

National Integrity Systems



Transparency International

Country Study Report

FINAL REPORT

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Authors

Zwelibanzi Masilela
Patrick B. Mkhonta
Sdumo S. Masango
Muzi A. Motsa

Acknowledgements

The NIS Country Studies are evidently very important as they provide governments, international organizations – governmental and private – and the public an opportunity to reflect, adjust and up-scale their efforts against all forms of Corruption. Therefore this exercise should be seen as an opportunity for those involved in this fight, including the authors, to reflect on their roles, involvement or lack-of, in the national effort to create a fairer and more just society. Thanks go to the following: Transparency International; Swaziland Coalition of Concerned Civic Organizations (SCCCO); the Government of Swaziland particularly the highest offices in the Ministry of Justice and Constitutional Affairs; Ms. Maxine Langwenya; and all who positively contributed to this work.

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List of Abbreviations and Acronyms

ADB	African Development Bank
AG	Attorney General
AG	Auditor General
ASBC	Association Swazi Business Community
CANGO	Coordinating Assembly of Non-Governmental Organisations
CBO	Church Based Organizations,
CEO	Chief Executive Officer
CSB	Civil Service Board
CSO	Civil Society Organizations
CTB	Central Tender Board
DPP	Director of Public Prosecutions
FBO	Finance Based Organizations
FSECC	Federation of Swaziland Employers and Chamberand Chamber of Commerce
GDP	Gross Domestic Product
HBO	Health Based Organizations
IMF	International Monetary Fund
JO	Judicial offices
JSC	Judicial Service Commission
MHUD	Ministry of Housing and Urban Development
MISA	Media Institute for Southern Africa
MP	Member of Parliament (Only members in the House of Assembly not Senate)
NAMBOARD	National Agricultural Marketing Board
NMC	National Maize Corporation
PAC	Public Accounts Committee
PBC	Planning and Budget Committee
PEU	Public Enterprise Unit
PPCU	Public Policy Coordinating Unit
PS	Principal Secretary
PSB	Parliamentary Service Board
SACU	Southern African Customs Union
SBIS	Swaziland Broadcasting and Information Services
SECLOF	Swaziland Ecumenical Church Loan Fund
SNAJ	Swaziland National Association for Journalists
STA	Swaziland Television Authority
TWC	Tender Waiver Committee
TI	Transparency International
TTB	Treasury Tender Board
UNDP	United Nations Development Programme
WLSA	Women and Law in Southern Africa

About the National Integrity System [NIS] Country Studies

Executive Summary

Swaziland is in dire straits largely due to the inexorable conflict between western and traditional systems of government. In the circumstances, the promise of our new constitution to, inter alia, “blend the... institutions of traditional law and custom with those of an open and democratic society so as to promote transparency and the social, economic and cultural development of our Nation”¹ seems a tall order.

In any setting, corruption is relative. Note that socio-political cultural practices of a particular country factor very heavily within the equation. In Swaziland, the impact of traditional culture on the socio-economic and political landscape is legendary. It permeates all facets of life. For example, nepotism, and its associated ills, is not necessarily considered untoward, considering the fact that, with a relatively small population², there is virtual network of consanguine and affinity relations that compel loyalty to family that any bureaucratic system of governance often can accommodate. In these circumstances, culture may very well be regarded as the stimulus for corruption so that any heroic attempt to constructively purge venality must be directed at inimical cultural practices endemic from the grassroots to the highest echelons of government.

The new anti-corruption legislation³ recognises the traditional practices, as well as white collar crime. The onus is on the administration to execute this legislation. It is the duty of the courts to interpret the laws of the land in an expeditious and judicious manner.

Country Profile

Overview of Political System

Located on the south-east of Africa and sandwiched in-between the Republic of South Africa and Mozambique, Swaziland is the only absolute monarchical state in southern Africa. It has a dual-legal system of customary law and Roman-Dutch law, both of which command equal politico-legal standing.

