy's apparent toleration of the activities of South African liberation movements on its territory during the apartheid period. The Swazi monarchy was never a member of the front line states in Southern Africa and went as far as signing a secret non-aggression pact with South Africa in 1982 under which Swazi officials harassed African National Congress representatives in the capital, Mbabane, and eventually expelled them from Swaziland. South African security forces, operating undercover, also carried out operations against the ANC on Swazi territory (See B. Nyeko, 'Swaziland and South Africa Since 1994: Reflections on Aspects of Post-Liberation Swazi Historiography', *From National Liberation to Democratic Renaissance in Southern Africa* (2005); P. H. Bischoff, 'Why Swaziland is different: An explanation of the kingdom's political position in Southern Africa', 457-471. Swaziland allowed the ANC to operate on its territory because it did not have an army of its own to stop them. In order to quell a labour unrest in 1962, the British had to import troops from Kenya. When one takes into consideration the fact that the Swazi ethnic group stretches into South Africa and there was no hardened line of demarcation between the two territories, it would be easy to understand why the control of the movement of South African guerrilla fighters was largely intractable. After Swazi independence, the building of a professional army was a slow and sluggish process meaning that the Swazi monarchy lacked the capacity to control the activities of the ANC and other rebel movements on its territories without direct South African involvement. The free operation of South African liberation forces on Swazi territory does not mean that Swaziland was officially pro-ANC.

[60] Potholm, 'Changing Political Configurations in Swaziland', 17.

[61] Ibid.

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The White Community and South Africa pressured the Swazi monarchy to form a political party to contest the June 1964 elections as a way of containing the radicals, while the British and the radical Swazi nationalists were opposed to the traditional monarchy engaging in modern politics. The colonial administration warned Sobhuza to stay out of party politics because he was already the King of all the Swazi people. British colonial policy in Africa did not favour the idea of traditional rulers engaging in modern politics because they were considered as conservative and divisive forces. Cohen, the brains behind this idea of the neutrality of traditional rulers in politics, stated that power transfer from the departing colonial administration should be effected in favour of the modern nationalists.[62] Sir Briand Marwick, the British Commission in Swaziland, was determined to implement this policy to the letter by ensuring that the *Ngwenyama* stayed clear of modern politics. Marwick advised Sobhuza to prepare himself for the position a constitutional monarchy in the new political dispensation similar to that of the United Kingdom in post-colonial Swaziland.[63] Marwick's position was communicated to Sobhuza and was clearly articulated in the 1963 constitution in which the *Ngwenyama* was a mere neutral figure with no powers.

Multinational and White investors in colonial Swaziland were not comfortable with Marwick's political stance in Swaziland which appeared to be sympathetic to the cause of radical African nationalism. Macmillan suggests that the Commonwealth Development Corporation (CDC),[64] a

[62] See Robinson, 'Andrew Cohen and the Transfer of Power in Tropical Africa 1940-1951'.

[63] 'Marwick, A Farewell message', *Times of Swaziland,* April 24, 1964.

[64] The CDC, a private liability company, was a Development Financial Corporation owned by the UK government. The Department for International Development was responsible for the CDC and the shareholders duties were managed by the Shareholder Executive Committee. (See M. Cowen, 'Early Years of the Colonial Development corporation: British State Enterprise Overseas during Late Colonialism', *African Affairs,* (1984), 63-75).

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major investor in Swaziland's forestry and sugar industries, was a strong lobby group behind the conservative Swazi monarchy in colonial Swaziland.

In a debate in the British House of Commons in July 1968, one Geoffrey Lloyd revealed that after 1945, the CDC transformed the Big Bend area of the Great Usutu River into a pioneer sugar-growing and production region of Swaziland and was responsible for the production and export of half of Swaziland's sugar. In the 1960s over 10,000 people lived there, dependent on the production of the sugar industry. The CDC made a loan of £100,000 to private enterprise development in the south of Swaziland which was crucial in enabling the area on the great Usutu River also to have a canal and to develop as a big irrigated farming area. In collaboration with Courtaulds Company, it was engaged in the exploitation of the great pine forests, producing sulphide pulp. The CDC was therefore the economic mover of Swaziland and its investment was the largest the Corporation had in any country.[65] It was, therefore, logical for the CDC to ensure that the political order in Swaziland was a stable one in the hands of conservative traditionalists and not the radical African nationalists.

The CDC and White investors abhorred industrial unrest which was inimical to their investments and "had a direct interest in the maintenance of stability and the establishment of a conservative regime which would be unlikely to interfere with either capital accumulation or relations with

[65] Http://hansard.millbanksystems.com/commons/1968/jul/05/swaziland-independence-bill HANSARD 1803–2005 → 1960s → 1968 → July 1968 →5 July 1968 → Commons Sitting → ORDERS OF THE DAY,SWAZILAND INDEPENDENCE BILL, HC Deb 05 July 1968, Vol. 767 cc1875-9031875 (Accessed on 27 June, 2015). Also see Daniel, 'Political Economy of colonial and Post-Colonial Swaziland', 90-113.

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South Africa".[66] Consequently, the investors successfully lobbied the Colonial Office to orchestrate Marwick's retirement in April 1964. This was because Marwick's policies favoured the radical nationalist and was anti-tradionalist.[67] Sobhuza's entry into modern politics and the portrayal of him as a modern politician were, therefore, the planned strategy of powerful economic interests and South Africa in order to contain radical Black Nationalism.

During his farewell speech in April 1964 as retiring British Resident Commissioner after seven and a half years of service in Swaziland,[68] Marwick did not hesitate to underscore the official British position on the role of African traditional rulers in modern politics which was neutrality and not direct engagement in party politics. He welcomed the proliferation of political parties in Swaziland as an inevitable part of political apprenticeship and political modernisation and called for a clear and unequivocal statement from the *Ngwenyama*-in-Council that "no barriers [would] be placed in the way of political groups or electoral candidates who wished to make themselves and their policies known to the Swazis". Marwick stressed his long conviction that the *Ngwenyama* should remain above party politics and that the Swazi National Council, which was in receipt of public funds, should not use its position to organise a political party in competition with others which did not have the advantage of such backing. He emphasised that the Swazi National Council should be a body representing Swazi law and custom and not a political party in disguise. Marwick stated that:

[66] Macmillan 'Swaziland: Decolonisation and Triumph of Tradition', 661.

[67] Ibid.

[68] 'Marwick, A Farewell message', *Times of Swaziland,* April 24, 1964. Marwick officially retired on 1 May 1964.

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> . . . if the traditional and conservative elements in Swaziland wished to form a political party to contest the June 1964 elections, they were free to do so by all means but they must not involve the King in that party and they must not use the Swazi National Council as a political instrument. They should stand and operate on equal basis with the other political parties and they should allow all contesting politicians to express their policies publicly.[69]

In a clear reference to White investors and South Africa, Marwick stated that he was aware of the fact that Sobhuza and the Swazi National Council were in close collaboration with some powerful economic and political interest groups and might be getting different advice from the one he was giving. He warned that what was paramount was that the interest of the Swazi people should be protected and that, if the King was identified with a political party, this would promote intra-Swazi conflicts which bring Sobhuza's kingship into disrepute.

Similarly, Dr. Zwane of the Ngwane National Liberatory Congress argued against the King entering politics because Sobhuza should stand as a symbol of unity and not become a divisive force. South Africa and the White minority in Swaziland did not see things the same way as the British. The 1963 turbulence in Swaziland, sponsored by the radical political parties, convinced apartheid South Africa, investors, and Swaziland's White community that Sobhuza needed to form a political party to contest the June 1964 elections in order to contain the radical nationalists who represented a real danger to their interests. Consequently, they advised the *Ngwenyama* not to take the advice of the British colonial administration. These interest groups were the source of Sobhuza's courage to challenge the British Colonial Administration and go ahead with the formation of a political party.

[69] Ibid.

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Prominent South African Afrikaner politicians like the Broderbond member Van Wyk de Vries and MP, and later Prime Minister, B. J. Vorster advised King Sobhuza to form a political party to contest the June 1964 elections in order to remain relevant in Swazi politics. South Africa provided Sobhuza with financial and organisational resources for the formation of his own political party to challenge the radical nationalists.[70] King Sobhuza also relied on the technical advice of Douglas Lukhele, a junior partner in the Nelson Mandela and Oliver Tambo law firm.[71] In early April 1964, against the advice of the British, King Sobhuza formed the Imbokodvo National Movement (INM) under the nominal leadership of Prince Makhosini but, in fact, under the King's complete control.[72] Potholm observes that the INM was never a political party in the organisational sense of the word. It was rather:

> . . . an extension of the *Ngwenyama* and the Swazi National Council, which depended upon the prestige of the King, the concept of a unified Swazi nation, and the local authority of the chiefs, who owned their position to traditional Swazi law and custom and the largesse of the *Ngwenyama* at the centre.[73]

The Imbokodvo was actually established as a way of meeting the requirements of the Westminster electoral process to give political expression to the class interests of Swaziland's traditional nobility, made up of the royal family and chiefs, for whom Sobhuza was the principal

[70] J. Daniel and J. Vilane, 'Swaziland: Political Crisis, Regional Dilemma', *Review of African Political Economy*, 13, 35 (1986), 56.

[71] Macmillan, 'Swaziland: Decolonisation and the Triumph of Tradition', 662.

[72] C. P. Potholm, 'Changing Political Configuration in Swaziland', *The Journal of African Studies*, 4, 3 (1966), 314-315.

[73] Ibid, 315.

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spokesperson.[74] The Imbokodvo also had to stand in favour of South African and White minority interests in Swaziland; it was therefore "[backed] by a wider and a formidable coalition of interests and economic investors that were scared of radical nationalism and disruptive strikes comprising the South African government, the local White bourgeoisie and foreign capital."[75]

Once the *Ngwenyama* formed a political party, the White community in Swaziland had to follow suit in order that the party should contest the White-roll and national-roll seats provided in the 1963 constitution. The Whites formed a political party, the United Swaziland Association (USA), led by three ranchers, namely: Willie Meyer, R. P. Stevens and J. D. Davies. The USA was out to preserve the primal position of Europeans in Swaziland, particularly their economic investments. The USA, like the Imbokodvo, was frightened by the rise of radical Black Nationalism in Swaziland espoused by the political parties. Another party of liberal Whites was formed known as the Swaziland Independent Front (SIF), which was also to contest elections in the European roll seats. This party was different from the USA by virtue of its composition and ideology. It was non-racial because it opened its doors to blacks and it stood for a political order which respected the wishes of the people and not that of a particular race.

With the formation of the Imbokodo, the Swazi National Council formally asked King Sobhuza to contest the June Legislative Council elections at a meeting of 2500 Swazis at Lobamba on 16 April 1964 in the Royal Cattle Kraal. He accepted the invitation. Prince Makhosini Dlamini was

[74] Daniel and Vilane, 'Swaziland: Political Crisis, Regional Dilemma', 56.

[75] Ibid.

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appointed to tour Swaziland in order to explain to the Swazi people what the elections were all about. At the meeting, King Sobhuza said that Swazis of all colours had supported him in the January 1964 referendum and he, therefore, called them "*Imbokodvo Emabalabala*", (the grinding stone of many colours) which is compact and hard to break.[76] This was a clear political statement indicating the toughness of his political organisation vis-à-vis other political formations in the territory.

The outgoing British High Commissioner in Swaziland, Brian Marwick, was furious at Sobhuza's entry into modern politics, contrary to British constitutional tradition and condemned the King in very harsh terms for bringing the traditional institution into disrepute and for enjoying unfair competition with other political formations in the territory. Marwick pointed out that modern politics was not meant for traditional rulers were the product of a totally different system of governance and that Sobhuza's entry into modern politics was not healthy for the political future of Swaziland. He insisted that Sobhuza should restrict himself to traditional matters and leave politics to modern politicians.

Marwick had no kind words for Sobhuza and the Swazi National Council in his farewell speech as High Commissioner for Swaziland. He described Sobhuza as being "obstructive" to the electoral process, as reports reaching him indicated that opposition candidates were oppressed and disallowed from freely campaigning and that this was a bad omen for Swaziland's first elections. He questioned the impartiality of the *Ngwenyama*. Marwick stated:

[76] 'Ngwenyama and Swazi Council Enter Politics', *Times of Swaziland,* April 24, 1964.

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> . . . I have been told the *Ngwenyama* himself addressed the Lobamba meeting and identified himself beyond doubt with the political group "Imbokodo". I was also told another meeting called for May 15th at which the names of the "Imbokodo" candidates for elections would be announced and instructions issued presumably through the Swazi National Council and tribal channels to voters to choose these men.[77]

What this, in essence, meant was that the *Ngwenyama*-in-Council, which was supposed to be answerable to the whole Swazi nation, was entering the political arena backed by the prestige of the King and the machinery of the Swazi National Council which was, incidentally, paid for by all tax payers of Swaziland. Marwick accused the King of misusing public funds:

> I put it to you gentlemen that by identifying the *Ngwenyama* with the Swazi National Council or "Imbokodo" political thinking and by misusing your staff and machinery for electioneering purposes as I have no doubt you intend to do, you will do more to put Swazi against Swazi and to bring kingship into disrepute than by any other acts.[78]

Marwick warned that Sobhuza would lose his throne if he continued to indulge in modern politics.[79] He stated that, by listening to advice from those who did not care about the Swazi people, Sobhuza was not being of service to his country. He enjoined Sobhuza "think well on this" as his advice was genuine and not motivated by any personal interests because "My advice comes to you a few days before I finally leave Swaziland. I have nothing to gain by misleading you, and

[77] 'Strong Criticism of country's Political Direction: Sir Brian Hits Out Sharply in Last Big Speech', *Times of Swaziland*, April 24, 1964.

[78] Ibid.

[79] 'Strong Criticism of country's Political Direction: Sir Brian Hits Out Sharply in Last Big Speech', *Times of Swaziland*, April 24, 1964.

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after over 30 years of service to Swaziland, I think I have a right to ask that you give it due weight."[80]

The Swazi traditionalists in the Imbokodvo royal party did not respond to Marwick's criticisms. They stated that Sir Brian Marwick had ignored the will of Swazis by imposing the 1963 constitution on them; a constitution that completely marginalised King Sobhuza. They pointed out that, under the constitution, the *Ngwenyama* had 'become a mere useless little tail, a relic which [was]to be done away with as soon as expedient" and that the will of the Swazi people had been ignored and the *Ngwenyama* "was reduced to a caricature". They urged the British colonial administration "to respect and acknowledge the position of *Ngwenyama* as King of Swaziland in the governmental machinery."[81] The traditionalists stated that the *Ngwenyama* was just doing his job and the people of Swaziland looked to him for leadership. They, further, argued that, in Africa, "kings are leaders as well as kings" and Sobhuza should be recognised and respected as such. In response to Sir Brian Marwick's plea for political parties to freely develop and operate without harassment, the Imbokodvo stated that political parties had, so far, 'used despicable methods of bribery, intimidation, calumny and defamation' and they had seen little or nothing of an honest attempt to propagate policy and, yet, the British were silent about their excesses.[82]

[80] 'Sir Brian to The King: This is the Advice I give to you. Preserve Your Office', *Times of Swaziland*, April 24, 1964.
[81] 'Imbokodo Reply to Sir Brian', *Times of Swaziland*, May 8, 1964.

[82] 'National Council to Reply to Sir Brian Next Week. The King's Speech to Sir Brian Marwick', *Times of Swaziland*, May 1, 1964; 'In Africa Kings are leaders as well as Kings: Imbokodo Reveals Itself, Attacks Sir Brian Marwick', *Times of Swaziland*, May 8, 1964.

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Dr. Zwane of the NNLC said that the decision of the SNC to fight the legislative elections in June would do the monarchy the greatest harm. The monarchy should be a symbol of national unity and an independent part of the constitution.[83] He pointed out that the SNC was making the people to vote on royalty and not on policy and warned that the King would end up in trouble in the same way that King John of England at the time of the Magna Carta was forced to come to terms with his people.[84]

The agitations of the monarchical traditionalists was a pointer to the fact that, if they had their way in the June 1964 elections, they would overhaul the British-tailored 1963 constitution to place King Sobhuza at the centre of the governmental machinery. Swaziland's radical political parties were also determined to pursue their agenda of one-man-one vote and a constitutional monarchy. The outcome of the June 1964 elections was, therefore, crucial in determining the constitutional future of Swaziland with reference to the role of the monarchy which the British and the radical nationalists were determined to neutralise.

The Imbokodvo-USA Coalition in the June 1964 Elections

In a bid to ensure victory in the crucial June Legislative Council elections, the leaders of the White United Swaziland Association Party convinced King Sobhuza that they should form a coalition and plan a common strategy. The strategy the Whites devised was that the USA Party should take all the White reserved seats, while the *Ngwenyama* would appoint members to fill the Swazi

[83] 'Zwane Objects to Council in Politics', *Times of Swaziland*, April 24, 1964.

[84] Ibid.

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reserved seats. The rest of the seats would be shared between the USA and the Imbokodvo. According to this logic, the Imbokodvo-USA coalition would realise their dream of dividing the national roll seats in the Legislature between themselves at the expense of the radical nationalist parties. The Imbokodvo-USA coalition was a marriage of convenience and "would not have arisen had not both groups feared the power of the other [radical] political parties"[85] Essentially, the USA Party were the leaders in the relationship who helped the Imbokodvo to plan for the elections, as the two parties sought to eclipse the radical political parties.

The Imbokodvo-USA coalition had the full backing of apartheid South Africa which financially contributed to their election funds. The South African government gave Sobhuza £25,000 for electoral expenses, leading to a widespread rumour at the time that he was planning to sell his kingdom to South Africa.[86] Furthermore, the South African government allowed the Imbokodvo-USA candidates to use Radio South Africa to conduct its campaigns.[87] In this way, South Africa intended to promote the emergence of a pro-South African regime and, thus, postponing the prospects of a hostile black majority rule in Swaziland. The Imbokodvo enjoyed the support investors and apartheid South Africa and this weakened the modern radical political parties.

It should be noted that Todd was not a member of the USA Party, raising the question of what had transpired to explain this situation. The answer is that, by agreement with King Sobhuza, and

[85] Potholm, 'Changing Political Configuration in Swaziland', 316.

[86] Macmillan, 'Swaziland: Decolonisation and the Triumph of Tradition', 662.

[87] Ibid.

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much to the surprise of the Whites in the territory, Todd joined the Imbokodvo and, in the June 1964 elections, stood as an INM candidate.[88] He was the first White member of the Imbokodvo, a symbol of racial integration, according to the Swazi monarchy. For Sobhuza, this was the best way to keep Todd within the system, knowing how resourceful he could be to him.

For purposes of the June 1964 elections, Swaziland was divided into four districts or constituencies, namely: Hhohho, Lubombo, Manzini and Shiselweni. The previous six districts into which Swaziland had earlier been divided, namely: Mbabane, Mankaiana, Piggs Peak, Stegi and Hlatikulu, changed their boundaries and were reduced to four. The nominations of candidates for the first Legislative Council elections took place on 19 May, while the first elections for the Legislative Council were held in June 1964. Candidates seeking elections were required to meet certain criteria. For instance, a Swazi had to be a British subject or British protected person, who had resided in the country for at least three years, and had paid direct tax, or in the case of women, be a wife of a man who paid tax. Only one wife of a polygamous man could vote. However, the inclusion of the clause one wife for polygamous men was criticised by the Swazis as it violated Swazi culture.[89]

The 1963 constitution provided for two electoral rolls - one European and the other national. The European roll provided for the elections of 4 candidates, while the national one provided for the election of 12 candidates. For the European roll, the following parties and individuals contested the elections: The United Swaziland Association, the Swaziland Independent Front and two

[88] Ibid. Also see Kuper, *Sobhuza II: Ngwenyama and King of Swaziland*, 253
[89] Matsebula, *A History of Swaziland*, 241.

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independent candidates. The elections under this European roll took place on 16 June and all four seats were won by the United Swaziland Association. The elected candidates were B. P. Stewart (1,129 votes), J. D. Weir (992 votes), E. G. Winn (983 votes) and W. P. Meyer (983 votes).[90]

Fifty-eight candidates representing four political parties were nominated under the national roll. The parties were: The Swaziland Progressive Party, The Swaziland Democratic Party, the Imbokodvo National Movement, and the United Swaziland Association. The voters on the national roll went to the polls on 24 and 25 June 1964 to choose twelve candidates. The results were announced on 27 June 1964 and showed that all nine Imbokodvo National Movement and three United Swaziland Association candidates had been elected. On 26 June 1964, the Swazi National Council presented the eight members who had been selected by the Council, following the traditional Swazi way of acclamation and in accordance with the requirements of the constitution, to the chief electoral officer.

The Imbokodvo -USA coalition formed to fight the 1964 elections turned out to be very effective because it successfully stifled the other political parties that had been operating in Swaziland since 1960. In the share-out strategy of the Imbokodvo-USA coalition, the Imbokodvo nominated candidates were acclaimed on the traditional roll while USA candidates won every European seat. As for the remaining seats on the national roll as provided in the constitution, the Imbokodvo-USA candidates won all the seats.[91] Thus, once the Imbokodvo and USA decided to cooperate, victory was a foregone conclusion. It should be pointed out that the Imbokodvo nominated

[90] 'USA Takes All Four Seats on European Roll', *Times of Swaziland*, June 19, 1964.
[91] 'Clean Sweep for Sobhuza: All Elected Seats go to Traditionalists', *Times of Swaziland*, July 3, 1964.

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candidates who were acclaimed on the traditional roll were hand-picked by King Sobhuza. The implication was that they were totally loyal and answerable to him. A Legislature with an overwhelming representation of pro-monarchical traditional and conservative elements would be expected to formulate a constitution with the King at the centre of all affairs.

The issues that bothered the largely illiterate and rural electorate were not incomprehensible ideologies like Western democracy, pan-Africanism, African socialism but the land issue and loyalty to the *Ngwenyama*. The traditional monarchy was able to tap its "immense reservoir of rural political conservatism on the nation-wide common roll to inundate the urban centres, so that even where the radical political parties did well (as in the urban areas of Mbabane and Manzini) they were unable to compensate for the huge rural vote of the Imbokodvo".[92] Many Swazis were confused as to what the issues of the elections were all about and they assumed they were merely reiterating their previous vote in the plebiscite for King Sobhuza and the Swazi nation that had taken place in January 1964 plebiscite.[93] In essence, the elections were interpreted as a vote for the King and the Swazi nation.

The radical political parties were annihilated in the elections. These parties were largely disfavoured by lack of funds and inexperience in political campaigns. They were divided into petty groupings instead of standing as a united force against the traditionalists. While the Imbokodvo-USA candidates were receiving 8000-14,000 votes in each of the four national constituencies, Dr. Zwane of the Ngwane National Liberatory Congress was able to muster just

[92] Ibid.

[93] Ibid.

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2,438 votes. Dr. A. Nxumalo of the Swaziland Democratic Party received 237 votes; J. J. Nquku of one of the Swaziland Progressive Party received 56 votes while O. B. Mabuza of the other Swazi Progressive Party received 26 votes. Voters were also possibly confused by the fact that these two Progressive Parties had the same name. Likewise, the liberal White parties, including the hastily formed Swaziland Independence Front, represented by F. Corbett and R. J. Lockart, were defeated by large majorities. [94]

The radical political parties protested in vain about election malpractices that the King and the Swazi National Council were engaged in. They complained that the chiefs prevented them from campaigning in some areas and that the Imbokodvo had unfairly enjoyed the facilities and support of the Swazi National Council. They pointed out that the Swazi people had been intimidated to vote for the King's party through threats of banishment and dispossession of Swazi Nation land and that, in addition, black South Africans then living in Swaziland, numbering over 7,500, including the intelligentsia, were disenfranchised, unlike White South African residents.[95] The parties further accused Imbokodvo of negative campaigning as it disparaged the other parties and charged them of being disrespectful to the *Ngwenyama* and attempting to cause a civil war. The British Colonial Secretary, Duncan Sandys responded to the joint memorandum of protest from political parties over election malpractices by pointing out that "the test for alleged malpractices during the elections lies with the courts, and that the parties should get advice from their legal advisers".[96] Although the British government responded to the petitioners by suggesting that the

[94] Ibid.

[95] Macmillan, 'Swaziland: Decolonisation and the Triumph of 'Tradition'', 661.

[96] 'Sandys Replies to Political Parties: Test for alleged electoral offences lies in courts', *Times of Swaziland*, July 10, 1964.

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matter should be referred to the courts, there was more to it than that. The British Colonial Government in Swaziland was disinclined to strongly countenance any petitions about the unfairness of the elections owing to the influence of multinational capital that were behind the Imbokodvo. The fate that befell Brian Marwick was still hovering the heads of his successors. The economic investors were therefore the mask behind Sobhuza's political performance and resilience.

The political implications of the humiliating crushing of the radical political parties at the polls and the emergence of the Imbokodvo-USA as the principal political forces in colonial Swaziland need to be analysed in order to establish their significance to Swaziland's subsequent history. The dismal performance of the opposition parties in the June 1964 elections was demoralising and some started vacillating whether to continue in the opposition or join the royal party. Dr. G. Msibi, leader of the MNC, left his party to join the royal Imbokodvo and was rewarded with an appointment as its Secretary General. Two months later, S. Nxumalo resigned from the executive of the SDP to join the Imbokodvo. In March 1965, Dr. A. M. Nxumalo, President of Swaziland Democratic Party, abandoned his party and joined the Imbokodvo and called on his followers to do same.[97] These defections were serious enough to cause the SDP and MNC to cease to exist. The SPP and NNLC continued to exist as the main extra-parliamentary opposition despite continuous defections from their ranks. For instance, Arthur Khoza, the Secretary General of the NNLC, resigned and joined the Imbokodvo and was rewarded with an appointment as the Private Secretary to Prince Makhosini. These defections and carpet-crossings in favour of the Imbokodvo

[97] 'Democratic Party Joins the Imbokodvo', *Times of Swaziland,* April 23, 1965.

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royalists emboldened Sobhuza but they also compromised the political survival of the USA, which was the brainchild of the destruction of the radical opposition parties, as will be shown later.

From Swaziland's First Legislative and Executive Council to the constitutional Committee for constitutional Review

The June 1964 elections produced members of Swaziland's first Legislative and Executive Councils. The Legislative Council was made up of 4 Europeans-elected on the national roll, 4 elected on a European roll, 8 Africans elected on the national roll and 8 others elected in accordance with Swazi traditional methods, 4 officials and 1 nominated member. The Africans elected by Swazi traditional methods were as follows: J. M. Dlamini, M. K. Mamba, P. K. Dlamini, J. B. M. Sukati, D. A. Hlophe, G. L. M. Msibi, G. M .E. Mabuza, and J. Rose (who was coloured). Thus, the membership of the first Legislative Council included 6 United Swaziland Association members, 1 independent, and 17 Imbokodvo members, including Carl Todd.

The inauguration of Swaziland's maiden Legislative Council on 9 September 1964 was historic and was given all the ceremonial importance it deserved. The Legislative Council had its first meeting on 9 September 1964. Her Majesty's Commissioner, Sir Francis Lloyd appointed I. B. Aers, the Speaker of the House, while the members of the Legislative Council, as documented in Table 4-2, were sworn in as prescribed by section 27 of the Swaziland Order-in-Council:

Table 4-2
Members of the 1964 Legislative Council

	Member	Political Affiliation	Remarks
1	A. C. E. Long, C.B. E.	Chief Secretary	
2	Prince M. N. Dlamini	Imbokodvo	Member
3	Chief M. K. Magongo, Esq.	Imbokodvo	Member
4	F. M. Mbelu, Esq.	Imbokodvo	Member

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5	Prince J. M. Dlamini, Esq. B.E.M.	Imbokodvo	Member
6	Dr. G. L. M. Msibi, Esq.	Imbokodvo	Member
7	D. A. Hlophe, Esq	Imbokodvo	member
8	M. N. Gamede, Esq.	Imbokodvo	Member
9	B. A. Dlamini, Esq.	Imbokodvo	Member
10	M. G**.** Dlamini, Esq	Imbokodvo	Member
12	N. M. Hlatshwako, Esq.	Imbokodvo	Member
13	W. M. M. Magongo, Esq.	Imbokodvo	Member
14	J. M. B. Sukati, Esq.	Imbokodvo	Member
15	Dr. G. L. Msibi	Imbokodvo	Member
16	J. Rose, Esq.	Imbokodvo	Member
17	W. P. Meyer	United Swaziland Association	Member
18	E. G. Winn, Esq.	United Swaziland Association	Member
19	J. D. Weir, Esq	United Swaziland Association	Member
20	R. P. Stephens, Esq.	United Swaziland Association	Member
21	B. P. Steward, Esq. M.C.	United Swaziland Association	Member
22	P. K. Dlamini	Imbokodvo	Member
23	J. J. Dickie	Attorney General	
24	C. F. Todd	Imbokodvo	Member
25	J. R. Masson	United Swaziland Association	Member
26	H. D. G. Fitzpatrick	United Swaziland Association	Member
27	M. J. Fairlie	United Swaziland Association	Mmber
28	G. M. E. Mabuza	Imbokodvo	Member
29	S. M. K. Mamba	Imbokodvo	Member
30	A. K. Hlope	Imbokodvo	Member
31	A.Z. Khumalo	Imbokodvo	Member
32	M. N. Dlamini	Imbokodvo	Member
33	C. A. B. Mandy	United Swaziland Association	Member
34	Prince M. Dlamini	Imbokodvo	Member

Source: Compiled from SNA: Swaziland Legislative Council Official Report (Hansard), First Session, Sittings from 9th and 14th November 1964.

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Thereafter, Her Majesty's Commissioner delivered a message of good wishes from the Queen of England and the Secretary of State for Colonies. The Commissioner noted that the inauguration of the Legislative Council was "an important step in the constitutional advance of [the territory]" and wished the Swazis success in their work. He further stated:

> First, I want to congratulate you on your membership of Swaziland's first Legislative Council, which marks a very significant step in the constitutional advance [of the territory], and to express the hope that the deliberations will be attended by goodwill and understanding for the benefit of the people of this country. This is a great and important occasion in the history of Swaziland, and its significance lies in many things. But first and most important of all is that you met here, together today for the opening of a Council which had been elected by people of all races throughout the country. This is the first time that such a joint Council has existed in Swaziland, and while I should like to take this opportunity to pay tribute to the work done in the past by such bodies as the European Advisory Council and the Swazi National Council, no group which is not composed of all the races in the territory can be truly representative of its people.[98]

He warned that no racial discrimination would be tolerated and there should be mutual respect for each other among the Swazi people, black and White.

The *Ngwenyama* could not attend the inauguration because he was very ill. He was represented by the *Ndlovukazi* (Queen Mother) and S. T. M. Sukati who read the King's speech on his behalf. The *Ngwenyama*'s speech hailed the historic opening of the first Legislative Council for Swaziland and recounted that "it was after many years of government by Proclamation…that the constitutional talks were initiated on 23 April 1960... Here cognised the fact that Swaziland had

[98] SNA: Swaziland Legislative Council Official Report (Hansard), First Session, Sittings from 9th and 14th November 1964.

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arrived at this point only after many "disappointments and tribulations" with particular reference of the refusal of the British to recognise the February 1964 referendum in which the imposed 1963 constitution was rejected. The *Ngwenyama* expressed the intention of Swaziland to be independent within the Commonwealth of Nations and that the constitution should serve as such a vehicle to attain such a goal.[99] He expected the Legislative Council to make laws in the land in which all were treated equally irrespective of race or colour.

Lloyd also appointed members of the Executive Council as prescribed by section 27 of the Swaziland Order-in-Council. The Council's membership is documented in Table 4-3:

Table 4-3
Members of the Executive Council

	Ex-Officio Members	Appointed Members	Party Affiliation
1	A. C. E. Long, Chief Secretary	Polycarp Dlamini	Imbokodvo
2	J. J. Dickie, Attorney General	A. K. Hlophe	Imbokodvo
3	J. C. Martin,. Secretary for Finance and Development	C. F. Todd	Imbokodvo
4		H. D. G. Fitzpatrick	United Swaziland Association
5		M. J. Fairlie	United Swaziland Association

Source: Compiled from SNA: Swaziland Legislative Council Official Report (Hansard), First Session, Sittings from 9th and 14th November 1964; News From Swaziland, http://www.historicalpapers.wits.ac.za/inventories/inv_pdfo/AD1715/AD1715-29-3-4-001-jpeg.pdf (Accessed January 25, 2015).

Lloyd appointed A. K. Hlophe as Member for Local Administration and Social Development, and Polycarp Dlamini, Member for Education and Health. D. Fitzpatrick and C. Todd were appointed

[99] Ibid.

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Members for Public Works and Communications and for Natural Resources, respectively. The Royalist Imbokodvo and the White USA dominated the Legislative and Executive Councils. Radical opposition parties were not represented owing to their poor performance at the polls. In an editorial the *Times of Swaziland* regretted the losses of dynamic parties in the elections and emphasised that a vigorous opposition was a good thing for a healthy political atmosphere.[100]

The maiden Legislative Council existed from September 1964 to March 1967 and was monopolised by the Imbokodvo-USA coalition after their resounding victory in the June 1964 elections. At the inaugural session of the Legislative Council, Prince Makhosini *indunankhulu*,[101] (leader) of the Imbokodvo royalist group, which held majority seats in the House, indicated that the Imbokodvo would work for the advancement of Swaziland and the preservation of its kingship, customs, culture and language which must be recognised by the law. He complained that some of his kinsmen and local newspapers considered this as 'being retrogressive" and as "tribalism". This hurt the Imbokodvo because the Swazi nation was represented by the King as its head, the traditional Council as the trunk and the Nation as the limbs. Alluding to the radical opposition parties, Prince Makhosini said those accusing them of being "retrogressive" had gone to overseas organisations to lobby against the independence of Swaziland because they claimed that the Imbokodvo is "tribalistic and retrogressive". He argued that the Swazis were a nation and not a tribe and complained that the King of Swaziland was degraded and was not accorded the place he deserved in the 1963 Order-in-Council. He declared that the Imbokodvo wanted to correct the situation. Prince Makhosini rejected the view that the Swazi King should be neutral in politics and

[100] 'Comments', *Times of Swaziland*, 19 July 1964.

[101] In siSwati *ndvunankhulu* means Prime Minister. King Sobhuza referred to Prince Makhosini as *Ndvunankhulu*. But Prince Makhosini was the leader of the majority party in parliament and not Prime Minister because there was no provision for that position in the 1963 constitution.

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vowed that his party would fight for the recognition of the *Ngwenyama* of Swaziland. He pointed out that his party had won the elections under a constitution that it did not like and would, therefore, want to review it. Consequently, Prince Makhosini called for a committee to be set up from among the members of the Council to review the 1963 Order-in-Council and recommend amendments.

Developments in Britain and the other High Commission Territories put pressure on Swaziland to quicken its pace of constitutional developments in a situation where the Imbokodvo had not been pressing hard on the issue of independence like the radical nationalists.[102] A change in government in Britain, with the coming of the Labour Party to power in October 1964 after thirteen years of conservative rule, was dramatic as the new government set 1966 as the year for the independence of Basutoland and Bechuanaland. The Imbokodvo, which had initially preferred to move slowly on the issue of independence,[103] had to reconsider its position. Furthermore, when Prince Makhosini attended an ordinary session of the OAU in March 1965, the clamour for independence was now high on the agenda of African statesmen. These developments put pressure on Swaziland to speed up its campaign to effect constitutional amendments that would help it attain independence.

Prince Makhosini wrote to the British Colonial Administration requesting the Secretary of State to reconsider the revision of the imposed 1963 constitution. The Imbokodvo received the support of

[102] Sobhuza's attitude towards independence is captured properly by his biographer, Kuper, who remarks that he was not opposed to independence but he was reluctant to push too hard on that because everything had its appropriate moment (See Kuper, *Sobhuza II: the Ngwenyama and King of Swaziland*.)

[103] Attitude of Sobhuza captured by Kuper, *Sobhuza II: the Ngwenyama and King of Swaziland.*

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their USA allies on the assumption that their own interests would also be served. Meanwhile, Carl Todd had written a confidential letter to Sobhuza seeking reassurance that the existing privileges of Whites that had been negotiated with the monarchy in the early 1960s would be safeguarded.[104]

On 18 August 1965, the British Commissioner, F. Lloyd, announced that the Colonial Secretary had agreed to review the 1963 constitution and had authorised the appointment of a constitutional Committee to submit proposals for the establishment of internal self-government leading to independence.[105] Commissioner Lloyd proceeded to appoint the constitutional Committee which he chaired, comprising 2 Official members,[106] 8 Imbokodvo, 4 USA and 2 secretaries, as documented in Table 4-4.

Table 4-4
The 1965 Constitutional Review Committee

	Member	**Affiliation**	**Comment**
1.	Sir Francis Lloyd	British Commissioner and Chair	Official member
2	A. C. E. Long	Chief Secretary	Official member
3	J. J. Dickie	Attorney General	Official member
4	Prince Makhosini	Imbokodvo	Unofficial member

[104] This confidential letter in which Sobhuza was expected to safeguard White interests in Swaziland was stolen by the opposition NNLC from national files and published in the times of Swaziland of November 1966 to discredit Sobhuza as a puppet of the White minority. Kuper states that King Sobhuza did not reply Todd's letter and did not therefore commit himself (see Kuper, *Sobhuza II: the Ngwenyama and King of Swaziland*, 265).

[105] 'Proposals for constitution Sent to London', *Times of Swaziland*, March 11, 1966.

[106] In British Colonial Africa the British members of the colonial administration were technically referred to as "officials'. African members who were progressively incorporated in the executive and legislative structures of colonial Africa were technically referred to as unofficial members. (See Ezera, *constitutional Development in Nigeria*; Nwaubuze,*A constitutional History of Nigeria*). The files from Swaziland National Archives have also consistently referred to British officials in the colonial administration as "official" members and the non-British officials as unofficial members.

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5	Prince Masitsela	Imbokodvo	Unofficial member
6	Prince Mfanasibili	Imbokodvo	Unofficial member
7	A. K. Hlope	Imbokodvo	Unofficial member
8	P. Dlamini	Imbokodvo	Unofficial member
9	S. T. M. Sukati	Imbokodvo	Unofficial member
10	Dr. G. Msibi	Imbokodvo	Unofficial member
11	C. Todd	Imbokodvo	Unofficial member
12	A. H. Fitzpatrick	United Swaziland Association	Unofficial member
13	R. P. Stephens	United Swaziland Association	Unofficial member
14	W. Meyer	United Swaziland Association	Unofficial member
15	A. G. Winn	United Swaziland Association	Unofficial member
16	H. M. Roemmele	Assistant Chief Secretary	Served as secretary
17	Rev. A. B. Gamedze	Senior Liaison Officer	Served as secretary

Compiled from: SNA: Legislative Council Official Report, Hansard, 1965-1966; *Times of Swaziland*, 27 August 1965.

The 1965 Constitutional Committee was drawn almost exclusively from the Legislature because its elected members had the people's mandate to act on their behalf. The opposition had performed poorly in the legislative elections and without a single seat in the Legislative Council they could not directly participate in the political processes. The SPP under Nquku, the NNLC under Dr. Zwane, and a joint Council of Swaziland Political Parties under O. M. Mabuza made separate submissions to the constitutional Committee and sent memos of protest to the OAU and to sympathisers in different countries to be admitted into the constitutional Committee to no avail[2]. As in the past constitutional conferences, King Sobhuza did not directly participate in the talks but he, literally, tele-guided its proceedings through the Imbokodvo who were totally faithful to him.

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The Constitutional Committee was tasked with the work of reviewing the constitution and make thorough recommendations to the Secretary of State for Colonies on the form of a new one.

Conclusion

This chapter demonstrated how the British imposed the 1963 constitution on Swaziland. It also analysed developments leading to the June 1964 elections. This was a decisive strategy that unlocked a constitutional stalemate in the debate on proposals for political changes in Swaziland since 1960. The British government succeeded in having their constitutional proposals adopted. Unfortunately, for the British, they played into the hands of the Swazi monarchy who was victorious in his plebiscite and elections of June 1964. The British wanted to pave the way for a liberal democracy in which the Swazi King played a constitutionally defined ceremonial rather than an executive role.

The 1963 constitution provided limited internal self-government for the inhabitants of the territory, with the British Commissioner having veto powers. The constitution was intended to be a compromise document and to satisfy the various interest groups in Swaziland, but it did not produce the desired effect. The conservative-traditional monarchists cried foul because King Sobhuza was provided a token ceremonial role in the constitution. He sent a delegation to London to protest against the constitution but the delegation was turned back. He then organised a plebiscite on the constitution to demonstrate that Swazis were against it and Britain refused to recognise the outcome of the plebiscite. The White community led by Todd rejected the constitution because equal European representation was not included in it and the traditional monarchy, which they preferred to the radical political parties, was marginalised. Radical political

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leaders rejected the constitution on grounds that it did not provide for one-man-one vote under universal adult suffrage and also because it introduced the 'federation of races' which favoured the White minority because they were disproportionately overrepresented in the Legislature.

When Britain announced elections for June 1964, the various key players quickly readjusted and indicated their willingness to participate in the elections despite their rejection of the new constitution. The elections revealed tensions between Britain's modernising constitutional project and the conservative project of the *Ngwenyama* and his allies. Whereas Britain insisted that African traditional rulers should maintain neutrality in modern politics and involve themselves exclusively with cultural and traditional matters, the *Ngwenyama* and the Swazi National Council disagreed. They felt the *Ngwenyama* should be the central figure in traditional and modern governance. The 1963 labour unrest sponsored by the radical political party leaders threatened Sobhuza's leadership, frightened White investors, alarmed apartheid South Africa, and underscored the necessity of the *Ngwenyama* entering modern politics. The *Ngwenyama*, therefore, came under pressure from the White investors and South Africa to form a political party, the Imbokodvo, and to contest the June 1964 elections against the wishes of the British. Clearly, British colonial policy favoured the transfer of power to the nationalist class operating under the banner of political parties and not traditional rulers. The White minority also formed the United Swaziland Association to contest the elections and, possibly, minimise the influence of the radical nationalist parties. Sobhuza and the White community, who had long been opposed to the notion of political parties as "unAfrican", made a U-turn and quickly formed political parties to join the existing ones in order to contest the June 1964 elections against the advice of the British Commissioner.

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The stakes in the 1964 elections were high because their outcome would shape the direction of the future constitutional development of Swaziland. The White United Swaziland Association party and the Imbokodvo formed a coalition to contest the elections and received logistical and financial support from apartheid South Africa, while opposition parties contested the elections in dispersed ranks. Not surprisingly, the Imbokodvo-United Swaziland Association alliance won all the seats. Swaziland's maiden Legislative Council was, therefore, dominated by the conservative political elements. The Constitutional Committee, which was an offshoot of the Legislative Council, was composed exclusively of the Imbokodvo, as the majority party, and the United Swaziland Association party. The initiative for the revision of the 1963 imposed constitution, therefore, fell on the two political parties in the legislature, namely the Imbokodvo and the United Swaziland Association.

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CHAPTER FIVE

THE 1967 CONSTITUTION, INTERNAL SELF-GOVERNMENT AND THE 1968 INDEPENDENCE CONSTITUTION

Introduction

This chapter examines the making of the 1967 constitution leading to the introduction of internal self-government characterised by the Cabinet system. It shows how the revision of the 1963 constitution was the major business of the winners of the June 1964 elections who constituted members of the Legislative Council from which the Constitutional Review Committee was selected. The Imbokodvo National Movement and the United Swaziland Association Party were expected to cooperate in the Constitutional Review Committee as allies but it did not completely happen this way owing to the race question. Although the two allies were unanimous in recommending the *Ngwenyama* as a central figure and executive Head of State in the new constitution, they bitterly disagreed over the issue of race and the privileges of the Europeans agreed upon in the early 1960s. This resulted in hotly contested and acrimonious debates in the Legislative Council between the Imbokodvo and the United Swaziland Association Party. The chapter gives voices to the protagonists of the two camps to reveal the substantive contentious issues in order to enable one to appreciate the difficulties of designing a constitution in a racially polarised society.

This chapter also examines disagreements between the indigenous Swazis and Whites in both the House of Assembly and Senate over the *Ngwenyama*'s control of minerals and mineral oils; disagreements that were carried over to the London constitutional Conference on the Independence

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Constitution where Britain was reluctant to endorse a constitutional order in which the *Ngwenyama* was elevated to a total autocrat who was above the cabinet in the management of mineral resources. The question which the two sides could not easily resolve was whether a traditional monarchy should be above the constitution in a modern state or whether it should be subjected to constitutional checks and balances. Britain had the last word in these matters before the independence of Swaziland in 1968.