The King is the Head of State who wields executive authority in Swaziland. The executive comprises of the King, Prime Minister, the Deputy Prime Minister and 15 Cabinet members. The King appoints a Prime Minister, acting on the advice of the Swaziland National Council Standing Committee (SNCSC). The SNCSC is the King's advisory council. The Prime Minister remains in office for a term determined by the King. The law provides however that the Prime Minister may not remain in office for a period exceeding two parliamentary terms of five years each. The Prime Minister is the head of government. The Deputy Prime Minister and cabinet members are appointed by the King in consultation with the Prime Minister. Cabinet members are selected by the King-in-Council from both Houses.

The legislative branch operates through a bicameral parliamentary system. The Senate consists of 30 members; 20 are appointed by the King while the House of Assembly elects 10 members from the public to sit in Senate. The House of Assembly comprises 65 members elected directly from 55 constituencies (*tinkhundla*) in the country. The King appoints the remaining 10 members. Constituencies are traditional electoral and developmental structures with no political bias. Swaziland is a non-party system and as such members of parliament are chosen on individual merit by the electorate in both primary and secondary elections.

The Judiciary is composed of the Supreme Court, the High Court; magistrate courts, specialised courts (e.g. Industrial Courts), Swazi courts and tribunals exercising judicial functions as Parliament may by law establish. The appointment of judges is made by the King on the advice of the Judicial Services Commission (JSC). A judge is a person who must have practiced as an advocate or attorney or legal practitioner for a period of at least fifteen years. He must also be a person of high moral character and integrity. The independence of the judiciary is enshrined in the constitution. Judges are insulated from undue influence which may be exerted by the Crown, the Executive and the Legislature.

All executive, legislative and judicial state powers are vested primarily in the monarchy and a dual structure of power sharing between the King and the Queen. Tradition plays a predominant role in the governance of the state. This presents two contrasting authorities – modern and traditional – without clearly demarcated parameters of operation creating an overlap and blur of governance and its structures.

Swaziland was a British Protectorate until September 6th, 1968. In 1973, and through the King's Proclamation dated 12th April, King Sobhuza II abrogated the Independence Constitution⁴. The King's Proclamation to the Nation introduced a new government

based on the tinkhundla (constituencies) system of political authority. In line with the new system of government, a new electoral system was ushered in five years later. The new electoral system had its own problems which were addressed somewhat through the Establishment of Parliament Order of 1992. The 1992 amendment was meant to bring the King's absolute powers full circle.

Contemporary Swaziland

The most pressing issues in contemporary Swaziland consist of the following: - the need to develop accountability and independence of the three arms of state, the development and implementation of the new Constitution, discipline in the management of the fiscal and the increased politicisation of civil society activism to the extent of synonymy of activism and politics and the subsequent weakening of this sector. Some of the important events and issues that characterize Swaziland's contemporary socio-economic and political landscape include *drought, HIV/AIDS, food shortages (security), corruption, and fiscal indiscipline*. The International Monetary Fund (IMF) and current Minister of Finance have repeatedly warned of unsustainable government expenditure yet government continues to spend outrageously on salaries. The wage bill stands at close to 60 percent of national income⁵. The major sources of revenue⁶ are South African Customs Union⁷ (SACU) receipts (58%), Income taxes (PAYE + Company Tax 24%), Sales Tax (14%) and user charges /fees & others 4%.

Total expenditure (E5.95 billion) has not reflected the very slow economic growth rate and dwindling revenue and grants (E5.3 billion) resulting in an increasing budget deficit of 4.5% of Gross Domestic Product. Net Budget Deficit has been on the increase since the mid 1990s. The economic growth rate of 2.1% (2004) has consistently been below the Southern African Development Community (SADC) (regional) growth rate of 3.5% (2004) yet 58% of Total Revenue comes from the unreliable and threatened SACU receipts.