Meanwhile, the 1967 constitution was promulgated in March and the country held elections the following month, followed soon afterwards by the inauguration of internal self-government in colonial Swaziland, with Prince Makhosini Dlamini as Prime Minister. Thereafter, both the House of Assembly and Senate debated the White Paper on the 1968 Independence Constitution in preparation for the forthcoming constitutional conference in London.

The Constitutional Review Committee and the Making of the 1967 constitution

The Constitutional Review Committee composed, exclusively, of the Imbokodvo and the United Swaziland Association was established by the British Government in 1965, to revise the 1963 constitution, which was satisfactory to no one in Swaziland, and to make recommendations for a new constitution. The membership of this Constitutional Review Committee is documented in Table 5-1.

Table 5-1
Constitutional Review Committee

	Official Members	**Non-official Members**	**Affiliation**
1.	Sir Francis Loyd, Chairman	Prince Makosini Dlamini	Imbokodvo
2.	A. E. C. Long, Chief Secretary	Prince Masitsela Dlamini	Imbokodvo

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3.	J. J. Dickie, Attorney General	Prince Mfanasibili Dlamini	Imbokodvo
4.		J. M. B. Sukati	Imbokodvo
5.		C. F. Todd	Imbokodvo
6.		P. Dlamini	Imbokodvo
7.		Dr. G. L. Msibi	Imbokodvo
8.		A. K. Hlophe	Imbokodvo
9.		W. Meyer	United Swaziland Association
10.		R. P. Stephens	United Swaziland Association
11.		H. D. G. Fitzpatrick	United Swaziland Association
12.		E. Winn	United Swaziland Association

Source: Compiled from *Times of Swaziland*, '12 Appointed to constitutional Committee: 8 Imbokodvo, 4 USA', August 27, 1965.

The Constitutional Committee started its work on 26 August 1965.[1] When the second session of the Legislative Council opened on 12 October 1965, the British Commissioner, Sir Francis Lloyd, attended this session during which he underscored in his speech to the House the intentions of the government to pursue its constitutional review exercise. He expressed the hope that the recommendations of the Committee would be ready by early 1966 and concluded on a personal

[1] '12 Appointed to constitutional Committee: 8 Imbokodvo, 4 USA', *The Times of Swaziland*, August 27, 1965.

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optimistic note that "there was enough wisdom in [Swaziland] . . . for the right decision to be taken.[2]

The Committee held a total of 18 sessions from August 1965 to March 1966 and was informed in its deliberations by constitutional practices in other British dependencies. It also received memoranda and suggestions from interested bodies and organisations and members of the general public.[3] On 3 March 1966, the government published the Committee's Report in both English and siSwati as a White paper for debate in the Legislative Council in April 1966.[4] The non-official members affirmed "their desire and intension for complete independence as soon as possible" in the Report. The Secretary of State for Colonies accepted the recommendation of the Committee in principle and stated that independence would be granted before the end of 1969.[5]

There were a range of issues over which the Committee was unanimous and others over which they were bitterly divided. The Committee was unanimous on issues related to the change of the status of Swaziland, the structure of the government and the inclusion or not of Swazi culture and tradition in the new constitution. The politics of the Protectorate status of Swaziland was related to the recognition of the *Ngwenyama* of Swaziland. The Committee had identified as its 'fundamental' problem the restoration of what the Swazi regard as the original treaty of relationship which had been established between Swaziland and Britain in the late 19th century

[2] SNA: Legislative Council Official Report, Hansard, 1965-1966.

[3] 'Proposals for constitution Sent to London', *Times of Swaziland*, March 11, 1966.

[4] Ibid.

[5] SNA: Swaziland Government. Report of Swaziland constitutional Committee. 1966.

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because this treaty recognised the kingship of the *Ngwenyama*, whereas, the 1903 Protectorate status did not.

The original treaty was the Pretoria Convention of 1881 which was a tripartite agreement signed by the British, Boers and Swazis recognising the independence of Swaziland under the Swazi King. The Swazi often invoked this treaty to claim that they were already independent under a recognised sovereign whom Britain should deal with all the time and not the leader of a political party. Britain treated Swaziland as a British Protectorate in the context of the constitutional status and evolution of Swaziland but the Swazis did not see it that way since the status smacked of colonialism. The Swazi interpreted the constitutional development of their country as the process of "regaining independence", translated as inkhululeko-freedom, since Swaziland had been independent under the 1881 Pretoria Convention which was upheld by subsequent international conventions.[6] The Secretary of State indicated the willingness of the British government to review the status of Swaziland from a Protectorate to a Protected State under a Treaty of Friendship with the British Crown, subject to the approval of Her Majesty and the *Ngwenyama*. The feeling was that Swaziland, as a protectorate, was little better than a colony and the change was intended to enhance its status as something more than a colony.[7] This change was not to fundamentally alter anything because Swaziland remained a colony in the technical sense of the word.

[6] SNA: Legislative Council Debates, 1966, 166-167.

[7] Ibid.

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The Committee made specific and detailed proposals which combined, in their view, the essentials of a modern democratic state with the traditional institutions of the Swazi people and Swazi kingship. It recommended that the *Ngwenyama* should be recognised as King of Swaziland and Head of State. Pending full independence, Her Majesty's Commissioner in Swaziland would retain responsibility for external affairs, defence, finance and internal security (including the use of the police force), and conditions of the public service. These reserved powers of Her Majesty's government were standard to all British dependent territories heading towards independence. In some territories, Her Majesty's Commissioner was usually in charge of finance, external affairs, defence, internal security and other matters. The Committee recommended that the Swazi National Council would continue to advice the King "on all matters regulated by Swazi law and custom" and should not be part of the constitution, while the three arms of modern government, the Judiciary , Legislature and executive would be vested in the constitution.

Furthermore, there should be a bicameral Legislature consisting of a House of Assembly and Senate. The House of Assembly was to consist of a speaker, 24 elected members and 6 members nominated by the *Ngwenyama* "having regards to interests not already adequately represented", and the Attorney General who would not have a right to vote. The Senate would consist of a speaker and 12 members, 6 elected by members of the House of Assembly and 6 appointed by the King, also representing interests not otherwise adequately represented.

The Committee proposed 8 constituencies, comprising approximately 15 000 voters, with each returning 3 members to the House of Assembly. All bills were to be passed by a majority of both

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Houses and assented to by the King before they became law. In the event of disagreements, a joint sitting of both Houses would resolve the matter by a majority vote. Finance bills would be dealt with by elected members.

In addition, there should be a Cabinet, consisting of the Prime Minister, his Deputy and up to 6 other Ministers. The Cabinet would advise the King. Allowance was made for the appointment of Assistant Ministers to assist the Cabinet Members with their duties. Although the *Ngwenyama* would appoint a Prime Minister and Cabinet, the British colonial separation of political office from civil service would be maintained and developed through the Public Service Commission and a Judicial Service Commission.[8] There was unanimity over these issues. Prince Makhosini Dlamini qualified this unanimity as "triumph for the Imbokodvo policy and as a wealthy gift to the people of Swaziland who returned [them] at the last elections".[9]

The Acrimonious Race Question during the April Legislative Council Debates

A typical characteristic of settler colonies in Southern Africa was the assertion of White superiority and the marginalisation, and even exclusion, of the black majority from the governance of the territory.[10] The feeling of the White minority was always that they were the torch bearers of

[8] 'The Proposal for New constitution', *Times of Swaziland*, March 25, 1966.

[9] Ibid, 162.

[10] In the case of Southern Rhodesia, for instance, Mlambo explains how the territory successfully secured self-government from the British in 1923 and pursued a policy of racial segregation at the expense of the black majority. When Garfield Todd became Premier of Southern Rhodesia in 1954, he refused to extend power and franchise to blacks (See Mlambo, *A History of Zimbabwe*, 119-127; For more on settler colonies, see L. Veracini, *Telling the End of the Settler Colonial Story. Studies in Settler Colonialism: Politics, Identity, and Culture* (New York: Palgrave Macmillan, 2011); C. Snelgrove, R. Dhamoon, and J. Corntassel, 'Unsettling settler colonialism: The discourse and

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civilisation and it was natural that they must lead the indigenous majority and enjoy special privileges. Against a background of the dominant position that the White minority enjoyed in Southern Africa, the predominantly White United Swaziland Party clamoured for White recognition as a distinct race from the native Swazis and defined the Swazi society as multi-racial. The black majority through the Imbokodvo advocated non-racial Swazi society in a constitutional order which treated everybody as equal and belonging to the same country irrespective of race, creed, religion or ethnicity. However, the Whites did not see things in that same light. The United Swaziland Association Party dissociated itself from the concept of a "non-racial state" and demanded a separate European Roll which would reserve half of the Legislative Council seats for the Whites in Swaziland. They argued that Whites not only warranted specific and separate representation, but also that their representation should be chosen by Europeans even though Africans outnumbered Whites by some 30:1 given that there were over 270,000 Africans to 9,000 Whites. They maintained that it was fair and reasonable that they should occupy half the seats in the House of Assembly because of their economic weight and the value of their technical know-how to the territory. The Swazi monarchy had, hitherto, embraced this position of the White minority and this had resulted in the coalition between the Imbokodvo and the United Swaziland Association Party before the 1964 legislative elections. However, this coalition, which had been meant to prevent the more radical Swazi political parties from gaining control of the legislature, had unravelled under new political circumstances in the aftermath of the 1964 elections.

politics of settlers, and solidarity with Indigenous nations', *Decolonization: Indigeneity, Education & Society*, *3*, 2 (2014).

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The Imbokodvo had then discovered its own real power from its triumph in the June 1964 elections. The victory had given the Imbokodvo leaders the confidence and a sense of security they had not enjoyed before. Before the June 1964 elections, the radical political parties had appeared truly threatening as the mammoth-crowd pulling rallies they organised and the strikes they sponsored demonstrated. The June 1964 elections dissipated the modern political parties' threat, as they won no seat. This was possible because of the support the Imbokodvo received from the United Swaziland Association Party. Radical political parties were further weakened by post-election disillusionment, and the carpet-crossings to Imbokodvo. The absorption of more modern political elements into the Imbokodvo built up its sense of confidence and it managed to undercut the appeal which these parties had enjoyed before in the eyes of the masses.

The Imbokodvo, subsequently, realised that the programme of the radical opposition party that rejected reserved seats for the White minority and the establishment of a non-racial society was popular among Swazis and, therefore, had to be considered. The pressure of the extra-parliamentary political parties on the Imbokodvo was high, as Stephens observed during the April 1966 debates of the Legislative Council. During the April 1966 Legislative Council debates, Stephens of the United Swaziland Association White minority party observed:

> We know that Imbokodvo are under pressure from political parties and that the leaders of these parties have told us that their policy is to Africanise the service to the complete exclusion of the Whites… This is an anti-White move and a racial move… If the Imbokodvo gives an inch today, by eliminating the White roll, they are going to have a great difficulty in resisting further demands.[11]

[11] SNA: Legislative Council Official Report, Hansard, 1965-1966, 175-178.

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The rapprochement between the Imbokodvo and the former radical political leaders that had joined its ranks made the United Swaziland Association Party suspicious and uncomfortable. As if this was not enough, the views of the Imbokodvo started changing and in certain respects approximated those of the radical political parties which had been advocating immediate independence, one man one vote, a non-racial state and White voting rights limited to those with British passports.[12]

The Imbokodvo was also increasingly becoming uncomfortable with the United Swaziland Association Party because of its overt support of the project of the integration of Swaziland into apartheid South Africa which was very unpopular among Swazis.[13] Although Sobhuza had subscribed to the overtures of Prime Minister Verwoerd in the early 1960s, the scheme had been ridiculed and condemned by the radical political parties and most Swazis were against it. By distancing itself from the United Swazi Association, the Imbokodvo was making a political statement to the effect that the monarchy did not endorse the project of the integration of Swaziland into South Africa. The Imbokodvo's changing position was captured in the April 1966 session of the Legislative Council debates on the Committee's Report which incensed their former allies, the United Swaziland Association Party.

[12] See: SNA: Legislative Council Official Report, Hansard, 1965-1966.

[13] The radical opposition had made a lot of political points on the issue of Swaziland's assimilation by South Africa and pointed to the White Swazis and King Sobhuza as the authors. The rumour being circulated was that Sobhuza had negotiated to sell Swaziland to South Africa. See Kuper, *Sobuza II*; *Ngwenyama and King and Swaziland.*

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During the April 1966 Legislative Council debates, three members of the United Swaziland Association Party, namely R. P. Stephens, W. Meyer and E. G. Winn, tabled a motion amending the constitutional proposals with regard to the equality in the Legislature between the White minority and the Africans, double electoral rolls for the two races, and the timing of independence. The United Swaziland Association Party wanted a fifty-fifty representation of blacks and Whites in parliament and separate electoral rolls for the two races and the postponement of self-government and independence. Their justification was that Swazis were not yet politically ripe to govern themselves and that the Swazi middle class should first be created to make independence meaningful.[14] This was in stark opposition to the Imbokodvo's position which was demanding: (i) the establishment of a non-racial constitution and (ii) a single electoral roll for all Swazi citizens, black, coloured, and White. Having a single electoral roll was, clearly, going to put an end to the reserved White minority seats, which had been negotiated with the Swazi National Council in the early 1960s and was the basis of the alliance between the monarchy and the Whites. In the event of a one man one vote election, Whites no longer stood a good chance of being elected.

The divergent positions of the two former allies over the race question sparked fireworks in the House, as tempers flared in the heated debates. On 1 April 1966, Prince Makhosini Dlamini clearly stated the position of the Imbokodvo as one that was determined to ensure that the new constitution of Swaziland should provide for a non-racial state. This position was in line with the wishes of various interest groups, including political parties outside parliament, which wanted a non-racial state and one common roll for the whole territory. He emphasised that only a minority wanted a multi-racial state and that the majority would not bow to the wishes of the minority since they had

[14] SNA: Legislative Council Debates, Official Report, Hansard, 1965-1966.

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been advised that in politics the majority must always rule.[15] He justified his position by arguing that constitutional Committee had agreed that all discriminatory laws should be repealed in the new constitution.

Prince Makhosini further reported that members of the United Swaziland Association Party had dissociated themselves from the concept of a non-racial state and that the Imbokodvo had struggled to persuade them to change their "sectional and racial attitude for the common good of Swaziland and enable the constitutional Committee to present a unanimous Report" without success. He stated that he:

> . . . knew that these [honourable] members felt that the Europeans warranted, not only specific and separate representation, but that their representatives should be chosen by Europeans; although Africans outnumber Europeans by some thirty to one. They considered it fair and reasonable that Europeans should occupy half the seats in the house of Assembly and hence the division . . . We advocate equality for all men and we condemn discrimination based on colour . . . If we accept the Europeans should have a separate voters' roll, how can we deny the same right of separate representation to the women, to the Roman Catholics, to the Portuguese, to the Jews, to the blind, to the Euro-Africans, to the teachers or indeed to anyone who feels he is in a special category? It is indeed a matter that we still have in our midst, when we have in the past, lived harmoniously.[16]

One of the White Swazis who proved to be a diehard supporter of the Swazi monarchy was Todd, who endorsed the provisions of the Report and supported Prince Makhosini. He made it clear during the debate that he fully supported the new constitution because it was acceptable to the

[15] SNA: Legislative Council Debates, Official Report, Hansard, 1965-1966, 163.

[16] SNA: Legislative Council Debates, Official Report, Hansard, 1965-1966, 162-163.

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large mass of the population of Swaziland, whether they were Swazi, White or Eurafrican.[17] He also supported it because it provided for a constitutional monarch and stated:

> I believe that I speak not only for the Europeans but for the Swazis when I say that this constitution, because it supports a monarchy for Swaziland, it is the real foundation to the stabilising influence in Swaziland. The Europeans are monarchists and the Swazis are monarchists. The Swazis have an old tradition of loyalty to their King and it would be unthinkable in Swaziland to devise a constitution that did not provide for a monarchy.[18]

As noted, three White members of the Swaziland Association Party, R. P. Stephens; W. Meyer and E. G. Winn expectedly dissented and tabled an alternative motion for amendment which demanded a separate European Roll which would retain for the Europeans one half of the membership of the Legislative Council. The stakes for the White minority in Swaziland were high and these Whites put up a ferocious battle to save the last vestiges of White privileges through the legislature. The two White United Swaziland Association Party members who spoke out in the House were R. P. Stephens and W. Meyer.

R. P. Stephens pointed out that the majority of the members of the United Swaziland Association Party supported the constitutional proposals in every respect except for the proposal on the voters roll and race. He agreed "wholeheartedly with Prince Makhosini and Todd that the monarchy in Swaziland is the cornerstone to stability" but indicated that his Party had reservations over the race issue and requested for an amendment to allow Europeans to have a separate roll because they

[17] SNA: Legislative Council Debates, 166.

[18] Ibid.

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were a significant and important minority on whose skills and investment the Swazi economy was built. The amendment was simply meant to reflect this reality.

Stephens argued:

> The object of our amendment is to try and accommodate in the constitution the realties with us at the moment. The reality is our people here are made up of two main races and our amendment will allow that part of the population, which is at the moment responsible for 99% of the farming, commercial, industrial, administrative and technical know-how, direct representation. This will give them and their children tangible proof that they are wanted as a permanent segment of the Swaziland community and that their standard and way of life will be permanently respected. The case of our recommendation is that we recognise the existence of two groups which, for want for a better term, I will refer to as races; and we maintain that, by ignoring this fact, we will do nothing to extinguish the patent differences between the two groups, mainly as entities in education, customs, tradition, capital, culture, technical skills, art and in many other ways.[19]

Stephens stated that the aim of the suggestion of the dissenting group was to "obtain independence for Swaziland under a new constitution that [would] not shake the faith of [Europeans and Euro-Africans] in [Swaziland's] future."[20] The dissenting group maintained that "a sudden 100% black administered territory is unnecessarily revolutionary and may upset the progress of development." They felt that evolution was better than revolution. The anti-independence suggestion that the Swazi Whites were making in 1966 was totally unrealistic because scores of African countries had already achieved independence and were operating in concert at the OAU headquarters in Addis Ababa.

[19] SNA: Legislative Council Official Report, Hansard, 1965-1966, 171.

[20] SNA: Legislative Council Debates, Official Report, Hansard, 172.

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Stephens argued that a constitution based on a non-racial society concept would not be suitable for Swaziland since the country was multi-racial. He asked, "why impose a non-racial constitution on a multi-racial state".[21] Stephens stated that there was a major difference between the approach of the United Swaziland Association Party and the Imbokodvo. Whereas the Imbokodvo was advocating a non-racial based constitution in a society with more than one race, the USA was advocating a constitution for a multi-racial society and there was nothing wrong with that. It was a reality that the constitutional drafters had to take into consideration. If Swaziland was a non-racial state, the United Swaziland Association would obviously ask for one electoral roll. To treat Swaziland as a non-racial state was a myth and it could not work. In the words of Stephens:

> It certainly will not work 100%. Mr Speaker, if the Imbokodvo is completely honest when they want a non-racial state with the blacks and Whites completely integrated, . . . let us discuss the best way of achieving this . . . they are not going to endear ourselves to the Whites by removing rights the Whites have had for over forty years. That is not the right way to win friends and keep them.[22]

W. Meyer was the second White politician to take to the floor of the House and also called for an amendment to the bill tabled by Prince Makhosini Dlamini which he alleged 'infringed' on White voting rights. He argued that the White minority constituted a special category and the future of Swaziland hinged on their voting rights. Mistakes had been made in bequeathing to African countries the notion of one man one vote and it has proved to be unworkable. Africans were not capable of handling European democracy. He then admonished:

> Let us hope that Her Majesty's government does realise by now that implementation of the political system of "one man one vote majority rule" has always led to disaster and chaos. We do not blame the Swazi nation for grasping the opportunity of "one man one vote majority rule" because they, like many other African states, are in an emotional dream;

[21] SNA: Legislative Council Debates, 172.
[22] SNA: Legislative Council Debates, 172-173.

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> they are yet to awake and realise the responsibility of independence and what it all involves.[23]

Meyer indicated that there was no country in the world that could be called a 'non-racial' state and many races were found in Swaziland. The Europeans had played an essential role in the development of Swaziland and it was unjust to render them politically helpless in the one-man-one-vote system. Such a system would eliminate the European minority as an entity.[23]

In an arrogant and provocative manner, Meyer presented Whites as the indispensable movers of the Swazi socio-economic life and argued that Swazis had to rely on them or perish. He stated in clear terms that the economic prosperity of Swaziland was due to the presence of Whites and that almost half of Swaziland belonged to Europeans who had developed it considerably and commented, sarcastically, that without Europeans, Swaziland would have been a backward enclave and "would have been where she was one hundred years ago". Europeans brought light and development to Swaziland and were the economic pillars of the territory. Because of their economic weight, he concluded, they should be entitled to special political rights on a separate roll.

In addition, Meyer ridiculed the idea of independence on the grounds that Swazis were not yet capable of governing themselves and needed more time. The issue of independence was to be approached piecemeal by introducing an interim period during which the European would be given

[23] Ibid, 178.

[23] Ibid, 179.

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the "opportunity and political power to enable him … to lead Swaziland into a prosperous future."[24] Africans, in his estimation, could not manage independence on their own; they still needed European expertise and tutelage. The quest for self-government and independence was not an urgent agenda to be pursued. Rather, the issue of European political rights should be addressed for the overall benefit of the territory. This would make the European to be committed and confident in his future in the territory

Meyer stated:

> Mr Speaker, we respectfully ask Her Majesty's government to provide sufficient representation for the European by the European. This is the only way we will maintain the confidence of the European in Swaziland and a stable government. . . . I am making an appeal to this House and to Her Majesty's government to make an exception in the case of Swaziland by taking account of the European's interest and the necessity to maintain his confidence in Swaziland, by giving the Europeans the opportunity to help the Swazi nation make Swaziland the only real independent country in Africa.[25]

The racist views of Stephens and Meyers on the indispensability of Whites in the survival of Swaziland's economy, and the incapability and unpreparedness of Blacks for self-government and independence, was pervasive in Southern Africa, particularly in Rhodesia and apartheid South Africa.[26] It was not, therefore, only in Swaziland where the White minority felt that Blacks were not ripe for independence and self-government.

[24] SNA: Legislative Council Official Report, Hansard, 1966, 180.

[25] Ibid, 180.

[26] See for instance, I. Smith, *The Great Betrayal* (London: Blake, 1997); S. Dubow, 'Afrikaner nationalism, Apartheid and the conceptualization of 'race', *The Journal of African History*, *33*, 2 (1992), 209-237; R. Cohen, *Endgame in South Africa?: the changing structures & ideology of apartheid* (New Jersey: Africa World Press, 1988).

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Not surprisingly, Meyer's speech was not well received in the, predominantly, black House, given that he had literally denigrated black Swazis and made allegations about their incompetency in managing the future of their country. Dr. Msibi of the Imbokodvo literally flared as he took the first shot at Meyer. He described Meyer as being "racist" and "short sighted" for highlighting the assumed shortcomings of Swazis and the superiority and know-how of Whites:

> Mr Speaker, most of us have always believed that we are immune to shocks; but I can understand the silence of this House this evening. The last speaker's speech could not have shaken anybody more than it has shaken me today. His speech, Mr Speaker, is the last word in *intolerance, Nazism, Herevolkism and everything that we do not stand for. It is an epitome of man's inhumanity to man* . . . We shall not be provoked by emotional speeches from the United Swaziland Association . . . We know that Hitler discriminated on the basis of racism. We know that oppression has been carried on the basis of colour in Africa. We know that there are those today who are trying to increase their pocket today and satisfying their greed by discriminating on the basis of colour in Southern Africa. There are those in our midst who, when we tell them that discrimination on the basis of colour is wrong, will say that we are anti-White . . . [they will] shout "agitator", "agitator", when told that the colour of a man's skin is merely a biological phenomenon and has no reflection on his ability intellectually or otherwise, but the only agitators and the only anti-Whites I know…are those Whites who wittingly or unwittingly continue to advocate discrimination on the basis of the colour of the skin . . . morphologically speaking, this country is multi-racial; . . . [but] to base our laws on an a multi-racial status is folly . . . . We want therefore that before the law of this country, everyone should be equal . . . .[27] [Emphasis added]

He dismissed Meyer's claim that Whites ought to be given special privileges because of their role in the country's economy and emphatically stated that Swazis were not in support of such an arrangement. He stated the Swazis wanted self-government and independence and he did not think anybody could refuse them that.

[27] SNA: Legislative Council Official Report, Hansard, 1965-1966, 181-183.

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Next, P. Dlamini rejected the amendment proposed by United Swaziland Association, pointing out those who had proposed the amendment under discussion were rude and arrogant for telling Swazis that they were not ripe to be given "responsibility for self-government, let alone independence" and that they owe their survival to Europeans who owned half of Swazi territory. Dlamini said from the utterances made it was clear that:

> The United Swaziland Association would like to deny Swaziland self-government leading to independence. They say we are not ready and we are incapable of looking after ourselves. That may be so, but I cannot understand how they claim the patronage to look after us when they are in the same position as we are. Some sixty years ago or so, . . . the British government has been responsible for running this country over [both Swazis and Whites]. Now tell me, Messrs. United Swaziland Association, how do you come to have the qualifications and say you can rule better than the Swazi people? . . . As far as I understand the position of a European in Swaziland *he is a guest* and this is the sort of gratitude we receive for our hospitality.[28] [Emphasis added]

In response, Fitzpatrick of the United Swaziland Association Party tried to calm down tempers while distancing himself from the position his party. He deplored the fact that his party had proposed the amendment on the basis of cultural and traditional differences and on the Herenvolk concept of the racial superiority of Whites. He stated that the 50-50 proposal was not realistic and had been rejected at the 1963 London Constitutional Conference. The British government was definitely going to reject such a proposal in 1966. The Swazi people were generally hostile to the 50-50 principle and they would not entertain it. He acknowledged the fact that if the 50-50 amendment was taken to London, it would simply delay self-government and independence.

[28] Ibid, 185.

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S. Mbelu of the majority party rose to call on members of the House to reject the amendment 'with a strong force because it deserved to be dealt with that way". He noted that:

> …all [12] members of the [constitutional Committee] were keen to produce a constitution which will bring about peaceful relations in Swaziland and they came to a point of differences whether the forecast should be on nationhood or should be on group exclusiveness. The African people all over Africa reject multi-racialism, Mr Speaker, because it is a negative approach to cooperation and the majority of the people regard it as pandering to European arrogance.[29]

He rejected all racialist concepts and stood for "straight majority rule" and non-racialism, arguing:

> When we say we stand for non-racialism we mean that we support the full development of the human personality. We support an active creation of conditions *which will blow to smithereens all group exclusiveness.* We believe that this will bring about a dynamic Swazi nation which will be committed to the tremendous task of building Swaziland . . . .[30] [Emphasis added].

When W. M. Magongo of the majority party took the floor, he simply called on the House to reject the amendment being proposed by the three USA Party dissidents. He stated:

> In a nutshell this amendment requires us to accept fifty-fifty. We have been told that Swazis are not yet able to govern themselves and that the Swazi middle class should first be created. Why should we waste our time on this and deny ourselves the opportunity of governing ourselves? We are asked here to reserve a separate roll for Europeans and Africans in the constitution. I say here and now that I reject that.[31]

[29] Ibid. 191.

[30] Ibid.

[31] Ibid. 193.

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D. J. Weir of the United Swaziland Party took to the floor and also endeavoured to calm tempers. He remarked that the United Swaziland Association had been thoroughly rebuked in the House and this might give the wrong impression that all United Swaziland Association members were 'traitors". He explained how the United Swaziland Association came by the 50-50 arrangement and called for understanding and tolerance. He rejected the view expressed in the House that the European in Swaziland is a mere guest and the United Swaziland Association did not stand for the suppression of any group in Swaziland.[32]

A. Gamedze of the majority party called on the members of the United Swaziland Association Party referred to in the Legislative Council report as "dissentients"[33] to withdraw the amendment motion they had tabled. He pointed to the fact that in the Republic of South Africa Whites only were allowed to legislate while blacks were ignored. In Swaziland, it was recommended that Whites should form part of the government and they were asking for a 50-50 representation and special consideration despite their minority status. Gamedze stated that they had recommended equality before the law and rejected all forms of discrimination based on colour.[34] Prince Masitsela Dlamini rejected the amendment proposed by the United Swaziland Association Party like those before him and advised them to simply withdraw it because the majority in the House did not want it. The United Swaziland Association Party, through Meyer, conceded to the position of the

[32] Ibid.

[33] The use of the word 'dissentients' in the Legislative Council report and even the *Times of Swaziland*, refers to the minority with dissenting opinions. The Legislative Council document read: "I realize, Mr Speaker, that these dissentients are in the minority and have no following." See SNA, Legislative Council Debates, 1966, 163.

[34] Ibid.198.

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majority for the time being, but added that they believed they were right in the position they took and would continue to fight for what they considered was best for Swaziland.[35]

After the debate in the Legislative Council, the draft constitution was sent to London for Her Majesty's government's consideration. The British Government agreed with most of the proposals of the constitutional committee but the thorny issue of the powers of the traditional monarchy in a modern state was not addressed to its satisfaction. Was the *Ngwenyama* to have total control over rights to minerals, mineral oils and land? Who should control these resources-the *Ngwenyama* as an individual or the modern parliament which represented the people's voices? The Imbokodvo maintained that it should be the *Ngwenyama* in trust of the people, but the British did not agree with that type of management of national resources in a modern state. After much debate, the Secretary of State finally agreed that control over minerals be vested in the *Ngwenyama*, who would be advised by a committee. However, who was to constitute the committee? The Swazi argued that, according to Swazi traditional kingship, the committee should be appointed by the King in consultation with the Swazi National Council. In other words, the control over minerals would be extra-parliamentary. The British pointed out that, since government would be in the hands of a Cabinet drawn from a parliament mainly elected by universal franchise, the committee should be appointed from Cabinet. The Secretary of State stated that it was:

> …essential that the Central Government which was responsible for other aspects of the economic development of Swaziland should also control mineral development. To provide otherwise and to vest control in the traditional authority might well result in a clash with the central government which would have far reaching effects in Swaziland. Furthermore in view of its unique position, events in Swaziland would come in for close scrutiny and it was desirable to avoid creating procedures which would enable people to say that a

[35] Ibid, 216.

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> traditional, rather than a democratic system, was being adopted. Clear ministerial responsibility would dispose of this criticism.[36]

According to the British, the ideal was that parliament in a modern state should emanate from competing political parties. The monarchy, which was not an elective position, should be subordinate to an elected parliament. The Imbokodvo felt that the reluctance of the British to accept their view point that Sobhuza should be in charge of the control of minerals was an indication of lack of recognition and trust in the *Ngwenyama*'s abilities and was a deliberate act of depriving him and his people the right to control revenue in accordance with their real national interests. The Swazis were clearly asking Britain to recognise the traditional model of kingship in Swaziland existing for more than a hundred years under totally different socio-economic conditions. Sobhuza's response was that Britain was applying its own traditional concept of constitutional monarchy and not that of the Swazis. The argument of the monarchists was vacuous in the sense that the British intended to bequeath to the Swazis a modern governance mechanism that would prioritise the people's voices and concerns through its elected representatives and not those of an individual. The pro-monarchists were imagining a Swazi culture and tradition that never existed because pre-capitalist Swaziland had a subsistence economy that had not developed into distinct primary, secondary and tertiary economic sectors.

The British were inclined to ensure that the economic infrastructure of a modern Swaziland state should be managed by the modern political elite who were equipped with the know-how to do so collectively and not traditionalists or a single individual. The pro-monarchists did not contemplate

[36] SNA: Swaziland Constitutional Proposals [Cmd], October 1966.

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the fate of Swazis if the monarchy tended out to be a malevolent and an unenlightened one. What the British wanted the Swazis to inherit was a modern political system in which checks and balances existed and not a traditional one in which an individual arrogated power to himself at the expense of the elected institutions of the state. These disagreements between the British and the monarchists did not augur well for the accelerated pace of constitutional developments in Swaziland.

Further pressures on the quickening of the pace of constitutional developments in Swaziland came from the independence of the other High Commission territories. On 30 September 1966, Bechuanaland became the independent Republic of Botswana and on 4 October 1966 Basutoland became the independent Kingdom of Lesotho. J. Stonehouse, the British Parliamentary Under-Secretary for Colonies, who was part of the independence ceremony of these countries, felt Swaziland's road to independence was slowed down by disagreements between the various political factions. He went to Swaziland with the intention of reconciling the different viewpoints on the Swazi constitution between the British and the Swazi authorities. He met Sobhuza, local officials, political leaders and a delegation from political parties to discuss the way forward for the making of a modern democratic Swaziland.

Dr. Zwane of the Ngwane National Liberatory Congress, whose party was excluded from the constitutional committee because it had no seat in the Legislative Council, appealed to Stonehouse that a "fully representative constitutional conference [should] be held in London by the end of October 1966 in which his party would want to be represented".[37] Dr. Zwane said Britain had

[37] 'NNLC wants London Talks on Proposed constitution', *Times of Swaziland*, October 14, 1966.

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found in "White settler arrogance" and "Swazi traditionalism" a reason to deny Swaziland a democratic constitution. He condemned the proposals in the constitutional Committee report because it was biased against emergent political forces and denied them independent representation. He pointed out that the electoral system was biased in favour of the Imbokodvo, while structurally, the proposed three-member constituency without proportional representation made it difficult for small parties to gain representation. The large size of the constituencies accentuated the advantages of the party with greater resources like the Imbokodvo. Zwane further stated that the King would not be a true constitutional monarchy because of his wide discretional powers. Moreover, Zwane's party argued that the Swazi National Council was an archaic body which was partisan and was a "mere breeding ground for Mbokodvoism and should be abolished and replaced by a college of chiefs with a fixed composition and with specified duties".[38]

The British Under-Secretary of State indicated that "no good purpose would be served by holding a constitutional conference in London" and that the British "could well work out a constitution on the evidence already given".[39] He stated clearly that in a debate in the House of Commons in September 1966, the British government expressed its determination that the new constitution would provide for a constitutional monarchy and that political power would clearly be in the hands of the elected Ministers.[40] He failed to persuade Sobhuza and the Swazi National Council to accept the British proposals for the control of mineral rights by the government that emanated from the

[38] 'NNLC wants London Talks on Proposed constitution', *Times of Swaziland*, October 14, 1966.

[39]'Constitution Ready? Stonehouse Meets Political Leaders', *Times of Swaziland*, October 14, 1966.

[40] 'Stonehouse on Powers of the King', *Times of Swaziland*, October 10, 1966.

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parliament of the day.[41] When Stonehouse left, Sir Francis Loyd made another attempt in December 1966 to persuade the *Ngwenyama* of the wisdom of the British approach to constitutionalism whereby parliament should be supreme over all matters of governance. The *Ngwenyam*a did not concede to Loyd's advice because it touched on parliamentary control of his powers.

The response of the British government to the Report of the constitutional Committee was largely accommodating and, on the basis of that report, the British Government had taken the following decisions. Britain had decided that (i) Swaziland should be granted internal self-government and (ii) that they were ready to enter an agreement with the Swazi King under which Swaziland would become a Protected State and the *Ngwenyama* would be recognised as King and (iii) that Swaziland would achieve independence not later than the end of 1969. Britain proceeded with the enactment of the 1967 constitution to enable the introduction of full internal self-government leading to independence.

The March 1967 constitution

The penultimate constitution to the 1968 independence was the March 1967 constitution. The constitution was issued on 22 February and promulgated on 1 March 1967.[42] It was essentially based on the proposals of the constitutional Committee and reflected to a large extent the British Westminster style constitutional tradition that was bequeathed to Britain's erstwhile colonies with

[41] 'Constitution Ready? Stonehouse Meets Political Leaders', *Times of Swaziland*, October 14, 1966; Kuper, *Sobhuza II: Ngwenyama and King of Swaziland*, 271.

[42] See Supplement to the Swaziland Government Gazette Extraordinary, Vol. VI, Mbabane, March 1st 1967, No. 211.

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a bicameral Legislature consisting of an Upper and Lower Legislative Assembly. It provided that Swaziland would gain independence under a monarchy not later than 1969.

In contrast to the 1963 constitution, the new constitution recognised the *Ngwenyama* as King and Head of State in Swaziland. The position of the *Ngwenyama* was firmly secured finally after a long struggle. The inclusion of the *Ngwenyama* as the King and Head of State of Swaziland was a victory for the conservative-traditional party who had been lobbying for the attribution of a more central and prominent role for the *Ngwenyama* against a background of British reluctance to do so in the light of British constitutional tradition. Succession to the position of *Ngwenyama* would be governed by Swazi law and custom and in the case of the absence or incapacity of the *Ngwenyama*, the *Ndlovukazi* (Queen Mother) would act in his place in accordance with Swazi Law and Custom. The *Ngwenyama* was to enjoy immunities and privileges from criminal jurisdiction of the courts and from being called as witness to any civil or criminal proceeding. Executive authority was vested in the *Ngwenyama* who exercised it through the Prime Minister and his Cabinet. The *Ngwenyama* was to appoint the Prime Minister from the elected members of the House who appeared to him to be likely to command the support of the majority of its members. With the advice of the Prime Minister, the *Ngwenyama* would appoint the rest of the members of the Cabinet from the House.

Under the 1967 constitution, a new electoral system was introduced which was different from that under the 1963 constitution. A single voters' roll was introduced for all Swazis and voting was based on universal adult suffrage. Swaziland was divided into 8 constituencies, each returning 3 members to the House of Assembly. The *Ngwenyama* was to nominate 6 additional members of

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parliament to the 24 elected members to make a total of 30. The 30 parliamentarians then elected 6 Senators, while the *Ngwenyama* nominated 6 others to make a total of 12. Thus, Swaziland's bicameral Legislature of a House of Assembly of 30 members and a Senate of 12 members was established.[43]

Although the electoral system was an improvement in introducing a non-racial single voters' roll, it was harshly attacked by the President of the Swaziland's student's Union, N. J. Mhlongo, during the annual conference of the union in Matsapha on 4 May 1967. The electoral system was criticised as a recipe for a one-party state because the concept of a three-member constituency was "a political manoeuvre to entrench the traditionalist-settler interests and by making it impossible for other [parties] large or small, to be represented in parliament". Under the electoral system of winner takes it all, the radical nationalists parties had no chance to be elected to parliament. The radical nationalist parties were strongest in the urban and industrial areas and had a chance of winning some seats in areas they were popular in only under the under a one-man constituency system. On the other hand, the Imbokodvo had a firm grip over the illiterate masses in the rural areas and the idea of a one-man three-vote system was for the rural population to swallow up the urban and industrial areas. It was therefore difficult for the radical nationalist parties to make any inroads into the political system. The students sent their protest to the Secretary of State in London, but no action was taken.[44]

[43] Ibid.

[44] 'Student Leader Attacks constitution', *Times of Swaziland*, May 12, 1967.

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The new constitution still allowed Her Majesty's Government the reserved right to amend or replace any part of it. The British Government was in charge of external affairs and defence, internal security, finance and the public service. Where it was deemed necessary, the office of Her Majesty's Commissioner could initiate legislation through the Swazi House of Assembly. In essence, the Constitutional Review Committee made provisions for all the institutions necessary for the functioning of a parliamentary democracy for internal government. All that was needed was to transfer the responsibilities and powers to the Government of Swaziland. For this to happen, elections had to be held in April 1967.

From the April 1967 Elections to the Introduction of Internal Self-Government for Swaziland

In April 1967 the first general elections were held under the revised constitution. The voting process was different from that of 1963 because, under the new constitution, voting was done on a single common roll, without reserved seats for Whites. The elections were contested by the Imbokodvo, the NNLC, and the Swaziland United Front (SUF). It was meaningless for the White United Swaziland Association Party to contest the elections because the electoral code did not favour them since it was difficult to win a seat in a single roll election. The Imbokodvo followed the traditional channels of selecting candidates. Put differently, the candidates had to be the appointees of the *Ngwenyama* and this ensured total compliance with his will. Such candidates were, therefore, mouthpieces of the *Ngwenyama* to whom they were answerable and not to their constituencies. They had to be the *Ngwenyama*'s perfect "Yes Men". If they had to survive as politicians and enjoy political patronage, they had to ceaselessly sing the praises of the *Ngwenyama*.

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Just as in the 1964 elections, the Imbokodvo derived most of its strength from cooperation with, and access to, the institutional resources of Chieftaincy. The Swazi Chiefs were at the beck and call of the *Ngwenyama* and their role was to ensure that the rural population under their control voted for the Imbokodvo royal party. Only the Imbokodvo and NNLC were able to register the full 24 candidates throughout Swaziland with 3 coming from each of the 8 constituencies into which the territory was divided. The Swaziland Progressive Party mustered 7 candidates and the Swaziland United Front 5.

Whites were not included in the Imbokodvo list in the 1967 elections unlike in the past. The initial reaction of most White Swazis was one of dismay and anxiety at the way their ally was treating them. Race had become an explosive issue which the political parties had made a lot of noise about and Whites were associated with colonialism and apartheid, and it was not political expedient to include them in any electoral list. The United Swaziland Association had been overtly rejected by the Imbokodvo as a political ally because other political parties were exploiting that relationship to their own ends by pointing to it as Sobhuza's open favouritism of a minority over indigenous Swazis.

The elections went on calmly and in an orderly manner. The Imbokodvo expectedly won all 24 seats in the House of Assembly in the election, polling 79.4 per cent of the vote against 20.2 per cent for the NNLC which had no seats in parliament. O. Mabuza's Swaziland United Front (SUF) won 681 votes or 0.3 per cent, while J. J. Nquku's Swaziland Progressive Party won 356 or 0.1

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per cent of the votes cast.[45] The results of the elections reflected the nature of the electoral system which allowed the party with a majority of the votes to have all the seats, whereas, under the proportional representation system of voting, the opposition would have been represented in parliament on the basis of their overall performance at the polls. Under the prevailing electoral system, no opposition party had a seat in parliament. Thus, after the April 1968 elections, Swaziland became a *de facto* one-party state. This was not promising for the future of democracy in the country.

Swaziland became a Protected State after the April elections as the British had promised and this was celebrated by the *Ngwenyama*. The Protected State Agreement was signed on 24 April 1967 by Sobhuza as the King of Swaziland and Sir Francis Loyd on behalf of Queen Elizabeth II of England. The *Ngwenyama* took the oath as King of Swaziland before a crowd of 20,000 people at Lobamba.[46] The politics of the new status of Swaziland as a "Protected State" had to do with the recognition of the *Ngwenyama* by the British. The argument throughout had been that Swaziland was a sovereign state according to the 1881 international conventions of which the Swazi monarchy was a signatory. But agreement which placed Swaziland under British rule created confusion because Swaziland was being treated as a colony whereas it was a sovereign state with a traditional head of State; something which was not captured in British constitutional thinking. By insisting that Swaziland should sign an agreement with Britain as a "Protected State", the Swazi monarchy was indirectly asking Britain to recognise the *Ngwenyama* as the real leader of Swaziland to whom power should be transferred and not the leader of a political party. This

[45] 'Clean Sweep at Elections: Imbokodvo gets all Seats', *Times of Swaziland*, April 28, 1967.

[46] 'The Kingdom of Swaziland Comes into Being', *Times of Swaziland*, April 28, 1967.

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name gymnastics did not imply any substantive constitutional change of the colonial status of Swaziland because the territory was still treated as a colony and was still to be granted independence.

Following the 1967 constitution which provided for full internal self-government, Sobhuza announced the appointment of Prince Makhosini Dlamini as Prime Minister and he was sworn in by the Attorney General. Sobhuza appointed members of the National Assembly and Senate, taking into considerations interests that were not adequately represented. Since the Imbokodvo won every elected seat, the appointments posed no problem. The appointments were a unique opportunity for Sobhuza to compensate his White allies who could not be featured on the Imbokodvo electoral list because of political considerations since Whites were associated by many with colonialism and oppression. The members of the House of Assembly appointed by Sobhuza to represent special interests and those elected are documented in Table 5-1.

Table 5-2
Members of the Swazi National Assembly after the April 1967 elections

	Member	**Affiliation**	**Comment**
1	L. Lovell	Appointee of King Sobhuza	Former Legislative Council member
2	R. P. Stephens	Appointee of King Sobhuza	Former Legislative Council member
3	Rev. R. Forrester	Appointee of King Sobhuza	Former Legislative Council member
4	J. S. Murphy	Appointee of King Sobhuza	Old Swazilander and chairman of Chairman of the Swaziland Tobacco Cooperative
5	D. Stewart Hynd	Appointee of King Sobhuza	Euro-African. Served as observer during first Lancaster house Conference in London
6	D. Dlamini	Appointee of King Sobhuza	Successful businessman
7	S. M. Dlamini	Elected member	Member of the Imbokodvo
8	Dr. M. Sukati	Elected member	Member of the Imbokodvo
9	Prince Mfanasibili Dlamini	Elected member	Member of the Imbokodvo

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10	M. Ndlangamandla	Elected member	Member of the Imbokodvo
11	M. N. Hlatshwako	Elected member	Member of the Imbokodvo
12	A. K. Hlophe	Elected member	Member of the Imbokodvo
13	R. V. Dlamini	Elected member	Member of the Imbokodvo
14	A. Duba	Elected member	Member of the Imbokodvo
15	J. B. M. Sukati	Elected member	Member of the Imbokodvo
16	M. N. Gamedze	Elected member	Member of the Imbokodvo
17	H. K. Dlamini	Elected member	Member of the Imbokodvo
18	S. M. Shabalala	Elected member	Member of the Imbokodvo
19	M. S. Ndaba	Elected member	Member of the Imbokodvo
20	Prince Makhosini Dlamini	Elected member	Leader on the Imbokodvo
21	J. S. Mavimbela	Elected member	Member of the Imbokodvo
22	Prince G. Dlamini	Elected member	Member of the Imbokodvo
23	Z. A. Khumalo	Elected member	Member of the Imbokodvo
24	A. D. Hlatshwako	Elected member	Member of the Imbokodvo
25	B. A. Dlamini	Elected member	Member of the Imbokodvo
25	E. S. Dhladhla	Elected member	Member of the Imbokodvo
27	Dr.C A. M. Nxumalo	Elected member	Member of the Imbokodvo
28	Prince Masitsela Dlamini	Elected member	Member of the Imbokodvo
29	M. S. Matsebula	Elected member	Member of the Imbokodvo
30	S. S. Nxumalo	Elected member	Member of the Imbokodvo

Source: 'The King Names Six MPs', *Times of Swaziland,* 5May, 1967; 'Clean Sweep at Election Imbokodvo Gets all Seats', *Times of Swaziland,* April 28, 1967.

The names of the senators elected by the House and appointed by Sobhuza are documented in Table 5-3.

Table 5-3
Senators Elected by the House and Appointed by King Sobhuza

	Senator	**Affiliation**	**Remarks**
1	P. Dlamini	Imbokodvo	Elected by House
2	J. M. Mamba	Imbokodvo	Elected by House
3	B. Nhlabatsi	Imbokodvo	Elected by House
4	B. Dlamini	Imbokodvo	Elected by House
5	P. J. Braun		Elected by House
6	M. W. Magongo	Imbokodvo	
7	M. Mdziniso (The only female)	Involved in welfare organisations. Gender	Appointee of the King

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		activist for enfranchisement of women.	
8	G. Mabuza	Rural Development Officer and former member of Legislative Council	Appointee of the King
9	D. Lukhele	Lawyer. He helped draft the 1963 petition against the imposed constitution.	Appointee of the King
10	Rev. A. B. Gamedze	Church Minister and Educator	Appointee of the King
11	C. Todd	Former leader of EAC and close confident of King Sobhuza	Appointee of the King
12	D. Fitzpatrick		Appointee of the King

Compiled from 'The King Names Six MPs, Five Senators Elected', *Times of Swaziland,* May 5, 1967; 'Biographies, Nominated MPs and Elected Senators', *Times of Swaziland*, May 5, 1967; 'Six Nominated to Senate', *Times of Swaziland,* May 19, 1967.

The ministers and assistant ministers consisted of the following people as documented in Table 5-4.

Table 5-4
1967 Ministers and the Assistant Ministers

		Ministry	**Affiliation**	**Assistant Ministers**
1	Prince Makhosini Dlamini	The Prime Minister's Office	Imbokodvo	Z. Khumalo
2	M. Sukati	The Deputy Prime Minister	Imbokodvo	Prince Masitstela Dlamini
3	L. Lovell	Minister of Finanace, Commerce and Industry		S. S.Nxumalo
4	Prince Mfanasibili Dlamini	Minister of Local Administration	Imbokodvo	B. Dlamini

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5	A. K. Hlophe	Minister of Agriculture	Imbokodvo	
6	Rev. A. B. Gama	Minister of Education	Imbokodvo	
7	P. Dlamini	Minister of Works, Power and Communications	Imbokodvo	

Source: Compiled from "King Names Seven Ministers', *Times of Swaziland*, May 19, 1967; "Swaziland's First Cabinet", *Times of Swaziland*, May 19, 1967.

Swaziland was granted a ministerial system of government otherwise referred to as internal self-government, as the last stage of the evolution of the territory to independence. The Tables 5-2 to 5-4 show the names of the 1967 parliamentarians.

Towards the 1968 London Constitutional Conference

Prime Minister Prince Makhosini Dlamini's Government assumed the key role of finalising the Independence Constitution with the British government. In order to prepare the White Paper on the constitution, the Swazi Cabinet asked members of parliament for written submissions for consideration in December 1967. Cabinet considered these submissions and incorporated some of them in the proposals for the Independence Constitution which it published as a White Paper in order to facilitate public debate on the document.[47] It is interesting to note that Dr. Zwane's Ngwane National Liberatory Congress offered no comments on the Government of Swaziland White Paper when it was published. He was incensed at his exclusion from the Constitutional Review Committee and the feeling that his criticism would have no effect on the Imbokodvo and United Swaziland Association.[48] However both the Ngwane National Liberatory Congress and

[47] http://hansard.millbanksystems.com/commons/1968/jul/05/swaziland-independence-bill HANSARD 1803–2005, 1960s-1968, 5 July 1968, Commons Sitting, Orders of the day, Swaziland independence bill, HC Deb 05 July 1968, Vol. 767 cc1875-9031875 (accessed on 29 June 2015).

[48] Ibid.

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the Swaziland United Front had been consistently critical of the electoral code which did not allow small parties the prospects of representation in parliament.[49] After public consultation, the Prime Minister submitted the White Paper to both the House of Assembly and the Senate for debate. A special meeting of the National Assembly was convened on 22 January 1968 to examine the White Paper.

The Prime Minister pointed out in the House of Assembly that the government had to take a stand on what form the Independence Constitution should take in preparation for the forthcoming constitutional Conference in London on 19 February 1968. He urged that the Cabinet's proposals be accepted and indicated that there were still some unresolved grievances relating particularly to the authority to control minerals and land. He spoke on the difficulties experienced by the Cabinet in reaching a compromise between the "two irreconcilable views" of the Swazis and the British. He stated that the Swazis considered minerals to be the rightful property of the Swazi nation and that it should, logically, be held in trust by the *Ngwenyama* for the Swazi people. He also argued that the profits derived from them would accrue to the Swazi nation and used for its benefit and pointed out that this proposition contained in Chapter V of the 1967 constitution had "time and again been endorsed by the electorate." However, the British did not agree with this viewpoint which the Prime Minister described as "the depth of the feeling and conviction of the Swazi Nation". The British consistently argued that the control of these valuable assets should be vested in the Cabinet, and indicated that they were obliged to consider all interests other than those of the Swazi.[50]

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[49] Ibid.

[50] SNA, Swaziland House of Assembly. Official Report (Hansard), First Session. Sitting on 22nd January 1968.

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In section 91 of the constitutional proposals which the British Government was tabling, the disposition of mineral rights was placed under the ultimate control of the Cabinet and also subjected the utilisation of the proceeds from such mineral rights to the ultimate decision of the Government of Swaziland. This was in contrast to the view of the constitutional committee as reflected in the British White Paper of October 1966 which gave powers to make dispositions of minerals and mineral oils to the *Ngwenyama*. The *Ngwenyama* would appoint a committee, after consultation with the Swazi National Council, to advise him to exercise his powers. The British and Swazi views were, therefore, irreconcilable. These views reflected the contradiction in the role of Sobhuza as *Ngwenyama* of the Swazi and Sobhuza as a King of a modern nation with a functioning parliament in the Westminster tradition. The proposal of Prime Minister Dlamini's government under Chapter 5 of the White Paper was an attempt to reach a compromise solution between the views of the Constitutional Committee and those of the British Government after lengthy consultations with the British Government. In support of the government White Paper, the Prime Minister highlighted the importance of mineral resources and the responsibility of a modern government vis-à-vis them:

> I wish to say that minerals are valuable assets and their development, lack of development, has a profound effect on the economy of the country as a whole. Mineral rights involve not only income to government through taxation but also various aspects of infrastructure to serve the country as a whole such as the construction of railways, roads, water and power. It is thought, therefore, that *it is only right and proper that the view of the government of the day should also be taken into account*, in addition to those owners of mineral rights, when any grants or dispositions are to take place. The views of this government can conveniently be taken into account by associating members of the Cabinet, in the committee advising the *Ngwenyama*, in the exercise of his rights over Minerals and Mineral Oils.[51] [Emphasis added]

[51] Ibid, 3-4.

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The compromise put forward by the Cabinet was that the Minerals Committee should consist of the Commissioner of Mines (a government official), and four or six members, half of whom would be appointed by Sobhuza as *Ngwenyama* in consultation with the Swazi National Council, and half by him as King, acting on the advice of the Cabinet.

The next important point raised by the Prime Minister was the land issue. Prime Minister Dlamini felt that it was the responsibility of the British government to solve the British land alienation problem involving the ceding of large tracts of Swazi Nation land to Europeans. He recalled that after the British assumed protectorate over Swaziland, it declared all Swaziland Crown Land and appointed a Commission to partition this land between Europeans and Swazis who benefited from just one third of the land. He pointed out that the land problem was causing social and economic problems which were threatening the political stability of the country and marring inter-racial relations. The Prime Minister wanted the land problem to be solved before independence. He, therefore, called on the House to support this motion in Chapter 5 of the White Paper.

In parliament, Sobhuza's praise singers took to the floor to express their opinion about the White paper. The first to speak from the floor was Elias S. Dhladhla. He went back to the old argument that the *Ngwenyama* should have absolute powers over land and mineral issues in Swaziland because it was the wish of the Swazi people and, therefore, called for the amendment of the government proposed motion accordingly. He stated:

> Mr Speaker, with regard to chapter 5, Land and Minerals . . . of the White Paper, I have to request leave of Mr Speaker to move an amendment of the White Paper proposals because

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> I feel very strongly that there has been injustice done to the Swazis. This section . . . deals with a Mineral Committee which will consist of a Commissioner of mines and not less than four and not more than six other persons . . . What I fail to understand is the appointment of this Committee, half of whom shall be appointed by the *Ngwenyama*, acting on the advice of Cabinet. Mr Speaker, Sir, why on earth on the advice of Cabinet? . . . my argument . . . is that when we talk of the Cabinet we refer to the Ministers nominated by the leader of the political party that has won the general elections of the day . . . .[52]

He pointed out that more than half of the land in Swaziland was held as farms or concession lands which were fully protected under the Bill of Rights. Some members of the community had their properties fully protected by the law but,

> . . . when it comes to legislation on the Swazi private property, which includes land, minerals and mineral oils . . . the White paper authors . . . should have the temerity and audacity to grant powers to Cabinet to exercise control over our Swazi private property which is under the trusteeship of the *Ngwenyama*? Surely this is not justice . . . .[53]

He disagreed with the idea of Cabinet advising the *Ngwenyama* on matters relating to land and minerals and proposed an amendment which read: "The *Ngwenyama-in-Libandla* (SNC) shall appoint a Mineral's Committee which will advise him in the exercise of his rights of control of these assets on behalf of the Swazi nation." He maintained that the wishes of the Swazi people that their King should control minerals and land should be respected. He felt the Cabinet had gone too far in striking a 'compromise and stated that the Cabinet:

> . . . [had] no earthly right to tramp on what we regard as sacred ground. Mr Speaker, I nearly said they should rather resign than meddle with what is thought to be so dear to [the Swazi people] . . . . Sir, the resolution [of Cabinet] could have been what they considered a reasonable compromise but we Swazis are not prepared and we do not believe that it is

[52] Ibid, 12.

[53] Ibid.

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> right for us to compromise, or to take chances with what we regard as our God-given possessions . . . .[54]

He was seconded by S. M. Shabalala who made a more restrained statement of Swazi wishes. He agreed that land and minerals were God-given property of the Swazis that should be placed under the *Ngwenyama* and cautioned Cabinet not to stray from the will of the Swazi people. The discussions that followed were acrimonious as the parliamentarians aligned themselves in the pro and anti-Sobhuza camp.

Murphy noted that the proposer of the amendment, E. S. Dhladhla and his seconder, Shabalala were 'preaching to the converted" and expressed the fear that they were seeing "a hornet's nest where one [did] not exist". He congratulated the Prime Minister and his Cabinet for having produced "a very accurate document". He stated that, contrary to what some parliamentarians might be thinking, it was quite clear in the Government White Paper that mineral rights were vested in the *Ngwenyama* "solely and entirely" and he did not need anybody's advice. However, the Prime Minister and his Cabinet wisely went one step further by including a clause where certain people would be appointed on the advice of Cabinet to advise the *Ngwenyama*, but there was nothing to force the *Ngwenyama* to accept their advice. The paper "wisely [mentioned] the Commissioner of Mines, which would comprise professionals and a technical team, to advise the *Ngwenyama* on the management of minerals because this was a technical exercise. Without such a committee, the Swazi people might be robbed of their mineral wealth by unscrupulous mining

[54] Ibid, 13.

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companies". He, therefore, congratulated Cabinet and moved that the Government White Paper should be adopted.[55]

The Minister for Finance, Commerce and Industry, L. Lovell pointed out that the problem for those asking for the Government White Paper to be amended arose from the clause which required that a committee should advise the *Ngwenyama* about the disposition of mineral rights. Such parliamentarians did not seem to grasp the dimension of the economics of mining which is both domestic and international. Murphy pointed out that the Swazi parliamentarians were placing land and minerals on the same footing. The two belonged to the Swazi people, no doubt, but "when it comes to making grants of minerals, it is a far more complicated issue than to make grants or dispositions or sales of land". The exploitation of minerals which is deep underground and the use of land for farming and grazing and putting buildings are two different things. The *Ngwenyama* might not require any advice when it comes to a decision to dispose of land or lease it, but when it comes to a decision as to whether you should grant a right of mineral prospection, expert advice would be required. The Minister then asked:

> Why should one take umbrage, why should one be upset because the Cabinet suggests that for this very difficult task the King should have at his disposal a Committee appointed by him to advise him? And advice regarding the disposal or grant to a particular mining company, or group of mining companies, not only require the advice on the question of mining. It also requires advice on the whole question of economising of whether this mining proposition is favourable or unfavourable to the economy of the whole country.[56]

[55] Ibid, 16-17.

[56] Ibid, 24.

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He pointed out that it was the government which provided the machinery for understanding the economy of the whole country. He stated that the Swazis had entrusted that task to their government and they would expect that the *Ngwenyama* would welcome the advice of government on the general economic effects of the granting of a lease to a particular mining company. It was, therefore, in the best interest of Swaziland for the *Ngwenyama* to be well advised by the government on the economy of the country. He felt there was no justification not to trust Cabinet in the type of advice it would give to the King. Reacting to Dhladla's statement about the "nerve, audacity and temerity" of Cabinet to suggest the *Ngwenyama* should be advised on the disposal of minerals, Lovell retorted: "I will accept… [that] it is audacious and an act of temerity to suggest that the Cabinet should place some advice at the disposal [of the *Ngwenyama*]." He questioned what was actually wrong with the King taking the advice from Cabinet. He wondered how advice to the King would endanger his "sovereignty", "integrity" or "high repute" in which he was held.

Lovell asked the House what the British government would do with a proposal that the *Ngwenyama* should act without the advice of his Cabinet in a modern state. Lovell stated that the Swazi deputation to London would be able to have their constitutional document endorsed if only it included the clause that the *Ngwenyama* would seek the advice of the Cabinet and the Swazi National Council in the disposal of minerals. The Minister warned that the British would reject any attempts to digress significantly from directives given about limitations on the powers of the monarchy.

In concluding the heated debate, the Speaker of the House gave the floor to Dhladla, the mover of the amendment of the government White Paper to sum up and make his position known after a

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lengthy explanation from Lovell. Dhladla did not address the crucial issues raised by Lovell on the importance of having Cabinet involved in mineral management in a modern economy because of its complexities. Rather he expressed pity for Lovell and asked him where international law was, when Swazi land was being alienated by the British. In his words,

> I feel sorry for the Hon. Mr Lovell because he does not seem to realise the importance attached by the Swazis to this very important matter . . . . I must say I was very disappointed after hearing the Minister . . . speaking about international Law and Justice because these are not new. Even when we were dispossessed of our land International Law and Justice were in existence. It is the nation which sent us here to bring back that which is their own, and it is our duty here to fulfil the wishes of the people. Mr. Speaker, I feel I will like to stay put on the amendment I have already moved and I will not be shaken.[57]

The amendment of the government White Paper to empower the *Ngwenyama* to have absolute authority over mineral and land resources was carried by 21 votes to 9, with voting reflecting a racial fault line with Swazis voting for and Europeans against the amendment.[58]

On 23 January 1968, the Prime Minister presented the White Paper to the Senate and urged the House to adopt its recommendations. There were two separate aspects to the proposals. The first related to the form of the constitution to be discussed between the representatives of Britain and Swaziland at a conference due to begin in London on 19 February 1968. The main issues, there, were the irreconcilable positions of the British Government and the Swazis over mineral rights and land alienation. The Swazi constitutional Committee's view, as reflected in the British Government White Paper of October 1966, was that the powers to dispose of minerals and mineral

[57] Ibid, 27.

[58] Ibid, 28.

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oils should be vested in the *Ngwenyama* and that he should appoint a committee, after consultation with the Swazi National Council, to advise him to exercise these powers. The Swazi Government proposal, as described in Chapter V of the White Paper, was, in effect, an attempt to reach a compromise between the views of the constitutional Committee and those of the British Government. The Prime Minister emphasised the importance of minerals to the economy of Swaziland and the technicalities involved in handling them. He urged the Senators to approve the proposed compromise solution to the mineral issue in the light of the explanation advanced. The second issue about compensation for land alienation was raised and the proposal was to request the British government to help the Swazi government to solve the land problem for Swazi occupation which has come about as a result of British policy of land alienation during its administration of Swaziland.

W. M. Magongo moved an amendment which read: "The Ngwenyama-in-Libandla shall appoint a mineral committee to advise him in exercising his right of control of these assets on behalf of the Swazi Nation."[59] Senator Braun immediately challenged Senator Magongo to explain exactly what that amendment meant. He explained that what the government presented to senate was the fruit of negotiations between the British and Swazi governments and those negotiations always take place between governments. He stated that he had heard murmurings to the effect that the right of the Swazi nation has been taken away and given to government. He dissented from such views and explained that the government proposals "give the *Ngwenyama* absolute power in deciding how [mineral] rights [were] going to be disposed of". Clause 80; (2) read: "The *Ngwenyam*a may make grants, leases or other dispositions conferring rights or interests in respect

[59] SNA, Official Report of the Debates of the Senate Fifth Meeting of the First Session, 23 January, 1968, 6.

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of minerals and mineral oils but only exercises such powers after obtaining but not necessarily acting in accordance with the advice of the Minerals Committee". The section of the Cabinet is merely to assist the mineral committee in giving it the benefit and experience of Government Members in its consideration of applications. Braun explained that this did not constitute an encroachment on the rights of ownership.

This explanation appears not to have had any effect on the pro-traditionalists, Senator Magongo. He argued that the *Ngwenyama-in-libandla* should appoint members of the committee. Magongo made the argument that he regarded minerals as private property the same way land was demarcated land and kept part for its own use, others were leased land as their private property. Minerals were the property of the Swazi Nation and government should stay off that domain the same way it stays off private farms. Cabinet should not advise the *Ngwenyama* on private property.

Senator Mdiniso supported Magongo although in more moderate terms. She stated that the minerals under discussion now belonged to the Swazi nation under the control of the *Ngwenyama* and agreed with the suggestion that the *Ngwenyama* should be empowered to appoint a committee of his choice to work with him.[60] She supported the idea that Ministers should work with the *Ngwenyama* on condition that they are his choice. Senator Todd, a diehard supporter of the *Ngwenyama*, explained to the house that "nobody [had] fought harder than [himself] for the principle that, as mineral rights were vested in the *Ngwenyama* for the benefit of the Swazi Nation they should have a decisive say in the exploitation of the mineral rights". He stated that the issue

[60] SNA, Official Report of the Debates of the Senate Fifth Meeting of the First Session, January, 23, 1968, 9-10.

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being raised "on the amendment is more psychological than real" and revealed that he had "consistently requested the British Government to allow the Swazi Nation to have a decisive voice in the exploitation of the minerals". Todd explained that he knew the strong feelings of the British Government about the mineral issue and that the constitutional Committee charged with responsibility of negotiating with the British government would have an uphill task in persuading the British Government to allow the monarchy to have total control over all matters affecting mineral rights at the expense of parliament. The Senator stated that it was impossible to exclude the State of Swaziland in the exploitation of these valuable assets and advised senators not to tamper with the Government proposal which was a carefully balanced clause designed to meet both the Government and the *Ngwenyama*'s concerns.

The clause in the draft stated that the *Ngwenyama* would make the decision on the advice of the Committee and, in Swazi tradition, *Ngwenyama* was the head of the Nation that made the decision for the Swazi nation. The *Ngwenyama* should listen to the Committee which was a government department and that which was from the Swazi National Council to make a decision on what was best to do about exploitation. It was not possible to assign such a technical role to the traditional Council. Todd explained that the paper on mineral rights had no value if no minerals existed. He explained that when he was in charge of the Mines Department, there were, approximately, 39 proved minerals in Swaziland but there was no study which supported any expenditures on these minerals because there were not of commercial value. The Government of Swaziland spent the money on mineral exploration annually and the budget for this was under the heading of the Ministry of Mines. The government could not be shut out of this domain of the national economy and, therefore, Todd invited the house to support the government policy in the White Paper.

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In his turn, Senator Braun emphasised the point that, in the absence of an opposition in the House, free discussions and a democratic approach to matters of mineral management were important. Referring to the Senators calling for the amendment of the Government Bill he said:

> I do not think that we are entitled to expect of those who choose to act the role of opposition, that they will act as responsible opposition and that they will give a little careful thought to what they are doing before they move amendments of this nature. Now it is obvious that our government is going to have a difficult task ahead of it in persuading the Government of Great Britain to accept the proposals which the constitutional committee two years ago put forward in regard to minerals . . . . [According to the committee] minerals . . . would be in the control of the *Ngwenyama*. The Cabinet in their wisdom have devised this formula, namely, that there should be a committee which the *Ngwenyama* appoints and which will have on it as half of its Members people appointed by the *Ngwenyama* on the advice of the Cabinet. *And it is that half of a little Committee which is advisory only which seems to terrify the movers of this motion*. Mr Speaker, *this is like an elephant which is afraid of a mouse, and the mouse has not even growled.*[61] [Emphasis added]

He maintained that the issue of mineral exploitation touched on several spheres of national life from communication, housing, educational and road infrastructure and to exclude Government from having a say in this matter did not make any sense. He called on movers of the amendment to withdraw it.

Senator Nhlabatsi took to the floor to insist on the amendment of the government White Paper to allow the *Ngwenyama* exclusive rights over issues of mineral exploitation. His argument was that colonialism had not been fair to the Swazi people and they trusted the *Ngwenyama* would act in the supreme interests of his people who were generally poor. If the Cabinet and the Swazi Nation had to appoint members of the committee to advise the *Ngwenyam*a, there could be a conflict

[61] SNA: Official Report of the Debates of the Senate. Fifth Meeting of the First Session, 23rd January, 1968, 11.

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between the two.[62] The senator appeared to be lost between the working of a modern and a traditional government.

Senator Mabuza spoke about the colonial injustices suffered by the Swazis and why the *Ngwenyama* should be trusted. Senator Fitzpatrick reminded the house of the technicalities involved in mineral management and the difficulties Government would have in selling the proposed amendment to the British government in London. Senator Dlamini felt that "the aspirations of the Swazi people must be expressed" so that it could go on record. He explained that the elaborate explanations from all the parties were enlightening but his thinking was that the Cabinet should not be above the *Ngwenyama* and the people who elected them would not want to hear that they have negotiated a system of governance which places Cabinet above the *Ngwenyama.* He appreciated the difficulties of selling the Swazi viewpoint to the British government but insisted that it was important for the British to know the feelings of the Swazi people. Finally the proposed amendment was put to a vote and the Senate was again divided along racial lines. The numbers of votes are documented in Table 5-5.

Table 5-5
Senate Vote on Amendment of government White Paper to Give the *Ngwenyama* absolute Power over Minerals and mineral Oils

	AYES	NOES
1	Senator B. Dlamini	Senator P.T. Braun
2	Senator D. Lukele	The Minister of works, Power and Communication
3	Senator G. M. E. Mabuza	Senator C.F. Todd

[62] Ibid.

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4	Senator J. M. Mamba	Senator H.D.G Fitspatrick
5	Senator Mrs M. Mdziniso	
6	Senator M. M. P. Nhlabatsi	
7	Senator W. M. Magongo	
8	The Minister for Education	

Source: Compiled from SNA: Official Report of the Debates of the Senate. Fifth Meeting of the First Session, 23rd January, 1968, 20.

The amendment in favour of the *Ngwenyam*a's overriding powers passed by 8 votes to 4, the strongest opposition being voiced this time by Senator Braun. Voting was on racial lines, with Whites voting against the amendment of the bill and blacks in favour. The two Houses of parliament finally resolved that mineral rights should be vested in the *Ngwenyama* as the Head of the Swazi nation, and *ipso facto*, the trustee of its property rather than in the King as a constitutional monarch obliged to act in accordance with the decisions of the government of the day. This was a significant departure from the 1963 constitution which obliged the King to act in accordance with the advice of his Cabinet. The proposal took away the control of mineral rights from the modern government of Swaziland and gave it to the traditional authority.

The Government of Swaziland made a request for independence on 6 September 1968. The same resolution requested Her Majesty's Government to seek, at the appropriate time, the support of other member Governments of the Commonwealth, for Swaziland's desire to become a member of the Commonwealth. The Government proposals were sent to London.

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The Secretary of State for Commonwealth Affairs convened a conference to discuss the final constitution from 19 to 23 February 1968 at Marlborough House in London. The Swazi delegates to the UK are tabulated on Table 5-6.

Table 5-6
Members of the Swazi Delegation to the UK to Negotiate the Independence Constitution in February 1968.

	Member	Affiliation	Comment
1	Prince Makhosini	Cabinet Minister	Imbokodvo
2	A. K. Hlope	Cabinet Minister	Imbokodvo
3	Polycarp Dlamini	Cabinet Minister	Imbokodvo
4	Leo Lovell	Cabinet Minister	King Sobhuza's Appointee
5	Dr. M. Nxumalo	Cabinet Minister	Imbokodvo
6	Sir F. Lloyd	H. M. Commissioner in Swaziland	Government Official
7	W. Ramsden	Attorney General	Government Official
8	H. Roemmele	Secretary of the Cabinet	Government Official

Source: Compiled from: 'London Talk', *Times of Swaziland*, March 1, 1968

Political parties not represented in parliament were excluded from the delegation. Dr. Zwane of the extra-parliamentary opposition Ngwane National Liberatory Congress and his deputy, K. Samketi did not take their exclusion kindly and decided to go to London and stage a lie-down protest. Consequently, at the opening of the conference on Monday, 19 February 1968, Dr. Zwane and K. Samketi lay at the entrance of Marlborough House, thereby blocking delegates from entering the hall. Several delegates had to be given a hand as they stepped over the bodies of Dr. Zwane and his deputy. The British police arrested them and took them away. A photograph of

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the two protesters smiling and their thumbs raised in African salute as they were being taken away by the police appeared in several newspapers, including *The Times of Swaziland.*[63]

According to George Thomson, Britain's Secretary of State for Commonwealth Affairs, all opinions, including those of the NNLC, were considered at the London Talks. During his visit to Swaziland in October 1967, the NNLC and the Swaziland United Front had submitted proposals which were critical of the electoral code which allowed the winner by a simple majority to carry all the seats. He, therefore, called for a single member constituency to replace the existing three-member constituency system. The Swazi government argued that the opposition had not presented their views when they had the opportunity to do so in Swaziland. The NNLC had proposed a 60 member constituency system but the government felt it would be inappropriate for a small country like Swaziland. The Swaziland delegation pointed out that, although the three-member system was entrenched in the constitution and was therefore difficult to change, under the constitution, the voting system would be determined by a parliamentary simple majority. The British advised that the provision forbidding a defeated member from becoming a nominated member should be dropped from the constitutional proposals.[64]

On the issue of the *Ngwenyama*'s control over minerals and land, which the Swazi parliament wanted, the Colonial Office felt that there was no need for the Swazi delegation to insist on acceptance of this by the British government. It was clearly a matter that could be rectified after

[63] See Appendices 7 and 8, Dr. Zwane and Deputy under arrest in London for Protesting their Exclusion from constitutional Conference in Swaziland's Independence Constitution.

[64] 'London Talks. NNLC Views were Put to the Conference', *Times of Swaziland*, March 1, 1968.

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independence by a two-thirds parliamentary vote. The Attorney General, W. A. Ramsden and the Queen's Commissioner, Sir Francis Loyd, confirmed this position. The British, however, advised that it was not good for a newly independent country to start tampering with its constitution.[65]

The land issue was also raised in London in addition to the amendment. This was against the wishes of the White members of the delegation who felt it was too delicate to handle. Prince Makhosini made the argument that the national economy was growing and the gap between the rich and the poor remained and this division was mainly between Whites and Blacks. He pointed out that 43 per cent of the land was still in White hands, many of whom were absentee landowners with vast acreages for grazing their sheep in winter. Others, as individuals or corporations, were engaged in cultivating or ranching on a large commercial scale. Yet, Swazis needed land for food and basic survival. Swazi areas were already congested, and farm tenants were insecure. The Swazi delegation placed the onus of finding the solution to the land problem on the British government. Citing the precedent of Kenya where the British bought the so-called White Highlands for African resettlement, the Swazi delegation suggested that a similar path should be pursued by the British. Prince Makhosini warned that land shortage in Swaziland was a real problem and would increasingly cause economic pressure and racial tensions which would pose a serious challenge to the Swazi government after independence. He proposed compensation for the alienation of land under the Partition Proclamation of 1907 which favoured Whites and also for a further 500,000 acres of land, which the British had sold to Whites to finance its administration of the country. The British out rightly rejected this claim. Similarly, the British did not budge from their insistence on Swaziland adopting a Westminster form of government and the supremacy of

[65] Ibid.

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parliament in modern governance. Before the close of the February 1968 London Conference, the British government informed the Swazi delegation that the Commonwealth Secretary General had confirmed that all members of the Commonwealth had agreed that Swaziland should become a member on attaining independence.

Upon its return from the UK, the Swazi delegation was welcomed by a mammoth crowd at Oshoek. Prince Makhosini said little because "Swazi tradition required him to report first to the *Ngwenyama* before discussing such matters with the people".[66] According to Kuper, the delegation reported to King Sobhuza that they had been cordially received and agreements had been reached on most matters. The British had finally recognised the strength of Swazi claims to control minerals and that only the land issue had not been satisfactorily resolved.[67] This is not the exact picture of what transpired in London because the British did not give in to the idea of the *Ngwenyama* having monopoly over minerals and land. This would have been a betrayal of British tradition of good governance which underscores the supremacy of parliament over the monarchy. Over the issue of land alienation, not much was achieved because it was more complicated than anticipated. Therefore, the land question had become linked with financial talks related to post-colonial British annual subventions to Swaziland. It was felt that financial talks would be held between the Swazi government and the British Minister of Overseas Development that could come later after independence. This could take the form of a portion of the annual payment from Britain to Swaziland to keep the newly independent state solvent.[68] According to the Conference Report,

[66] 'Independence Talks Continue in London', *Times of Swaziland*, March 1, 1968.

[67] Kuper, *Sobhuza II: Ngwenyama and King of Swaziland*, 297-298.

[68]'Independence Talks Continue in London', *Times of Swaziland*, February 23, 1968.

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this last remaining dispute over land claims could be solved in the context of British financial assistance to the development plans of Swaziland after independence. Compensation for land alienation was considered a multi-million rand issue which had to be shelved until after independence. [69]

The British House of Commons debated the "Swaziland Independence Bill" in July 1968. The Bill provided for the independence of the Kingdom of Swaziland within the Commonwealth. During the debate, some British Members of Parliament questioned the wisdom of giving mineral control to the *Ngwenyama* and not the Cabinet or the Legislature. The Under-Secretary of State for Commonwealth Affairs, W. Witlock responded that "whether wise or not, it [was] the feeling of the Swazis that the control and disposal of those rights should rest with the person who holds them and not with the government of Swaziland". The Swazi Nation land was also vested in the *Ngwenyama* and not the modern government of Swaziland.

Responding to the members of parliament, he said:

> Points have been made about mineral rights. What was agreed at the Independence Conference made no change whatsoever in the ownership of mineral rights. What is vested in the Ngwenyama in trust for the Swazi Nation under the present constitution will be unchanged. What the conference did was to deal with the disposal of what is held in trust for the Swazi nation, that is to say, the tribal Swazis and not the population as a whole, which includes Europeans and others.
> These rights are held by the Ngwenyama . . . and there can be no doubt that it is the desire of the large majority of the Swazis that this shall be so. Whether wise or not, it is the feeling of the Swazis that the control and disposal of such rights should rest with the person who holds them and not with the Government of Swaziland.
> The Swazis have their own way of making their own views known on how the Ngwenyama should conduct their affairs. The Independence Conference agreed that that there should be a minerals committee to advise the Ngwenyama in Libandla, which is the council of the

[69] http://hansard.millbanksystems.com/commons/1968/jul/05/swaziland-independence-bill HANSARD 1803–2005 → 1960s → 1968 → July 1968 →5 July 1968 → Commons Sitting → ORDERS OF THE DAY,SWAZILAND INDEPENDENCE BILL, HC Deb 05 July 1968, Vol. 767 cc1875-9031875 (Accessed on 27 June, 2015).

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> whole nation; every adult male in Swaziland having the right to attend the Libandla. There is little need, therefore, to feel that as between the Ngwenyama and the Swazi nation there will be any dissatisfaction over this arrangement.[70]

The response of the Under-Secretary of State reflected a British concession to Swazi pressures to allow the *Ngwenyama* to have total control over mineral resources but that was not the definitive answer of the British government. The response did not address the issue of the place of the Cabinet in regulating the modern economy of Swaziland which was not the sphere of traditional governance.

The 1968 Independence Constitution which the British ultimately approved[71] was largely what the Swazi government had proposed except for the checks and balances that were introduced on the powers of the *Ngwenyama* to render him accountable. The *Ngwenyama* was vested with the power to appoint the Prime Minister, nominate 6 senators (half the senate) and nominate 6 members of parliament. He was made an executive authority and acted on behalf of Cabinet which he appointed after consultation with the Prime Minister. The King participated in both the modern and traditional government. To ensure that these two were kept distinct, the monarchical institutions were not incorporated into the Independence Constitution. The constitution separated the Swazi National Council from modern government, whereas the SPP/NNLC had proposed that it should be gradually and peacefully incorporated into the modern system of government.

[70] Ibid.

[71] SNA: The constitution of Swaziland Statutory Instruments 1968, No. 1377, Africa, The Swaziland Independence Order, 1968, made 25th august 1968, laid before Parliament 30th August 1968; coming into operation: immediately before 6th September 1968.

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The 1968 constitution required the *Ngwenyama* to act on many issues in accordance with the advice of his Cabinet and not unilaterally. Article 12 of the Independence Constitution stated categorically that "the constitution [was] the supreme law of Swaziland and if any law . . . [was] not consistent with this constitution, that law [would] to the extent of the inconsistency, be void". It stated that any alteration of this specially entrenched provision would require a joint sitting of the House of Assembly and the Senate, with the majority of not less than three quarters of all members and that the decision should be submitted to the people's approval in a referendum which must be supported by not less than two thirds of all valid votes cast. It is only after this process that the bill would be submitted to the *Ngwenyama* for his assent. This was the essence of good governance that the British bequeathed to the Swazis. The checks and balances and the subordination of the *Ngwenyama* to a modern cabinet did not please King Sobhuza who wanted to reign supreme.

Conclusion

This chapter has demonstrated that since the conservative monarchical Imbokodvo and their allies, the White United Swaziland Association Party, cleared all the seats, the constitutional Committee that the British appointed from the Legislature was composed exclusively of conservative elements at the expense of the radical nationalists. This committee worked tirelessly to revise the 1963 imposed constitution for 18 months and completed its deliberations in March 1966 to allow a debate on their submissions. They were guided in this process by tapping from the constitution of other British territories and the submissions of extra-parliamentary opposition parties and other interests groups.

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Surprisingly, cracks quickly developed between the Imbokodvo and their United Swaziland Association allies, as the two could no longer trust each other in the aftermath of the June 1964 elections due to breaches of their initial agreements and the increasing rapprochement between the Imbokodvo and renegade elements of the radical nationalist parties. This schism had important implications on the constitutional debates in the Legislative Council in April 1966. Whereas the Imbokodvo and the United Swaziland Association Party were unanimous on several components of the White Paper tabled in the House, including the inclusion of the *Ngwenyama* as the King and Head of State of Swaziland, the issue of voting rolls divided the two bitterly. The separate voting rolls for Whites was viewed as a form of apartheid politics and was exploited by the radical opposition parties for electioneering purposes and many Swazis supported them. The Imbokodvo wanted to eliminate this special electoral roll for Europeans on grounds of the need to create a non-racial state in which everybody was equal before the law because it was popular with the Swazi people and they were in a position of power to do so. The United Swaziland Association Party dissented on the grounds that a single voters' roll would mean the political death of the White minority Swazis despite their significant contribution to the Swazi economy. The exchanges between the two camps during the debates were heated and bitter and, at the end, the majority Imbokodvo Party had its way with the establishment of a single electoral roll for all.

The British Government appointed a constitutional Committee that called for the revision of the 1963 constitution in a bid to give absolute powers to the *Ngwenyama* over an elected parliament and over mines and land issues. While conceding to the royalists of the constitutional Committee that Sobhuza should be made Head of State and King of all Swazis, the British consistently and vigorously opposed the idea of the supremacy of King Sobhuza over parliament and Cabinet.

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The 1967 constitution was the penultimate constitution enacted in Swaziland and which, for the first time, granted the territory full internal self-government based on a bicameral Legislature and which recognised Sobhuza as Head of State and King of Swaziland. However, Sobhuza was made subordinate to parliament at the insistence of the British and to the displeasure of the Imbokodvo. When a delegation of the Swazi Government went to London in August 1968 for the final constitutional talks before independence, the royalists failed to convince the British to amend the constitution to give Sobhuza absolute power without parliamentary control in a modern independent state.

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CHAPTER SIX

FROM THE WESTMINSTER CONSTITUTION TO THE CONSTITUTIONAL VOID IN SWAZILAND 1968-2005

INTRODUCTION

This chapter focuses on the era of the Westminster Constitution which provided for a Swazi-type constitutional monarchy which was overthrown in 1973, followed by a constitutional void of over 32 years. Constitutional monarchism, which had a very short life span, was compromised by the African political environment which favoured executive absolutism in the shape of one party dictatorship. Experiments with constitutionalism in the newly independent state of Swaziland resulted in a constitutional crisis culminating in Sobhuza's 1973 auto-*coup d'état*.[1]

The crisis of constitutionalism played itself out when the Swazi monarchy struggled to extend executive control over the Legislature and Judiciary and to impose its political agenda of political monolithism in line with what was in vogue on the African continent. In essence, Constitutionalism deals with the limitation of governmental powers and the protection and promotion of civil rights and liberties. It requires a division of power between the executive, legislature, and Judiciary and between the central and local government.[2] The crisis of

[1]The concept of "auto-coup", which will be explained in detail in this chapter, deals with the overthrow of the constitution by a Head of State who came to power by constitutional means or a monarch who owes his position both to a dynastic line and the constitution.

[2] See, for instance, M. Brattan, 'Formal versus Informal Institutions in Africa', in: L. Diamond & M. F. Platter, (eds.) *Democratisation In Africa: Progress And Retreat*, (Baltimore: John Hopkins University Press, 2010); C. M. Fombad, 'The Swaziland Constitution of 2005: Can Absolutism be reconciled with Modern Constitutionalism?', *South African Journal on Human Rights* 93, 1 (2007), 93-115; M. Sinjenga, 'Constitutionalism in Africa: Emerging trends: The evolving African Constitutionalism', *The Review-International Commission of Jurist*, 60 (1998), 23-28; T. Lumumba-Kasongo, *Liberal Democracy and its Critics in Africa: Political Dysfunction and the Struggle of Social Progress*, (London: Radical International Publishing, Zed Books, 2005).

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Constitutionalism in this chapter, therefore, deals with the uneasy relationship between the executive and Legislature under the firm control of the Swazi monarchy, on the one hand, and the Judiciary which was still largely independent and wanted to play its constitutional role as the supreme arbitrator in the land, on the other hand. The chapter deals with the difficulties of the conservative traditional monarchy to subordinate itself to the modern 1968 constitution and accept the independence and verdict of the Courts of the land. These difficulties were interpreted by the Swazi monarchy as a constitutional crisis.

The crisis was triggered by the opposition capture of three seats in the May 1972 elections, at the time King Sobhuza was contemplating to emulate his counterparts elsewhere on the continent by doing away with the 1968 Westminster-inherited Constitution in favour of royal absolutism. The Swazi monarchy was irked by the opposition's victory at the polls and was not prepared to allow them to have any space in the political arena. This chapter demonstrates how King Sobhuza used high-handed and illegal methods to muzzle the opposition and the Courts opposed to his schemes. King Sobhuza did not espouse the principle of the separation of powers and felt challenged and ridiculed when the Swaziland Court of Appeal ruled in favour of an opposition candidate who the government had classified as an 'illegal immigrant". He responded to the standoff with the Court with a *coup d'état* against the constitution. This royal putsch marked an important milestone in the constitutional history of Swaziland because it left the country without a constitution for over 32 years. The overthrow of the inherited Westminster Constitution and the banning of multi-partyism in Swaziland were favoured by the African political environment where, everywhere, multi-partyism was discredited using the pretext of African culture and tradition. Consequently,

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one party rule or military dictatorships were instituted in most of Africa. The *Tinkhundla* political system that was established by an Order-in-Council in 1978 opted for a "party-less" democratic state in Swaziland and re-established a bicameral Legislature and Cabinet. The *Tinkhundla* party-less democracy is presented in this chapter as Swaziland's response to the emergence and flowering of one-party states and Presidential absolutism in Africa in the aftermath of independence. The *Tinkhundla* system, in essence, favoured the consolidation of monarchical absolutism. The Houses of Parliament were resurrected under this system from a party-less platform and the cabinets that emerged from it were totally subservient to the monarchy. The *Tinkhundla* system, therefore, came to consolidate royal monolithism unrestrained by any forms of checks and balances.

The Era of the Swazi-type Constitutional Monarchy 1968-1973

Between 1968 and 1973, Swaziland experienced a brief period of constitutional monarchy. Typically, a constitutional monarchy is understood as a state "headed by a sovereign who rules according to the constitution". Such a constitution might be "written" and "codified" as, indeed, is the case with the vast majority of constitutional monarchies, although the British constitution is unwritten and uncodified.[3] This form of government differs from an absolute monarchy in which the absolute monarch serves as the sole source of power in the state and is not legally bound by

[3] V. Bogdanor, *The Monarchy and the Constitution.* (Oxford: Oxford University Press, 1997), 1; Wanda, 'The Shaping of the Modern Constitution of Swaziland: a Review of Some Social and Historical Factors', *Lesotho Law Journal: A Journal of Law and Developments,* 6, 1 (1990), 137-198; Examples of contemporary Constitutional monarchies include Cambodia, Denmark, Japan, Jordan, Kuwait, Lesotho, Luxembourg, Malaysia, Morocco, Netherlands, Norway, Spain, Sweden, Thailand, the United Kingdom of Great Britain and Northern Ireland.