In theory, the constitutional development process in Swaziland started immediately after the abrogation of the constitution in 1973, and ended in July 2005, when King Mswati 111 signed the new constitution into law. In effect, however, the real process of constitutional development began with the creation of the Constitutional Review Commission (CRC) in 1996 and the Constitutional Drafting Commission (CDC) in 2002. The CRC was handpicked by the King and was chaired by Prince Mangaliso Dlamini. Initially, the CRC included several members of the "progressive" front⁸. All progressives subsequently resigned citing the fact that their appointment as individuals constrained their participation as representatives of their constituencies and thus they could not contribute in legitimising a process that was inherently flawed in not allowing group representation at both commission and submission levels.

The CRC compiled a report of what the people of Swaziland purportedly wanted in their national constitution. In 2002 the Constitutional Drafting Committee (CDC), whose members were again handpicked by the King and led by another member of the royal family, Prince David Dlamini, was established. Their main responsibility was to produce a draft constitution based on the CRC report.

The CDC's draft was presented to the King in May 2003 where after the CDC conducted a national validation exercise of the draft. This comprised ostensibly of collecting submissions from the Swazi people on whether the document was an accurate articulation of the views that had been expressed over the years. In October and November 2004, a process of adoption of the constitution was set in motion through the *Sibayal* "people's parliament" submission process. This was followed by the submission for debate of the Constitutional Bill by the Minister of Justice and Constitutional Affairs, Prince David, to both Houses of Parliament albeit with a certificate of urgency. The King eventually signed the Constitution into law in July 2005. Ideally the Constitution should bring clarity to the political confusion and suspense that has existed for over thirty years by giving political direction and definition of the political system. It should bring clarity regarding the overlap and conflicts between the modern government structures and the traditional structures. Pre-emptive speculation on the use of the constitution in addressing these overlaps, conflicts and political confusion is that it is not sufficient to deal with these issues. However it has created space and further enabled the other issues (corruption, fiscal management etc.) to be debated publicly.

The cost of corruption in Swaziland is very high. In his 2006 Parliamentary Budget Speech, the Minister of Finance said corruption costs government about 40million Emalangeni per month. This has had serious implications on social services and the government's ability to deal will social pandemics such as poverty, HIV/AIDS and unemployment. The poverty rate stands at 69%, meaning about 800 000 people in an estimated population of about 1.2 million live on less than \$1 (E6.50) a day. "Swaziland stands alone with the world's highest rate of HIV infection (at about 42.6%) after nearby Botswana made headway against the deadly pandemic"⁹. The unemployment rate is estimated at 29% active job-seekers with prospects of getting much worse; a consequence of a slump in the manufacturing sector, global trading policies and many other factors.

It is a positive that government is able to benchmark and identify the implications of corruption in the socio-economic situation in the country. The legislative framework aimed at dealing with corruption was speedily put in place. The deficit however has been in implementing and putting into action the corrective measures to deal with corruption. Human and capital resources that should accompany the legislation have not been forthcoming. The Anti-Corruption unit in the country is very short on resources as discussion of this institution illustrates. Implementation of the Constitution has been very haphazard and restrained. Most institutions, envisaged by the Constitution have not yet been created over a year after the coming into effect of the document.

Corruption Profile

The executive branch of government has been accused of encroaching upon the functions, independence and authority of the other arms of government. Thus, issues of crisis of the rule of law, accountability and transparency in parliament especially on matters of fiscal responsibility and corruption appear as a part of the political landscape in the country rather than an exception to the norm. The said issues are inadequately addressed. The oversight role of the other arms of government is therefore an unfulfilled objective.