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any constitution; the constitution, in essence, vests all powers in the monarch and there is no clear separation of powers.[4] The monarchy is the incarnation of the state.

The 1968 Westminster model, encapsulated the main tenets of liberal democracy, including a written constitution, a multi-party system, a bill of rights, the separation of powers, and the independence of the Judiciary. The Independence Constitution provided for a constitutional monarchy[5] tailored along Swazi custom and tradition, on the one hand, and the basic tenets of the Westminster constitutional model, on the other. Baloro noted that the balance of power between the various arms of government was defined in the constitution although it very much tilted in favour of the monarchy and traditionalism.[6] This was reflected in the "entrenchment of monarchal interests" which was noticeable in several aspects of the constitution. Chapter IV of the constitution recognised the paramouncy of the Swazi monarchy, with the acknowledgement of King Sobhuza II as the King of Swaziland and Head of State. The paramount position of the Queen Mother or the *Ndlovukazi* was equally recognised, as both she and the King were to enjoy immunity from taxation and legal proceedings.[7]

In a bid to protect Swazi traditional political values, section 62(2) of the constitution disallowed Parliament from legislating on any of the following: the office of the *Ngwenyama;* the office of the *Ndlovukazi* (the Queen Mother); the authorisation of a person to perform the functions of Regent, the appointment, revocation of appointment and suspension of Chiefs, the composition of

[4] Bogdanor, *The Monarchy and the Constitution,* 1.
[5] SNA, The 1968 Independence Constitution.

[6] Baloro, 'The Development of Swaziland's Constitution', 19-34.

[7] Ibid.

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the Swazi National Council, the *Ncwala* ceremony and the *libutfo* (regimental) system. These provisions were intended not only to preserve Swazi customary law and practices, but also to insulate the key issues of succession to the monarchy from interference by parliamentarians[8] who were products of the elective principle. The positions of King and Queen Mother were, therefore, restricted to traditional King-makers who were allowed to exercise unfettered powers in determinining royal succession without parliamentary control.

On the issue of control of the land and minerals, which were hotly debated before independence, Swazi culture and tradition were triumphant in entrusting those resources to the *Ngwenyama*. Under section 94 of the 1968 Constitution, all Swazi Nation Land was entrusted to the *Ngwenyama* on behalf of the Swazi Nation. The *Ngwenyama* in *Libandla* (in-Council) had the power to exercise all rights of ownership such as disposition, grants or leases over all such lands. All rights to minerals and mineral oils were vested in the Ngenyama in trust for the Swazi nation subject to any subsisting interests or rights which were in force before 6 september 1968. The King was invested with the power to make grants, leases, and other dispositions with regard to minerals and mineral oils, provided that he consulted with the Mineral Committee before exercising any such rights.

The Mineral Committee was not an independent body but was appointed by the King *in Libandla*, which consisted of all adult Swazi citizens, in terms of section 95(3) of the constitution. The chairman of the Mineral Committee was to be appointed at the discretion of the King who was the

[8] Succession to the British monarchy is regulated by Parliament. The next heir to the British throne is Prince Charles, Prince of Wales. It is therefore a public secret. This is not the case with the Swazi monarchical system where the next heir is a guarded secret and is known only by a select few insiders.

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only person invested with power to summon it. The British colonial government and Swazi's opposition parties had stenously opposed such a constitutional provision which invested such powers in the King at the expense of the cabinet. The Swazi monarchists wanted the King's powers to be supreme and not to be watered down by the dynamics of parliamentary democracy. The Nwenyama was, no doubt, vested with substsantial executive, legislative and judicial powers, but the spirit of the 1968 Independence Constitution that was inherited from the British was to establish a constitutional monarchy who could act subject to Parliament and the advice of the cabinet. That is why limitations were deliberatedly inserted on the King's powers in the constitution.

The constitution provided a bicameral legislature, comprising a National Assembly (Lower House) of 24 elected members and six nominated members and the Attorney General, and the Senate (Upper House) consisting of 12 members, six of whom were elected by Parliament, while the remaining six were appointed by the King. In exercising the powers to appoint Senators, the King was obliged to consult with the relevant bodies.

The constitution vested all legislative authority in the King and Parliament, as constituted through elections and selection by the King. In order for any bill from Parliament to become law, the assent of the King was needed, even though in terms of sections 72(2) and 76(1) he could not withold his assent to an appropriation or money bill. In the case of other bills passed by both Houses of Parliament, if the King refused to assent, he could refer the whole bill or a section thereof for further consideration by Parliament. If within 90 days of such referral, the bill was passed by a joint sitting of the Senate and the House of Assembly, it was then presented to the King for his assent. But what was to happen if the King refused the second time to assent to the bill? The

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constitution was silent on this. In reality this scenario of Parliament and the King being at loggerheads was not forseeable by virtue of the fact that Swaziland's Lower and Upper Houses were filled with deputies from the royal Imbokodvo Party. But the fact that Parliament was given such powers in the constitution to legislate and possibly disagree with the King points to this important aspect of parliamentary control of the executive.

The constitution vested executive authority in the King subject to certain limiting provisions. He was empowered to appoint the Prime Minister and his deputy and to appoint up to 8 Ministers after consultation with the Prime Minister. In appointing the Prime Minister, the King was obliged to appoint a person who was an elected member of the House of Assembly and who appeared to him to be the best candidate to command the support of the majority of the members of the House. Under this system, an opposition Prime Minister could be appointed by the King if his party commanded the majority in the House of Assembly.

The Prime Minister was a political force in his own right and could not be fired by the King unless the House of Assembly passed a vote of no confidence in the goernment of Swaziland. The other possibility of removing a Prime Minister from his position was after the holding of general elections in the country and the resultant composition of the membership of the house no longer favoured the Prime Minister numerically. In that case the Prime Minister would not be able to command the majority of members in the House of Assembly and he would have to be removed. Furthermore, the office of the Prime Minister would be declared vacant in the following circumstances: where he ceased to be a member of Parliament other than by reason of a dissolution of Parliament; where Parliament first met after dissolution and the Prime Minister was no longer

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a member thereof; or where he resigned from office. Similarly a ministerial vacancy was said to occur: where the King, acting in accordance with the advice of the Prime Minister, so directed; where the Prime Minister resigned from office three days after the passage of a vote of no confidence in his Government: or where another person had been appointed to the position of Prime Minister. The function of the Cabinet comprising the Prime Minister and other Ministers was to advise the King in the government of the country. The Cabinet was to be collectively responsible to Parliament for any advice given to the King and for anything done by any minister in the execution of his duties. To underscore the collective nature of cabinet responsibility further, the King, could, by a written designation, assign responsibility to the Prime Minister or any minister, after consultation with the Prime Minister.[9] What clearly emerges in the provision of the 1968 Independence Constitution, as Baloro points out, was the intention "to establish a constitutional monarchy where the King would exercise executive powers which were, nevertheless, limited by…the Constitution, the…cabinet and also . . . Parliament".[10] The constitutional limitation of the King's powers is exactly what did not go down well with the Swazi traditionalists who interpreted it as the undermining of the *Ngwenyama*.

The 1968 Constitution as the basic and supreme law of the land was emphasised in section 2 where it was clearly stated that governance was subjected to the constitution. Section 28 of the constitution stated that the King could "do all things that belong to his office in accordance with the provisions of this constitution and of all other laws for the time being in force". Thus in the exercise of his executive functions the King had to be mindful of the law, including Swazi law and

[9] SNA, The 1968 Independence Constitution.

[10] Baloro, 'The Development of Swaziland's Constitution', 23. For a similar viewpoint, see Wanda, 'The Shaping of the modern Constitution of Swaziland', 178.

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custom, provided that such customary practices did not contravene the provisions of the constitution, the supreme law of the land.

No matter how much power the monarchist camp of the Imbokodvo would have wanted to retain for the monarchy, the 1968 Westminster-tailored Constitution did introduce checks and balances and underscored the principle of the sovereignty of the people and not that of a hereditary monarchy. The modern institutions of the Cabinet and Parliament were offshoots of the will of the people through elections and not Swazi custom and tradition. It is for this reason that most of the provisions of the 1968 Constitution vested decision-making powers in the Prime Minister and his cabinet instead of the hereditary *Ngwenyama*. This provision was constructed on the logic that

> …the Prime Minister, being an elected officer of government, was directly accountable, first to a largely elected House of Assembly which could vote him out of office by a resolution of no confidence and, secondly, that the Prime Minister was also ultimately responsible to the elctorate who could likewise vote him out of Parliament.[11]

The in-built mechanisms in Swaziland's constitutional monarchy were not tested even once, as the *Ngwenyama* appeared totally supreme since the royal Imbokodvo Party had total sway in both Houses of Assembly. This was facilitated by the fact that in both the 1964 and 1967 elections held in colonial Swaziland, the Imbokodvo reigned supreme by winning all the seats. However, contradictions were bound to arise between the Swazi traditional law and custom which treated the *Ngwenyama* as an untouchable figure and as the effective political, military and religious leader, and not a ceremonial and non-executive Head of State as the British proposed in the Westminster Constitution bequeathed to independent Swaziland. That the *Ngwenyama* was a near-deity in the eyes of Swazis according to Swazi traditional law and custom was periodically drummed up during public occasions by royal praise singers. One of the *Ngwenyama*'s praise

[11] Wanda, 'The Shaping of the modern Constitution of Swaziland', 178.

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songs that was even taught in primary schools ran as follows in siSwati followed by an English translation:

TibongoTaSobhuza II	**SobhuzaII 's praises**
Dladla sembumbe, Simazima	Lion's claws that are very strong
Unyathele lwandle	You stepped on the sea
Lwandle lwakubalekela	The sea gave way
Lwandle lwakakhela izinkimbinkimbi	The sea rippled before you
Lwandle lwakakhela izikhawukhawu	The sea rippled before you
Sobhuza bebathe	Sobhuza they had said you
Kayikumchawula	Will never shake hands
USokhingi Jojie eNgilandi	With King George of England
Waze Wamchawula Ngembane wezulu	You eventually shook hands with him by lightning
Wazewavuma	He let you shake his hands
Lizulu lawufaka umbane	There were flashes of lightning
Wabambili	The lightning struck twice
Egodlweni KaNkhosazane eNgilandi	At the Palace in England
Bazebakudvumisa bathi	They applaud you and said
'Lobudvodza lobungaka'	You are a man/ You are courageous!!
Wabutsatsaphi	Where did you get such courage?
Nkhweletjeni KaNgwane, KaMahlokohla?' Watsi: 'Wabutsatsa enkhabeni	You answered and said that
Lapha KuboNdvungunye	You got it from Ndvungunye
Lapha KuboSomhlolo	You got it from Somhlolo[12]

Source: T. T. Ginindza, *Tibongo Temakhosi*, (Cape Town, Longman Publishers, 1979).

[12] The poet alludes to Sobhuza's genealogy (Ndvungunye and Somhlolo are the names of Sobhuza's forefathers).

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Whereas the common folk were used to the rituals of pouring encomiums on the King and deified him whenever an occasion arose, the Swazi opposition parties did not belong to that section of the citizenry and could not afford to be praise singers of royalty because that was not their role in politics. They played their watchdog role as the opposition in a modern state, which was interpreted as disrespect for royalty. During the May 1972 elections, the opposition literally vilified the monarchy in its campaigns, to the utter embarassment of the common folk.[13] The ordinary Swazi people normally respect the King and the critique unleashed on the monarchy was a new and embarrasing political culture that many Swazis had difficulties entertaining. The expectations of the monarchy to be worshipped and not criticised in a moderm political system did not augur well for the survival of constitutionalism in independent Swaziland[14] or for the overall African political environment.

The Road to the End of Swaziland's Era of Constitutional Monarchism

The road to the end of Swaziland's constitutional monarchy should not be seen as an exclusively internal development within Swaziland but as a common trend that was dictated and nurtured by events outside Swaziland. The independence constitutions of Africa were mostly imitations of

[13] 'Dr. Zwane Fined', *Times of Swaziland*, May 5, 1972; 'Dr. Zwane in Court', *Times of Swaziland*, April 28, 1972.

[14] The traditionalism of the Swazi monarchy has made a number of writers to question whether it is feasible for a typical traditional monarchy to imbibe constitutionalism (See, for instance, Fombad, 'The Swaziland Constitution of 2005: Can Absolutism Be Reconciled with Modern Constitutionalism?'; C. M. Fombad, 'Challenges to Constitutionalism and Constitutional rights in Africa and the enabling role of political parties: lessons and perspectives from southern Africa', *The American Journal of Comparative Law* (2007), 1-45; J. B. Mzizi 'The dominance of the Swazi monarchy and the moral dynamics of democratisation of the Swazi state', *Journal of African Elections* 3, 1 (2004), 94-119.

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Western constitutions. More specifically, they appear to have been dysfunctional duplications of the constitutions of the former imperial masters. W. H. O. Okoh-Ogendo observes that the Westminster constitutional system in Anglophone Africa, with its liberal democratic flair, did not have a "happy history". This was because "almost without exception the independence documents . . . either ended up in military dustbins or [underwent] changes so profound and rapid as to alter their content and significance beyond recognition".[15] The end product of these mutations was the single-party authoritarian rule.

Kwame Nkrumah's Ghana set the tone for the single-party system that pervaded the continent. Shortly after Ghana's independence, Nkrumah indicated that Africans should evolve forms of government rather different from the traditional Western pattern, but no less democratic in their protection of the individual and his inalienable rights. He posited that multi-partyism was alien and divisive and not conducive for the development of newly independent African states and in 1964 Ghana officially became a single-party state and an act of Parliament ensured that there would only be one candidate for president.[16] Most African countries subscribed to Nkrumah's logic after independence. This was so because the transplant of the Western multi-party democratic arrangement into Africa during the final stages of colonial rule had failed to take firm

[15] H. W. O. Okoth-Ogendo, 'The politics of Constitutional change in Kenya since independence, 1963-69', *African Affairs*, 71, 282 (1972), 9-34.

[16] P. T. Omari, and N. A. Ollennu, *Kwame Nkrumah: The anatomy of an African dictatorship* (London: Africana Publishing Corporation, 1970); M. L. Kilson, 'Authoritarian and single-party tendencies in African politics', *World Politics*, 15, 2 (1963), 262-294; R. H. Jackson, and C. G. Rosberg *Personal rule in Black Africa: prince, autocrat, prophet, tyrant*, (Berkeley: University of California Press, 1982); K. Nkrumah, R. Arrigoni, and G. Napolitano, *Africa must unite*, (London: Heinemann, 1963).

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roots.[17] In different ways, most African countries opted for the replacement of multi-partyism with one-party states or military regimes. In a space of a few years after independence, authoritarian forms of government came to prevail virtually on the entire continent, perhaps with the exception of Botswana, the Gambia and Mauritius.[18]

The African national leaders who subscribed to one-party rule premised their choice on the imperatives of national integration because of the ethnic and social cleavages that characterised the political and social landscapes of their various societies. They argued that the constraints of social and economic development meant that their young and fragile states could ill-afford the divisive trends inherent in opposition politics. Other proponents of the single-party state made a strong cultural argument that traditional African society was classless and was always akin to consensus democracy and the one-party state rather than multiparty culture. Consequently, African statesmen came to the conclusion that the ideal political culture for Africa was a single or a no-party state. It was believed that it was only within this form of political organisation that all the various tendencies in their societies would be compelled to compete. This would guarantee national integration, avoid the fissiparous tendencies inherent in opposition politics, and harness most effectively the energies of their people towards nation-building.

[17] G. M. Carbone, 'Political Parties and Party Systems in Africa: Themes and Research Perspectives', *World Political Science Review,* 13, 3 (2007), 1; S. Mozaffar and A. Schedler, 'A Comparative Study of Electoral Governance: Introduction', *Party Politics,* 11, 4 (20050), 395.

[18] Okoth-Ogendo, 'The politics of Constitutional change in Kenya since independence, 1963-69', 9-34; Jackson, and Rosberg, *Personal rule in Black Africa: prince, autocrat, prophet, tyrant*; R. Schachter, 'Single-party systems in West Africa', *American Political Science Review* 55, 2 (1961), 294-307; N. Van de Walle, 'Presidentialism and clientelism in Africa's emerging party systems', *The Journal of Modern African Studies,* 41, 2, (2003), 297-321.

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The trend of abandoning the inherited Westminster Constitution and adopting the single party-state model resonated positively in the mind of the conservative Swazi monarch who had never hidden his disdain for Western liberal democracy.[19] Developments in the Kingdom of Lesotho further reinforced the resolve of the Swazi monachy to discard its opposition and review its multiparty culture. The ruling Basotho National Party (BNP) of the Kingdom of Lesotho, a former High Commission territory like Swaziland (with which the Kingdom of Swaziland shared one university until 1981),[20] suspended the British-tailored Westminster Constitution in 1970. This act was justified by Prime Minister Leabua Jonathan and the leaders of the party on grounds that the Western concept of democracy differed from African democracy.[21] The cultural argument for discarding the Westminster Constitution came to form part of King Sobhuza's arsenal for disposing of the Westminster Constitution. Swaziland also needed to revisit its colonially inherited constitution and its prevailing multi-party democracy which had been described by the ruling African political class as foreign and ill-fitting in the African environment.

The "fault" with Swaziland's Independence Constitution was not that it did not treat the *Ngwenyama* as a deity but as a constitutional monarch. Following the general trend in postcolonial

[19] King Sobhuza II had clearly distanced himself from liberal democratic practices in the 1960s but the British made it part of the Independence Constitution.

[20] The three British High Commission territories comprising Basutoland, (Lesotho), Bechuanaland (Botswana) and Swaziland started a joint University in 1964 known as the University of Basutoland, Bechuanaland and Swaziland (UBBS) owing to South Africa's apartheid policy. Lesotho withdrew from UBLS in 1981 to form the National University of Lesotho (NUL). Swaziland and Botswana were on their own and decided to form the University of Botswana and Swaziland (UBS). The UBLS later dissolved, leading to the birth of an autonomous University of Swaziland (UNISWA) in 1982. Developments in Lesotho were, therefore, closely followed in Swaziland owing to their common history and institutions of learning they shared.

[21] K. Matlosa, 'Democracy and Conflict in Post-Apartheid Southern Africa: Dilemmas of Social Change in Small States', *International Affairs*, 74, 2 (1998), 330.

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Africa of African Heads of State faulting colonially-inherited constitutions on grounds of being alien instruments that were not in line with African culture and tradition, Sobhuza wasted no time in attacking the 1968 Constitution as a prelude to its ultimate abrogation. He interpreted the 1968 constitutional provisions which required him to act on advice of the cabinet as a restriction on his right to rule as *Ngwenyama*. In an address to Swazi Chiefs in Lobamba in 1969, he criticised the constitution as being too rigid.[22] He pointed out that it was the Swazi Nation that had the right to change the constitution and not the government in Mbabane. When Sobhuza dissolved Parliament on 15 March 1972, he invited parliamentarians to Lobamba Royal kraal for a meeting on 26 March 1972 so that they could give an account of their stewardship for the last five years. The Prime Minister made a report on behalf of the members of Parliament in which he complained about the difficulties they faced in running the country because of the constitution. Sobhuza seized the opportunity to publicly condemn the constitution which he felt had not succeeded in reconciling the Swazi and British ways of governance. Sobhuza stated that there was a need to review the constitution and make it malleable to the needs of Swazis.[23]

In another address to the Swazi nation at Lobamba on 19 March 1973, Sobhuza put the following questions to Swazis: "(a) Are we really independent like the British, French or Germans? (b) Do we have a Parliament that is supreme like that of the British, French and other independent nations? (c) Or are we nominally independent?"[24] The concern of the *Ngwenyama* was the fact that the Independence Constitution subordinated him to its provisions and he did not like that. His

[22] Kuper, *Sobhuza II: Ngwenyama and King of Swaziland*, 318-335.

[23] Ibid.

[24] Ibid.

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counterparts elsewhere in Africa were manipulating their respective constitutions to enable them to concentrate powers in their hands at the expense of the other arms of the government.

To tamper with Swaziland's Independence Constitution would, thus, not be an unprecedented event in post-colonial Africa. Nonetheless, King Sobhuza needed a pretext to discard Swaziland's inherited Independence Constitution and its multi-party culture. There was nothing to worry the Swazi monarchy because all the members of both the House of Assembly and Senate elected on the eve of independence belonged to the royal Imbokodvo Party and this made Swaziland a *de facto* one-party state without an opposition. King Sobhuza was, therefore, in a position to effect any constitutional changes he wanted legally if only he could be patient with due process and follow the law to the letter.

The May 1972 General Elections and the Conflict between the Executive and the Judiciary

The May 1972 elections provided the monarchy with the needed pretext to do away with the 1968 Independence Constitution. This is so because the elections resuscitated an opposition which had so far only had a legal existence, and not a parliamentary presence. The surfacing of an opposition displeased the monarchy because it posed a problem to him since he could now be openly challenged. In a continent where one-party-rule and authoritarian heads of state were in vogue, the Swazi opposition party emerged in an unfavourable environment after the May 1972 elections and was unwelcome to the Swazi monarchy.

The pre-independence elections which had taken place in Swaziland on a multi-party basis in May 1967 witnessed the royal Imbokodvo Party sweeping all the seats. In anticipation of the general

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elections billed for 16 and 17 May 1972, King Sobhuza dissolved Parliament and Senate on 15 March 1972.[25] The campaign manifestoes of the two main political parties promised political change in the event of victory. The Imbokodvo Manifesto promised:

1. A state with the *Ngwenyama* as its head;
2. Respect for Swazi institutions;
3. A free democracy based on the best Swazi tradition and modern constitutional law;
4. A sound and stable government with an impartial and independent Judiciary ; and
5. The entrenchment of the freedom of the institutions of Kingship, and the Swaziland National Council and the Chiefs.[26]

But the government appeared to be paying mere lip service to its election slogans of 'free democracy' while emphasising the respect and entrenchment of Swazi traditional institutions of governance. During the election campaigns, the Prime Minister, Prince Makhosini stated, at Lobamba, the royal headquarters in Swaziland, that the inherited constitution was a problem for the Swazi government and called for an amendment in favour of the transfer of more powers to the monarchy.[27] This proposed constitutional amendment was contrary to the spirit of constitutionalism that underscores checks and balances between the various arms of government. This was also evidence of the fact that the Swazi government had made up its mind to change the constitution after the elections because it was already complaining about it.

[25] 'May Elections', *Times of Swaziland*, March 17, 1972.

[26] 'Pledge', *Times of Swaziland,* April 14, 1972.

[27] Ibid.

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The Ngwane National Liberatory Congress campaign slogan, in contrast, for an increase of royal prerogatives and included the following pro-liberal democratic principles:

1. The rule of law to be the watchdog of the Ngwane State [that is the Kingdom of Swaziland] whose motto would be "Freedom and justice";
2. A Constitutional monarchy;
3. An independent Judiciary completely free from the country's Executive;
4. Automatic citizenship for everyone born in the country;
5. Free Labour unionism; and
6. Freedom of speech, association, assembly and press.[28]

In its turn, the opposition NNLC campaigned for a democratic Swaziland and constitutional monarchy that operated within the parametres of the law. It advocated for the separation of powers in the true spirit of modern constitutionalism.

The monarchists campaigned strenously against the modernist stance of the opposition by proclaiming that the opposition had threatened to remove the Swazi King from power if they won the elections. King Sobhuza II assured Swazis that he would not be cowed into silence because of fear of dethronement.[29] This type of statement from the monarchy was clearly intended to demonise and alienate the opposition from the common folk.

[28] 'Dr. A.P. Zwane's Historic Document', *Times of Swaziland*, May 12, 1972.

[29] 'Imbokodvo Candidate', *Times of Swaziland*, March 31, 1972.

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The royal Imbokodvo Party won the May 1972 election overwhelmingly with 21 seats, while Dr. Zwane's opposition NNLC managed to capture the remaining three seats from the Mphumalanga constituency.[30] This was the first time in Swaziland's modern political history for the opposition to join the House of Assembly but this occurred in an era in African history when multi-partyism was being discredited almost everywhere on the contenent as 'alien' and 'unAfrican' and being assailed by a strong upsurge of authoritarianism.

The capture of some parliamentary seats by the Swazi opposition challenged the *de facto* one-party Imbokodvo regime that had reigned supreme after the 1964 and 1967 elections in Swaziland.[31] Neocosmos asserts that the NNCL was able to bring together the working class and a section of the well-to-do peasants but this was not enough to pose any threat to the traditional arisctocracy.[32] Motloso states that the opposition leader Dr. Ambrose Zwane won only one constituency, Mphumalanga, in the eastern part of the country, and his party's representation was not numerically significant. However, the important point is that the opposition's presence in the Assembly represented an alternative voice to that of the monarchy.[33]

The election results confirmed the fears of the traditionalists that the Independence Constitution was not a good document for Swaziland because it made allowance for the challenge to royal prerogatives. Swazi constitutional experts state that the winning of three seats in Parliament by

[30] 'Boycott at Parliament', *Times of Swaziland*, October 20, 1972.
[31] Ibid.

[32] M. Neocosmos, 'The Politics of National Elections in Botswana, Lesotho and Swaziland: Towards a Comparative Analysis', in M. Cowen and L. Laakso (eds.), *Multiparty Elections in Africa*, (Oxford: James Currey, 2002).

[33] Motloso, 'Democracy and Conflict in Post-Apartheid Southern Africa'; also see R. Levin, 'Swaziland's Tinkhundla and the Myth of Swazi Traditional', *Journal of Contemporary African Studies*, 10, 2 (1991), 1-23.

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the opposition amounted to what the Swazi royalists called a "constitutional crisis" in Swaziland and the unfolding of events from these May elections culminated in the royal repeal of the Independence Constitution.[34] The use of the word 'crisis' should not be taken to mean there was an internal or external threat to the institutions of the Kingdom of Swaziland. The government manufactured a constitutional crisis by contesting the citizenship of the opposition candidate who won the polls and by refusing to respect the verdict of the courts of the land over the issue. In its anxiety to do away with the opposition in line with what was happening elsewhere in Africa, the government and its judical arms could not function harmoniously as the Bhekindlela Thomas Ngwenya Affair revealed.

The Bhekindlela Thomas Ngwenya Affair and the Citizenship Crisis.

The Bhekindlela Thomas Ngwenya Affair was a political controversy caused by the refusal of the Imbokodvo-dominated House of Assembly to endorse the candidature of one opposition candidate who won the May 1972 polls. The Ngwenya affair pitted the government against the opposition and resulted in "three of the most important judicial pronouncements in the short history of [Swaziland's 1968] constitution".[35] It was a test case for Swaziland of the principle of the separation of powers in a nascent democracy and of the role of the Judiciary "as the custodian of the constitution, fundamental rights and freedoms" in Swaziland.[36]

[34] See H. S. Zwane, 'Constitutional Discontinuity and Legitimacy: A Comparative Study With Special Reference to the 1973 Constitutional Crisis in Swaziland', A Dissertation for a Master Degree in Law: University of Edinburg 1988; B. Khumalo, 'The Politics of Constitution-Making and Constitutional Pluralism in Swaziland Since 1973', *UNISWA Research Journal*, 10, (1996), 1-19; T. Maseko, 'The Drafting of the Constitution of Swaziland', 1-22.

[35] Maseko, 'The Drafting of the Constitution of Swaziland', 31.

[36] Ibid, 320.

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The Swazi monarchy wanted to use the opposition candidate, Bhekindlela Thomas Ngwenya, as a scapegoat to execute its agenda of establishing political monolithism in Swaziland. The Imbokodvo-dominated Parliament therefore initiated a crisis in order to get rid of the opposition entirely.[37] Before the elected members of Parliament could be sworn in after the May 1972 elections, the government alleged that one of the members of the opposition NNLC, Ngwenya, was not a Swazi citizen. Although Ngwenya had been allowed by the Swazi electoral law to stand as an opposition candidate in the May 1972 elections, the Swazi government claimed after his election victory that they had discovered that he was not really a Swazi citizen. The Deputy Prime Minister, as Minister responsible for immigration, described Ngwenya as "a South African citizen" in the Government Gazette Extraordinary and declared him a prohibited immigrant that had to be deported to his country of origin.[38] On 25 May 1972, the Deputy Prime Minister served Ngwenya with a deportation order. He was arrested and held in jail in Matsapha for a few days before being deported and handed over to the South African Police at the Oshoek border post. So when Parliament opened, Ngwenya's seat was empty. After deportation, Ngwenya decided to return to Swaziland and was immediately arrested, charged and found guilty by a magistrate of being in Swaziland illegally. He was sentenced to 12 days imprisonment. In the meantime, Ngwenya applied to the Swaziland High Court to have the DPM's decision that he was a prohibited immigrant quashed. The case was clearly a political one that needed to be handled with expertise. Ngwenya's lawyer, Musa Shongwe, solicited the services of a renowned South African advocate,

[37] Interview with anonymous political activist and scholar in Swaziland.

[38] It was issued in terms of Section 9(1) (g) of the Immigration Act 32 of 1964, published under Government Gazette 45 of 1972.

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David Soggot,[39] to appear for his client. Ngwenya's attorney's applied to the High Court to have the order set aside.

They prepared a dossier of affidavits in which they maintained that their client was born at Hluti, in Swaziland.[40] They stated that the fact that Ngwenya was born in Swaziland was enough evidence that he was a true Swazi citizen. Ngwenya's attorney's therefore filed an application to the High Court of Swaziland to have the order declaring him a prohibited immigrant and a citizen of the Republic of South Africa set aside and for a ruling that he was a citizen of Swaziland. The case was brought before Sir Philip Pike and Chief Justice and Acting Justice Johnson for a hearing.[41]

During the hearing, a pro-government official, M. Ntshangase brought evidence in the High Court of Swaziland against Ngwenya that he was a South African citizen from Kanzkloof and that his father was South African.[42] Ntshangase told the court that Ngwenya was born at Ntonga in South Africa, near Kanzkloof. He revealed that he was an Acting Chief of that area when the Ngwenya clan came to him with an inheritance dispute concerning the estate of J. Ngwenya, the applicant's South African father.

[39] Soggott was not new to the politics of Swaziland and had represented Dr., Zwane and the other NNLC leaders during the trials connected with the 1963 workers' and Mbabane residents' strikes (Kuper, *Sobhuza II: Ngwenyama and King of Swaziland*, 334).
[40] 'Declared Prohibited Immigrant', *Times of Swaziland*, June 2, 1972.

[41] Bhekindlela Thomas Ngwenya v The Deputy Prime Minister 1970-76 Swaziland Law Report (HC) 88.

[42] 'Deportation Appeal', *Times of Swaziland*, July 28, 1972.

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Delivering judgment, Sir Philip Pike, Chief Justice, observed that, in view of the importance of the matter, affecting as it did the fundamental rights of a person who claimed to be a citizen and who had been resident in Swaziland for some years before his deportation, the case had to be heard by a full bench of two judges. The Court expressed its displeasure with the way the government had arrived at the conclusion that Ngwenya was not a citizen of Swaziland. After hearing oral evidence in court on 29 August 1972, the full bench, comprising Sir Philip Pike, Chief Justice, and Acting Justice, Johnson, ruled that Ngwenya was a Swazi citizen by birth and set aside the deportation order.[43] This meant that Ngwenya could take his seat in Parliament.

The judicial arm of government had made its pronouncement and it was now left for the government to respond accordingly. The government was furious and declared barrister Soggot *persona non grata* in Swaziland. The government appealed against the High Court's ruling, on 31 August 1972. The government also issued summons against Ngwenya on 16 November 1972 claiming an order setting aside the High Court decision of 29 August 1972 on ground that it was obtained by perjured evidence. While the government appeal was still pending, the government rushed an amendment to the 1964 Immigration Act through Parliament and quickly passed it into law so that it could be used to eliminate Ngwenya from the House of Assembly.

The Imbokodvo-dominated House was not prepared to respect the High Court ruling on Nwenya's citizenship. The House resolved to frustrate him from being sworn in as a parliamentarian through boycotting the swearing-in ceremony in Parliament. Ngwenya took his seat in the House next to the two other NNLC members, namely Dr. A. Zwane and M. Masilela while waiting for the other

[43] 'Boycott at Parliament', *Times of Swaziland*, October 20, 1972.

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members of Parliament to come into the house for the swearing-in ceremony. At about 2.30, when the sitting of Parliament was due to begin, the NNLC were the only members present in the House of Assembly. Other Imbokodvo members of Parliament were in the Assembly buildings but they kept away from Parliament in a bid to boycott the sitting thereby making it impossible for a quorum to be met since the Imbokodvo had the overwhelming majority in the House. At 3pm the Speaker, accompanied by the clerk and the interpreter and the Attorney General, David Cohen, formerly enterred the House and observed that there was no quorum and the sitting had to be postponed to another day.[44]

A joint sitting of both Houses-the National Assembly and Senate- was expected to take place on 17 October 1972. But the Speaker received a letter from the Prime Minister stating that the date was not suitable for the meeting to take place owing to the problem of a quorum.[45] It was clear that the government party had decided to stay away from a sitting of its own Legislative Assembly because of Ngwenya's presence in the House. On receipt of the letter from the Prime Minister, Prince Makhosini, the Speaker of the National Assembly, sent it to all Senators and Members of the House of Assembly.

While the government appeal against the court verdict on Ngwenya's citizenship was still pending, it rushed through Parliament an amendment to the 1964 Immigration Act, which qualified Ngwenya to participate in the elections. The point was to amend the Act in such a way that the new law would classify Ngwenya as a foreigner and he would then be deported. The amended

[44] 'A Boycott at Parliament', *Times of Swaziland*, October 20, 1972.

[45] 'A Boycott at Parliament', *Times of Swaziland*, October 20, 1972.

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law would be applied retroactively. Parliament then set out to enact a parliamentary law under a Certificate of Urgency clause which would allow it to act speedily to solve the 'citizenship' crisis. Under the Certificate of Urgency clause, the government could enact a law to address a crisis if there was no constitutional provision for it and if the enacted law did not contradict the spirit of the constitution. Consequently, the government tabled an urgent bill amending the Immigration Act (No.32) of 1964 which had qualified Ngwenya as a Swazi citizen by virtue of his birth and the fact that he had lived in Swaziland continuously for more than five years. Parliament was convened to execute the plan.[46]

The Deputy Prime Minister, A. Z. Khumalo tabled the motion in the House of Assembly, that the government should urgently endorse the amendment of the existing 1964 Immigration Act under which Ngwenya had qualified as a Swazi citizen when, in reality, he was not and his father was from South Africa. Khumalo pointed out that there were a number of persons living in Swaziland who claimed that they belonged to Swaziland when they were not Swazis. He argued that the claims had brought confusion in the country and there was need to set up a Special Tribunal to look into such cases. He stated:

> The Bill before you for your consideration proposes to amend the [1964] Immigration Act by the introduction of a *new section providing for the establishment of a Special Tribunal to deal with any issue as to whether or not a person belongs to Swaziland in terms of that act*. There will be a right to appeal to the Prime Minister against any decision of this Tribunal which will consist of five persons. These will be responsible men whose integrity I do not doubt at all.[47] [Emphasis added]

[46] 'Immigration Bill Gazetted', *Times of Swaziland*, November 10, 1972.

[47] SNA, House of Assembly Hansard, November 1972, 270.

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The Deputy Prime Minister further proposed that a Special Tribunal of five people under his chairmanship be set up to look into the matter and that the matter should no longer be heard in the courts of the land. He stated that the Special Tribunal would act according to the terms of the constitution and pointed out that there would be a right for individuals to appeal to the Prime Minister. He asked the Members of the House to give unanimous support to the Bill. He buttressed his position by stating that the courts in Swaziland were not in a position to deal with citizenship matters because they were already congested with other issues and they were not familiar with Swazi traditional customs and law. He argued that, if the court was to handle the matter of citizenship, it would be subjected to harsh criticism by Swazis since the judges were not Swazis. Therefore, such interference should be avoided by letting the envisaged Special Tribunal handle the situation with due consideration to Swazi custom and tradition.

The first person to second the Deputy Prime Minister from the floor was the Minister of State for Foreign Affairs. He concurred with the Deputy Prime Minister that the citizenship issue had created problems in Swaziland. The Minister of State for Foreign Affairs stated that:

> It is a known fact that, when difficulties arise in some countries, points are presented which are not in accordance with their Constitution. One thing I am grateful for is that here in Swaziland we have always taken immediate steps to see that we frame clauses in our Constitution to tide us over difficulties. For instance, Mr Speaker, we have here the Deputy Prime Minister bringing up an amendment to this bill because of the controversy that has arisen here in Swaziland. The citizen question has created a lot of misunderstanding here in Swaziland. Not only does it put the country in the state of chaos, but it also affects the relationship between Swaziland and other countries . . . .[48]

[48] SNA, House of Assembly Hansard, November 1972, 271.

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The Minister of State for Foreign Affairs endorsed the amendment of the 1964 Immigration Act. He pointed out that he hoped that the Deputy Prime Minister would ensure that the Special Tribunal was composed of people whose integrity was beyond doubt.

Dr. Zwane strongly opposed the Bill. He argued that, in essence, the Bill had nothing to do with immigration, but was a political stunt to fight the Ngwane National Liberatory Congress. He pointed out that 'only a child . . . would be fooled and be deceived by the Imbokodvo'.[49] Dr. Zwane saw the Bill as something that was presented in the House with the intention of destroying NNLC as the only opposition in the House.

He stated:

> I am shocked that in terms of this immigration (Amendment) Bill of 1972, . . . all powers of deciding as to who comes into this country and who goes out are now reserved for the Prime Minister . . . . This House here has no power to make laws that are not subject to the jurisdiction of the courts. That is according to the constitution that I have in my hand.[50]

Dr. Zwane emphasised that all laws which were passed by Parliament should be for the good of Swaziland and should be in harmony with the constitution. Parliament should not substitute the courts under any circumstance and should not establish Tribunals to handle immigration matters. He underscored his argument by stating that:

> The House has been given all the powers to effect some changes if it feels like, as long as those changes are for the good of the country. The Constitution itself does point out that this House has powers to effect some alternations in the Constitution if they feel like it . . . . There is a portion of the Constitution here which says: "The Constitution is a supreme law of Swaziland; and if any other law is inconsistent with this Constitution, that other law,

[49] Ibid.
[50] Ibid.

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> to the extent of the inconsistency, be void". I therefore, Mr Speaker, wish to point out that this [Immigration Amendment Law] is void . . . . it is un-constitutional. My party is going to fight this law inside this Chamber . . . . And when I say outside this Chamber I mean the powers of the courts. This House here has no power to hijack the powers of the courts and vest them in the Prime Minister. I know this, of course, happens in fascist countries.[51]

In response to Dr. Zwane, the Deputy Prime Minister argued that:

> . . . [Dr. Zwane] didn't feel satisfied that the Prime Minister should have the last saying as far as this matter is concerned. I personally feel the Rt. Hon. Prime Minister should have the last say [in immigration matters] because he was elected by the nation. Mr Speaker, I would understand, perhaps if the matter would end up with me as the Head of the Tribunal not to go ahead, or to appeal to the Prime Minister. But if it is said that we appeal to the Prime Minister, I don't see what is wrong in that, because he is the one who is the Head of the present Government.[52]

Dr. Zwane stood out as the lone voice that resisted parliamentary encroachment on the powers of the Judiciary but this had little or no impact in the House that was overwhelmingly composed of the Imbokodvo. As was expected, the Assistant Deputy Prime Minister seconded the Deputy Prime Minister. He stated that he supported the amendment of the Bill wholeheartedly and congratulated the Deputy Prime Minister for tabling it. He believed that the Bill would solve the problem of people who claimed to be Swazis when they were not. The Minister for Agriculture also supported the Deputy Prime Minister and condemned Dr. Zwane for not supporting the Bill.

The Minister for Agriculture stated that:

> If the Member of the opposition party rejects this bill on grounds that it has been presented to the House merely to hit against his followers, does he imply that members of the opposition Party are elected by foreigners? If, for instance, you go to China, Japan, or anywhere else, I doubt whether permission can be granted to a person who is not a citizen.

[51] SNA, House of Assembly Hansard, November 1772, 274.
[52] Ibid, 277.

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> I must mention the fact that it wouldn't be right if a person just walked into your house and occupied your bed without seeking permission.[53]

The Imbokodvo-dominated House of Assembly expectedly endorsed the Amendment Bill by an overwhelming majority.

The Attorney General described the work of the Tribunal as follows:

> . . . the Special Tribunal, being an adjudicating authority, must in the case where any civil right or obligation is involved, give the case fair hearing within a reasonable time. It also provides in such a Tribunal that it would have to be independent and impartial. It also provides that the determination of that right shall be held in public . . . . Provisions of the section to which I have referred must be carried out by the special Tribunal. Section 6 of the Commission of Enquiry Act, which must be of the Tribunal must take an oath, and carry out their functions in the correct manner. Section 7 means that the secretary, who shall be appointed to this Commission and shall keep a record of the proceedings of the Tribunal. Section 9 means that in the case of equality of votes, the Chairman shall have a casting [vote] . . . . The reference to section 10 means that the Tribunal may make rules not consistent with that act, for its own guidance as the time and place for their sittings, and generally as the conduct their proceedings.[54]

In essence, the 1972 Immigration Amendment Act provided for the establishment of a Special Tribunal to consider, where there might be doubt, whether a person was a citizen of Swaziland or not. The Government further explained that the intention of the Immigration Amendment Act, which set up a Special Tribunal, was to limit the number of non-Swazis and non-resident attorneys practising in Swaziland's courts.[55] In reality, the Special Tribunal was basically largely concerned with the Ngwenya's birth place and his claim to citizenship.

[53] SNA, House of Assembly Hansard, November 1772, 276.
[54] Ibid, 278.

[55] Ibid.

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The Deputy Prime Minister moved the same motion in Senate on the amendment of the 1964 Immigration Act and the establishment of a Special Tribunal to handle immigration matters. He made the same argument in Senate that had been made in the House of Assembly that the Courts were not capable of handling matters of citizenship which had a lot to do with Swazi customs and tradition. He stated that cases such as "our marriage ceremonies, *lobola*, and *khonta'ing* and such matters inevitably arise in consideration of whether or not a person belongs to the Swazi nation".[56] Khumalo stated that letting the Special Tribunal to handle such cases was a way of protecting the courts against criticism by the public who are aware of the fact that they are ignorant in Swazi culture and tradition. Such criticism could lead to disrespect of the courts by the nation. He emphasised that such a situation should be avoided by allowing such cases to be handled by the Special Tribunal according to Swazi custom and tradition.

Senator Carl Todd supported the Deputy Prime Minister by pointing out that some countries set up a Special Tribunal when dealing with a case of whether or not a person was a citizen of that particular country. He stated that the House should not quarrel with such an amendment. Senate supported the Bill.

Following the debates that took place in the Assembly and Senate, the Bill became law on 14 November 1972.[57] The amended Bill was to be applied retroactively on the opposition candidate with the intention of disqualifying him from the House. This retoactive piece of legislation by the

[56] SNA, House of Senate Hansard, Novemebr1972, 148. *Lobola* is bride wealth tradition among Swazis while *khonta'ing* represents a token of a cow given to a Chief to obtain a piece of land for occupation and cultivation.

[57] 'Five Man Tribunal', *Times of Swaziland*, November 17, 1972.

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pro-monarchical Imbokodvo Parliament was clearly politically motivated and was a travesty of justice because, in principle and practice, enacted laws are never retroactive in any modern state. Could the Swazi Parliament with an Attorney General considered as honourable and learned in the law, have acted in error? David Cohen, the Attorney General could not have possibly erred in appeciating such an obvious legal principle. Clearly, Parliament had come under the sway of the monarchy to do all it could, including the exclusion of Nywenya, to neutralise the opposition and pave the way for the destruction of the Independence Constitution which did not uphold the absolute supremacy of the monarchy as King Sobhuza II wanted. King Sobhuza did not care about legality and what was high on his agenda was the weakening and destruction of the opposition at any cost.[58]

The Amended Bill could not be challenged in court and it empowered the Prime Minister to render any court ruling ineffective. The Legislature intended to subordinate and eclipse the Judiciary in this Ngwenya affair by giving the Prime Minister the powers to counteract any decision of the courts that did not favour the government. Parliament ensured that, under the Amended Immigration Act, appeals against the decision of the Tribunal lay exclusively with the Prime Minister, a member of the Imbokodvo, whose decision was final. This Act made the government both the complainant and the judge in the Ngwenya case. The Act was, therefore, clearly designed to eliminate Ngwenya from Parliament and enfeeble the opposition which had a marginal presence in Parliament.

[58] Interview with anonymous Swazi legal experts 10 November 2015.

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At the same time, the amendment Bill usurped the powers of the court by establishing a Tribunal with power of sole adjudication on matters which would ordinarily be within the jurisdiction of the High Court. The civil rights referred to in the Bill are important rights, which at the time of the promulgation of the constitution, could only be adjudicated upon by the High Court. Rights of citizenship are civil rights and there was nothing to suggest that such rights were to be excluded from the operation of section 10 (10) (b) of the 1968 Constitution. Barrister Maphalala[59] was, therefore, of the opinion that the establishment of the Tribunal was *ultra vires* the constitution and that Parliament was incompetent to adjudicate on the issue of the citizenship of Ngwenya.[60]

The Special Parliamentary Tribunal established under the Amended Immigration Act (1972) to determine the Swazi status of Ngwenya included five members. The members of the Tribunal are documented in Table 6-1.

Table 6-1

The Members of the Special Tribunal to examine the Ngwenya Citizenship Affair

	Name	**Comment**
1.	J. F. G. Troughton	Chairman
2.	F. N. M. Dlamini	Member
3.	M. M. Mnisi	Member
4.	Chief M. Maziya	Member

[59] He was the lawyer who stood for those who took the government of Swaziland to court over the illegality of the abrogation of the 1968 constitution.

[60] Bhekindlela Thomas Ngwenya v The Deputy Prime Minister 1970-76 Swaziland Law Report (HC) 88.

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5.	Prince Sifuba	Member

Source: A Government Gazette Extraordinary; 'Five Man Tribunal', *Times of Swaziland*, November 17, 1972.

The Special Tribunal had its first meeting on 8 December 1972 at Lobamba.[61] The purpose of the meeting was to set a date for the hearing of the claim by Ngwenya that he was a Swazi citizen. D. Luhkele represented the government, supported by two Johannesburg advocates, Goldstein and Mostert. Advocate Soggott from South Africa represented Ngwenya. The hearing was postponed until 9 January 1973. The Special Tribunal was, therefore, given a free hand to proceed with its case against Ngwenya.

When the Parliamentary Tribunal finally met in January 1973, it invited Ngwenya to appear before it so it could determine his citizenship status - a matter which had already been settled by the High Court of Swaziland. But the Special Tribunal wanted to do things its own way according to the dictates of the monarchy. The Tribunal deliberated and came to the conclusion that Ngwenya was born in South Africa and was not a citizen of Swaziland. It stated that, although Ngwenya's parents might have been resident in Swaziland, he himself was born in South Africa and could not be considered a Swazi under the present amended law.[62] He could not, therefore, sit in the Swazi Parliament because he was a foreigner.

Ngwenya did not take the politically motivated citizenship manoeuvring by the Imbokodvo lying down. He challenged the competence and constitutionality of the Parliamentary Tribunal. He

[61] 'Tribunal Meets', *Times of Swaziland*, December 8, 1972.
[62] Baloro, 'The Development of Swaziland's Constitution: Monarchical Reponses to Modern Challenges', 24-25.

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applied to the High Court of Swaziland praying that it declare the Immigration Amendment Act, 1972 *ultra vires* the constitution and, to similar effect, the Special Immigration Tribunal established under it. The Swazi High Court under Chief Justice C. J. Hill did not favour Ngwenya because it dismissed his application on grounds that the Parliamentary Act and the Special Parliamentary Tribunal were constitutionally valid.[63] It should be noted that prior to the establishment of the Parliamentary Tribunal, this same High Court presided over by Chief Justice Phillip Pike and C. J. Hill had adjudicated over this same case in favour of Ngwenya. The High Court had now changed its position suggesting that some pressures were being put on it by the government. Chief Justice Phillip Pike had vacated his office before the court hearing[64] without any explanation, suggesting that he could have come under politial pressure to do so. Maseko notes that: "the judgment [of the High Court] was clearly wrong, based on a deliberate lack of appreciation of the relationship between the Act of Parliament, on the one hand, and the constitution, on the other, as well as the role of the courts in protecting and promoting fundamental rights and freedoms".[65] The legal untidiness of this case is reflected by the fact that under the 1964 Immigration Act, Ngwenya was a Swazi citizen and was allowed to run for a parliamentary seat. Under the 1972 Amended Immigation Act which followed Ngwenya's victory at the polls, Ngwenya's citizenship was changed from a Swazi citizen to a South African citizen with the sole purpose of eliminating him from Parliament.

[63] 'Tribunal Meets', *Times of Swaziland*, December 8, 1972.
[64] Maseko, 'The Drafting of the Constitution of Swaziland, 2005', 320.

[65] Ibid, 321.

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Nwenya refused to accept the manipulation of his citizenship. He decided to seek redress in the Appeal Court of Swaziland which was the highest court in the land, and which had replaced the British Privy Council.[66] The Court of Appeal comprised three leading South African judges namely: J. P. Schreiner, J. A. Milne and J. J. A. Smith.[67] The case was heard on 29 March 1973. The judges observed that section 134 of the Swaziland independence Order dealt with the alteration of the constitution and this required a joint sitting of the Senate and the House of Assembly. The section further distinguished between "entrenched" and "specially entrenched" provisions, which were scheduled respectively in the two parts of schedule 4 of the constitution. Both entrenched and specially entrenched provisions required that the amending enactment should be passed by not less than three quarters majority at the final reading of the joint sitting. The entrenced provisions further required that, for alteration to be effected, a referendum had to be organised in which at least a two-thirds majority of the voters approved the amendment. What is important is the method of the alteration of the constitution which the Imbokodvo-dominated Parliament failed to observe.

The Court of Appeal observed that the Amendment Act was passed in the ordinary bicameral way, with each House sitting separately, and not together as required by the constitution. The basis of the Ngwenya's appeal was that the Act purported to bring an alteration in the constitution without following the procedure of a joint sitting required by section 134 of the constitution, implying that

[66] Bhekindlela Thomas Ngwenya v The Deputy Prime Minister and the Chief Immigration Officer 1970-76, Swaziland Law Report. (Court of Appeal), 123-126.

[67] It was a common practice in Swaziland to draw its Court of Appeal judges from South Africa to come occasionally to the country to conduct court sessions and return to South Africa. Swaziland did not have resident judges of the Court of Appeal and had to rely on South Africa. (Interview with anonymous legal authorities in Swaziland between November1 and 16, 2015).

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the alteration was invalid. Broadly speaking, the appellant's case was that the constitution protected various rights belonging to Swazi citizens and, expressly or impliedly, given the High Court jurisdiction to decide whether such rights had been infringed. In order to decide such issues, the court had to decide whether the person affected was a Swazi citizen, as defined in Chapter III of the constitution. The Swazi Court of Appeal, therefore, declared the Immigration Act that was enacted and applied retroactively illegal. The Act was void as it was beyond the powers of Parliament to enact, save in accordance with section 134 of the constitution.[68] The Swaziland Court of Appeal had ruled accordingly and the judicial arm of government had exercised its independence fully. It was now left for the Swazi government to uphold the independence of the Judiciary and respect the principle of the separation of powers, which is the hallmark of constitutionality and its corollary, liberal democracy.

The response of the Imbokodvo-dominated Parliament to the decision of the Swazi Court of Appeal was, in the words of Baloro, "swift and decisive"[69] and demonstrated the government's impatience with, and lack of democratic credentials. The government declared that the 1968 Independence Constitution was "unworkable" and there was a "constitutional crises" in Swaziland. By constitutional crisis, the government meant that the Court of Appeal ruling did not favour it and had, therefore, challenged the monarchy. The Swazi Government tabled bills in both the House of Assembly and Senate simultaneously in which it elaborated on the theory of a "constitutinal crisis" in Swaziland. From the constitutional crisis argument, the Swazi government contemplated to revisit the 1968 Independence Constitution. The two Houses of Parliament met

[68] Bhekindlela Thomas Ngwenya v The Deputy Prime Minister and the Chief Immigration Officer 1970-76, SLR. (Court of Appeal), 123-126.
[69] Baloro, 'The Development of Swaziland's Constitution', 25.

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simultaneously on 12 April 1972 to look into the "constitutional crisis". Given the importance of this historic event in Swaziland's post-colonial constitutional history, a full list of the Cabinet and Members of the House of Assembly who engaged in the debate aimed at revisiting the Independence Constitution which was described as "unworkable" is presented in Appendix 10**.**

In the Swazi National Assembly, the Prime Minister moved a motion in Parliament on Thursday 12 April 1973 that the Independence Constitution inherited from the British was "unworkable" and called on the King-in-Council "to consider ways and means of resolving the constitutional crisis" and that "the House of Assembly of the Kingdom of Swaziland and the individual members thereof [had placed] themselves entirely at the disposal of the King-in-Council".[69] They had surrendered themselves to the King to do whatever he wanted to solve the crisis.

Speaking to the motion, the Prime Minister said:

> Since independence on the 6th of september, 1968, this House of Assembly and Senate have functioned in terms of, and by virtue of, the Constitution which was created and granted to Swaziland by way of a law passed by Parliament in the United Kingdom.
> The Constitution has proved to be the direct cause of difficult and sometimes insoluble problems in that:
>
> (a) as a result of a number of provisions introduced into the Constitution as: so-called safeguards, there is a significant derogation from the sovereign powers of legislation which should normally vest in His Majesty, the Ngwenyama of Swaziland;
>
> (b) Many unwarranted restrictions are placed on the executive powers of Ministers and of the King-in-Council resulting in the incapacity of the Executive to govern the country properly and without continuously encountering irksome and completely unjustifiable obstacles;
>
> (c) It permits of particularly undesirable political activities, bordering on the subversive, and completely foreign to, and incompatible with, the normal way of life of the citizens of our country;

[69] Official Report of the Debates of the House of Assembly, First Meeting (Vol. II) of the first Session of 12th April, 1973.

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> (d) the accumulated effect of the network of provisions derogating from sovereign powers of the Legislature and the executive renders the Constitution an ineffective instrument for the peace, order and good government of the country.
>
> The Constitution contains an intricate system for the entrenchment of the offending provisions which is wholly impracticable and effectively prevents Parliament from amending the Constitution. This is an imposition on a free independent state of a set of restrictive conditions which do not apply even to the British Parliament itself.[70]

This quote from the Prime Minister's motion captures the thinking of the traditionalist Imbokodvo about the 1968 Independence Constitution which was intended to provide for a constitional monarchy with checks and balances between the various arms of government. The entrenched clauses in the constitution were intended to make it difficult for the manipulation of the constitution according to the whims and caprices of the executive. What the British bequeathed to the Swazis was an instrument for the governance of a modern state in which sovereignty lay with the people and the rule of the law was supreme. However, the thinking of the Imbokodvo traditionalists was that the *Ngwenyama* should reign supreme as a trusted benevolent autocrat without any restrictions on his powers. Constitutional checks and balances were interpreted as an infringment on the sovereignty of the Swazi people.

After the Prime Minister's motion, speaker after speaker rose to support the motion. The Minister of Finance, R. P. Stephens stated that he believed that "the revision of the Constitution [was] in the best interest of the Kingdom of Swaziland and that a suitable revision [would] lead to a much better degree of . . . political stability". He pointed out that there was nothing unusual in altering the constitution especially when it was felt that the constitution was out of tune with the times. He cited the constitution of a great nation like the United States of America which had been altered

[70] SNA: Official Report of the Debates of the House of Assembly, First Meeting (Vol. II) of the first Session of 12th April, 1973.

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25 times. In his turn, R. V. Dlamini argued that the constitution was meant to serve the people and not the other way round. The Minister of Agriculture also supported the motion and pointed out that the Independence Constitution was "unworkable". Like the Prime Minister, he said the constitution was "an imposition on a free independent state of a set of restrictive conditions which [did] not apply to the British Parliament itself". He complained that "in this constitution, as a result of a number of provisions introduced therein as so-called safeguards, there [was] a significant derogation from the sovereign powers of legislation which should normally vest in His Majesty and the Houses of Parliament".[71] According to Maseko, the opposition staged a walk-out of Parliament in protest against the manoeuvres of the Imbokodvo-dominated House of Assembly before any voting.[72] The Prime Minister's motion to alter the constitution was put to the House for a vote and was carried .[73]

Senate debated the issue on Thurday 12 April 1973. Leading the discussion, the Minister of Justice pronounced the constitution "unworkable" and invited the King to intervene to solve the constitutional crisis that had arisen. He stated that the people of Swaziland whom they represented wanted this constitution to be amended. All subsequent speakers supported this position. Senator Dr. V. S. Leibbrandt endorsed the Minister's motion "wholeheartedly" and argued that, while the 1968 Constitution might have suited Englishmen, it was doubtful whether it could suit Swazis who

[71] SNA: Official Report of the Debates of the House of Assembly, First Meeting (Vol. II) of the first Session of 12th April, 1973.

[72] Maseko, 'The Drafting of the Constitution of Swaziland, 2005', 320. It is important to underscore this point because most pro-government interviewees give the impression that the opposition also voted in favour of the government motion and went as far as expressing their joy by dancing on the floor.

[73] SNA: Official Report of the Debates of the House of Assembly, First Meeting (Vol. II) of the first Session of 12th April, 1973.

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[were] different in population, social and educational background and the "environmental differences and different levels of development", especially given the wish of Swazis to see the constitution amended.[74] After the debate, Senate approved the motion.[75]

Thus, the two houses were unanimous that the 1968 constitution was "unworkable" and there was a "constitutional crisis" which required the constitution to be "revised, or "amended". The Imbokodvo members of Parliament placed themselves at the disposal of the King-in-Council. The parliamentarians then marched to the King's kraal at Lobamba, where the King, members of the traditional Swazi National Council, and a crowd of about 8,000 people awaited them.[76] The stage had, therefore, been long prepared for some political drama.

The constitutionality of members of Parliament placing themselves at the disposal of a traditional ruler and Head of State of Swaziland to solve a 'constitutional crisis' is questionable. There was no provision in the 1968 Constitution that disagreements between the various arms of government in a modern state should be solved by the surrender of the Legislature to the executive in order to find a solution. This surrender was political drama *par excellence* which negated the essence of the functions of Parliament in sorting out constitutional issues and the idea of the separation of powers as sacrosanct. Parliamentary negation of its responsibilities in a moment of need was a scar on the constitutional history of Swaziland.

[74] SNA, Official Report of the Debates of the Senate First Meeting (Volume II) of the First Session, 12th April, 1973.

[75] Ibid.

[76] See Appendix 9: His Majesty's Speech during Repeal of the Westminster Constitution at Lobamba, 12 April 1973.

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The Sobhuza II 12 April 1973 Auto-*Coup d'état* and the Death of Constitutionalism

King Sobhuza II staged an auto-*coup d'état* against the institutions of the state before the mammoth crowd at Lobamba. Scholars writing on the overthrow of Swaziland's Independence Constitution did not conceive it as an auto-*coup d'état*,[77] probably because King Sobhuza was a civilian and the word was not yet in vogue in describing civilians who unlawfully overthrew their country's constitutions and instituted an emergency rule. When the word *coup d'état* is used, the tendency is to associate it with the military overthrow of a political regime which was so endemic in Africa South of the Sahara until recently.[78] *Coups d'état* are hardly associated with civilians, yet civilian politicians are equally engaged in *coups d'état* which are very much similar to those of the military. Scholars have increasingly adopted the concept of an 'auto-coup' or 'self-coup' as a form of *coup d'état* in which a nation's civilian leader, despite having come to power through legal means like elections, repeals, suspends, dissolves, or renders powerless the constitutional structures of the state, including the Legislature and Judiciary . The leader unlawfully assumes extraordinary powers, not granted under normal circumstances by the constitution.[79] The leader engages in extra-constitutional governance after the overthrow of the constitution which is the supreme law

[77] See, for instance, Baloro, 'The Development of Swaziland's Constitution'; Wanda, 'The Shaping of the modern Constitution of Swaziland'; Levine, 'Swaziland's Tinkhundla'; Kuper, *SobhuzaII: The Ngwenyama and King of Swaziland;* Zwane, 'Constitutional Discontinuity and Legitimacy: A Comparative Study With Special Reference to the 1973 Constitutional Crisis in Swaziland'; Khumalo, 'The Politics of Constitution-Making and Constitutional Pluralism in Swaziland Since 1973'.

[78] Postcolonial Africa has been characterised by *coups d'état* and in sub-Saharan Africa between 1956 and 2001, there were over 80 successful coups, 108 abortive coups and 139 coup plots.

[79] For the development of the concept of auto-*coup d'état* see Sampford, 'Making coups history', 1-10; J. Protzel, 'Changing Political Cultures and Media Under Globalism in Latin America', 101-120; M. Hutt, 'King Gyanendra's coup and its implications for Nepal's future', 111; K. Hachhethu, 'Legitimacy crisis of Nepali monarchy', 1828-1833; K. M. Dixit, 'Absolute Monarchy to Absolute Democracy', 1506-1510; M. Hutt, 'Nepal and Bhutan in 2005: Monarchy and Democracy, Can They Co-exist?', 120-124; D. Kumar, 'Proximate causes of conflict in Nepal', 51-92. This concept is extremely helpful in this study in describing what King Sobhuza II actually did.

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of the state. Exceptional measures are usually taken by the coup leader, including the declaration of a state of emergency, reinforced by a curfew, the suspension of civil courts, and the institution of governance by decrees and Orders-in-Council. In essence, the Head of State, who may be a civilian or military leader, becomes an absolute dictator. It is important to emphasise the point that, in effect, King Sobhuza II staged an auto-*coup d'état* in 1973 by highlighting historical parallels of his action and by showing how scholars conceptualise the overthrow of the constitution of a country by royal or civilian Heads of State as an auto-*coup d'état*.

Royal auto-*coups d'état* and the famous 1992 Peru auto-*coup d'état* are well captured in literature supplied by several authors. Classical examples of auto-coups include the successive royal auto-coup of the Nepalese monarchy in 1960, 1990 and 2005, after periods of constitutional rule, and Peru's Fujimori's famous 1992 auto-*coup d'état*. These auto-*coups d'état* are similar in several respects to that of King Sobhuza II because they deal with the overthrow of the constitution by the Head of State, followed by emergency rule. The Nepalese King Mahendra was frustrated with the operation of parliamentary democracy inherited from the British and used this as a pretext to stage a royal auto-*coup d'état* in 1960 against the inherited Westminster Constitution.[80] The elected Prime Minister, members of Parliament and hundreds of political activists were arrested and the King instituted a 'party-less' traditional *Panchayat* (councils) system of government in Nepal. King Mahendra later promulgated a new constitution which established a 'party-less' system of

[80] For more on the Nepalese royal auto-coup see Hutt, 'King Gyanendra's coup and its implications for Nepal's future', 111; Hachhethu, 'Legitimacy crisis of Nepali monarchy', 1828-1833; Dixit, 'Absolute Monarchy to Absolute Democracy', 1506-1510; Hutt, 'Nepal and Bhutan in 2005: Monarchy and Democracy, Can They Co-exist?', 120-124; B. C. Upreti, *Maoists in Nepal: From insurgency to political mainstream*, (Delhi: Gyan Publishing House. 2008), 46.

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panchayats, described as a meaningful democratic form of government that was closer to Nepalese traditions. The system had a pyramidal structure starting from village assemblies to the *Rastriya Panchayat* (National Parliament). The *Panchayat* system constitutionalised the absolute power of the monarchy by making the King the Head of State and the sole authority over all government institutions including the executive (Cabinet) and Legislature (Parliament).

The Nepalese monarchy succumbed to the idea of a constitutional monarchy with a functioning multiparty system and a Prime Minister but not for long. In 1990 the new ruling Nepalese King, Gyanendra staged a royal auto-*coup d'état* because of conflicts with the goverrnment. He alleged that political parties had failed to contain violence, corruption and the deteriorating economic situation in the country. The King suspended the constitution and imposed personal despotism on the country. He then formed a new government under his direct control. Media practtioners, intellectuals and other members of civil society who were considered to be supporters of democracy were also arrested or were subjected to restrictions on their movements.

The Nepalese monarchy later reinstated constitutional rule, but this did not survive for long. On 1 February 2005, the ruling Nepalese King, Gyanendra, staged another royal auto-*coup d'état* after complaining of political corruption, chaos and generalised mismanagement. King Gyanendra dismissed the Sheer Bahadur government and declared a state of emergency in the country. The King's assumption of powers followed a series of actions against his political adversaries. Political leaders were either placed under house arrest or jailed. The media was brought under tight control. All kinds of communications, such as print media, radio and television were brought under control. King Gyanendra assumed all powers to rule the country directly as Chairman of the Council of

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Ministers for a specified period of three years. Bhuwan Upreti notes that King Gyanendra's action was uncalled for, as there was no such urgency or justifying circumstances in declaring a state of emergency in the country. The King's action was unconstitutional and the justification for assuming full powers for a three year period was unclear.[81]

On 5 April 1992, President Alberto Fujimori's auto-coup in Peru, also known as the *Autogolpe* (in Spanish) took place. President Fujimori dissolved the Peru Congress and Judiciary and assumed full legislative and judicial powers. Fujimori embarked on curtailing the independence of the Judiciary and constitutional rights, imposed a state of emergency and curfews and enacted severe emergency laws to deal with any form of opposition. International reactions to the auto-coup involved condemnation from the international community.[82]

It is within this same logic that it is argued that King Sobuza II staged an auto-*coup d'etat* against the 1968 inherited Westminster Constitution on 12 April 1973. King Sobuza assumed full dictatorial powers and started ruling by decrees. Everything wrong in Swaziland was blamed on the 1968 Constitution. Sobhuza explained that the constitution had failed to provide the machinery for good government and for the maintenance of peace and order. The constitution was the cause of growing unrest, insecurity, dissatisfaction and "an impediment to free and progressive development in all spheres of life . . .". The constitution had permitted the importation into Swaziland of 'highly undesirable political practices alien to, and incompartible with the way of life [of Swazis]'. It was designed to 'disrupt and destroy' the 'peaceful and constructive and

[81] Upreti, *Maoists in Nepal: From insurgency to political mainstream*.
[82] Sampford, 'Making coups history', 1-10; Protzel, 'Changing political cultures and media under globalism in Latin America', 101-120.

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essentially democratic methods of political activity . . .". This element engendered 'hostility, bitterness and unrest' in peaceful Swaziland.[83]

The King read to the awaiting crowd and the whole nation a carefully prepared proclamation in which he repealed the constitution, dissolved Parliament, banned all political parties, including the royalist Imbokodvo, trade unions and all political activities and meetings.[84] He declared a state of emergency, introduced a 60-day detention without trial system, and removed the civil rights enshrined in the constitution. In his monumental historical speech, King Sobhuza II stated in English, instead of siSwati in which he usually addressed his people:

> . . . as a nation, we desire to march forward progressively under our own Constitution guaranteeing peace, order and good government and happiness and welfare of the people.
>
> Now, therefore, *I Sobhuza II, King of Swaziland,* hereby declare that, in collaboration with my Cabinet Ministers and supported by the whole nation, *have assumed supreme power in the Kingdom of Swaziland and that all legislative, executive and judicial power is vested in myself and shall, for the timebeing, be exercised in collaboration with a Council constituted by my Cabinet Ministers.*
>
> I further declare that to ensure the continuous maintenance of peace, order and good government, *my armed forces, in conjunction with the Swazi Royal Police, have been posted to all strategic places and have taken charge of all government places and all public services*.
>
> I further declare that I, in collaboration with my Cabinet Ministers, hereby decree that:-
>
> (a) *the Constitution of the Kingdom of Swaziland which commenced on the 6th September, 1968 is hereby repealed*.
>
> (b) All laws, with the exception of the Constitution hereby repealed, shall continue to operate with full force and effect and shall be construed with such modifications, adoptations, qualifications and exceptions as may be necessary to bring these into comformity with this and issuing decrees.

[83] See Appendix 9: His Majesty's Speech during Repeal of the Westminster Constitution at Lobamba, 12 April 1973.
[84] See Appendix 9: His Majesty's Speech during Repeal of the Westminster Constitution at Lobamba, 12 April 1973.

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> I will call upon the Attorney-general, Mr David Cohen, to read out further decrees designed to provide for the coninuance of Administration, essential services and normal life in our country.[85]

Sobhuza II's speech was a typical *coup d'état* speech often heard on the air waves of African Radio and Televisions each time a *coup d'état* occurred. His speech resembled that of Brigadier Sani Abacha when President Shehu Shagari of Nigeria was overthrown on 1 December 1983 in favour of General Buhari, the current President of Nigeria, part of which went as follows:

> Fellow countrymen and women, I, Brigadier Sani Abacha, of the Nigerian army address you this morning on behalf of the Nigerian armed forces. You are all living witnesses to the great economic predicament and uncertainty, which an inept and corrupt leadership has imposed on our beloved nation for the past four years . . . . *After due consultations over these deplorable conditions,* I and my colleagues in the armed forces have, in the discharge of our national role as promoters and protectors of our national interest, decided to effect a change in the leadership of the government of the Federal Republic of Nigeria and form a Federal Military Government. This task has just been completed. The Federal Military Government *hereby decrees the suspension of the provisions of the Constitution of the Federal Republic of Nigeria 1979 relating to all elective and appointive offices . . . . All the political parties are banned*; the bank account of FEDECO and all the political parties are frozen with immediate effect. *With effect from today, a dusk to dawn curfew will be imposed between 7pm and 6am* each day until further notice. All airways flights have been suspended forthwith and all airports, seaports, and border posts closed. External communications have been cut . . . . Anyone caught disturbing public order will be summarily dealt with . . . .[86] [Emphasis added]

Sobhuza's discourse and that of Brigadier Abacha were very much the same, emphasising the fact that the nation was confronted with a crisis that required immediate and herculian action by force of will of strong and decisive action that would save the state craft from collapse. Sobhuza, like the Nigerian military, took draconian measures to ensure peace and compliance by suspending the constitution, arrogating all powers to himself and ruling by decrees, imposing a dawn-to-dusk

[85] Ibid.

[86] S. W. Obotetukudo, (ed.), *The Inaugural Addresses and Ascension Speeches of Nigerian Elected and Non-elected Presidents and Prime Minister, 1960-2010,* (Maryland: University Press of America, 2010), 178-179.

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curfew, deploying the armed forces everywhere, and banning political parties and any form of association with the potential of causing trouble. A coup is a coup. In the case of Nigeria, it was military; in the case of Swaziland, it was civilian. A royal auto-*coup d'état*, accompanied by governance by decrees and orders-in-council, is anti-constitutional and a negation of the basic notion of democracy.

Sobhuza II's auto-coup was clearly illegal and constitutional experts are unanimous about this illegality.[87] Both the High Court and the Court of Appeal of Swaziland concurred that the 1968 constitution was unlawfully repealed when the matter was challenged in 2002 by civil society organisations in court.[88] Although scholarship and legal opinion have pointed to the fact that Sobuza's repeal of the constitution was unlawful or illegal, they were short of calling the act a *coup d'état*. The correct term for that illegality of overthrowing the 1968 constitution is a royal auto-*coup d'état*, which has its precedence in the Nepal monarchy and elsewhere. There was no constitutional provision in the 1968 inherited Westminster Independence Constitution that allowed for the repeal of the constitution. There was only a provision for an amendment. The act of repealing the constitution and the institutionalisation of rule by decrees are the hallmarks of a typical *coup d'état* and dictatorship in Africa. This is precisely what the Swazi monarchy did.

The reaction of the international community, especially Britain and South Africa to developments in Swaziland was mute and was influenced by the commonality of the trend in Africa to change or

[87] Ray Gwebu and Lucky Nhlanhla Bhembhe, Swaziland Court of Appeal Case Nos. 19/20, 2002 as yet (unreported), Zwane, Hlatshwayo and Khumalo.

[88]See Lucky Nhlanhla Bhembe v The King criminal Case 75/2002 (High Court), per Masuku; Nhlanhla Lucy Mbembe& Ray Gwebu and Another Criminal Case 75 & 11 of 2002 *per* Sapire CJ (Unreported).; Gwebu & Another.

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jettison colonially-inherited constitutions and the conservative and anti-communist stance of Swaziland since independence in 1968. Sobhuza had expressed his disdain for the Soviet blend of 'socialism' and even banned the circulation of communist literature in Swaziland after independence. He never expressed any intention of imbibing any brand of socialism like other African countries had done at one point or the other and he never threatened to nationalise foreign-owned industries in Swaziland. Following the abrogation of the 1968 constitution, Britain simply expressed reserves. The British High Commissioner in Swaziland wrote after a few days after the incident that he had obtained instructions "to tell the Swazi Government that Her Majesty's Government proposed business as usual."[89]

The abrogation of the 1968 constitution and the draconian laws that followed meant the silencing of the opposition parties, especially the radical NNLC. This development paved the way for the continued domination of Swazi politics by the conservative monarchists who were generally friendly towards South Africa since independence. Consequently, the South Africa Radio and Press took particular interest in this development. The South African Broadcasting Service's "Current Affairs" programme, which was generally considered to echo the sentiments of the apartheid regime, was sympathetic to the changes. The South African media noted that King Sobhuza II did not act from fear that the government party would be voted out of office, nor were there tribal tensions. It noted that Swaziland was one of the prosperous black states endowed with rich agricultural and mineral resources and plentiful water, with a per capita income which was more than twice that of Lesotho and Botswana. The South African government was of the opinion

[89] P. Q. Magagula, 'Swaziland's Relations with Britain and South Africa since 1968', PhD dissertation, Durham University, United Kingdom, 1988, 100-103.

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that King Sobhuza was compelled to act by economic motives. The South African Broadcasting Service was full of praise for Sobhuza and the Swazi sytem of government by concensus. It stated:

> Quite simply, King Sobhuza believed that the Swazi [traditional] system of government was better for the Swazi people. Certainly, it is thoroughly democratic. The Libandla, the King's Council, is open to all Swazi males or their representative and the King gives effect to the consensus the Libandla establishes. The system has indeed been described as a classic example of rule by consultations and consent.[90]

The South African endorsement of the Swazi royal coup and conservative traditional political system is undestandable. Whereas, the Swazi monarchy did not pose any threat to apartheid South Africa, Swaziland's opposition manifested open sympathy to South African radical black nationalist movements. During the 1967 general elections, the NNCL promised to open its doors to the ANC in the event of victory. South Africa was, therefore, comfortable with the conservative political order in Swaziland.[91]

On the domestic front, the abrogation of the constitution was met with jubilation by the supporters of the Swazi monarchy while at the same time it opened the floodgates for the arrest and incarceration of opposition figures without any charges. The harassment of the opposition started in April 1972 after the promulgation of the decree suspending the constitution. By the end of May 1973 seven key leaders of the opposition NNLC including S. Myeni, Dr. Zwane, M. M. Motha, T.

[90] Ibid.

[91] Although ANC bases were found in Swaziland, it should be noted that Swaziland was never a member of the Frontline States. The Swazi monarchy did not have the military resources to contain ANC activities on its territory. It had to rely on South African intelligence operatives to go after the ANC in Swaziland, especially after signing the 1982 secret pact with South Africa to uproot the ANC from Swazi territory.

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B. Ngwenya, J. Groening, M. M. Mathonsi and B. Mbuli were in detention. Ngwenya was eventually deported to South Africa.[92]

The Swazi civil society in the form of trade unions and students movements emerged to fill the vacuum created by the banning of opposition parties. They organised public demonstrations where were often capped with a call for the re-introduction of multi-party democracy. Some of the prominent members of the civil society who stood against royal authoritarianism included Albert Heshane Shabangu, Obed Dlamini and Mbho Shongwe. Albert Heshane Shabangu was a prominent trade unionist of the Swaziland National Association of Teachers (SNAT) in the 1970s and 1980s. He stood strongly against the *tinkhundla* system of governance and mobilised teachers all over Swaziland to stand against it. Obed Dlamini was a former member of the outlawed Ngwane National Liberatory Congress (NNLC). He became a strong unionist and used this platform to challenge the government through the organisation of strikes and the call for the lifting of the ban on opposition parties. Another activist who expressed his views in newspapers was Mbho Shongwe. His articles were very critical.[93]

With the demise of King Sobhuza in 1982, Swazis quickly reorganised and took advantage of the situation to attempt to introduce of multipartism which the monarchy had objected to. A group of political activists led by Mario Masuku formed the People's United Democratic Movement (PUDEMO) in 1983 at the University of Swaziland. The movement's manifesto stated, among other things, that it was fully dedicated to creating a democratic Swaziland and ensuring that

[92] 'Detentions: Ngwenya and Zwane', Declassified/Released US Department of State EO, From: Swaziland Mbabane, Systematic Review 30 JUN 2005.
[93] Ibid.

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human rights were observed and respected. PUDEMO called for democratic reforms in 1988.[94] The "third democratic wave', to use Huntington expression,[95] which consumed Africa and the democratic transition in neigbouring South Africa in 1994 are two developments that favoured the resurgence of political activities in Swaziland. Various political groupings-notably PUDEMO and its youth wing, the Swaziland Youth Congress (SWAYOCO), and the Swazi Federation of Trade Unions (SFTU) all started pushing vigorously for democratic reforms. King Mswati III set up a Commission in 1991 to review the Tinkhundla system and another one in 1992 to review the electoral process. PUDEMO rejected these royal reforms as not far reaching enough. PUDEMO resorted to organising campaigns of strikes and civil disobedience in 1996 and, in 2000, its president, Mario Masuku was arrested for sedition, treason and for insulting the King. Pro-democracy protests took place in 2002 in Swaziland and became a common feature of political life in Swaziland. The activists took the government to court over its refusal to introduce freedom of political associations. In March 2005 the Swaziland High Court ruled that political parties could not exist in Swaziland.[96] The Swazi monarchy successfully resisted all attempts at re-establishing the political status quo ante-1973.

[94]B. Masuku, and P. Limb, 'Swaziland: the struggle for political freedom and democracy', *Review of African Political Economy*, (2015), 1-10; T. Debly, 'Culture and resistance in Swaziland', *Journal of Contemporary African Studies* 32, 3 (2014), 284-301; M. F. Sihlongonyane, 'The invisible hand of the royal family in the political dynamics of Swaziland', *African and Asian Studies* 2, 2 (2003), 155-187.

[95]S. P. Huntington, *The third wave: Democratization in the late twentieth century*, (University of Oklahoma Press, 1993). Huntington describes global democratization as coming in three main waves. The first wave of democracy began in the early 19th century in the USA. The second wave began with the Allied victory in World War II followed by the general growth of democracy. The third wave with specific reference to Africa began in 1989 following the World Bank/IMF conditionalities with tied economic aid to multi-partyism.

[96] For more of the confrontation between the Swazi monarchy and pro-democracy movements in Swaziland, see J. B. Mzizi, 'The dominance of the Swazi monarchy and the moral dynamics of democratisation of the Swazi state', *Journal of African Elections* 3, 1 (2004), 94; H. S. Simelane, 'The state, elections and hidden protest: Swaziland's 2008 elections', *Journal of African Elections* 9, 1 (2010), 16-33.

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Governance in a Constitutional Void with Royal Decrees and Orders-in-Council 1973-2005

After the overthrow of the Independence Constitution in 1973, Swaziland remained without a constitution until 2005 - a period of over three decades. This prolonged constitutional void of 32 years is unprecedented in the history of post-colonial Africa and turned out to be the political trade mark of the Swazi monarchy.

King Sobhuza transformed himself from a formal constitutional monarch, albeit with relatively broad-based executive powers, into an absolute executive monarch free of any checks and balances on his powers. Governance during the Sobhuza-imposed state of emergency was through the instruments of Royal Proclamation of Decrees and Orders-in-Council.[97] Governments usually issue legislation directly through Decrees and Orders-in-Council, at the expense of the usual parliamentary procedure, during periods of emergency rule. Rule by Decree in Africa is typical of military regimes that seize power. This style of governance allows the quick, unchallenged enactment of law by a single person and is used primarily by dictators or absolute monarchs.[98] In the case of Swaziland, King Sobhuza II adopted governance by Decree and Order-in-Council because of the prevailing state of emergency he imposed. Thus, with the stroke of a pen, King

[97] These decrees and orders are contained in: Statutes of Swaziland. Constitutional Law Courts, Vol. 3; The Constitutional Framework of Swaziland, Compiled and Consolidated by the Constitutional Review Commission.

[98] For more information on governance by decree and order-in-council during state of emergencies see W. E. Scheuerman, 'Survey Article: Emergency Powers and the Rule of Law After 9/11', *Journal of Political Philosophy,* 14, 1, (2006), 61-84; A. F. Uduigwomen, *Schools of law and military decrees*, (Calabar: Ebenezer Printing Press & Computer Services, 2000); V. T. Le Vine, 'The fall and rise of Constitutionalism in West Africa', *The Journal of Modern African Studies*, 35, 2 (1997), 181-206; J. H. Pain, 'The reception of English and Roman-Dutch law in Africa with reference to Botswana, Lesotho and Swaziland', *The Comparative and International Law Journal of Southern Africa* (1978), 137-167.

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Sobhuza used Decrees and Orders-in-Council as tools to enable him to take quick action when necessary. Under the state of emergency, the King was the law and the law was the King.

In the absence of a constitution, King Sobhuza II ruled the country in collaboration with the traditional council, *Libandla*, the Prime Minister and his Cabinet. He issued Decrees unilaterally or pronounced Orders taken with his Council of Ministers. This novel type of high-handed governance raised eyebrows and questions started being raised in the public about how long the King would rule Swaziland without a constitution.[99] The Swazi government went ahead to explain to the bewildered nation that the King's rule by decree was temporary and was not intended to be forever.[100] Beyond stating that emergency rule was be be temporary, the King did not give any timeline for the end of emergency rule in Swaziland. The King promised to appoint a Constitutional Committee that would work on a new form of hybrid democracy based on a combination of Swazi and Western values and report to him within six months. The King indicted the opposition for taking a "divisive and destructive form", thereby forcing the government to repeal the constitution.[101]

Members of government on their part attempted to allay the fears of Swazis about the constitutional void by making various promises to the people. The Minister of Justice, Senator P. Dlamini, announced on 4 May 1973 that a new constitution was being drafted which would take into account

[99] Such concerns about the governing of Swaziland were expressed in the media (See 'New Constitution Coming: Official', *Times of Swaziland*, May 4, 1973).

[100] This was not true because King Sobhuza II ruled Swaziland without a constitution up to his death in 1982.

[101] 'Constitutional Commission to be set up: Decree is Temporary', *Times of Swaziland*, April 20, 1973.

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the nation's historic and cultural background and its hopes and aspirations. In a press briefing in New York, the Minister of Industry, Mines and Tourism indicated that anew constitution for Swaziland was under preparation and would be ready within six months time.[102]

The Swazi monarchy did not appear to have been in a hurry to endow the Kingdom of Swaziland with another constitution after discarding with the Independence Constitution in 1973 because he established a succession of inconclusive constitutional committees to look into designing a new constitution for Swaziland.[103] On independence day on 6 September 1973, the King announced the establishment of a Royal Constitutional Committee. The members of the committee included Polycarp Dlamini as Chairman, David Cohen, the Attorney General, Arthur Khoza as Secretary, and Prince Sifuba as Member.[104] The Royal Constitutional Review Committee (RCRC) was tasked to crisscross Swaziland and get the views of Swazis on the type of constitution they wanted. They were to enquire into the fundamental principles upon which the Kingdom of Swaziland's constitution should be based, having regard to the history, the culture, the way of life of the people of Swaziland, and the need to harmonize these with the modern principles of constitutional law and international law.[105] After the fact-finding exercise, the Committee recommended a mixed constitutional system that contained both Swazi traditional values and Western political traditions. The Swazi King did not implement the recommendations of the committee.

In 1974 another Royal Constitutional Committee was established to continue consulting the people on the issue of a new constitution for Swaziland, with similar terms of reference to the previous

[102] 'New Constitution Coming: Official', *Times of Swaziland*, May 4, 1973.
[103] When Sobhuza died in 1982 Swaziland still had no constitution. It was only under pressure that his successor, Mswati III, endowed Swaziland with a constitution in 2005.
[104] J. S. M. Matsebula, *A History of Swaziland*, 261.
[105] 'Constitution Committee Appointed', *Times of Swaziland*, September 21, 1973.

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one.[106] The Royal Constitutional Committee consisted of the following people, as documented in Table 6-2:

Table 6-2
Swaziland Royal Constitutional Committee

Kuseni Hlophe	Chairman
Velaphi Dlamini	Secretary
Mkhulumandvulo Mamba	Member
Buya Mdiniso	Member
Magangeni Magongo	Member
Prince Mabandla	Member
Prince Mahhomo	Member
Prince Gabheni	Member

Source: Public Library of the US Diplomacy, Constitutional Commission Makes its Report, 13 June 1975. Matsebula, p.265.

On 12 June 1975, the Chairman of the Royal Constitutional Committee announced that they had presented its final report to King Sobhuza on the key elements to be included in the new constitution. Although the Swazis were not sensitised to the main issues concerned in the making of a modern constitution, the Royal Constitutional Review Committee reported that Swazis wanted a 'no-party state', with the traditional Swazi National Council being the only decision-making body, and that there should be a two-chamber House of Parliament composed of an Assembly and a Senate.[107] The recommendations from the Constitutional Committee appeared to be confusing, as they proposed that decision-making in a modern state should be reserved for the traditionalists of the Swazi National Council, while, at the same time, recommending the creation of a bicameral House of Assembly without specifying what its functions would be.

[106] 'Constitution Committee', *Times of Swaziland,* September 13, 1974.
[107] Public Library of the US Diplomacy, Constitutional Commission Makes its Report, 13 June 1975, http://www.wikileaks.org/plusd/cables/1975MBABAN00987_b.html,(accessed 28 November 2015); Matsebula, *A History of Swaziland*, 265.

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The King was expected to review the Royal Constitutional Committee's Report in collaboration with the Swazi National Council and proceed to appoint another committee that would draft the new constitution. The drafting committee was expected to use the recommendations and the King's comments for the purpose.[108] On the basis of the 1975 Report submitted by the Royal Constitutional Committee and the advice of the Swazi National Council, King Sobhuza decided to institute the *Tinkhundla* traditional system of governance for Swaziland with the instrument of an Order-in-Council. The *Tinkhundl*a-based system of government was formally legislated under the Establishment of Parliament Order, 1978 and the Regional Councils Order, 1978.[109] The King, however, avoided discussing the prospects of instituting a constitution for Swaziland.

The term *Tinkhundla*, for Swaziland's traditional system of government, is derived from the siSwati name given to the constituencies that were established by the Swazi monarchy throughout the country to perform political and administrative functions. The government of Swaziland established *Tinkhundla* (plural for *inkundla*) to serve as local councils for electoral purposes and to assist in the delivery of public services in the regions and communities. The *Tinkhundla* system is very much similar to the traditional *Panchayat* (councils) system of government which King Mahendra of Nepal established after staging an auto-coup in 1960. The Nepalese King established a 'party-less' system of *panchayats* which he described as a meaningful democratic form of

[108] Ibid; Matsebula, *A History of Swaziland*, 265.

[109] Establishment of the Parliament of Swaziland Order. King's Order-in-Council No. 23, 1978.

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government closer to Nepalese culture and tradition.[110] The system had a pyramidal structure under the firm control of the monarchy starting from village assemblies to the *Rastriya Panchayat* (National Parliament). The *Tinkhundla* system was a 'no-party system', also established to select members of Swaziland's Houses of Parliament.

What is traditional about Tinkhundla?