The Prime Minister has on numerous occasions been vocal in his resolve to eradicate corruption in high levels of government. The renewed vigour of the Prime Minister in his fight against corruption has not been met with the same enthusiasm by his cabinet as some cabinet ministers are implicated in corrupt practices. As a result, no significant action has been taken against corrupt ministers in the present cabinet save for a cabinet reshuffle for underperformance of two ministers implicated in corrupt practices and a dismissal for insubordination of one cabinet minister. Nonetheless, the code of conduct of government officials prescribes such consequences as removal from office and legal action including the preferment of criminal charges and upon conviction, the imposition of a custodial sentence or payment of a fine.

The executive is accused of losing forty million Emalangeni per month to corrupt practices. The Central Bank of Swaziland also reports that bureaucratic corruption "is on the high side." The Economist Intelligence Unit also notes the existence of "some, largely petty, bribery in the civil service". According to the report, there are over 10,000 ghost employees in the civil service, and regular abuse of overtime and other allowances occurs. Further, large government contracts are particularly vulnerable to corrupt practices" as illustrated in the oil-rig¹ scandal and the consequent blacklisting of suspected companies from tendering for government business. According to a report by the Institute of Security Studies, corruption in government is particularly acute in public procurement which manifests itself in the forms of price inflation and collusion between domestic or foreign companies with local officials.

In respect of deficiencies relating to the financial management of public funds, public officers can be surcharged in terms of the Finance Management and Audit Act no. 18 of 1967. In addition, parliamentary establishments are also mandated to inquire into and examine the accounts of government and thereafter report to parliament. In practice, such policies and measures have not been implemented.

Policy formulation of the executive branch of government has no formal stipulations on citizen participation especially as service delivery is through the Tinkhundla system. The role of parliament as a form of popular participation in policy formulation is acknowledged as a system of participation however ineffective the public may perceive it. Through parliamentary process, fiscal and budgetary issues, legal and social policy issues are assessed and deliberated upon before the executive can proceed to effect them. Parliament has in large measure failed the citizenry in its monitoring function over

government. Parliament has been considered a toothless dog and rubber stamper in some instances whilst in limited instances, it has received commendations for stemming the excesses of the executive and demanding accountability and transparency on state processes.

Controlling officers or PS's, are political appointees. There is no prerequisite qualification for Principal Secretaries. Their accountability is therefore to the appointing authority than to the public. Recruitment of other staff is through Government's General Orders of 1973 Section 6. The same legislative instrument is used for transfers and promotions¹. The Civil Service Board (CSB) is responsible for appointments, transfers and promotions of all civil servants in government.

The process of recruitment and transfers has been subject to nepotism, abuse and corruption. There are several cases such as the infamous transfer of Clerk of Parliament¹ into a non-existent position in the ministry of agriculture and co-operatives. The then Prime Minister illegally ignored the Civil Service Board which has the mandate to transfer civil servants, and overruled the Industrial Court by transferring the Clerk to Parliament by force; the police physically ejected the Clerk from the parliamentary building and premises. The PM claimed that the transfer was, in his opinion, based on national security.

Members of the Executive, excluding the King, are not immune to prosecution. Indeed, executive decisions are subject to judicial review. The Head of State is immune to prosecution and his decisions are not subject to Judicial review (*Section 11 (a) and (b) of the Constitution*). Where public bodies exceed their powers, the Courts can exercise a restraining influence over such excesses. The problem, however, is that court decisions are seldom respected and adhered to especially where the executive is in the wrong.

A most recent example of judicial review of executive action concerns the case of the former Minister of Health and Social Welfare, Mfomfo Nkambule. Mr. Nkambule was dismissed from his cabinet post by the Prime Minister. He challenged the action of the Prime Minister on the grounds that it was unconstitutional in as much as Mr. Nkambule had not been afforded a hearing prior to his dismissal. He lost the case.

Citizens can sue the government for infringement of their civil rights. They continue to sue government for among others, malicious prosecution, unlawful arrest and detention, unlawful assault by the police and army, dependant's action in respect of relatives who have died in the hands of the law enforcement agencies.