The architects of the *Tinkhundla* system of government projected it as a home-grown system that incorporated elements of Swazi traditional governance with the King at the centre, and some elements of Western governance.[111] Faithful to Swazi culture and tradition, the *Tinkhundla* system of government espoused a 'party-less' system of government reminiscent of traditional African politics that was based on consensus and not competing political party formations.[112] The no-party system was Swaziland's response to the emergence of single parties on the continent incarnated

[110] For more on the Nepalese traditional Panchayat (councils) system of government see R. Burghart, 'The Political Culture of Panchayat Democracy', *Nepal in the Nineties: Versions of the Past, Visions of the Future* (1994), 1-13.
[111] The philosophy of the *Tinkhundla* system is developed in the Imbokodvo Policy document titled: *A handbook to the Kingdom of Swaziland, Swaziland Government Information Services, The Philosophy, Policies and Objectives of the Imbokodvo National Movement*; also see Report of the Tinkhundla Review Commission; Government Gazette Extraordinary, No.855 of 1992. For a more comprehensive study on the Tinkhundla system of government, see, Nkhanini; June 1992; T. Mkhaliphi, 'The Extent to which the Tinkhundla-Based System of Government Articulates the Decentralization Principles: A Practitioner's Analysis', Paper presented at a Research Seminar, University of Swaziland, 11 February, 2015; M. A. Mamba, 'Tinkhundla: A Study of A System', MA Thesis: University of Swaziland, 2006; A. M. Mkhatshwa, 'An Assessment of the Tinkhundla System of Government, 1973-2003', B A Project: University of Swaziland, 2004; P. Bischoff, 'Why Swaziland is Different', *Journal of Modern African Studies*, 26, 3 (1988), 457-471; Baloro, 'The development of Swaziland's Constitution: Monarchical Response to Modern Challenges', 19-34; Wanda, 'The Shaping of Modern Constitution in Swaziland: A review of some social and historical factors', 137-178.

[112] President Julius Nyerere of Tanzania had convincingly argued that traditional Africa was a classless society and this structure did not necessitate Western multiparty democracy. Rather, the one-party consensual system was more appropriate and closer to African culture and tradition (See A. Mohiddin, 'Ujamaa: A commentary on President Nyerere's vision of Tanzanian Society', *African Affairs*, (1968), 130-143; K. W. Grundy, 'The 'Class Struggle' in Africa: An Examination of Conflicting Theories', *The Journal of Modern African Studies* 2, 3 (1964), 379-393.

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by an autocratic President who was usually its automatic chairman. Instead of establishing a single political party to which everybody belongs, the *Tinkhundla* elevated King Sobhuza as the fountain of politics in Swaziland with the responsibility of directing political activities in the kingdom in a conflict-free harmonious way without wranglings among Swazis. Thus, the *Tinkhundla* system vested sovereignty in the King[113] and not the people of Swaziland and catapulted him to the position of a benevolent despot as dictated by Swazi culture and tradition.

Since the idea of political parties, whether single or multiple, smacked of westenisation, Sobhuza endeavoured to distance himself from political parties and invented something typically Swazi. He did this by stating clearly in the Order-in-Council of 1978 that all political parties remained banned and that it was unlawful for anyone to organise and canvass for political support under the banner of a political party. Although the Order-in-Council made Swaziland a party-less state, the Swazi King incarnated and radiated the spirit of a characteristic one-party-state in Africa since he was the sole authority to select candidates of his choice for political office just as the ruling single party machinery in one-party African countries monopolised the animation of political life in the country.

The similarities between the African one-party-state model and the *Tinkhundla* no-party-state model were, therefore, glaring to such an extent that the two models were almost indistinguishable. The governments of the one-party-states in Africa, just like the government of Swaziland, were made up of individuals drawn mainly from the ruling party that had wrestled power at independence. In both the one-party and the *Tinkhundla* models, there was a clearly identifiable

[113] The *Tinkhundla* system entrenched the absolutism of the Swazi monarchy comparable to absolutism of pre-18th century revolutionary France.

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culture of the systematic neutralisation of the opposition through a series of strategies, including coercion, cooptation, accommodation and exclusion. The President of the one-party-state was usually the chairman of the national party and he tighly controlled its operations. The Swazi King was the source of all authority like the Chairman of the single party, and was responsible for the choice of officials to all offices. Using his over-bearing influence in the *Tinkhundla* system, the Swazi King excluded the Western-educated radicals and reformers from gaining a foothold in the political arena.

The Tinkhundla Driven Elections into Parliament

For electoral purposes under the Tindkundla system in 1978, Swaziland was partitioned into 40 *Tinkhundlas* or electoral constituencies which represented administrative or council units. Each of the 40 *Tinkhundla* elected two out of four candidates into an electoral college which had to meet at a time, date and place to be determined by the King in order to elect 40 members of the House of Assembly by secret ballot. In lieu of competitive multiparty elections, the candidates were elected on the basis of their 'individual merit' based on the proposition that candidates would stand for elections as independents and compete for votes on the basis of their own integrity, popularity and good standing in society. Once elected, the members of the House of Assembly would, in turn, elect those members of the Senate who were not nominated by the King. In the *Tinkhundla* system, there was no provision for a secret ballot and the election process itself was indirect in the sense that the voters were only allowed to vote for an Electoral College which then chose the Members of Parliament.

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The mandate and machinery for conducting elections to the electoral college and, ultimately, to Parliament was vested in an Electoral Committee comprising seven persons. The character, breadth and real mandate of the the electoral committee were detailled in section 4 of the establishment of Parliament in Swaziland Order, 1978 as follows:

> Without derogating from the generality of section 3 thereof, the Electoral Committee shall_
> (a) lay down guidelines and directives for the conduct of elections of the Inkhundla level and at the Electoral College;
> (b) be represented by at least two persons, not necessarily members of the Committee at each meeting of any Inkhundla convened as hereinafter provided for the purpose of electing two delegates to the Electoral College;
> (c) be present at the election bythe Electoral College of members of Parliament or in the majority of its members; and
> (d) be responsible for the proper conduct of the elections at Tinkhundla or the Electoral College, as the case may be, having regard to the traditional practices at meetings and elections of the swazi nation, save in so far as such practices may be inconsistent with the directives and guidelines laid down by the Elwctoral Committee.[114]

The Electoral Committee acted under the tight control and supervision of the *Indvuna Yetinkhundla* (Chief) who was defined as the person appointed by the King as the *Indvuna* over the *Tinkhundla*. This *Indvuna* and his cabinet are directly answerable to the King.

The Bicameral House of Parliament

This 1978 Royal Order established a modern bicameral body structured like the one under the 1968 Westminster Constitution, comprising a House of Assembly of 40 and a Senate of 20 members, half of whom were to be elected by the House of Assembly and the other half nominated by King Sobhuza. He was also empowered to nominate the members of the House of Assembly. In all these nominations he enjoyed absolute discretion, subject to the following proviso:

[114] Establishment of Swaziland Parliament Order, King's Order-in-Council No. 23 of 1978.

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> Provided that without any way fettereing such discretion, the remaining ten Senators shall be so appointed after consultation with such bodies as the King may consider appropriate in an endeavour to appoint such persons who are by reason of their special knowledge or practical experience, able to represent economin, social and cultural interests not already adequately represented in Parliament or who are by reason of the special merit able to contribute substantially to the good governance of Swaziland.[115]

In essence, the King was to take into consideration the social strata who may possess expertise in certain fields or are not represented in Parliament, such as White interest groups, when making such appointments. The academic elite and remnants of the White business community fit well in this category.

The Cabinet and Royal Absolutism

The 1978 Order-in-Council establishing the *Tinkhundla* system of government served further to consolidate and entrench the powers of the Swazi monarchy. It vested the executive authority of the country in the King. He was empowered to appoint the Cabinet, including the Prime Minister, Deputy Prime Minister, and all Ministers, at his discretion. Unlike under the 1968 Constitution, the King was no longer required to have regard to the political make up of the House of Assembly since multipartyism had been banned and every member of the House was a royal appointee and faithful. The King was no longer obliged to consult the Prime Minister in appointing Ministers to the Cabinet. In theory, the doctrine of collective responsibility to Parliament had been explicitly preserved in Swaziland. In practice,"it would seem that the Prime Minister and his Cabinet Ministers rank at par both before Parliament and the King because "the Prime Minister [could] not legally dismiss or even discipline . . . a member of his Cabinet whom he found wanting in the execution of his duties." The tenous position of the Prime Minister was further underscored by

[115] Establishment of the Parliament of Swaziland Order, King's Order-in-Council No. 23 of 1978.

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the provisions of section 71(2) of the establishment of the Parliament of Swaziland Order 1978 which empowered the King to dismiss the Prime Minister or any Minister from office at any time. He could remove the Prime Minister if a resolution of no confidence in him or the government of Swaziland was passed by the House of Assembly or if he was unable to perform the duties of his office or was guilty of misbehaviour. There was, however, some limitation to the King's power to fire the Prime Minister contained in the following proviso to section 71(2):

> Provided that before removing the Prime Minister or other Minister from office on the ground of any such inability or misbehaviour, the King shall appoint a tribunal consisting of a Chairman and two other persons to enquire into the matter and report to the King on the facts thereof and render such advice to the King as it may deem fit.[116]

Section 71(4) seemed to take away what was provided in section 71(2) by stating that the enquiry by the tribunal was subject to the following conditions: it was to be held in camera; its members were appointed by the King only; its appointments were not to be published in the government gazette; it prepared a confidential report for the King only; and the proceedings, and regularity of the inquiry and its conclusions were not challengeable in any court of law.

In practice, King Sobhuza was answerable to nobody. Two Prime Ministers were dismissed in the 1990s: Prince Bkekimpi Dlamini and Sotsha Dlamini by a simple announcement made by the King before a public gatheiring at the Royal Residence at Lobamba, the official residence of the Queen Mother and the nation's spiritual home. The King never instituted any inquiry before the dismissal of the Prime Ministers.

[116] Establishment of the Parliament of Swaziland Order, King's Order-in-Council No. 23 of 1978.

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Essentially, the *Tinkhundla* system of a party-less democracy[117] which King Sobhuza established by the 1978 Order effectively set up and legalised a monolithic political order in which the Swazi monarch reigned supreme. The Legislature and cabinet were composed of his appointees and he was at liberty to fire and hire any official.

Elections Under the 1978 *Tinkhundla* System and the Extra-Constitutional Legislatures and Cabinet

With the passage of the Order-in-Council establishing the *Tinkhundla* system, elections to the House of Assembly were held on 27 October 1978. The *Ngwenyama* pointed out that elections would be conducted through the *Tinkhundlas* where candidates would be nominated before being presented to the King for final approval.[118] The *Ngwenyama* criticised the use of a secret ballot. He argued that, under the Western system in which the secret ballot played a major role, the electors found themselves voting for someone whose background they knew very little about and that the candidate might be a stranger in the constituency in which he was standing.[119]

[117] Democracy under one-party or 'party-less" rule is a distinct political model that stands out in its own category. In Swaziland, as in other African countries which used to have legally established one-party states, it is not appropriate to think in conventional terms of a government and an opposition to describe the regime as democratic. "Single party" or "party-less" states also claim to be democratic in the sense that they allow free discussions, within fairly broad limits but they proscribe free association outside the single party system. Those who disagree fundamentally with the ruling party or regime are not allowed to form rival political party to promote their own agenda. They must either keep quiet and conform, or seek to advance their cause by resorting to unconstitutional means. A different yardstick is therefore needed to evaluate "democracy" in a one part or "party-less" state from a multiparty regime. (For more on democracy under one party rule see W. Tordoff, 'Tanzania: democracy and the one-party state', *Government and Opposition* 2, 4 (1967), 599-614; G. Schubert, 'Democracy Under One-Party Rule? A Fresh Look at Direct Village and Township Elections in the PRC', *China Perspectives* 46 (2003); K. J. O'Brien and L. Li 'Accommodating "democracy" in a one-party state: Introducing village elections in China', *The China Quarterly* 162 (2000): 465-489; B. Magaloni, and R. Kricheli, 'Political order and one-party rule', *Annual Review of Political Science* 13 (2010), 123-143).

[118] 'New Moves on Elections', *Times of Swaziland,* January 16, 1978.

[119] 'New Moves on Elections', *Times of Swaziland,* January 16, 1978.

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The elections started on 27 October 1978 with the choice of 80 members for the electoral college by members of the electoral committee designated by King Sobhuza.[120] The members of the electoral committee are listed in Table 6-3.

Table 6-3
Members of the Electoral Committee

	Name of Member	**Comment**
1	Gwece Dlamini	Chief electoral Officer
2	Shadrack J. S. Sibanyoni	Executive Officer
3	Mndeni S. Shabalala	Member
4	Mabalizandla Nhlabatsi	Member
5	Major Magomeni Ndzimandze	Member
6	Richard Velaphi Dlamini	Member
7	Ndleleni Gwebu	Member
8	Chief Mfanawenkosi Maseko	Member

Source: "Election details announced", *Times of Swaziland*, October 17, 1978.

The committee ensured that members of the Electoral College were selected. The Electoral College would, in turn, elect 40 members of Parliament. The members of Parliament would elect 10 members of Senate and the King-in-Council another 10, making a total of 20 Senators.[121]

Selection Procedure of Members of the Electoral College

The names of four candidates for each *Inkhundla* were presented to voters a few hours before the voting began. After the candidate was presented before the voters, he was asked to stand in front of one of the four gates through which voters would pass.[122] The name of the candidate was written in block letters above the gate. Voters were told to pass through the gate at which their preferred candidate was standing and they were counted as having voted. There were no ballot papers.

[120] 'Election date chosen', *Times of Swaziland*, October 13, 1978.

[121] 'Election date chosen', *Times of Swaziland*, October 13, 1978.

[122] 'Today-How to Vote', *Times of Swaziland*, October 23, 1978.

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Three enumerators stood at each gate in order to count the number of votes. The enumerators also made sure that voters did not vote more than once. Each *Indvuna* (Chief) announced the name of the winning candidates for his *Inkhundla* as soon as counting was done. The elected members of the Electoral College then proceeded to the Royal Residence at Lobamba. The members of the Electoral College would elect 40 members of the House of Assembly by secret ballot.[123]

Those who were eligible to vote were Swazis above 18 years. Voters were allowed to vote at the *Inkhundl*a at which they were normally resident. There were 40 polling stations representing each Inkhundla.[124] The elections under the *Tinkhundla* system produced the members of Parliament as documented in Appendix 11. Members of Parliament elected 10 senators while the King appointed the other 10. The King also appointed members of the cabinet presented in Table 6-4.

Table 6-4
Members of Cabinet Emanating from the *Tinkhundla* System

1	Prime Minister	Major General Maphevu Dlamini
2	Deputy Prime Minister	Mshamndane Sibandze
3	Minister of Commerce, Industry and Mines	Prince Ncaba
4	Minister of Agriculture	Abednego Kuseni Hlophe
5	Minister of Education	Archdeacon Sphetse Dlamini
6	Minister of Finance	J. F. L. Simelane
7	Minister of Health	Dr. Samuel Hynd
8	Minister of Home Affairs	Prince Gabheni
9	Minister of Works, Power and Communications	Dr.. V. S. G. Leibbrandt
10	Minister of Justice	Polycarp Dlamini
11	Minister without portfolio	R. V. Dlamini

Source: Official Report of the First Meeting of the First Session of the Third Parliament of Kingdom of Swaziland, 16th and 19th January, 1979.

[123] 'Election date Chosen', *Times of Swaziland,* October 13, 1978.

[124] 'Today-How to Vote', *Times of Swaziland,* October 23, 1978.

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The names of the assistant ministers are documented in Table 6-5.

Table 6-5
Deputy Ministers and Assistant Ministers

	Ministry	Name of Deputy Minister
1	Deputy Minister for Agriculture	Prince Mahhomu
2	Deputy Minister for Education	W. M. Magongo
3	Minister of State for Establishments and Training	Enock B. Simelane
4	Deputy Minister of Labour	Chief Bhekimpi Dlamini
5	Deputy Minister of Finance	J. R. Masson
6	Deputy Minister of Works, Power and Communications	Dabulumjiva Nhlabatsi
7	Deputy Minister of State for Foreign Affairs	Lawrence Mncina

Source: Official Report of the First Meeting of the First Session of the Third Parliament of Kingdom of Swaziland, 16th and 19th January, 1979.

The Paradox of the Co-Existence of elected Legislative and Executive Organs of Government from 1978 and the Continuity of Decrees and Orders-in-Council to 2005.

Perhaps the singular most important event of constitutional importance during the 32 years of constitutional void was the establishment of the *Tinkhundla* system which allowed for elections into the House of Assembly and Senate and which made it possible for King Sobhuza to form a government. Parliament, which had been forcefully dissolved in 1973 was able to resurface in 1978 and held its first meeting on 16 January 1979. One would have expected that the re-establishment of the institutions of the Kingdom of Swaziland would mean the return to constitutional order. This did not happen because King Sobhuza did not want the writing of any constitutional document which would impose restrictions on his operations. Sobhuza believed the *Tinkhundla* system of government was appropriate for Swazis because it accommodated consensus and societal conviviality as opposed to the Western model of competitive canvassing of votes under a multiparty context.[125] Elections were periodically conducted in Swaziland after every five

[125] Interview with Prince Majawonke Dlamini at Manzini Extension 6, 22 October 2015.

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years under the *Tinkhundla* system. After the 1978 elections, others were held in 1983, 1988, 1993, 1998, and 2003.

The Swazi monarchy continued to rule by decrees and orders-in-council despite the fact that Parliament had been instituted. A power struggle ensued after the death of King Sobhuza II in 1982. A new King, Mswati III, was installed in 1986. He continued with the political culture of ruling by decrees. Until the 2005 constitution was adopted, Swaziland was a constitutionless state.

CONCLUSION

This chapter examined two important phenomena in the constitutional history of Swaziland. The first is the short-span of five years of Swaziland's experiment with constitutional monarchy, as provided for by the 1968 Independence Constitution. The second is the era of constitutional void which was created by King Sobhuza's overthrow of the 1968 Constitution. It was during the 'constitution-less' period that King Sobhuza established the *Tinkhundla* traditional political system as an equivalent of Swaziland's version of a 'party-less' or single party state.

It was revealed in this chapter that during the era of Swaziland's constitutional monarchy, King Sobhuza's powers were overwhelming but they were constrained within the constitutional framework requiring him to appoint a Prime Minister who commanded a majority in Parliament and to consult Cabinet on governance issues. Nonetheless, government business proceeded without hitches because Parliament was composed exclusively by members of the royal Imbokodvo Party, thereby making Swaziland a *de facto* one-party state.

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Swaziland did not escape constitutional developments in other parts of the continent where a common tendency among Anglophone independent African states was to amend, revise, or alter the British-tailored Westminster Constitution. These constitutional changes also went hand in hand with the collapse of multi-partyism and its replacement with autocratic single-party regimes, often justified on grounds of adjusting to the realities of African culture and tradition. The Kingdom of Swaziland responded to these developments which appealed to the conservative instincts of the Swazi monarchy who was no lover of the Westminster liberal democratic constitution and its corollary, multi-partyism.

The opportunity for the Swazi monarchy to follow the rising monolithic trend in the continent was provided by the May 1972 multi-party elections which witnessed the opposition NNLC winning three seats in the Mphumalanga constituency out of a total of 24 National Assembly seats. This victory hurt King Sobhuza who was contemplating to undertake Constitutional reforms and do away with the opposition, like his counterparts on the continent. The Swazi monarchy, therefore, looked for a pretext to render the opposition fragile and ultimately neutralise it by accusing one of its members, Thomas Ngwenya of being an undesirable alien in Swaziland and proceeding to deport him to South Africa. The opposition resorted to the Courts of the Land and won their case against the government as Ngwenya was declared a Swazi citizen and could, *ipso facto*, take his seat in Parliament. The government could not tolerate this trend of events that culminated in a standoff. The government declared that there was a constitutional crisis in the country and the Westminster inherited constitution was unworkable and needed to be discarded. There was, however, no constitutional provision for the overthrow of the constitution but for its amendment or revision.

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On 12 April 1973, King Sobhuza staged an auto-*coup d'état* by overthrowing the 1968 Independence Constitution and instituting emergency rule in Swaziland. Swaziland remained without a constitution for the next 32 years, an unprecedented constitutional void in Africa's recent history. King Sobhuza ruled by the proclamation of decrees and orders-in-council and, after his death in 1982, his son King Mswati III continued to rule by decree until a new constitution was promulgated for Swaziland in 2005. There was, therefore, a protracted period of constitutional void.

It was also revealed in this chapter that, during the period of the constitutional void, King Sobhuza established the *Tinkhundla* traditional system of government in Swaziland by the legislative instrument of the 1978 Order-in-Council. This provided for a 'party-less' democracy, an equivalent of the prevalent single party phenomenon in postcolonial Africa. The *Tinkhundla* were actually electoral constituencies whose responsibility was to initiate the process of voting royal nominees to Parliament. Under the *Tinkhundla* system, the Houses of Parliament were elected and a Cabinet established. The *Tinkhundla* system established a monolithic system under the firm control of the Swazi monarchy and made it possible for King Sobhuza to reign without a constitution. When Swaziland was finally endowed with a constitution in 2005 under King Mswati III, the constitution came into effect only a year later.

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CHAPTER SEVEN

CONLUSION

This thesis examined Swaziland's constitutional developments in the colonial and post-colonial periods against a background of changing circumstances, actors, and factors. This study revealed two important points about Swaziland's constitutional development under British tutelage. First, it was similar in certain respects to that of other former British colonies in that constitutional talks were usually thorough and took place in Swaziland and in Lancaster House in the United kingdom. Second, Swaziland's constitutional development was also shaped by its distinctive characteristics reflected in its monarchical structures, its racial composition, and its geo-political location within the sphere of South African influence. This combination of elements is hardly found in other African countries and this is what makes Swaziland's constitutional history unique.

The constitution-making processes in colonial Swaziland were triggered by the birth of nationalist movements in Africa after World War II which culminated in the independence of Ghana in 1957 and the acceleration of the decolonisation 'whirlwind' across the continent. Swaziland's key stakeholders responded to these developments in different ways. These stakeholders including the Swazi Monarchy or the *Ngwenyama*, the White Swazis, the Western educated radical nationalists, and not unexpectedly, South Africa constituted a configuration that is hardly found in other African countries. In the constitutional development of Nigeria, Ghana or Kenya, for instance, the Western educated elite, and not traditional rulers, took the lead and were crowned as successors of the post-colonial state. This was not the case with Swaziland where the influence of the traditional monarchy was all pervasive and preponderant. Whereas neigbouring South Africa interfered and even competed with the British colonial authorities in shaping the constitutional developments in

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Swaziland, one hardly finds a similar situation of a neighbouring African territory interfering in the constitutional development of another African territory. This concatenation of actors and circumstances make the constitutional developments of Swaziland somewhat unique.

Unlike constitutional developments in some African states which were monopolised by the Western educated elite, the traditional conservative monarchy was at the forefront of Swaziland's constitution-making exercise and was engaged in a protracted battle of conflicting ideologies with the Western educated elite and the White Swazis. The Swazi Western educated elite quickly responded to the decolonisation wind blowing over Africa by forming political parties in order to capture power from the departing British colonial authorities. These included the Swaziland Progressive Party led by John June Nquku, the Ngwane National Liberatory Congress under the leadership of Dr. Ambrose Zwane, the Swazi Democratic Party under Sishayi Nxumalo, and the Mbandzeni National Convention under Clifford Nkosi and Dr. George Msibi's Convention Movement. These politicians subscribed to Kwame Nkrumah's radical brand of nationalism which clamoured for immediate independence and 'Africa for Africans', meaning the Swazilisation of all sectors and services. While recognising the importance of the monarchy in Swazi society, they felt the Swazi King, as a traditional ruler, was ill-fitted for the business of modern governance and should restrict himself to traditional matters. The British colonial administration only took this position. This stance hurt the traditionalists who felt the King was the only legitimate heir to the postcolonial state.

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The traditional monarchy, the *Ngwenyama*, and the Swazi National Council were opposed to political parties and liberal democracy that allowed one-man-one-vote. The new political order was seen as a challenge to the Swazi traditional status quo.

The Dlamini dynasty historically ruled the largely homogenous Swazi society and the *Ngwenyama* saw himself as the logical heir of the post-colonial state and expected that the British should deal directly with him in all talks related to decolonisation and not the radical nationalists. King Sobhuza's legitimacy was not to be put to the test since it was ancestrally derived and upheld by culture and tradition. The traditionalists felt that Sobhuza's education and exposure to Western ways were additional qualifications for him to be the successor of the postcolonial state.

The White Swazis, operating under the European Advisory Council (EAC) under their leader Carl Todd, supported the conservative monarchy at the expense of the radical nationalists whose ideology threatened their investments in Swaziland. The Swazi Monarch and the White minority, therefore, constituted an alliance to check the rising tide of radical nationalism in Swaziland. Unlike West Africa where settler colonialism was largely unknown and the White community were generally not stakeholders in the constitutional debates on the future of African territories, Swaziland presented a different scenario. The White community that had settled in Swaziland were influential and backed the Swazi Monarch in opposing the modernisation schemes of the radical nationalists out of self-interest.

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Apartheid South Africa was an important "behind-the-scene" actor in Swaziland's constitutional development owing to the latter's location inside South Africa and what the South African rulers regarded as disturbing radical nationalist discourses which had to be contained since they were injurious to the apartheid ideology. South Africa, therefore, threw its weight behind the conservative camp in Swaziland. Meanwhile, some White liberals and the Swazi Student Union supported the platform of radical nationalists. The constitutional debate, therefore, took place between the conflicting agendas of the conservative alliance of the Swazi monarchy and the White EAC and the radical nationalists. The presences of the White Swazis and South Africa in Swaziland's constitutional developments were therefore crucial factors that cannot be ignored and that were hardly present in the constitutional developments of former British West and East dependencies.

The constitutional debate in colonial Swaziland revolved on one important question: should the transition to political modernisation and sovereignty be achieved through popular sovereignty or through the traditional structures of the Swazi monarchy? In other words, should the political field be level for all the contestants for the position of heir of the postcolonial state or should the *Ngwenyama* be the automatic successor to the postcolonial state? This question would not have been relevant for other erstwhile British dependencies because they were not governed by a single traditional ruler and not every society was centralised under a King.[1] In Swaziland, however, it was a real issue because of the structure of the polity which was united under the Dlamini dynasty. The response of the actors as to who should inherit the postcolonial state reflected their grounded

[1] Most African countries are composed of centralized and decentralized societies. Whereas the Igbos of Nigeria are largely segmentary without a central political figure to whom the Igbo people pay allegiance, the Northern Hausa-Fulani emirates are generally centralized under the Sardauna of Kano.

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interests and the degree to which they had embraced modernity. For the Swazi radical nationalists of the Western modernising school, the political playing ground had to be level for everybody and the Swazi people should speak through the polls on the basis of one-man-one-vote. They insisted that, regardless of their race, the Swazi people should exercise their full sovereignty through the ballot box.

The *Ngwenyama* and the traditional Swazi National Council were against political modernisation through popular sovereignty and ballot box democracy because these methods constituted a challenge to the traditional Swazi monarchy and were considered 'foreign' and 'unSwazi'. The monarchy, and not the Swazi people, should be allowed to control the election processes. The White community supported the conservative Swazi monarchy because it trusted the traditionalists as the best partners who would protect their economic interests and not the radical nationalists.

Behind the Swazi monarchy and the White community was the apartheid South African government which feared the development of radical African nationalism in Swaziland because of the unsettling spill-over consequences it could have on the apartheid regime. To avoid such a possibility, South Africa attempted to replicate itself in Swaziland through its proxies-the traditional Swazi monarchy and the White immigrant community who were largely of South African origin. South Africa, therefore, assisted in formulating the constitutional proposals of Sobhuza's Swazi National Council and Todd's European Advisory Council which were largely conservative. The White Swazis, South African government and the *Ngwenyam*a stood strongly against political modernisation for black Swazis on grounds that it was "unSwazi" but advocated

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it for Whites on grounds that it was European political culture. It must be noted that the issue here was not just about political modernisation but about the defence of political and economic interests.

During the preliminary constitutional debates in the early 1960s, the radical political leaders countered the conservative stance of the *Ngwenyama* and his White supporters. They were either fired or forced to resign from the constitutional Consultative Committee leaving behind the conservative members of the Swazi National Council and the European Advisory Council to finalise the draft constitutional document.

The document was not a consensual one owing to unbridgeable differences between the conservative stance of the Sobhuza-Todd alliance on the one hand and the modernist stance of the nascent political parties and the British colonial authorities on the other. In essence, Sobhuza, with the support of Todd, wanted to enter modern politics with the political culture and tradition of Swaziland intact. This royal political posturing with White support was a type of historical anachronism and disguised apartheid because it emphasised separate African and European political cultures of voting in the same country. Britain objected to this just as it did not want a traditional ruler to be engaged in modern politics in its colonial dependencies.

By the time the British Government invited the various protagonists from Swaziland for the Lancaster House Conference in early 1963 to finalise the constitutional talks, no agreement had been reached owing to the intransigence of the Swazi monarchy and the White community in refusing to make any concessions, and the successful propaganda the radical political parties launched against the apartheid-like constitutional proposal. The Lancaster House conference

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expectedly ended in smoke despite the efforts of the colonial administration to strike a compromise. It was because of its frustration with the protagonists that Britain decided to impose a constitution on Swaziland in December 1963 which reflected a mix of the constitutional views of all the Swazi stakeholders.

The constitution was intended to be a compromise document to satisfy all the various interest groups in Swaziland, but it did not produce the desired effect. The conservative-traditional monarchists cried foul because King Sobhuza was provided a token ceremonial role in the constitution since Britain did not expect a traditional ruler to be engaged in modern politics. The White community under Todd rejected the constitution because equal European representation was not included in it and the traditional monarchy, which they preferred to the radical political parties, was marginalised. The radical political leaders rejected the constitution on grounds that it did not provide for one-man-one-vote under universal adult suffrage and also because it introduced the 'federation of races' which favoured the White minority who were disproportionately overrepresented in the Legislature.

Britain appointed the Constitutional Committee from the Legislature which was composed exclusively of conservative monarchists and their White supporters to revise the 1963 imposed constitution. This was a rare case in the constitutional history of British dependencies where the constitution-making exercise excluded the leaders of Swaziland's nascent opposition parties and privileged a traditional ruler and his White supporters. It was also a deviation from British politics of power devolution of which the beneficiaries were the Western educated elite and not the conservative traditional rulers. The Constitutional Committee therefore deliberated without the

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leaders of the opposition parties but their deliberations were accompanied by fireworks. The royal Imbokodvo and their United Swaziland Association allies could no longer trust each other in the aftermath of the June 1964 elections due to breaches of their initial agreements and the increasing rapprochement between the Imbokodvo and renegade elements of the radical nationalist parties. The race factor bedevilled the deliberations as White Swazis wanted the White community to enjoy special parliamentary representation which reflected their economic weight and not their demographic representation as a tiny minority. Unlike other British dependencies in West and East Africa, the race factor was prominent on the agenda of constitution making in Swaziland.

This study also revealed that the tardiness of Swaziland's constitutional developments was due to disagreements over the role of the monarchy and the Western educated elite in an independent Swaziland. Whereas most African countries were already independent by the mid-1960s, Swaziland was endowed with full internal self-government for the first time only in1967.The 1967 constitution was the penultimate constitution enacted in Swaziland before independence. Britain insisted that King Sobhuza should be subordinate to parliament but the royalists felt this constitutional document was out of tune with Swazi culture and tradition in which the *Ngwenyama* was supreme. When a delegation of the Swazi Government went to London in August 1968 for the final constitutional talks before independence, the royalists failed to convince the British to amend the constitution to give Sobhuza absolute power without parliamentary control in a modern independent state. This thesis therefore shows the difficulties of modernising a traditional monarchy within the British liberal democratic framework.

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Like other African countries, Swaziland became independent in September 1968 under the British-tailored Westminster Constitution but the constitution had a short life span after functioning smoothly for barely five years. This is explained by the fact that Swaziland was not spared of constitutional developments in other parts of the continent where a common tendency among Anglophone independent African states was to amend, revise or alter the British-tailored Westminster Constitution. These constitutional changes also went hand in hand with the collapse of multi-partyism and its replacement with autocratic single-party regimes, often justified on grounds of adjusting to the realities of African culture and tradition. These developments appealed to the conservative instincts of the Swazi monarchy who was no lover of the Westminster liberal democratic Constitution.

Unlike elsewhere in erstwhile British Africa, the Swazi Monarchy actually overthrew the Independence Constitution in 1973 and started ruling by decrees and orders-in-council. This thesis has demonstrated that King Sobhuza actually staged a royal auto-*coup d'état* by overthrowing the institutions of the government that were legally put in place. Although scholars have elaborated on the illegality of the royal abrogation of the 1968 Westminster inherited constitution, there were short of describing it as a *coup d'état*. This thesis has therefore conceptualised King Sobhuza II's 1973 abrogation of the Independence Constitution in appropriate terms as an auto-*coup d'état* and this helps one to add him to the list of historic coup leaders in contemporary African history.

The over three decades period of constitutional void that followed Sobhuza's auto-*coup d'état* is an important period in Swaziland's constitutional history which this study highlights. This constitutional void was brought to an end when the 2005 constitution was inaugurated under King

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Mswati III. There is no political regime in post-colonial Africa that operated without a constitution for such a protracted period of time. The Swazi monarchy provides us with such a rare case and this should constitute an area of scholarly curiosity and further investigation.

This thesis has demonstrated the difficulties of fitting a traditional African political system into the Westminster-inherited constitutional mould. While rejecting and resisting constitutionalism and its corollary liberal democracy, the Swazi monarchy attempted to modernise itself by subscribing to bicameralism and a cabinet headed by a Prime Minister but it insisted on closely supervising elections and the whole governance process. Other African Heads of State in the post colony including Robert Mugabe, Paul Biya, and Eduardo dos Santos have also tended to increasingly concentrate powers in their hands at the expense of the other organs of government and eternalise to themselves in power like a typical African monarchy. The high propensity manifested by the Swazi monarchy to monopolise power and reject liberal democracy is not different from its counterparts elsewhere in Africa. Where there is a problem is the reluctance of the Swazi political system to reform itself with the changes of the time to avoid an implosion. This is true of most African sit-tight presidents.

A longitudinal study of this nature can definitely not be exhaustive. In view of the findings of this study, the following possible new research avenues are proposed that might stimulate scholarly interest for further enquiry. These hinge on (i) Governance in Swaziland during the Period of Constitutional Void 1973-2005; (ii) The Itinerary of the Civil Society in Swaziland 1973-2005 and (iii) The Changes and Possibilities of democratising the Swaziland's monarchical system of governance.

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LIST OF APPENDICES

APPENDIX 1
Letter of informed consent

UNIVERSITEIT VAN PRETORIA
UNIVERSITY OF PRETORIA
YUNIBESITHI YA PRETORIA
Department of Historical and Heritage Studies

Dear Sir/Madam.

Re: Letter of Informed Consent

My name is Hlengiwe Portia Dlamini. I am studying towards a PhD with the University of Pretoria. I hereby humbly request you to participate in my research. My research topic is: **Constitutional Developments in the Kingdom of Swaziland 1960-2005.** I am asking you to participate because you are knowledgeable about the constitutional processes and developments in Swaziland. Consequently, you will be interviewed on your expert knowledge of the constitution-making process over time and your recollection of the same and not on any personal matters. Participation in this research is entirely voluntary. You are free to withdraw from participating at anytime without a penalty. If you choose to withdraw, your information will not be used in the study. If you agree to participate in this research, kindly sign in the section provided below. Please indicate by ticking the appropriate box below whether you require anonymity and/or confidentiality. The research data will be kept in the Department of Historical and Heritage Studies for a period of 15 years for both archiving and possible future research. Should you have any questions, please feel free to contact us.

Contact details:

1. Researcher
   Miss H.P. Dlamini
   Email: u14459133@tuks.co.za and hlingoline@gmail.com
   Cell no. +268 76187973
   Tel. phone +268 25056793

2. Supervisor
   Professor A.S. Mlambo
   Email: alois.mlambo@up.ac.za
   Tel: +27124202323

Thank you.
Yours Sincerely,

Hlengiwe Dlamini

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As an indication of your willingness to participate, please sign below. Also indicate by ticking the appropriate box below whether you request anonymity and confidentiality or not.

☐ I request anonymity and confidentiality

☐ I do not require anonymity or confidentiality

Name(s) .....

Date: .....

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APPENDIX 2

Open-ended Interview questions

1. What role did you play in the making of the Independence Constitution?
   …….
2. Were Swazis generally aware and informed in the 1960s about the Constitutional talks leading to independence?
   ……
3. What determined the choice of delegates from Swaziland to attend the Lancaster House talks in London in the 1960s?
   …….
4. Were women also part of the delegation or was it only men involved?
   …….
5. Who sponsored the trip of the Swazi delegates to the UK?
   ……
6. The dress code of the Swazi delegates in the UK was definitely very Swazi as the pictures portray. What was the reaction of the British to it and why did the Swazi delegation decide to dress that way instead of following a formal British dress code?
   ……
7. Why was King Sobhuza absent from London when he was an important actor in the Constitutional talks?
   ……
8. What were the major issues of disagreement between the Swazis and the British in the negotiations for a new Constitution? How were these resolved?
   ……..
9. Were Swazis briefed about the London Constitutional conference when the delegates returned home?
   ……..
10. What was the relationship between the British Crown and the monarchy after independence? I ask this question because in British West Africa, the Queen remained the titular head of African countries after independence until they became republics.
    ……...
11. What in your opinion was positive about the 1968 Independence Constitution?
    …….
12. What in your opinion was negative about the 1968 Independence Constitution?
    ……
13. Why is the *Tinkhundla* system described as traditional? I ask this question because traditional Swaziland did not have a written constitution.
    ……

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14. Following the death of King Sobhuza II, there was a succession crisis characterized by a struggle for power and the traditional rules of regency failed to operate to manage the situation. How can this crisis be explained? Did this crisis result in any rethinking of the Swazi monarchical constitution?
    ……..
15. The 1990s was a particularly turbulent period in African history with the reintroduction of multi-partyism and the collapse of apartheid paving way for a democratic South Africa. How can one explain the resilience of the Swazi *Tinkhundla* no-party system to this strong wind of change?
    ……

16. A constitution is generally a supreme law of the land and everybody is subjected to the constitution. Was the repeal of the Independence Constitution in 1973 legal? Under what circumstances can the 2005 Constitution be repealed? Is it allowed in international law?
    …….
17. Why did the Attorney-General, David Cowen, a White man, not advise against the repeal of the constitution?
    ……
18. Will you be comfortable if we compare the 1968 constitution and the 2005 constitution? If yes which in your opinion is superior and meet the democratic aspiration of the Swazi people?
    ……..
19. Every system of government has its merits and demerits. What are the merits and demerits of the *Tinkhundla* constitutional system?
    ……..
20. Will you be comfortable if we discuss the electoral law in Swaziland since independence? The opposition managed to gain 3 seats in the 1972 elections. How did the electoral law favour the victory of the opposition in the Mphumalanga constituency?
    ……
21. What are the main trends in the evolution of the electoral system since 1972?
    …….
22. In terms of the law, what do the progressives really want and is it legal?
    ……
23. The period of constitutional void in intellectual terms was not good for the image of the country. What is your take on that?
    …….

24. In 1978 King Sobhuza introduced the Tinkhundla by Order-in-Council which provided for the elections of a bicameral house of assembly and the establishment of a cabinet. The

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Legislature and the executive were therefore completely under the King's control because they were composed of the King's supporters. They could definitely not oppose the King. My question is why did the King continue to bypass parliament and legislate by decrees and order in council? Put differently, why did King Sobhuza not repeal governance by decrees, orders-in-council and proclamations? I ask this question because in standard constitutional practices in modern governance the words decree, order-in-council give the impression of the existence of dictatorship. For one thing, although governance is a sovereign act, it does not operate in isolation from the international community and its opinion. Therefore the system of governance in a normal state should be seen to comply with the international norms of modern governance which are not of African origin. Once we have in place parliament, the Legislature and the executive as it happened in 1978 after a period of problems, we would expect constitutionalism to reign supreme. In other words we would expect the three arms of government to function fully as we were taught by the architect of modern governance. There is therefore an issue which needs to be illuminated legally or otherwise. Was it that the CJ and other legal luminaries in 1978 did not advice the monarchy to use its own institutions which were created?

.....

25. When the 2005 constitution came to existence rule by decree and proclamations and orders-in-council saw its natural death. Can we say since 2005 rule by decree died completely?

.....

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APPENDIX 3
THE 1963 SWAZILAND CONSTITUTION

I. INTRODUCTION

1. The present Constitution of Swaziland is contained in the Swaziland Order in Council. 1903, the Basutoland, Bechuanaland Protectorate and Swaziland (Office of High Commissioner) Orders in Council 1959 and 1960, and the High Commissioner Territories Royal Instructions, 1959.
2. Swaziland is administered by the Resident Commissioner under the direction of the High Commissioner for Basutoland, the Bechuanaland Protectorate and Swaziland. Laws are made by proclamation by the High Commissioner.
3. The Residents Commissioner is advised by two bodies which are recognised by law.
4. On matters affecting the Swazi inhabitants, the Resident Commissioner is advised by the *Ngwenyama* (or Paramount Chief), who by tradition acts in concert with the Swazi National Council. The *Ngwenyama*-in-Council enjoys traditional and recognised authority in respect of Swazi customs and institutions. In addition, he possesses certain powers conferred on him by proclamation by the High Commissioner.
5. The European Advisory Council advises the Resident Commissioner on matters directly affecting the European residents of Swaziland and on any other matters which he may specifically refer to it.
6. The European Advisory Council, on 18th January 1960, expressed the view that the time had been reached in the political development of the territory for the establishment of a Legislative Council in which both European and Swazi interests would be represented.

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7. On 23rd April 1960, the *Ngwenyama* in an address (which the Swazi National Council in July 1960 adopted as expressing the views of the Swazi nation) also suggested that Europeans and Swazis should meet in a Legislative Council.
8. On 16th June 1960, the Secretary of State instructed the Resident Commissioner, through the High Commissioner, to set in hand and examination of this question.
9. Following separate discussions by the Resident Commissioner with representatives of the Swazis and of the Europeans, it was agreed to set up a committee under the chairman of the Resident Commissioner, to be composed of officials of the Swaziland Government and representatives of the Swazi National Council, the European Advisory Council and the Swaziland Combined Executives Association.
10. The first meeting of the committee took place on 4th November 1960. Three Swazi members of the committee withdrew from it in mid1961. The committee's report was presented to the Secretary of State in December 1961.
11. There was unanimous among the signatories of the report over a large field, but the Chairman and the other Government officials entered reservations on certain aspects of re… more particularly in regard to the composition and powers of the Legislative Council.
12. The Committee's report was published in Swaziland in March 1962, together with the text of a despatch to the High Commissioner from the Secretary of State. In this despatch the latter explained that he had set out his provisional views.
13. After taking into account reactions in Swaziland to the Committee's report and his despatch, the Secretary of State, on 8th December 1962, invited representative citizens of Swaziland to come to London to Discus with him the problem of Constitutional advance.

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14. These discussions took place from 28th January until 12th January of this year. While they revealed a broad measure of agreement, there was a marked difference of opinion on certain matters, in particular regarding the composition and powers of the Legislative Council.
15. After the conclusion of these talks, the secretary of the State considered very carefully the views which had been expressed. In the light of them, he formulated certain broad proposals which he hoped might provide a basis for agreement: and he asked the Resident Commissioner to discuss these with Ngwenyama and with the other interests represented at the London talks. Unfortunately, these further consultations failed to reconcile differing opinions.
16. In view of this, the secretary of state has been obliged to decide on his own responsibility form the new Constitution should take.
17. Wherever possible, the points on which there was broad agreement have been incorporated. On the other matters, particularly those relating to the legislature, the secretary of State has endeavour to take account of the traditional institutions of the Swazi people, the contributions of the European community to the economy of the territory and the need to provide opportunity for political expression to those who, while respecting the position of the Ngwenyama and of the Swazi National Council, yet do not feel themselves adequately represented through the tribal structure.
18. The main features of the new Constitution are summarised below.

II. **OUTLINE OF NEW CONSTITUTION**

19. While the High Commissioner will retain power to give directions to the Resident Commissioner (except in matters relating to the exercise of the Secretary of State for the government of the territory. To mark this change, he will be described as *Her Majesty's*

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Commissioner for Swaziland, and will be appointed, like Colonial Governors, by the Sovereign.

Agreement with Ngwenyama

20. It is proposed that an agreement should be concluded between Her Majesty's Commissioner, on behalf of her Majesty, and the Ngwenyama (King) of Swaziland, in which Her Majesty's Government will formally undertake that new arrangements for the relations between the Ngwenyama and the Executive Council and the Legislature, for the immunities of the Ngwenyama and his Civil List, and for mineral rights in Swaziland (paragraphs 49, 50 and 52) will be included in the new Constitution. This agreement will also contain solemn undertaking by the Ngwenyama to be loyal to Her Majesty, The Queen, whose protection Swaziland enjoys, and to Her heirs and successors, to abide by the terms of the Constitution and to uphold the peace, order and good government of Swaziland.

The Executive

21. The executive powers will be vested in Her Majesty's Commissioner, assisted by an Executive Council in the manner described below.

22. The executive Council will consist of 3 *ex officio* members and 5 members appointed by Her Majesty's Commissioner in his discretion. The 3 *ex officio* members will be the Chief Secretary, the Attorney-General and the Secretary for Finance and Development. One of the appointed members will also be an official; the other 4 will be appointed from among the members of the Legislative Councils who are not officials. (Prior to the appointment of unofficial members of the Council, Her Majesty's Commissioner will consult with official

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members of the Legislative Council as he considers appropriate to ensure that the 4 unofficial members are as representative as possible of the different classes of voters.)

23. Her Majesty's Commissioner will be required, in the formulation of policy and in the exercise of the powers conferred upon him by the Constitution or any law, to consult the Executive Council, except in cases:
    (a) Which are of such a nature that, in his judgement, Her Majesty's Service would sustain material prejudice if the Council were consulted thereon; or
    (b) In which the matter to be decided are, in his judgement, or insufficient importance to require the advice of the Council; or
    (c) In which, on his judgment, the urgency of the matter requires him to act before the Council can be consulted.
24. The obligation of her Majesty's commissioner to c0onsult the Executive Council will not extend to:
    (a) Any power conferred upon him by the Constitution which is exercisable in his discretion, in pursuance of instructions from Her Majesty, or on the recommendation of a person or authority other than the Council; or
    (b) Any power conferred upon his law other than Constitution which he is empowered, either expressly or by implication, to exercise without consulting the Council.
25. Her Majesty's Commissioner, who will normally preside in the Executive Council, will decide on the business to be submitted to the Council.
26. Her Majesty's Commissioner, who will be empowered to act contrary to the advice given him by the Executive Council. He will be required to report any case in which he does so to the Secretary of the State.

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27. The exercise of the Royal Prerogative of Mercy will be entrusted to Her Majesty's Commissioner in his discretion. In capital, Her Majesty's Commissioner will be advised by the Executive Council, but will act on his own judgement in deciding whether or not the Prerogative should be exercised.

The Legislature

28. There will be a Legislature for Swaziland, which will consist of Her Majesty's Commissioner and a Legislative Council.
29. The Legislative Council will be composed of a speaker, 24 elected members, 4 officials members and nominated members.
30. The speaker will be pointed by Her Majesty's Commissioner, in his discretion, from outside the Legislative Council.
31. The 24 elected members will be made up as follows:

    Eight Swazis certified by the Ngwenyama-in-Council as elected by traditional methods;

    Eight Europeans, four of whom will be elected by voters on a European roll and four of whom will be elected by a national roll;

    Eight persons of any race elected by voters on a national roll.
32. The official members will be the four officials who are members of the Executive Council (paragraph 22).
33. The nominated members will be persons of the age of 21 or above who are British subjects or British protected persons, anointed by Her Majesty's Commissioner in his discretion. It is intended that the power of nomination should be used only:

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(a) To secure representation in the Legislative Council of interests or communities which, in the opinion of her Majesty's Commissioner, are not otherwise adequately represented in the Council; or

(b) To ensure that Government may be carried on. . . circumstances arise.

34. All members of the Legislative council will be entitled to vote, with the exception of the Speaker who will have neither an original nor casting vote.

35. Subject to the provisions of the Constitution, the Legislature will have power to legislate in respect of all matters, except those specified in paragraph 53, which will continue to be regulated by Swazi Law and Custom.

Qualifications for Membership of Legislative Council

36. A Swazi will be qualified for election to the Legislative Council by Swazi traditional methods, if he is a British subject or a British protected person of the age of 21 or above who has been resident in Swaziland for a period of not less than 3 years.

37. A European will be qualified for election to the Legislative Council by the voters on the European roll, if he is himself qualified to be registered as a voter on that roll.

38. A person will be qualified for election to the Legislative Council by the voters on the national roll, if he is himself qualified to the registered as a voter on that roll. Nominations of candidates for the 4 national roll seats reserved for Europeans will have to be supported by 25 Europeans registered as voters on that roll.

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Constituencies

39. Swaziland will be treated as a single constituency for the election of Europeans by voters on the European roll. For elections by voters on the national roll will be divided into 4 constituencies, each returning 3 members to the Legislative Council; the seat of one of these members will be reserved for a European in each constituency.

Franchise

40. A European of 21 years or above will be qualified to be registered as a voter on the European roll provided that he:

    (i) is British subject or British protected person (or until 31st December 1965, not being a British subject or British subject protected person is a South African Citizen); and

    (ii) has resided in Swaziland for atleast 3 years.

41. Any person of 21 years or above will be qualified to be registered a voter on the national roll provided that he:

    (i) is a British subject or British protected; and

    (ii) has resided in Swaziland for at least 3years; and

    (iii) pays direct tax or is the wife of a person who pays direct tax.

Eurafricans

42. A Eurafrican who has the qualifications set out in paragraph 40 will be eligible for registration on the European roll. A Eurafrican who is registered on the European roll may stand as a candidate in elections by voters on the European roll, if he is registered on the national roll, as a candidate for a reserved European seat in election by voters on the national roll. A Eurafrican

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who is not registered on the European roll may stand for election by Swazi traditional methods if he has the qualifications set out in paragraph 36.

Introduction of Bills

43. There will be the usual provision prohibiting the Legislative Council from proceeding, without the consent of her Majesty's Commissioner in his discretion, with any bill or motion which makes provision for imposing or increasing any tax or charge on the revenue or for compounding or remitting any debt due to the Government.

Reserved Legislative Power

44. Her Majesty's Commissioner will have reserved legislative power under which he may, if he considers it necessary or expedient in the interests of public order, public faith or good government, declare that any bill or motion introduced in the Legislative Council shall have affect as if it had been passed by the Council.

Assent to Bills

45. Bills passed by the Legislative Council will be submitted to her Majesty's Commissioner for assent. Her Majesty's Commissioner, acting in his discretion, but subject to any Royal Instructions, will assent, refuse assent or reserve a Bill for the signification of Her Majesty's pleasure. He will be required to reserve for the signification of Her Majesty's pleasure:

(a) any Bill which appears to him to be inconsistent with any of Her Majesty's international obligations;

(b) any Bill which appears to him likely to prejudice the Royal Prerogative;

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(c) any Bill which appears to him repugnant to or inconsistent with the Constitution;

(d) any Bill which is requested by the Ngwenyama to reserve in the accordance with the arrangements in paragraph 49.

Disallowance of Laws

46. A general power of disallowance of laws will be reserved to her Majesty.

Prorogation and dissolution of Legislative Council.

47. The power to prorogue or dissolve the Legislative Council will be vested in Her Majesty's Commissioner, in his discretion. The life of the Legislative Council, unless sooner dissolved, will be 4 years.

Powers and Privileges of the Ngwenyama

48. For the purpose of the Constitution, the Ngwenyama will be defined as the person appointed as such under Swazi Law and Custom.

49. The Ngwenyama will have the under mentioned powers and privileges in relation to the Executive Council and to the enactment of legislation.

(a) he will be entitled to be provided with all papers submitted to the Executive Council and with the minutes of meetings of the Council,

(b) in accordance with the proposed agreement referred to in paragraph 20, the Ngwenyama will be empowered to require Her Majesty's Commissioner to cause any matter (not being a matter in respect of which the Commissioner is not obliged to consult the Executive Council or relating to the Prerogative of Mercy) to be considered at a meeting of the

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Council. He will also be empowered to require any advice tendered by the Executive Council on any matter (save in regard to the Prerogative or Mercy) to be reconsidered at a subsequent meeting of the Council to be held (except in cases of urgency) not less than 7 days after the first meeting.

(c) He will be entitled to be provided with a copy of every Bill passed by the Legislative Council.

(d) Except in the case of a Bill declared by Her Majesty's Commissioner in his discretion to be an urgent measure, he will be empowered to require, within one month of the transmission of the bill to him, that the bill be reserved for the signification of Her Majesty's pleasure.

The foregoing privileges and powers will be conditional upon the fulfilment by the Ngwenyama of the Solemn undertaking set out in Agreement between Her Majesty and the Ngwenyama referred to in paragraph 20.

50. The Ngwenyama will be entitled:

(a) to exemption from taxation of his personal income and property;

(b) to immunity from civil process in his personal capacity;

(c) to immunity from compulsory acquisition of personal property and

(d) to the entrenchment in a Civil List of his emoluments (and those of certain other Swazi dignitaris).

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Swazi Nation Land

51. Swazi Nation Land will be vested in the Ngwenyama on behalf of the Swazi Nation. Until such time as other provision is made by a law enacted under the Constitution, the power to allocate or grant any right or privilege to any person in relation to Swazi Nation Land will be vested in the Ngwenyama-in-Council. These arrangements will be without prejudice to the acquisition of land by the Government under ay law for public purposes.

Minerals

52. The Constitution will vest ownership of minerals, subject to existing rights, in the Ngwenyama on behalf of the Swazi nation. The Legislature will have the power of Legislation in regard to minerals. Minerals rights will be granted or refused by Her Majesty's Commissioner in the name of the Ngwenyama, after consultation with the Ngwenyama and Executive Council.

Swazi Institutions

53. The Legislature of Swaziland will not be competent to legislate in respect of the following matters, which will continue to be regulated by Swazi Law and Custom:

    (a) the office of Ngwenyama;

    (b) the office of the Queen Mother (Ndlovukazi");

    (c) the appointment, revocation of appointment and suspension of subordinate chiefs;

    (d) the composition of the Swazi National, appointment and revocation of appointment of the members of the council, and the procedure of the Council;

    (e) the annual Ncwala ceremony;

    (f) the Libutfo (regimental) system.

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Human Rights

54. Fundamental human rights will be protected under the Constitution. These will include protection against deprivation of property without adequate compensation.

Existing Laws

55. Existing laws, including Swazi Law and Custom, will continue in force until changed by a competent legislative authority.

Public Service

56. The arrangements contained in the Swaziland (Public Service Commission) Order in Council 1962 will be included in the new Constitution

Judiciary

57. Provision will be made for a High Court in Swaziland and for the appointment of a Chief Justice and judges on the lines of Part V of the Bechuanaland Protectorate (Constitution) Order in Council 1960.

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OUR CONSTITUTION NO. 1

THE SWAZLAND CONSTITUTION

WHAT IS A CONSTITUTION?

A Constitution is the system of rules by which a country is governed. Every country in the world has some form of Constitution; the new Swaziland Constitution will enable every Swaziland adult taxpayer subject to certain qualifications or wife of such a taxpayer to have a say in the making of laws for this Territory.

HOW WAS THE SWAZILAND CONSTITUTION MADE?

In 1960 both the Ngwenyama and the European Advisory Council suggested that the system whereby the Swaziland Government was advised and assisted by two bodies: one representing the Europeans of Swaziland and the other being the Swazi National Council – was outmoded. They proposed that all the people of Swaziland should be represented on one common Legislative Council.

A Committee was established in June 1960 by the Resident Commissioner on the instructions of the Secretary of State to examine this proposal, and to put forward recommendations. This committee, on which were represented all communities of the Territory, reached complete agreement on many maters. A number of matters which could not be agreed by the Committee were finally resolved by the Secretary of State in London after all the interested groups had separately and jointly made representations to him.

The final decisions of the British Government on the Constitution were published in May 1963.

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WHAT WILL THE SWAZILAND CONSTITUTION CONTAIN?

The Swaziland Constitution will define the powers and duties of Her Majesty's Commissioner, the Executive and Legislative Councils, the composition of the Councils and the way in which people will be chosen to sit on the two Councils.

It will also mention the powers and privilege of the Ngwenyama (King) of Swaziland. Swazi Institutions and Swazi Nation Land and Mineral rights.

Fundamental human right will be protected under the Constitution and special provision will be made for the Judiciary and Public Service.

Copies of the official statement on the Constitution are available at District offices.

Source: File 3497/1 Constitution-Elections-Electoral Law, Swaziland Constitution Presented to the Parliament by the Secretary of State for Colonies by the Command of Her Majesty May 1963.

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APPENDIX 4

KING SOBHUZA II'S 1960 APRIL SPEECH

Your Honour and Gentlemen

We are met here to consider and talk about what is happening in the world today. We have seen from reading newspapers and hearing radio reports that there is quite an unrest and a number of things happening around us. I am sorry that the day has proved unsuitable in that we find that the weather is inclement and that therefore the roads are not very nice to drive on; but I hope that is an omen of something good that may come from what we are trying to do here today. (Rain is an auspicious omen.)

The unrest and many disturbances that I have mentioned just now alarm us and cause us to wonder where the world is leading to, and in particular Africa. The Prime Minister of the United Kingdom in his speech at Cape Town mentioned something to the effect that Africa is on the crossroads – they did not know which side they might have to choose of the two worlds, East or West; he was convinced that the only way to solve the problem would be by treating the African people in a humane way, and in a way that would so satisfy them that they would not join in the struggle that is at present taking place between the East and the West. But as we see the day to day events taking place we feel unhappy about what is happening in Africa, so much so that we cannot pride ourselves in Swaziland that we are not included in the struggles that are taking place elsewhere; nor can we say that we are better off in any way. I personally think that we are utterly in the midst of the trouble. There is no room for complacency.

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The most disturbing factor which I think is the source of all trouble in Africa is fear. If only we could get rid of what fear complex we would have solved all our problems. Let us consider what the source of fear is. Now let me explain it in this way – a human being is an animal like other animals; then in this analogy, consider what animals do when they are in fear, and I come to certain conclusions. I have observed that an animal such as a lion will kill a male cub when it is still young, kill it, because once it grows to maturity, it may be a danger to it. So is the case with a human being; it has also got that instinct, with this exception only – that a human being has got the power of thinking ahead on any proposition before him. One finds two types of human beings. There is one type that will bring up his children in such a way that they will become very cruel and unhuman because they have been brought up in a rough way at home, and another type of person will bring up his children in the spirit that they are his children, his responsibility and the future prop of his declining years. Even if he beats the child, he only does so in order to teach him or give him a training of some King, and when he is grown, the child will say, 'Oh how my father did beat me'; but the father will be in the position to say that "I wanted you to be a man and by my discipline, I have brought you to what you are now'. And in his own private talks, the child will be able to tell his comrades and friends: 'You know, I was brought up by my father, under hard discipline, but that was good for me and has made me what I am today.' The other child who has been brought up in a brutal manner in a cruel way, when grown will try to do what was done to him by his father. We have come to the conclusion therefore that the difference between human beings and animals is that in the case of human beings where the child has been brought up in a reasonable, humane way, the child will develop to be a good citizen but when the child has been brought up in a brutal and unreasonable way, he may develop to be something unruly, difficult and a bad man generally.

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Next we come to consider what happens in the case of the treatment of races be they White or black. Let us take for instance the case of Europeans and place them in the position of parents who have to bring up their child and we watch how they bring up the child. We find that what actually happens today is that the Europeans will so handle the African that they would not like to see him grow and try to be something to contend with. The treatment the African receives is such that it aims at keeping him just at that level so that he does not achieve complete independence. In a way you could say that the European is defending himself, is protecting his interests. Can anyone tell me if it is a good state of affairs that the European must seek to protect his interest in this way? What will be the position if the White man acts thus? The African too will seek to do that at some stage. There are many ways of stifling the development of a person so that he does not grow or does not thrive.

One way would be the elder man will not give full rights to the younger one. Another way is so to apply economic pressure that the African has no incentive to develop. In certain cases you will find that there are many obstructions that are in the way of the development of the younger man. Yet another way is to deny him a full, and fundamental education that will enable him to stand on his own, as a man. All those are ways and means of trying to debar the progress of the junior man to develop to the stage where he compares with his senior.

I read the other day something that was said by the leader of the Opposition in the Union, Sir de Villiers Graaff, where he said that he did 'not think that the people overseas who thought that there should be equality even in the economic world were genuine in what they said'. He thought that that would never obtain. He thought they merely meant that there should be equality in a shallow

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way because no African can hope to be on the same level with the European at the present moment. When I read the article, I wondered what Sir de Villiers really meant, what sort of equality was he referring to, that of stature, or what? I could hardly appreciate his idea, because as an African together with many others we are looking for fair play and justice only. All that the African people seek to achieve is to be able to face their own problems themselves rather than have things done for them by some other person. The type of equality and fair play that we are referring to is not such as to demand that even though someone has his own property here we will try to oust him from that property of his or show off in any way. All we need is fair play in every sphere of life, that's all that we are asking for. Having read that article I felt I wasn't at all convinced that Sir de Villiers had grasped what type of equality we are striving for. I thought of what's happening up in North Africa.

In casting my thoughts over this and wondering what actually it was that was worrying the whole of Africa, and looking around in my predicament, I read one article from a man in East Africa, in Kenya, who says: 'No, we are not actually trying to deprive some other person of his own right, we want rights of our own.' And another one came out from Nyasaland who says: 'We are not out to fight, against Europeans – we realize that we must live together with the Europeans.' I said: 'This is exactly what we have been thinking ourselves, because, when someone says "We don't want Europeans here, we don't want Europeans with us" I just wonder really if those people are saying so genuinely from the bottom of their hearts. Truly speaking, one wonders if there is anything at all in that type of talk.'

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Personally I feel that no man with all his senses and a good citizen could ever think of depriving one of his own property and still remain complacent with somebody else's property. People who try to do such things are those who have had ill-treatment like a child that has been ill-treated from its earlier stages, which usually thinks: 'If one day I grow, I will pay back to this person.' That type of person I am referring to now, is such as we have read about in papers who say: "Let the Europeans go back overseas' and speak in an unreasonable way like that. But I would like to give an assurance to this house here and now that personally I feel that no true African would think in terms of trying to oust a person from his house or think that he can just chase his neighbours out.

I have often wondered what it is really that these people are struggling for or are striving for when they say that they are trying to establish White protectorates and things of that nature which don't seem to make any sense to me. And I think that's where the danger of the whole thing is. It is a danger that I think is threatening us even in this country Swaziland. I have read that we are trying to get more and more immigrants into Swaziland and I have read also that even though the Union did not want to have immigrants from elsewhere they are now trying to open their doors to get as many people from outside as possible. I think that they will go wrong. That's where the conflagration is going to start which will lay waste the whole countryside.

Let me take for example what is happening in the Union. I am sure that they haven't got a proper solution of the problem how to settle the Africans in that country. Now they are seeking to bring in more and more Europeans. What will the Indians do? The Indians will wonder why they should be debarred from entering the Union, they are human beings like anybody else, and so will the Chinese and other Asians, they also have a right to live. Everybody else will demand: 'Why am I

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precluded from entering the Union if these other countries have a right to send their people as immigrants into South Africa?' And then there is also the position in which one finds there are Africans who are not allowed to go out into other countries – they are in South Africa all the time and are refused permits or passports for going out. They will join the other people that are struggling against what is happening in South Africa and they will join hands with those to whom Mr. Macmillan was referring when he pointed out, 'Let us beware of trying to work the situation in such a way that will estrange ourselves from the Africans and make them join the East instead of going with us.'

To drive my point home, let me make an illustration of what happens among the Swazi. When a man has to reprimand his wife, often there will be found an ill-intentioned man who will come to the wife and say: 'How sorry I feel for you because your husband always scolds you and treats you badly and I would do something better for you.' Such a man is a bad man. And we feel that such a man in the political world is Russia and others like her. Now if you try to stop the Africans from doing what they would like to achieve by way of entering Territories outside the Union or the Asians and others from entering into South Africa, you are really setting against each other the East and West. Personally, I think that among the Africans, there is no need whatsoever, nothing required by way of immigration laws and things of that nature to regulate the migration of the people.

All that type of legislation emanates from the fear complex that is there all the time and each man wants to protect himself. Each side fears that if there are more and more people of the other section coming in they must protect their rights so that these people that come in will not eventually

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swallow them up. Actually what I mean is that by bringing in more and more Europeans, the country's Government is trying to equalize the position so that some day when it is needed to vote the Europeans should not be found to be in the minority or have lesser numbers. There I feel personally that there is nothing to fear, 'they fear leopards in the dark where they do not exist.'

In the protection that they are seeking in this manner, they are getting themselves into worse positions than they would otherwise have been in. Let us take for instance, the example in the Union or Rhodesia; if, say, people were to be told that they are now placed on equal footing or equal rights in all respects, how many educated persons would be found with adequate education to supply all commodities that are necessary in modern life, how many years would it take them to get to that stage? Or let us take a hypothetical case where by some miracle we would suddenly find that Europeans had all disappeared and left the country and we are left in Africa without any Europeans at all. What could we do? Where would we get trains? Where would we have the electricity, power, or the commodities that we have learnt to use with comfort nowadays?

Now seeing that each of us is seeking to find a proper protection as to his rights in future, in what way shall we have this assurance that the European is not going to be ousted from any country and the African is assured of a proper place for his posterity. It is for that reason then, gentlemen that I have asked for this meeting to take place here today so that we can consider, confer together and find out a way which will make us have a common understanding and how we can remain in peace knowing that we are here settled and going to live together. Now even if one may deceive oneself by saying that it is only the Europeans that are seeking security for their future, the truth is that also the Africans would like to get assurance of what is going to happen with them in future. I say

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so because it is common practice among the Europeans that when he lends out money, he must have security, a surety for what will happen in the event of the client failing to pay the money. In Africa we have also got to look into the practices of the Africans as to whether the practice used to obtain whereby when one borrowed money it was necessary to have some sort of surety. This one thing I know among the Africans, that if you marry a woman and you pay cattle as lobola, those cattle are there as security – you are buying the right to have the children and your wife is also bound at her husband's kraal because she feels that she cannot leave the children there. She knows that if she were to leave her husband's people, she would have forsaken her children, have abandoned any right to her children because the children were actually bought by her husband's people by the lobola that they paid. And if she were to decide to desert her husband's kraal, she would have to leave the children behind. So far I have been trying to deal with the situation of the whole world but now I'd like to come nearer home and refer to Swaziland in particular.

We find that what is the source of trouble elsewhere obtains even in Swaziland. Indeed I have read from the newspapers, that this country too, seeks to bring in a lot of people from outside, and somebody else mentioned on a certain occasion that we need to have people from outside, for the development of the country. And that has caused me much concern – I feel this is the source of all problems that are going to come.

Our practice and indeed what we uphold in Swaziland, is a position where people will come into the Territory of their own free will, when they feel that there is something for which they want to come into the Territory, not because they have been invited or told to come in numbers into the

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country. I wonder how this house feels about that, whether they think that is the way in which we are going to solve our problems.

I draw attention to the policy of the Government overseas; a glimpse into their policy will show what their aim is about the whole of Africa. You will find that the policy now is to let go. They feel that to be sitting on a people, in that old Imperialist and Colonialist fashion when they are unhappy and all that, is not a healthy state of affairs. Give them independence and let them carry on their own – just in the way that Mr. Harold Macmillan mentioned in Parliament in Cape Town. And you will realize that the West as a whole – England, America and others that are grouped together as the West – their ideas, their policy now is that people should look after their own affairs. The White people should have nothing to complain about. The black people should not find cause to complain either. If that would come to pass, that state of affairs where there will be peace, between the White and the black – these Western countries would be very happy – they will sing 'Halleluja'.

And it is for that reason that even in Swaziland one has heard a number of people here and there coming out with views and ideas that we should come together and work together for the well-being of our country. We have this one great fortune in Swaziland that we live together as one – there is no underdog – we just live as a community. And this lack of equality elsewhere does not exist in Swaziland – we are all equal.

We should now look for a way which will make us feel at home, feel that we are quite secure in this country, but how shall we go about getting this security that we seek? Even if there are

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difficulties I don't think that they are insurmountable. Many a difficulty has had to be surmounted. We can have difficulties of whatsoever a nature, but we should find ways and means of trying to fight against those difficulties and live together in peace. I have already mentioned that the metropolitan Government has already expressed a desire that we should manage our own affairs. A number of men have been to consult me about whether it wouldn't be a good idea to meet together and join in the Advisory Council as one Council.

I have decided to place my dreams before you here present. At first I thought I would hold back my views and leave the matter in the hands of my Council and those men who were desirous to discuss it, and await their views. I thought that my Council would confer together and discuss these matters with the European Council or Government and with ordinary members of the public to find out ways and means of how to come together and develop something that would be of help to the country. But because of the turn of events that have been taking place in North Africa, in East Africa, in Central Africa and elsewhere, I began to realize that probably I was making a mistake by sitting quiet – now I am convinced I must say my mind, however wrong it may be – a number of people may not agree with me but I think I'd better express my mind now. And even though perhaps what I am going to say now may probably prejudice the position in that some people may try to follow what I have already said without reasoning it out, I am now going to say out what my feelings are on the subject.

I think it would not be a good idea to join with the Advisory Council, for these two reasons: Firstly, we are a Protectorate and the set-up of a Protectorate is such that the people are an entity on their own, a people that have their own institutions, have got to carry on in the way that they have been

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want to do, but they go to someone to protect them who has got to bring them up, teach them certain things in which they feel they are deficient until such time as they feel they are fully developed. And then he hands over.

And you find that the protecting power, as we have heard is the practice among the Germans, when they are protecting a certain state, instead of developing that state to a state of being able to stand on its own feet, they begin to absorb that particular state. And that cases ill feeling from the state which was expecting to be brought up and which was being nursed until it was able to stand on its own feet. They feel that they have now been deprived of their rights.

Now I will ask His Honour the Resident Commissioner and the Secretary from Swazi Affairs now to listen intently. What I am going to say will probably be somewhat sore to them but I would ask them to bear with me and just listen to what I am saying. It may help them because sometimes to speak the truth even though it may be painful, does help. The members of the Council may probably think that I am spoiling their chances by saying much and more than I should have said but, well, let them bear with me. A man always has bad ideas sometimes has also got to be listened to, so please listen to this.

I believe at the present moment, there is quite a lot of talk in Council sessions with Government on matters concerning immigration laws and deportation laws, so much so that decision on one law has been withheld for an inordinately long time and the Government feels that the Council is so delaying matters that now the High Commissioner's Office is becoming very impatient on these

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things, and the Council fees 'What is Government trying to do with us? They are probably leading us into something that we've never heard of or are going to ruin our country' and things of that nature.

I did not like to participate in these discussions because even though I am a man, a member of the Council, they have the chance to discuss matters among themselves and convince one another on these matters before I come in. but now I begin to feel that I should really come out with the truth and ask the Council 'Why don't you say so and so', which will make the position quite clear to the Government, and why doesn't Government do so and so and so and so, so that this matter may be cleared up.

I am of opinion that the mind of the Council is working on these lines: 'That instead of Government protecting us they are now taking away some of our powers – they are now suppressing us.' Take for instance the deportation draft Proclamation. The Swazis wonder why it should be the Government that has got to deport people rather than people should be deported by the Swazis if they have to be. It is felt that Government should be in a position to deport Europeans but the African people who have come into the Territory should only be deported by the National Administration – the Swazi Authority.

A number of these members of the Council here present have got relations of some kind in the Union somewhere. Chief Confirm here with us, has his senior brother in the Lydenburg district. Council or Nhlabatsi has always told us that when the boundaries were first set up his home was on the Swaziland side of the line but the boundaries were first set up his home was on the Swaziland

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side of the line but the boundary has shifted time and again and now they don't know how they got to be in the Union. Mnt. Madevu's physical father used to live in the Carolina district. The Secretary to the Nation has got some of his people living in the Transvaal and others living in Swaziland. A number of Royal kraals, some of them in the Barberton district, others in the Carolina district, are under my direct control in the same way as other Royal kraals of past reigns are under my care today.

Now if these people were to come back to Swaziland and we accept them to come back to Swaziland and should there be something wrong because they were born outside the country, they become deported by Government. What does that bring up in the minds of the Swazis? That is what is really causing a lot of difficulty among the members of the Council on this draft Proclamation that we are doing something that is not known among the Swazi. They fear that when the whole Libandla is called upon, they will censure them rather severely, they will tell them that they have exceeded their powers in accepting this thing because it has got great repercussions, great difficulties behind it, if it is going to bring about dismissal or deportation of Africans in Swaziland without the authority of the Swazi – it is something unheard of.

I don't know if this has been explained to Government by the Council but this that I am explaining is the reason why they have been so very adamant about it, and that they also feel that our rights are being whittled off. Instead of being brought up properly we are now being swallowed up. In all this I have been trying to explain how a protecting Government can help to protect and develop and bring up a Nation that is not yet developed, to a stage where it can stand on its own feet. I will

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not now deal with the Convention of 1894 but I will refer to the Order in Council which enjoins Government that when they make laws in the country they will respect Swazi law and custom.

Thirdly, as I mentioned, I don't think that the Advisory Council can join together with us. The set up, the way of life of the European is such that it is individualistic and he has his own practices which are peculiarly his own. That is their tradition, but we have our own traditions too. No man can say that that one is not as good as the other one but I will say that mine is the better tradition.

By way of illustrating what I am saying I would like to point out that in the European culture, you find that if I married a wife, my wife is my own and she is not a woman of the household of my family. A wife does not belong to the family but she is my own. I am her husband and nobody else has got anything to do or to say to her. According to Swazi custom, she is your wife, she is your family's wife, belonging to the family as a whole. Among the Europeans if there is a misunderstanding in the house, the husband will run to the magistrate and report, 'Oh my wife does not want to share a bed with me.' If the wife has got some difficulty in the house, she goes to report to the Court – and then the newspaper reporters are there and they are ready to report. And then the Court Order is given – you should make it up and if you are not able to make it up within so many days, come back to me. Among us Africans we feel that that is not good behaviour. With us, if the man had such a situation in the house, he, if it is the woman that is becoming difficult, reports the matter to his parents. If his parents no longer lived, he reports to friends or relatives and they come and discuss the matter and get it over – it is not broadcast to the whole world so that everybody should know what's happening – that these are no longer sharing their bed, etc. A family matter of that nature is referred to the King, to the Court only as a last resort,

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and we feel that that is a better procedure than to report everything to the Court rather than have it settled amicably at home.

In so saying, I am trying to point out that the Europeans and Africans are not yet at the stage where they would be able to meet and discuss things profitably in such gatherings as the Advisory Council. But I do not mean that they should not meet, I think that we should by all means find a way of making these two meet.

But we regard the Advisory Council as having a lower status than our Council. We cannot meet the Advisory Council in its present stage as an Advisory Council and in order that we should join it, let its status be raised to that of a Legislative Council. Only then can we come together. At that stage, we will come together on equal basis, discussion matters of the Territory of Swaziland as a whole. It would not lower our prestige, our dignity as a protected people who have their own institutions and rights, but it will raise us both to a stage where we could together confer on matters of state and legislate for the country. We would not be taking a retrogressive step there. Now there again, as I have mentioned, these people have been brought up on different ideas. How will they come together, join up only at the top levels? I think a solution to that would be that the Advisory Council, the European public, should elect their own men under their system of election, and we would get our men, chosen by us to meet and legislate for the country. They would all then join together. It would be better to call the method that of Federation, where we would not count how many represent so and so and how many represent that unit, but they will merely meet as a Federation together.

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If we met on these lines and the Africans came with their own system, I think it would solve the situation. I do not see how we can try to adopt European ways of doing things which we don't know. Yes it is quite true that we should copy those good practices that the Europeans have, but when we come to consider what is this democracy of which they speak you ultimately get lost in the idea – I do not even understand what is meant by democracy – because each man will display his wealth and say that he wants to do so and so and bring out certain monies with the idea to do so and so but one without capital will not be able to do any of these things or display. When people speak of democracy, one wonders what democracy it is they want to maintain because we, the Africans as a matter of fact, have bigger numbers than the other people but one cannot understand what is meant by democracy when one thinks on those lines.

Let us regard this as a practice, as a European practice, because to speak of democracy, I don't think would be the correct word, because democracy is not there. A man promises his constituency that 'I will do so and so for you, I will certainly achieve so and so for you' and then he is not able to do it. I think it would be better democracy if people went into it in the same way as de Gaulle took up his position in France. He was called by the people to come to their rescue as they were in difficulty in this way. He came with that mandate. There's nothing that he has promised the people that he would achieve for them. Actually, I appreciate it was the people that suggested that he should be appointed. I thought that was a good form.

If only we could be able to extricate Africa from this idea of one man, one vote, I am sure we would have achieved our objective. Even this federation that I referred to, that we have heard of

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in Central Africa, if it aims at one man, one vote, I am sure it will not be a success. Whether it is a federation for the White or the black, it would not be successful. Because if the parties fear that the one party, the black or White, supersedes the other, then there will be fear that they will swallow all the others' own opinion, whether it is right or wrong, it is my opinion. I would like to hear from you, what you suggest could be done to save this country.

Source: H. Kuper, *Sobhuza II Ngwenyama and King of Swaziland: The Story of an Hereditary Ruler and his Country* (London: Gerald Duckworth and CO. Ltd, 1978), pp.210-217. This speech reproduced by Kuper is a taped translation from siSwati to English. Excerpts of it are also found in the *Times of Swaziland.* (See "The Ngwenyama, Sobhuza II C.B.E. Gives Expression to His Views on the Constitutional Future of Swaziland", *The Times of Swaziland*, July 1, 1960, Vol. 58, No. 27.)

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APPENDIX 5
COMMENCEMENT OF LANCASTER HOUSE CONSTITUTIONAL TALKS

WILSONS ELECTRICAL
FOR ALL YOUR HOUSEHOLD APPLIANCES
COMPLETE RANGE OF TRANSISTOR RADIOS & RADIOGRAMS
(OPPOSITE QUEENSWAY THEATRE)
ALSO PRESIDENT PLACE MANZINI

The Times of Swaziland
Registered at the G.P.O. as a Newspaper Established 1896 Published on Fridays
The authorised medium in Swaziland for the publication of official notices.
Vol. 61 No. 7 FRIDAY, FEBRUARY 15, 1963. Price 3 cents

GIULIO'S MANZINI
Films Showing This Week
FEBRUARY 16th GOLD OF THE SEVEN SAINTS with Clint Walker.
FEBRUARY 20th BANDIT OF ZHOBE with Victor Mature.
FEBRUARY 23rd VILLAGE OF THE DAMNED with George Sanders.

TALKS BEGIN WITH SMILES BUT END IN DEADLOCK

Ngwenyama to be consulted on Britain's conclusions

The talks in London on a constitution for Swaziland ended in a deadlock on Tuesday. From the start of the talks on Monday, January 28, to the end there was at no time any signs of agreement between the various delegations. A cable from our London correspondent says that observers there consider that the delegates from the Swazi National Council and the European Advisory Council were not in a position to accept any compromise; they were not there to bargain but to put the case for the proposals of the Swaziland Constitutional Committee which they helped to draft. Their mandate ended there.

Our correspondent adds:

The traditional group — the delegates from the SNC and the EAC — stood firm on a demand that the new constitution be written into a new treaty between the British Government and the Ingwenyama. The effect would be to shut the door to future constitutional changes for the Swazi people and confirm the paramountcy of the Ingwenyama. This is one of the questions that dragged down the talks since the beginning, two weeks ago.

Sandys's statement

Mr. Duncan Sandys, the Secretary of State for the Colonies, who presided at the final meeting on Tuesday, said in his closing statement that the next step would be for an analysis of the different points of view to be made. Her Majesty's Government would then study this analysis with a view to formulating comprehensive conclusions on the constitutional future for Swaziland.

These conclusions would be transmitted to the Resident Commissioner and he would be asked to consult with the INgwenyama and representatives who had attended the talks.

Her Majesty's Government's decisions would be taken in the light of these further consultations.

50-50 Proposal

Our London correspondent says that among the points on which no agreement could be found were the 50-50 proposal, to which the SNC and EAC are committed, and the way of electing members to a legislative council.

The Constitutional Committee's proposals recommend 50-50 representation, the Swazis to elect their members in their traditional way and the Europeans to elect theirs in their own way. The Swaziland Administration would like some form of modification so that the educated Swazi group would be adequately represented; and the delegates from the political parties left for the talks with a mandate from their members to press for universal adult suffrage.

Mr. Brian Marwick, Resident Commissioner, Mr. Michael Fairlie, Secretary for Social and Political Affairs, the Swazi National Council delegates and the Eurafricans delegates will arrive in Swaziland at the weekend.

The people in the pictures

TOP PICTURE: Mr. Duncan Sandys (seated, fourth from left), Secretary of State for the Colonies, acting as chairman at the opening session of the talks. From left: Mr. W. B. L. Monson, an Assistant Under-Secretary of State, Colonial Office; Sir John Martin, Deputy Under-Secretary of State; the Marquess of Lansdowne, Minister of State for Colonial Affairs; Mr. Sandys; Mr. Brian Marwick, Resident Commissioner, Swaziland; Mr. Michael Fairlie, Secretary for Social and Political Affairs, Swaziland; Mr. J. C. McPetrie, legal adviser to the Secretary of State.

Middle picture: Delegates from Swaziland: From left: Dr. George Msibi, Mbandzeni National Convention; Mr. Simon Nxumalo, Democratic Party; Mr. A. Sellstroom, Eurafrican Welfare Association; Dr. David Hynd, Independent.

Bottom picture: Mr. Sandys greeting Mr. S. T. M. Sukati, the main offi-

£26,300 GIFT FROM U.K.

The British Government has approved a free grant of £26,300 for the capital costs of establishing a cotton breeding unit on the Lowveld Experiment Station near Big Bend.

The money will provide for housing, office and laboratory accommodation, field experiment buildings, equipment, irrigation works and transport. The building, which is to be done by the Land Utilization Department's constructional unit and by the Public Works Department, will begin soon.

The cost of recurrent expenditure has been guaranteed by the producers in the Territory. They are making contributions, by means of a levy, to the Cotton Improvement Fund.

Mr. Maurice Rose, formerly the Swaziland Governme through the generosity of th Empire Cotton Growing Co poration of London.

He has already visited t Territory and advised on programme of experime work. He visited this we recently and expressed opinion that there was a g future for cotton in Swazila His report is expected soo

The Empire Cotton Grow Corporation has agreed to cond Mr. Cornish-Bowden cotton breeder on the s terms in which it oper throughout all cotton gro

Source: 'Talks Begin with Smiles but End in Deadlock', *Times of Swaziland,* 1963

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APPENDIX 6
A PCTURE OF THE COMMENCEMENTS OF THE LANCASTER HOUSE CONSTITUTIONAL TALKS

Source: 'Talks Begin with Smiles but End in Deadlock', *Times of Swaziland,* 1963

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APPENDIX 7
A Picture of Dr. A. Zwane and K.T. Samketi on the steps at Marlborough House, London, 1968

LONDON

ce Makhosini, Swaziland's Prime Minister, and the British Commonwealth Secretary, ill sign the report of the Swaziland independence conference here and Swaziland inal lap towards independence on September 6.

Tea-time Rendezvous on Sunday

Prince Makhosini and his party are due to return to Jan Smuts Airport, Johannesburg midday on Sunday.

They will then drive back to Swaziland. They are expected to arrive at the Oshoek Border Gate between 4 p.m. and 5 p.m. on Sunday, and a big crowd is expected to see them.

Dr Ambrose Zwane NNLC leader lies down on the steps of Marlborough House, London shortly before the conference was due to begin and gives a cheerful thumbs-up sign. Embarrassed officials ponder on what to do. Behind Dr Zwane is Mr K. T. Samketi, his deputy. (Picture by radio to Johannesburg).

MR GEORGE THOMSON

PROGRESS MADE IN SWAZILAND

MR GEORGE THOMSON, British secretary of state for Commonwealth Affairs, referred in his welcoming speech to the constitutional progress made in Swaziland since 1964.

In that year, the Legislative Council was established.

Because of the tremendous labours that had gone into the making of the constitution in the past, the task of the present conference should in that respect be a comparatively light one.

The conference had the task of making adjustments that were necessary or appropriate at the final stage of advance from internal self-government to full independence.

There was, however, said Mr Thomson, one issue relating to the constitution itself

To Back Page

UNITED FRONT CHAIRMAN FLIES OUT

The chairman of the Swaziland United Front, Mr O. M. Mabuza, left for London by air on Tuesday night to attend the independence talks.

Mr Austin Nxumalo, secretary of the party, said that although Mr Mabuza had not been invited to the talks, he would watch the proceedings from the gallery.

Mr Mabuza is expected to stop at Addis Ababa on his return journey to visit Mr D. Otelli, Secretary-General of the Organisation for African Unity.

carried away . . .

stration: "I am furious that only chiefs and White settlers have been invited to the conference."

For months, since his party was defeated at the general elections, Dr Zwane has

an alliance has been formed with South African political and commercial interests," the NNLC leader told our London correspondent.

"There are two South Africans in the delegation to London."

AFRICAN CREDIT CORPORATION
MBABANE
Have pleasure in announcing the opening of their

Source: *Times of Swaziland*, 1968.

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APPENDIX 8

A picture Dr. Zwane and. Samketi being removed by the police from the steps at Marlborough House, London

urg newspaper, a story under "Swaziland as Angered", reaction from nister, who is- statement the rifying his re- osini had been ng that a time- n planted and plode as it did ntial linister's state- is essential in the Swaziland all people iland and of ors here that diately clarify impression of 's attitude on m which may ated by my squoted in an "Swaziland Angered. . . ." le I was mis- 'It is going to d in Kenya', being to the rly couple on se containing ple may have ured. ervant, em- Herbst, who Scott ranch, criminally nday after- d the police roached by ut 4.00 p.m. r to direct ranch. On ch, all three ssaulted her. arrested two with the o recovered ed clothing ng to Mrs

time-bomb which I was correctly quoted as saying 'as having been planted and will be handed over to us with independence on September 6.'

"I did, in fact, refer to Kenya at the Press conference, but it was in the context of the British Government's precedent of giving the Kenya Government financial aid to help it solve a rather similar land problem to that in Swaziland."

The Prime Minister clarified the use of his expression time-bomb: "The British Government by their past policy of land alienation deprived the

To back page

FOUR-PAGE TALKS BONUS INSIDE

IT WAS A GREAT WELCOME BACK

IT WAS A GREAT WELCOME BACK FOR THE PRIME MINISTER PRINCE MAKHOSINI AND MEMBERS OF THE LONDON TALKS DELEGATION LAST SUNDAY.

Hundreds of people gathered at the border gates at Oshoek waiting for the delegates to arrive, and then after Prince Makhosini had briefly greeted his supporters, a two-mile motorcade drove the 14 miles into Mbabane.

There, outside the Secretariat was another crowd of about 2,000 people. They waited patiently for Prince Makhosini to arrive and make a brief speech.

Greeted

The Prime Minister reserved his main speech for a later ceremony in the Royal Cattle Byre at Lobamba. He was greeted by the King, and then told his audience that as far as the constitution was concerned, Britain had accepted all Swaziland's proposals.

Britain had agreed to Swaziland's plan for the administration of mineral rights, but had been unwilling to accept the responsibility of restoring alienated land.

No violence

King Sobhuza congratulated the delegation and said that through the nation's efforts, Swaziland had moved to this stage at which the British Government had agreed to independence.

The King paid tribute to King Sobhuza I, who warned that the Swazis should never take to violence under any circumstances. The nation had upheld that policy of getting what was wanted through negotiation.

Dr Ambrose Zwane, (right) leader of the NNLC is removed from the steps of Marlborough House by British police. Also under police guard is Mr K. T. Samketi, his deputy.

UKE OF KENT FOR SWAZILAND

Duchess of to Swazi- en's special at the in- brations in d last Fri- iland dele- don consti- t, which

came from Buckingham Palace ends months of speculation about which member of the British Royal Family would attend the celebrations.

It was a tightly-kept secret until the last moment. Members of the delegation were delighted with the news, and the reaction in Swaziland was one of great excitement.

Kent Rock, in Mbabane, is named after the present duke's late father.

NEW SUPER MARKET
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Source: *The Times of Swaziland*, 1968.

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Appendix 9

SWAZILAND

GOVERNMENT GAZETTE

EXTRAORDINARY

VOL. XII MBABANE, TUESDAY, 17TH APRIL 1973 NO. 578

CONTENTS

MISCELLANEOUS

Proclamation by His Majesty King Sobhuza II……..148

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PROCLAMATION BY HIS MAJESTY KING SOBHUZA II

For purposes of general information the full text of the King's Proclamation made before the Nation on the 12th April, 1973 is hereby published.