Parliamentarians enjoy immunity from investigation and prosecution under the Parliamentary Privileges Act of 1969. In addition, no member of the National Assembly shall be held responsible outside the National Assembly for opinions officially expressed or votes cast within the Assembly.

Theoretically, the parliamentary standing orders are supposed to be the legal instrument ensuring the integrity of parliamentarians. However, the standing orders have not been

useful in that regard. Until the enactment of the new constitution, parliament had no instrument detailing the codes of conduct, conflict of interest and rules governing gifts and hospitality. At present, three parliamentarians have been charged with fraud and are out on bail, four are engaged in business interests that result in conflict of interest. The new Constitution – under Chapter XVI Sections 239, 240 and 241 introduces codes of conduct for all public servants including members of parliament. An Integrity Commission shall also be established and will be responsible for declarations of property, assets, gains and liabilities owed by the holder. The Prevention of Corruption Act of 2006 supplements the constitutional obligations expected from all public officials with regard to integrity and prevention of corruption.

The public views Parliament as toothless but also as corrupt in terms of governance. This was especially apparent in parliament's refusal to permit the dissolution of parliament to allow the new dispensation ushered in by the constitution without resultant financial compensation; collusion with the Executive by approving salary increases for select high ranking civil servants and parliamentarians when the country is facing financial constraints and unable to pay salaries, the inability of parliament to act against government officials facing corruption charges and the corruption of parliamentarians in development projects at the tinkhundla level. Therefore, the public perception of parliament as an important pillar against graft is that it is a very ineffective or weak pillar.

The fact that traditional authorities are routes that can be taken alternate to the normal, accepted, transparent and legal route has also provided avenue for corrupt and illegal acts. It is common knowledge that the use of the King's name in whatever transaction assures compliance. There are cases where people would remove private property from individuals, such as cattle (fines) during the umncwasho ritual in the name of the King. National policy and the constitution are some things that were fast tracked through parliament ostensibly at the instruction of the King.

The King's Private Secretary has come out in the media to dispel perceptions that the King condones corruption and illegal activity. The Private Secretary cites instances where the King has pronounced his disapproval of corruption and illegal acts such as the King's speech when he opened the 7th Parliament. However, some of the King's appointments of individuals that have been previously convicted or suspected to have been engaged in fraudulent and illegal corrupt acts e.g. the former Clerk of Parliament and Attorney General more recently, feed on these perceptions. That it is rare to have punitive legal action taken against individuals in senior public office who are suspected or even found to have contravened the country's moral and legal norms confirms the public perception that traditional authorities condone and worse still, approve of corruption.

Traditional authority permeates every section of Swazi life. In Swaziland, the modern institutions of government run parallel to the traditional institutions. The King features in both institutions and it is this dual system that has been primarily cited as hindering development and promotion of a society rooted on integrity and high moral values.

Corruption Activities

The Prevention of Corruption Order No 19 of 1993 was passed while Parliament was prorogued by the King and his Council of Ministers.

The commission's mandate *inter alia*, is to receive and investigate complaints or suspected corrupt practices made against any person and refers appropriate cases to the Director of the Public Prosecutions. From that premise therefore, there must be an internal complaints mechanism. It has been stated that the previous commission failed in the performance of its functions mainly because it lacked not only administrative and financial independence but also because it had no capacity to effectively carry out its task. It did not have qualified and experienced personnel. There was also the problem of interference from various authorities and sometimes corrupt tendencies within the members and/or officers of the agency itself.

The following legal instruments are used by the police and public prosecutors for the investigation and prosecution of cases of corruption and bribery:

a) The Prevention of Corruption Act of 2006

The short-comings of this Act are that it gives investigation powers only to the Anti-Corruption Unit and not to the police. Also, this Act is applicable only to cases of corruption that are committed after its coming into effect. This means that all the cases that were committed before its commencement must be dealt with in line with Common Law.

b) The Prevention of Corruption Order of 1993

This legislation deals with cases of corruption that took place between 1993 and 2006.

c) Under the Common Law, bribery is a crime and as such the police can charge people with bribery as a common law offence. Notably, bribery has a broader scope under common law than under the Act.

The Directorate of Public Prosecutions has specialized units and amongst others is a Corruption Unit which deals strictly with corruption cases. It is hoped that the DPP will now be able to effectively prosecute corruption cases.

Generally, prosecutors are not able to include the military in their remit, save for cases where the military has busted corruption cases especially people trying to evade the customs and excise laws by illegally entering imported goods along the border as opposed to legitimate entry points.

Even though the independence of the DPP is provided for in the constitution, such independence is not foolproof in practice as at times one gets the impression he operates under pressure. The Director of Public Prosecutions heads public prosecutions and the Commissioner of Police heads the police services. The DPP reports to the Ministry of Justice while the Commissioner of Police is responsible to the Prime Minister.

The officials in DPP's office exercise a degree of independence but on contentious cases with political connotations the independence is illusory. The same is true of the Commissioner of Police. To a large extent, he is not independent as most of the time he takes instructions from the Prime Minister and many other authorities including the traditional authorities.

Ideally, appointments of the DPP and her Deputy must be based on merit, but such are the exclusive preserve of the King. The same is true of the appointment of the Commissioner of Police and his Deputy. The constitution provides that the DPP must be removed from his position in the same way as judges of the superior courts.

Landmark Dates on Anti Corruption Activities (1993 - 2006)

YEAR	LANDMARK
1993	The Prevention of Corruption Order of 1993 enacted without parliament
1998	The Anti-Corruption Commission is established
2003	The High Court rules the Prevention of Corruption Order of 1993 is null, void and of no legal force
2005	The Court of Appeal, overturns the High Court decision declaring the Prevention of Corruption Order of 1993 constitutional
2005 (July)	The Constitution of the Kingdom of Swaziland receives King Mswati III's assent; becomes effective on February 8 th , 2006. The Constitution contains Codes of Conduct for public servants and politicians, Chapter XVI Leadership Code of Conduct.
2006 (February)	In his Statement from the Throne, the King says corruption is a serious national problem that should be dealt with swiftly.
2006	Minister for Finance, Majozi Sithole, in his budget speech, for the first time, quantifies the cost of corruption; 40 million Emalangeni per month.
2006	A revised Prevention of Corruption Act of 2006 is enacted by parliament
2006 (August)	Cabinet approves the Public Service Charter on Ethics and Accountability.

Assessment of The National Integrity Systems Pillars

Executive

Role of Institution as a Pillar

The following are the key institutions in the executive - Cabinet: cabinet is the ultimate policy formulation and implementation authority. The Prime Minister is in-charge of parliament and as such, is responsible for staffing, approves the parliamentary budget, etc). *de facto* the Legislature is therefore subordinate to the Executive arm of government. The Ministry of Finance is the second most important institutional office in the Swazi executive. Traditionally, the Minister of Finance is the most trusted member of the King's Cabinet. The Minister is also responsible for the King's Office, heading the board directing the functioning of the King's office including appointment and termination of services of all staff in the King's Office. The Ministry of Public Works and Transport is key in terms of government expenditure. The ministry is responsible for all government capital expenditure and a major portion of some recurrent expenditure such as the maintenance of infrastructure. In terms of government policy, all government institutions submit their capital expenditure to parliament for approval in the normal budgetary process. However this expenditure is implemented by the ministry of public works and transport. Because of its function as the largest spender in government expenditure, the ministry of public works and transport enjoys a very negative public perception as the most corrupt state institution.

Structures/Resources

The executive authority of the state is vested in the King and the King may exercise such authority directly or through the Cabinet or a Minister¹⁰. In terms of the law¹¹, the King appoints the Prime Minister from among the members of the House. However, this requirement does not appear to be strictly adhered to¹². The King also appoints a Deputy Prime Minister and other government Ministers with the advice of the Prime Minister.