D. Cohen
Attorney-General

Mbabane,
16th April, 1973

PROCLAMATION

TO ALL MY SUBJECTS – CITEZENS OF SWAZILAND

1. WHEREAS the House of Assembly and the Senate have passed the resolution which have just been read to us.

2. And WHEREAS I have given grave consideration to the extremely serious situation which has now arisen in our country and have come to the following conclusions:

   (a) that the Constitution has indeed failed to provide the machinery for good government and for the maintenance od peace and order;

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(b) that the Constitution in indeed the cause of growing unrest, insecurity, dissatisfaction with the state of affairs in our country and an impediment to free and progressive development in all spheres of life;

(c) that the Constitution has permitted the importation into our country of highly undesirable political practices alien to, and incompatible with the way of life in our society and designed to disrupt and destroy our own peaceful and constructive and essentially democratic methods of political activity; increasingly this element engenders hostility, bitterness and unrest in our peaceful society;

(d) that there is no Constitutional way of effecting the necessary amendments to the Constitution; the method prescribed by the Constitution itself is wholly impracticable and will bring about the disorder which any Constitution is meant to inhibit;

(e) that I and all my people heartily desire at long last after along Constitutional struggle, to achieve full freedom and independence under a Constitution crated by ourselves for ourselves in complete liberty without outside pressures; as a nation we desire to march forward progressively under our own Constitution guaranteeing peace, order and good government and the happiness and welfare of all our people.

3. Now therefore I, Sobhuza II, King of Swaziland, hereby declare that, in collaboration with my Cabinet Ministers and supported by whole nation, I have assumed supreme power in

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the Kingdom of Swaziland and that all Legislative, Executive and Judicial power is vested in myself and shall, for the meantime, be exercised in collaboration with a Council constituted by my Cabinet Ministers. I further declare that, to ensure the continued maintenance of peace, order and good government, my Armed Forces in conjunction with the Swaziland Royal Police have been posted to all strategic places and have taken charge of all government places and all public services. I further declare that I, in collaboration with my Cabinet Ministers, hereby decree that:-

A. The Constitution of the Kingdom of Swaziland which commenced on the 6th September, 1968, is hereby repealed;

B. All laws with the exception of the Constitution hereby repealed m shall continue to operate with full force and effect and shall be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with this and ensuing decrees.

I will now call upon the Attorney-General, Mr David Cohen, to read out further decrees designed to provide for the continuance of administration, essential services and normal life in our country.

THE KING IN COLLABORATION WITH HIS COUNCIL DECREES THAT:-

1. All Judges and other Judicial Officers, Government Officials, Public Servants, Members of the Police Force, the Prison Service and Armed Forces shall continue in office and

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shall be deemed to have been validly appointed. They shall carry out their duties and shall be entitled on the existing basis to their remuneration;

2. For a period of six months from date hereof, the King-in-Council may, whenever they deem it necessary in the public interest, order the detentions of any person subject to any conditions they may impose for any period of time not exceeding sixty days in respect of any one order. Any person released after such detention may again be detained as often as it may be deemed fit in the public interest. No Court shall have power to enquire into or make any order in connection with any such detention;

3. Chapter IV of the repealed Constitution, with the exception of Section 28, 31, 32 and 36 shall again come into force.

4. All persons who at the date hereof held office as Prime Minister, Deputy Prime Minister, Minister of State, Assistant Minister, Secretary to the Cabinet and Attorney-General in terms of Chapter VII of the repealed Constitution shall continue in office at the discretion of the King. They shall continue to carry out their duties and functions (subject to such modifications as may be necessary as a result of this decree) and shall be responsible to the King.

5. The Attorney General shall again have the powers and duties vested in him in terms of Chapter VII Section 91 (1), (3), (4), (5), (6), (7) and (8) of the repealed Constitution and

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the provisions of Section 119, 120 and Section 100 of Chapter IX of the repealed Constitution shall again apply to the Office of Attorney General.

6. Save as hereinafter set out Chapter VIII of the repealed Constitution shall again come into force;

(a) All land and rights in and to land previously vested in the Government shall now vest in the King and the reference in Chapter VIII to the Government shall, where the context permits, be taken as a reference to the King;

(b) The words "to the provisions of this Constitution and "shall be deleted from Section 94(1):

7. Parts 1 and 2 of the Chapter IX and Sections 138, 139, 140 and 141 of Chapter XIII of the repealed Constitution shall again operate with full force and effect and shall be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with this and ensuing decrees. The judicial Service Commission is abolished and parts 1 and 2 of the said Chapter IX shall be construed as if there is no reference in them to the Judicial Service Commission;

8. Chapter XI of the repealed Constitution shall again come into force and shall be construed with such modifications, adaptions, qualifications and exceptions as may be necessary to bring it into conformity with this and ensuing decrees. In particular any

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reference to the House of Assembly or both chambers, or the procedures for enacting financial legislation shall be interpreted as reference to the King-in-Council and/or decrees issued by the King as the context requires.

9. Until further notice, all persons who have lost office as a result of the repeal of the Constitution, including all members of the Senate and the House of Assembly, shall be entitled to receive the emoluments which they would have received but for the repeal of the Constitution;

10. Section 135 of the repealed Constitution shall again come into force subject, however to the deletion of the introductory words "save as otherwise provided in this Constitution";

11. All political parties and similar bodies that cultivate and bring about disturbances and ill-feelings within the Nations are hereby dissolved and prohibited.

12. No meetings of a political nature and no precessions or demonstrations shall be held or take place in any public place unless with the prior written consent of the Commissioner of Police; and consent shall not be given in the Commissioner of Police has reason to believe that such meeting, procession or demonstration, is directly or indirectly related to political movements or other riotous assemblies which may disturb the peace or otherwise disturb the maintenance of law and order.

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13. Any person who forms or attempts or conspires to form a political party or who organizes or participates in any way in any meeting, procession or demonstration in contravention of this decree shall be guilty of an offence and liable, on conviction, to imprisonment not exceeding six months.

Thus done and signed at Lobamba, this 12th day of April, 1973.

Sobhuza II

King of Swaziland

HIS MAJESTY'S SPEECH DURING REPEAL OF THE WESTMINISTER CONSTITUTION AT LOBAMBA 12TH APRIL, 1973

Ladies and gentlemen you will perhaps wonder why today I depart from the usual procedure and address you in foreign language.

The reason is simple that the matter, about which we are gathered here, is not one which will affect us and end at our borders but it is a matter which will be relayed and get to many other parts of the world.

For that reason, I have decided to address you today in this foreign language, so that many lands in the world may get my message as it is, in a language which they understand because if I were to speak in siSwati, however well the speech may be interpreted, the two just don't completely dove-tail.

You have the advantage of being here, you stay with me. If there is something you don't quite understand, you can always come to seek explanation but those who are not here, those who belong to other countries, do not have that advantage or opportunity. And I start:-

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Proclamation

To all my subjects, citizens of Swaziland

Whereas the House of Assembly and the Senate have passed the resolutions which have just been read to us and whereas I have given great consideration to the extremely serious situation which has now arisen in our country and have come to the following conclusions:-

(a) that the Constitution has, indeed, failed to provide the machinery for good government and for the maintenance of peace and order.

(b) the Constitution is, indeed the cause of growing unrest, insecurity, dissatisfaction with the state of affairs in our country and an impediment to free and progressive development in all spheres of life.

(c) that the Constitution has permitted the importation, into our country, of highly undesirable political practices alien to and incompatible with the way of life in our society and designed to disrupt and destroy our own peaceful and constructive and essentially democratic methods of political activity. Increasingly, this element engenders hostility, bitterness and unrest in our peaceful society.

(d) that there is no Constitutional way of effecting the necessary amendments to the Constitution. The method prescribed by the Constitution itself is wholly impracticable and will bring about that disorder which any Constitution is meant to inhibit.

(e) that I and all my people heartily desire, at long last, after a long Constitutional struggle, to achieve full freedom and Independence under a Constitution created by ourselves for ourselves in complete liberty, without outside pressures. As a nation, we desire to march forward progressively under our own Constitution guaranteeing peace, order and good government and happiness and welfare of all our people.

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Now, therefore, I Sobhuza II, King of Swaziland, hereby declare that in collaboration with my Cabinet Ministers and supported by the whole nation, have assumed supreme power in the Kingdom of Swaziland and that all legislative, executive and judicial power is vested in myself and shall, for the time being, be exercised in collaboration with a Council constituted by my Cabinet Ministers.

I further declare that to ensure the continued maintenance of peace, order and good government, may armed forces, in conjunction with the Swaziland Royal Police, have been posted to all strategic place and have taken charge of all government places and all public services.

I further declare that I, in collaboration with my Cabinet Ministers, hereby decree that:-

(a) the Constitution of the Kingdom of Swaziland which commenced on the 6th September, 1968 is hereby repealed.

(b) All laws, with the exception of the Constitution hereby repealed, shall continue to operate with such modification, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with this and ensuing decrees.

I will now call upon the Attorney General, Mr David Cohen, to read out further decrees designed to provide for the continuance of Administration, essential services and normal life in our country.

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APPENDIX 10

Members of Parliament under the *Tinkhundla* System

1.	Princess Phetfwayini
2.	Mphithi Luka Dlamini
3	Mambonjwana S. Nkambule
4	Peter Shovela Munro
5	Robert Makhanyambeni Dlamini
6	Walter William Mordaunt
7	Malaveni Mgwagwanana Ginindza
8	Samson Msunduzeni Dlamini
9	Dr.. Sishayi S. Nxumalo
10	Joseph Nduna Mamba
11	Ben Gregory Bennett
12	Bhizeni Wilson Dlamini
13	Paulos Mfanawendlela Ginindza
14	Chief Mlimi Nicholas Maziya
15	Chief Mandzanga Ndabenkulu Ndwandwe
16	Ephraim Nyambezi Dlamini
17	Chief Malamlela Magagula
18	Mshefane Daniel Shongwe
19	Mhlanganyelwa Mbonani Michael Shongwe
20	Ernest Phenyane Mamba
21	Chief Sibengwane Magomba Ndzimandze
22	Magwece Jeremiah Mkhatshwa
23	Chief Mnikwa William Dlamini
24	Austin Sangoma Vanda Dlamini
25	Gawulela Jeremiah Zwane
26	Naphtali Mlungeli Mahlalela
27	Makhalane Paul Dlamini
28	Prince Maquba
29	Prince Mekiseni Enock
30	Mengameli Amon Matsebula
31	MafaPheleon Sibandze
32	Sylvester Saustin Sankwenteya Mokgokong
33	Mandinda Bhembe
34	Ndawombili Fred Dlamini
35	Precious Shungube

Source: Official Report of the First Meeting of the First Session of the Third Parliament of Kingdom of Swaziland, 16th and 19th January, 1979.

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BIBLIOGRAPHY

PRIMARY SOURCES

ORAL INTERVIEWS

Anonymous Interviewees

Over a score of prominent interviewees with profound knowledge in different aspects of Swaziland's constitution were interviewed. They made invaluable insights into the history of Swaziland's constitutional development and I have decided to respect their wish not to be exposed. The current political climate in Swaziland with the civil society almost monopolising the initiative in pushing forward the multiparty agenda with the support of the European Union who are important partners of the Swazi government, has made people to conceal their identifies as 'progressives' or supporters of multipartyism which the monarchy considers as an anathema.

Dlamini, Prince Majawonke

Prince Majawonke was interviewed at his home in Manzini, Extension six on 22 October 2015. He is a civil servant under the Ministry of Tinkhundla. He is 57 years old.

Dlamini, Prince Masitsela

Prince Masitsela is 85 years old. He was interviewed at his home at Emafini on 25 January 2015. He is the son of King Sobhuza II. He worked closely with his father. Prince Masitsela was a member of the Legislative Council in 1964. He was also a member of the 1967 Constitutional Review Committee. He became member of Cabinet in 1968. He is well versed about constitutional developments in the 1960s.

Dlamini, Prince Mfanasibili

Prince Mfanasibili was interviewed at his home, at Coates Valley in Manzini. He is 76 years old. He was the member of the Legislative Council in 1964 and in 1967 he was a member of the Constitutional Review Committee. He became the Minister of Local Administration in 1968. He was member of the Liqoqo during the interregnum period.

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NEWSPAPERS

(i) *Times of Swaziland*

'Prime Minister Returns to United Kingdom: Press Conference', *Times of Swaziland,* February 20, 1960.

'The Ngwenyama, Sobhuza II C.B.E. Gives Expression to His Views on the Constitutional Future of Swaziland', *The Times of Swaziland,* July 1, 1960.

'Constitutional Advance in Swaziland', *Times of Swaziland*, November 11, 1960.

'Points of View on Constitutional Reform: the Rozwadowski statement', *The Times of Swaziland,* February 2, 1962."

'Priest Replies', *Times of Swaziland*, March 16, 1962.

'Todd's Thoughts on Constitutional Proposals', *The Times of Swaziland,* March 23, 1962.

'Todd Replies to Times Leader', *The Times of Swaziland,* June 15, 1962.

'Constitutional Adviser from UK Due in Swaziland this week', *Times of Swaziland,* July 13, 1962.

'50-50 Accepted by Swazis and Europeans: joint Statement', *Times of Swaziland,* September 14, 1962.

'Bid to get Dr. Zwane to London fails, Mr. Nquku to represent the Progressives', *Times of Swaziland,* January 18, 1963.

'Talks begins with smiles but end in deadlock', *Times of Swaziland,* February 15, 1963.

© University of Pretoria

'Todd on the Talk in United Kingdom: An Imposed Constitution Would not Work', *Times of Swaziland,* 1 March 1963.

'Swaziland Constitution Announced, 8 Seats reserved for Whites out of 24 elected members', *Times of Swaziland,* May 31, 1963.

'Reactions to the Constitution: Whites say lets do our best to make it work', *Times of Swaziland,* June 7, 1963.

'Todd Doomed to Same Eclipse as Walensky', *Times of Swaziland,* July 12, 1963.

'Todd: White Paper Turned Down by SNC: A New approach Suggested', *Times of Swaziland,* August 30, 1963.

'SNC Petitions the Queen: Cable Sent to Sandy', *Times of Swaziland,* September 6, 1963.

'The Constitution: A fresh Start Even Now', *Times of Swaziland*, September 6, 1963.

'Make the Constitution Work: Urges Fletcher', *Times of Swaziland,* September 13, 1963.

'Bid to get Dr. Zwane to London fails, Mr. Nquku to represent the Progressives', *The Times of Swaziland*, January 18, 1963.

'People Impressed by Verwoerd's Offer Says Todd', *Times of Swaziland*, October 25,1963.

'NNLC's Reaction to Dr.. V's Offer', *Times of Swaziland,* December 13, 1963.

'New Swaziland Constitution Comes into Force Today: Order in Council Published', *Times of Swaziland*, January 3, 1964.

'Constitution Now in Operation', *Times of Swaziland*, January 3, 1964.

© University of Pretoria

'Ngwenyama Urges all to Register: Swazi Women demand the vote', *Times of Swaziland,* February 14, 1964.

'Marwick, A Farewell message', *Times of Swaziland,* April 24, 1964.

'Strong Criticism of country's Political Direction: Sir Briand Hits Out Sharply in Last Big Speech', *Times of Swaziland,* April 24, 1964.

'National Council to Reply to Sir Briand Next Week. The King's Speech to Sir Briand Marwick*',* *Times of Swaziland,* May 1, 1964.

'Imbokodo Reply to Sir Briand', *The Times of Swaziland,* May 8, 1964.

'In Africa Kings are leaders as well as Kings: Imbokodo Reveals Itself, Attacks Sir Briand Marwick', *Times of Swaziland,* May 8, 1964.

'USA Takes All Four Seats on European Roll', *Times of Swaziland,* June 19, 1964.

'Clean Sweep for Sobhuza: All Elected Seats go to Traditionalists', *Times of Swaziland,* July 3, 1964.

'Sandys Replies to Political Parties: Test for alleged electoral offences lies in courts', *Times of Swaziland,* July 10, 1964.

'Democratic Party Joins the Imbokodvo', *Times of Swaziland,* April 23, 1965.

'12 Appointed to Constitutional Committee: 8 Imbokodvo, 4 USA', *Times of Swaziland,* August 27, 1965.

'Proposals for Constitution Sent to London', *Times of Swaziland,* March 11, 1966.

© University of Pretoria

'Stonehouse on Powers of the King', *Times of Swaziland*, October 10, 1966.

'The Proposal for New Constitution', *Times of Swaziland*, March 25, 1966.

'NNLC Wants London Talks on Proposed Constitution', *Times of Swaziland*, October 14, 1966.

'Constitution Ready? Stonehouse Meets Political Leaders', *Times of Swaziland*, October 14, 1966.

'Student Leader Attacks Constitution', *Times of Swaziland*, May 12, 1967.

'Clean Sweep at Elections: Imbokodvo gets all Seats', *Times of Swaziland*, April 28, 1967.

'The Kingdom of Swaziland Comes into Being', *Times of Swaziland*, April 28, 1967.

'Independence Talks Continue in London', *Times of Swaziland*, February 23, 1968.

'London Talks: NNLC Views Were Put to the Conference', *Times of Swaziland*, March 1, 1968.

'May Elections', *Times of Swaziland*, March 17, 1972.

'Imbokodvo Candidate', *Times of Swaziland*, March 31,1972.

'Pledge', *Times of Swaziland*, April 14, 1972.

'Dr. A. P. Zwane's Historic Document', *Times of Swaziland*, May 12, 1972.

'Declared Prohibited Immigrant', *Times of Swaziland*, June 2, 1972.

'Deportation Appeal', *Times of Swaziland*, July 28, 1972.

© University of Pretoria

'Boycott at Parliament', *Times of Swaziland,* October 20, 1972.

'Five Man Tribunal', *Times of Swaziland,* November 17, 1972.

'Tribunal Meets', *Times of Swaziland,* December 8, 1972.

'Constitutional Commission to be set up: Decree is Temporary', *Times of Swaziland,* April 20, 1973.

'New Constitution Coming: Official', *Times of Swaziland,* May 4, 1973.

'Constitution Committee', *Times of Swaziland,* September 13, 1973.

'New Moves on Elections', *Times date of Swaziland,* January 16, 1978.

'Election date chosen', *Times of Swaziland,* October 13, 1978.

'King Keeps his Fingers on the Pulse', *Times of Swaziland,* October 18, 1978.

'Today-How to Vote', *Times of Swaziland,* October 23, 1978.

'Election date Chosen', *Times of Swaziland,* October 1978.

(ii) *Izwi Lama Swazi*

'British Government Knows Our View-Nquku', *Izwi Lama Swazi,* January 19, 1963.

'Constitutional Talks End', *Izwi Lama Swazi,* February 23, 1963.

'Swaziland Constitution Announced', *Izwi Lama Swazi,* June 8, 1963.

© University of Pretoria

'The Ngwane National Congress Rejects the Constitution', *Izwi Lama Swazi*, October 5, 1963.

'Ngwenyama's Petition to the Commons: Wants Changes Made in the Constitution', *Izwi Lama Swazi*, November 30, 1963.

Files in the Swaziland National Archives (hereafter SNA)

SNA, S.T.176/1950, Swazi National Council, Lobamba.

SNA, RCS 613/21, Report of the First Meeting of the European Advisory Council, 18-20 October 1921.

SNA, RCS, 359/22, Suggested Deputation of the European Advisory Council to High Commissioner at Government House Cape Town, 21 July 1922.

SNA, Colonial Annual Reports, 1923.

SNA, Swaziland Progressive Party, "Swaziland: Report on Constitutional Proposals", Swaziland Progressive Party, 1961.

SNA, Government of Swaziland, Proposal for the Swazi Constitution, March 1962.

SNA, File 3311/1 News letter: Swaziland Democratic Party, No5, Vol.1, 5th October 1962.

SNA, Swaziland's Report on the Constitution.

SNA, File 3497/1 Constitution-Elections-Electoral Law, Swaziland Constitution Presented to the Parliament by the Secretary of State for Colonies by the Command of Her Majesty May 1963.

SNA, DPMO 12, A.G. 100/316/56. 26 July 1979.

SNA, Constitutional Proposals: Written Comments of the Public, 1962.

© University of Pretoria

SNA: The Constitution of Swaziland Statutory Instruments 1968, No. 1377, Africa, The Swaziland Independence Order, 1968, made 25th august 1968, laid before Parliament 30th August 1968; coming into operation: immediately before 6th September 1968.

SNA: Speeches of King Sobhuza II.

SWAZILAND GOVERNMENT DOCUMENTS

SNA, Swaziland Government Extraordinary Gazette, Vol. III, Mbabane, Thursday, 2 January. 1964.

Swaziland Government Gazette Extraordinary, Vol. VI, Mbabane, March 1st 1967, No. 211.

SNA, Swaziland Government Extraordinary Gazette, Vol. XII, Mbabane, Tuesday, 17 April 1973.

The Immigration Act 32 of 1964, published under Government Gazette 45 of 1972.

SNA, Swaziland Government Gazette Extraordinary, No. 855 of 1992.

Miscellaneous

A handbook to the Kingdom of Swaziland, Swaziland Government Information Services, The Philosophy, Policies and Objectives of the Imbokodvo National Movement"

Report of the Tinkhundla Review Commission, n.d.

Establishment of Swaziland Parliament Order, King's Order-in-Council No. 23 of 1978.

SNA, Swaziland Government Big Bend Strike Report 1963: A Report of the Commission Appointed to Inquire into the Causes and Circumstances of the Strike which took place in Big Bend area during March 1963.

© University of Pretoria

LEGISLATIVE COUNCIL, PARLIAMENT AND SENATE DEBATES

SNA, Legislative Council Official Report, Hansard, 1965-1966.

SNA, Swaziland House of Assembly. Official Report (Hansard), First Session. Sitting on 22nd January 1968.

SNA, Official Report of the Debates of the Senate Fifth Meeting of the First Session", 23 January, 1968.

SNA, House of Assembly Hansard, November 1972.

SNA, House of Senate Hansard, November1972.

SNA, Official Report of the Debates of the House of Assembly, First Meeting (Vol. II) of the first Session of 12th April, 1973.

SNA, Official Report of the Debates of the Senate First Meeting (Volume II) of the First Session, 12th April, 1973.

SWAZILAND LAW REPORTS AND FILES FROM THE HIGH COURT OF SWAZILAND

Bhekindlela Thomas Ngwenya v The Deputy Prime Minister and the Chief Immigration Officer 1970-76, Swaziland Law Report.(Court of Appeal).

Lucky Nhlanhla Bhembe v The King criminal Case 75/2002 (High Court), per Masuku;

Nhlanhla Lucy Mbembe & Ray Gwebu and Another Criminal Case 75 & 11 of 2002 *per* Sapire CJ (Unreported); Gwebu & Another, Swaziland Law Report.

© University of Pretoria

Ray Gwebu and Lucky Nhlanhla Bhembhe, Swaziland Court of Appeal Case Nos. 19/20, 2002 as yet (unreported); Zwane, Hlatshwayo and Khumalo.

The Constitutional Framework of Swaziland, Compiled and Consolidated by the Constitutional Review Commission.

Statutes of Swaziland. Constitutional Law Courts, Vol. 3.

SECONDARY SOURCES

BOOKS

Adediran, M. O. *Constitutional History of Nigeria Ile-Ife*. Osun State: Cleanprint, 2004.

Akpan, M. E. *Constitution and Constitutionalism.* Lagos: Paico Press, 1984.

Beck, R. B. *The History of South Africa*. California: Library of Congress Cataloguing-in publication Data, 2014.

Bogdanor, V. *The monarchy and the Constitution.* Oxford: Oxford University Press, 1997.

Bourret, F. M. (ed.), *Ghana: the road to independence, 1919-1957*. Vol. 23, California: Stanford University Press, 1960.

Botwe-Asamoah, K. *Kwame Nkrumah's Politico-Cultural Thought and Politics: An African-Centered Paradigm for the Second Phase of the African Revolution*. New York: Routledge, 2013.

Cohen, R. *Endgame in South Africa?: the changing structures & ideology of apartheid*. New Jersey: Africa World Press, 1988.

Coleman, J. S. *Nigeria: Background to Nationalism.* Benin City: Broburg & Wistrom, 1986.

© University of Pretoria

Cooper, F. *Africa Since 1940: The Past of the Present*. Cambridge: Cambridge University Press, 2002.

Swaziland Progressive Party, "Swaziland Report on Constitutional Reform" , Ms.,Cape Town, 1961.

Crowder, M. and Ikime, O. (eds.), *Their changing Status Under Colonial Rule and Independence.* New York: Africana Publishing Corporation, 1970.

Deng, F. M. (ed.), *Sovereignty as responsibility: conflict management in Africa*. Washington DC: Brookings Institution Press, 1996.

Daramy, S. B. *Constitutional Developments in the Post-colonial State of Sierra-Leone, 1961-1984*. Lewiston: Edwin Mellen Press, 1993.

Elias, T. O. *Nigeria: The Development of its Laws and Constitutions*. London: Stevens & Sons Ltd, 1967.

Enwezor O. and Achebe, C. *The Short Century: Independence and Liberation Movements in Africa, 1945-1994.* Prestel Pub, 2001.

Ezera, K. *Constitutional Developments in Nigeria.* Cambridge: Cambridge University Press, 1964.

Furedi, F. *Mau Mau War in Perspective*. J. Currey; Heinemann Kenya; Ohio University Press, 1989.

© University of Pretoria

Gifford, P. and Louis, W. R. (eds.), *Decolonization and African independence: The Transfer of Power 1960-1980*. New Haven: Yale University Press, 1988.

Gillis, D. H. *The Kingdom of Swaziland: Studies in Political History*. Westport: Greenwood Publishing Group, 1999.

Ginindza, T. T. *Tibongo Temakhosi*, Cape Town: Longman Publishers, 1979.

Jackson, R. H. and Rosberg. C. G. *Personal rule in Black Africa: prince, autocrat, prophet, tyrant*. Berkeley: University of California Press, 1982.

Kirk-Greene, A. H. M. (ed.), *The Transfer of Power: The Colonial Administrator in the Age of Decolonisation*. Oxford: Inter-Faculty Committee for African Studies, University of Oxford, 1979.

Kuper, H. *Sobhuza II Ngwenyama and King of Swaziland: The Story of an Hereditary Ruler and His Country*. London: Gerald Duckwork and Co. Ltd, 1978.

Lane J. E. *Constitutions and Political Theory*. Manchester: Manchester University Press, 1996.

Levin, R. *When the Sleeping Grass Awakens: land and Power in Swaziland: Land and Power in Swaziland.* Johannesburg: Witwatersrand University Press, 1997.

Lijphart, A. *Parliamentary versus presidential government*. Oxford: Oxford University Press, 1992.

Lumumba-Kasongo, T. *Liberal Democracy and its Critics in Africa: Political Dysfunction and the Struggle of Social Progress*, London: Radical International Publishing, Zed Books, 2005.

© University of Pretoria

MacDowell, W. H. *Historical Research: A Guide.* London: Longman, 2002.

Maloba, W. O. *Mau Mau and Kenya: an analysis of a peasant revolt*. Nairobi: East African Publishers, 1993.

Matsebula, J. S. M. *A History of Swaziland*. Johannesburg: Longman, 1988.

Mlambo, A. S. *A History of Zimbabwe.* New York: Cambridge University Press, 2014.

Nkrumah, K. Arrigoni, R. and Napolitano, G. *Africa must unite*. London: Heinemann, 1963.

Nnoli, O. *Ethnic Politics in Nigeria*. Enugu: Fourth Dimension Publishers, 1978.

Nwabueze, B. O. *Constitutionalism in the Emergent States.* London: C. Hurst & Company, 1973.

Nwabueze, B. O. *A Constitutional History of Nigeria*. Addison-Wesley Longman Ltd, 1982.

Obotetukudo, S. W. (ed.), *The Inaugural Addresses and Ascension Speeches of Nigerian Elected and Non-elected Presidents and Prime Minister, 1960-2010*. Maryland: University Press of America, 2010.

Ojwang, J. B. *Constitutional Development in Kenya: Institutional Adaptation and Social Change* (No. 1. Acts Press: African Centre for Technology Studies, 1990.

Omari, P. T. and Ollennu, N. A. *Kwame Nkrumah: The anatomy of an African dictatorship*. London: Africana Publishing Corporation, 1970.

© University of Pretoria

Phiri, K. M. McCracken J. and Mulwafu, W.O. *Malawi in Crises: The 1959/60 Nyasaland State of Emergency and Its Legacy*, Zomba: Kachere Series, 2012.

Potholm, C. P. *Swaziland: The Dynamics of Political Modernisation*, Vol. 8.London: University of California Press, 1972.

Rosberg, C. G. *Personal rule in Black Africa: prince, autocrat, prophet, tyrant*. Berkeley: University of California Press, 1982.

Raftopuolos, B. and Mlambo, A. (eds.), *Becoming Zimbabwe: A History from the Pre-colonial Period to 2008*. Harare: Weaver Press, 2009.

Smith, I. *The Great Betrayal*. London: Blake, 1997.

Thomson, A. *An Introduction to African Politics* London: Routledge, 2010.

Tosh, J. *The Pursuit of History*. London: Longman, 1991.

Uduigwomen, A. F. *Schools of law and military decrees*. Vol. 1. Ebenezer Printing Press & Computer Services, 2000.

Upreti, B. C. *Maoists in Nepal: From insurgency to political mainstream*. Delhi: Gyan Publishing House, 2008.

Veracini, L. *Telling the End of the Settler Colonial Story. Studies in Settler Colonialism: Politics, Identity, and Culture.* New York: Palgrave Macmillan, 2011.

Wilson, H. S. *African Decolonization.* London: Edward Arnold Kaapstad, 1994.

© University of Pretoria

BOOK CHAPTERS

Brattan, M. 'Formal versus Informal Institutions in Africa', in: Diamond L.& Platter, M.F. (eds.), *Democratisation In Africa: Progress And Retreat*. Baltimore, Maryland: John Hopkins University Press, 2010.

Grimm, D. 'Types of Constitutions' , in Rosenfeld M. and Sajo, A. (eds.), *The Oxford Handbook of Comparative Constitutional Law.* Oxford: Oxford University Press, 2012.

Frederick Madden, (eds.), *Essays in Imperial Government* (Oxford: Basil Blackwell, 1963).

Olusanya, G. O. 'Constitutional Developments in Nigeria, 1861-1960', in Ikime, O. (ed.), *Groundwork of Nigerian history.* Heinemann Educational Books, 1980.

Robinson, R. 'Andrew Cohen and the Transfer of Power in Tropical Africa', in Morris-Jones, W. H. and Fischer, G. (eds.) *Decolonisation and after: the British and French experience.* No. 7, Psychology Press, 1980.

Winston, M. G. 'Decolonisation and the Westminster Model', in: Kirk-Greene A. H. M. (ed.), *Africa in the Colonial Period III. The Transfer of Power: The Colonial Administrators in the Age of Decolonisation,* Oxford: Oxford University Inter-Faculty committee for African Studies, 1979.

THESES & CONFERENCE PAPERS

Hlandze, S. 'The Evolution of Workers' Consciousness in Swaziland: The Case of Usuthu Pulp Company, 1948-1963', MA Thesis: University of Swaziland, 2013.

Hlatshwayo, V. S. 'The Reality of Media Freedom in Swaziland under the New Constitutional Dispensation', MA Thesis: University of Cape Town, 2011.

Mamba, M. A. 'Tinkhundla: A Study of A System', MA Thesis: University of Swaziland, 2006.

© University of Pretoria

Maseko, T. 'Constitution Making in Swaziland: The Cattle-byre Constitution Act 001 of 2005', Paper presented at African Network of Constitutional Law Conference on fostering Constitutionalism in Africa, Nairobi, 2007.

Mkhaliphi, T. 'The Extent to which the Tinkhundla-Based System of Government Articulates the Decentralization Principles: A Practitioner's Analysis', Paper presented at a Research Seminar, University of Swaziland, 11 February, 2015.

Mkhatshwa, A. M. 'An Assessment of the Tinkhundla System of Government, 1973-2003', BA Project: University of Swaziland, 2004.

Sikhondze, B. A. B. 'Factors that have stalled efforts towards a Constitution in Swaziland, 1970s to 2003: A Constitutional History', Paper Presented for a Workshop of the Swaziland OSSREA Chapter, 27 November, 2003.

Zwane, H. S. 'Constitutional Discontinuity and Legitimacy: A Comparative Study With Special Reference to the 1973 Constitutional Crisis in Swaziland', A Dissertation for a Master Degree in Law, York University, 1988.

Journals

Anchimbe, E. A. 'Hybrid Linguistic Identities in postcolonial Africa: The Intricacy of Identity Opportunism in Multilingual Cameroon', *New Hybridities*: *Societies and Cultures in Transition* (2006).

Allen, C. 'Understanding African Politics', *Review of African Political Economy*, 22, 65 (1995).

Arrighi, G. and Saul, J. S. 'Nationalism and Revolution in Sub-Saharan Africa', *The Socialist Register*, 6, 6 (1969).

© University of Pretoria

Awasom, N. F. 'Negotiating Federalism: How Ready Were Cameroonian Leaders before the February 1961 United Nations Plebiscites?', *Canadian Journal of African Studies/La Revue canadienne des études africaines* 36, 3 (2002).

Awasom, N. F. 'Politics and Constitution-Making in Francophone Cameroon 1959-1960', *Africa Today*, 49, 4 (2002).

Baloro, J. 'The Development of Swaziland's Constitution: Monarchical Responses to Modern Challenges', *Journal of African Law*, 30, 1 (1994).

Banda, P. C. and Kayira, G. W. 'The 1959 State of Emergency in Nyasaland: Process and Political Implication', *The Society of Malawi Journal*, (2012).

Barber, H. W. 'The United States vs. the United Nations', *International Organisation*, 27, 2 (1973).

Bischoff, P. H. 'Why Swaziland is Different: An Explanation of the Kingdom's Position in Southern Africa', *The Journal of Modern African Studies*, 26, 3 (1988).

Burghart, R. 'The Political Culture of Panchayat Democracy', *Nepal in the Nineties: Versions of the Past, Visions of the Future* (1994).

Carbone, G. M. 'Political Parties and Party Systems in Africa: Themes and Research Perspectives', *World Political Science Review*, 3, 3 (2007).

Chambers, S. 'Democracy, Popular Sovereignty, and Constitutional Legitimacy', *Constellations*, 11, 2 (2004).

Chase, F. A. and Chase, D. Z. 'More than Kin and King: Centralised Political Organisations Among the Late Classic Maya', *Current Anthropology*, (1996).

© University of Pretoria

Crook, R. C. 'Legitimacy, authority and the transfer of power in Ghana', *Political Studies,* 35, 4 (1987).

Crush, J. 'Landlords, Tenants and Colonial Social Engineers: The farm Labour Question in Early Colonial Swaziland', *Journal of Southern African Studies,* 11, 2 (1985).

Daniel, J. 'The Political Economy of Colonial and Post-Colonial Swaziland', *South African Labour Bulletin,* 7, 6 (1982).

Daniel, J. and Vilane, J. 'Swaziland: Political Crisis, Regional Dilemma', *Review of African Political Economy,* 13, 35 (1986).

Davis, C. J. 'Blair Worden, Roundhead Reputations: The English Civil War and the Passions of Posterity', *Parliamentary History,* 21, 3 (2002).

Dixit, M. 'Absolute Monarchy to Absolute Democracy', *Economic and Political Weekly* (2005).

Dubow, S. 'Afrikaner nationalism, Apartheid and the conceptualization of 'race'', *The Journal of African History*, 33, 2 (1992).

Duverger, M. 'A new political system model: semi-presidential government', *European Journal of Political Research,* 8, 2 (1980).

Falk, R. and Strauss, A. 'On the creation of a global peoples assembly: legitimacy and the power of popular sovereignty', " *Stanford Journal of International Law,* 36, (2000).

Firmin-Sellers, K. 'The concentration of authority: Constitutional creation in the Gold Coast, 1950', *Journal of Theoretical Politics,* 7, 2 (1995).

Flint, J. 'Planned decolonization and its failure in British Africa', *African Affairs,* (1983).

© University of Pretoria

Fombad, C. 'The Swaziland Constitution of 2005: Can Absolutism be reconciled with Modern Constitutionalism?', *South African Journal on Human Rights* 93, (2007).

Fyfe, C. 'Africanus Horton as a Constitution-maker', *Journal of Commonwealth & Comparative Politics*, 26, 2 (1988).

Grundy, K. W. 'The 'Class Struggle' in Africa: An Examination of Conflicting Theories', *The Journal of Modern African Studies* 2, 3 (1964).

Hatchard, J. 'The Constitution of Zimbabwe: Towards a Model for Africa?', *Journal of African Law*, 35, 1-2 (1991).

Hachhethu, K. 'Legitimacy crisis of Nepali monarchy', *Economic and Political Weekly* (2007).

Hutt, M. 'King Gyanendra's coup and its implications for Nepal's future', *Brown Journal of World Affairs*, 12, (2005).

Ibhawoh, B. 'Second World War propaganda, imperial idealism and anti-colonial nationalism in British West Africa', *Nordic Journal of African Studies*,16, 2 (2007).

Julian, G. O. 'Modeling the State: Postcolonial Constitutions in Asia and Africa', *Southeast Asian Journal*, Vol. 39, No.4, (2002).

Kilson, M. L. 'Authoritarian and single-party tendencies in African politics', *World Politics*, 15, 2 (1963).

© University of Pretoria

Khumalo, B. 'The Politics of Constitution-Making and Constitutional Pluralism in Swaziland Since 1973', *UNISWA Research Journal*, 10, (1996).

Kloman, H. E. 'African unification movements', *International Organisation*, 16, 2 (1962).

Kumar, D. 'Proximate causes of conflict in Nepal', *Contributions to Nepalese Studies* 32, 1 (2005).

Louis, W. R. and Robinson, R. 'The imperialism of decolonization', *The Journal of Imperial and Commonwealth History*, 22, 3 (1994).

Macmillan, H. 'Swaziland: Decolonization and Triumph of 'Tradition', *Journal of Modern African Studies*, 23, 4 (1985).

Mamdani, M. 'The social basis of Constitutionalism in Africa', *The Journal of Modern African Studies*, 28, 3 (1990).

Maseko, T. 'The Drafting of the Constitution of Swaziland, 2005', *African Human Rights Law Journal*, 8, 2 (2008).

Matlosa, K. 'Democracy and Conflict in Post-Apartheid Southern Africa: Dilemmas of Social Change in Small States', *International Affairs*, 74, 2 (1998).

Mohiddin, A. 'Ujamaa: A commentary on President Nyerere's vision of Tanzanian Society', *African Affairs* (1968).

Mozaffar S. and Schedler, A. 'A Comparative Study of Electoral Governance: Introduction', *Party Politics*, 11, 4 (2005).

© University of Pretoria

Ndulo M. B. and Kent, R. B. 'Constitutionalism in Zambia: Past Present and Future', *Journal of African Law*, 40, 2 (1996).

Neocosmos, M. 'Homogeneity and Differences on Swazi Nation Land: Social Relations in Rural Swaziland: Critical Analysis', SSRU: *UNISWA*, (1978).

North, C. and Weingast, B. R. 'Constitutions and Commitment: the Evolution of Institutions Governing Public Choice in Seventeenth-Century England', *The Journal of Economic History*, 49, 4 (1989).

Okoth-Ogendo, H. W. O. 'The politics of Constitutional change in Kenya since independence, 1963-69', *African Affairs*, (1972).

Olusanya, G. O. 'Constitutional Developments in Nigeria, 1861-1960', *Groundwork of Nigerian History*, (1980).

Ojwang, J. B. 'Constitutional development in Kenya: Institutional Adaptation and Social Change', No.1. *Act Press, African Centre for Technology Studies*, (1990).

Owen, J. M. Kalinga, 'The 1959 Nyasaland State of Emergency in Old Karonga District', *Journal of Southern African Studies*, 36, 4 (2010).

Pain, J. H. 'The reception of English and Roman-Dutch law in Africa with reference to Botswana, Lesotho and Swaziland', *The Comparative and International Law Journal of Southern Africa* (1978).

Potholm, C. P. 'Changing Political Configuration in Swaziland', *The Journal of African Studies*, 4, 3 (1966).

Potholm, C. 'Swaziland under Sobhuza II: The Future of an African Monarchy', The Round Table", *The Commonwealth Journal of International Affairs*, 64, 54 (1974).

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Protzel, J. 'Changing Political Cultures and Media Under Globalism in Latin America', *Democratising Global Media: One World, Many Struggles*, (2005).

Rathbone, R. 'Kwame Nkrumah and the Chiefs: The Fate of Natural Rulers under Nationalists Governments', *Transactions of the Royal Historical Society*, 10 (2000).

Reynolds, A. 'Constitutional Engineering in Southern Africa', *Journal of Democracy* 6, 2 (1995).

Robinson, K. 'Autochthony and the Transfer of Power', *Essays in Imperial Government,* (1963).

Robinson, R. E. 'Andrew Cohen and the Transfer of Power in Tropical Africa 1940-1951', *Fondation nationale des sciences politiques*, (1976).

Sampford, C. 'Making coups history*', World Politics Review*, 22, (2010),

Schachter, R. 'Single-party systems in West Africa', *American Political Science Review* 55, 2 (1961).

Scheuerman, W. E. 'Survey Article: Emergency Powers and the Rule of Law After 9/11', *Journal of Political Philosophy*, 14, 1 (2006).

Sherwood, M. 'Diplomatic platitudes': The Atlantic charter, The United Nations and colonial independence', *Immigrants & Minorities,* 15, 2 (1996).

Sinjenga, M. 'Constitutionalism in Africa: Emerging trends: The evolving African Constitutionalism', *The Review-International Commission of Jurist,* 23, (1998).

Snelgrove, C. Dhamoon, R. and Corntassel, J. 'Unsettling settler colonialism: The discourse and politics of settlers, and solidarity with Indigenous nation', *Decolonization: Indigeneity, Education & Society*, 3, 2 (2014).

© University of Pretoria

Spence, J. E. 'The New States of Southern Africa', *The Journal of Modern African Studies,* 5, 4 (1967).

Stevens, R. P. 'Swaziland Political Development', *The Journal of Modern African Studies,* 1, 3. (1963).

Strang, D. 'From dependency to sovereignty: An event history analysis of decolonization 1870-1987', *American Sociological Review,* (1990).

Van de Walle, N. 'Presidentialism and clientelism in Africa's emerging party systems', *The Journal of Modern African Studies,* 41, 2 (2003).

Van Rouveroy van Nieuwaal, E. A. B. 'Chiefs and African states: Some introductory notes and an extensive bibliography on African chieftaincy', *The Journal of Legal Pluralism and Unofficial Law,* 19, 25-26 (1987).

Vine, V. T. 'The fall and rise of Constitutionalism in West Africa', *The Journal of Modern African Studies,* 35, 2, (1997).

Wanda, B. P. 'The Shaping of the modern Constitution of Swaziland: a Review of Some social and Historical Factors', *Lesotho Law Journal: A Journal of Law and Developments,* 6, 1 (1990).

Ward, S. 'Run before the Tempest. The 'Wind of Change' and the British World', *Geschichfe und Gesellschaft,* 37, 2 (2011).

Zwane, T. M. J. 'The Struggle for Power in Swaziland', *Africa Today,* 11, 5 (1964).

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Internet Sources

Historical Paper Research Archives, Collection Number AD 1715, News from Swaziland, 15 July 1963, http://www.historicalpapers.wits.ac.za/inventories/inv_pdfo/AD1715/AD1715-29-3-4-001-jpeg.pdf (Accessed 22 January 2015).

HANSARD 1803–2005 → 1960s → 1968 → July 1968 →5 July 1968 → Commons Sitting → ORDERS OF THE DAY,SWAZILAND INDEPENDENCE BILL, HC Deb 05 July 1968, Vol. 767, cc1875-9031875, Http://hansard.millbanksystems.com/commons/1968/jul/05/swaziland-independence-bill (Accessed on 27 June, 2015).

Public Library of the US Diplomacy, Constitutional Commission Makes its Report, 13 June 1975, http://www.wikileaks.org/plusd/cables/1975MBABAN00987_b.html,(accessed 28 November 2015).

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