The budgetary process of all executive institutions is identical. The process is managed by the Ministry of Finance. The Principal Secretaries (CEO's), and management draft the budget estimates of their ministries after a process of consultation with stakeholders where applicable and submit these estimates to the Ministry of Finance. The Finance Ministry allocations are then based on the line ministries expenditure estimates and published as the Budget Policy Statement. The Policy statement outlines national priorities. Where major resources will be directed, it is meant to be a product of all state institutions.

Ideally, civil society and the public in general are supposed to contribute to the *people's budget*. However, in practice, this has not happened for two reasons, namely; firstly, the public and civil society is not aware of the usefulness of such a process as this happens too close towards the delivery of the budget speech suggesting that public opinion is only for window dressing purposes. Secondly, that this is a new arrangement that has not yet taken root. Government has instituted a *Medium Term Expenditure Framework* whose function is to allow ministries to budget in the long-term and in the intermediate. The

ministries account for their expenditure at regular intervals by publishing their expenditure. This, it was hoped, will make government more responsive to the needs of the country and responsible in its management of the fiscal. Monitoring of expenditure has however not happened as expected. There are cases where the executive spent government resources without parliamentary approval¹³.

The Public Accounts Committee (PAC), a portfolio committee, introduces a semblance of systematic checks and balances and contributes somewhat to executive responsiveness and accountability. The PAC is reactive rather than proactive in the sense that it only addresses reported (by Auditor General's report) cases of abuse. In addition, portfolio committee recommendations may not be implementable as they depend on the very executive for enforcement.

Accountability

The Cabinet comprises of 15 Ministers, a deputy minister, the deputy Prime Minister and the Prime Minister who is the head of Government and Cabinet. The Prime Minister may not remain in office for not more than two parliamentary terms of five years each. This condition has been upheld in all previous governments, not as a constitutional mandate but rather as the Monarchy's prerogative in the pre-constitutional era. Cabinet members are publicly held accountable for their actions through the legislative passing of vote of no confidence, and political summary dismissals by the Prime Minister, as well as cabinet restructuring. Their repress/generative functions to their constituencies are not compromised by their role as ministers as they still retain their parliamentary responsibilities. This is the theoretical position and one which is in conformity with the doctrine of parliamentary sovereignty. However, in practice, the appointments of all cabinet ministers is effected through the King's unjustifiable prerogative which is absolute and cannot be reversed or altered by parliament's vote of no confidence on any of his appointees.

Integrity Mechanisms

The executive branch of government has been accused of encroaching upon the functions, independence and authority of the other arms of government. Thus, issues of crisis of the rule of law, accountability and transparency in parliament, especially on matters of fiscal responsibility and corruption, appear as a part of the political landscape in the country rather than an exception to the norm. The said issues are inadequately addressed. The oversight role of the other arms of government is therefore an unfulfilled objective.

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Transparency

The executive is accused of losing forty million Emalangeni per month to corrupt practices. The Central Bank of Swaziland also reports that bureaucratic corruption "is on the high side." The Economist Intelligence Unit also notes the existence of "some, largely petty, bribery in the civil service". According to the report, there are over 10,000 ghost employees in the civil service, and regular abuse of overtime and other allowances occurs. Furthermore, large government contracts are particularly vulnerable to corrupt practices" as illustrated in the oil-rig¹⁴ scandal and the consequent blacklisting of suspected companies from tendering for government business. According to a report by the Institute of Security Studies, corruption in government is particularly acute in public procurement which manifests itself in the forms of price inflation and collusion between domestic or foreign companies with local officials.

In respect of deficiencies relating to the financial management of public funds, public officers can be surcharged in terms of the Finance Management and Audit Act no. 18 of 1967. In addition, parliamentary establishments are also mandated to inquire into and examine the accounts of government and thereafter report to parliament. In practice, such policies and measures have not been implemented.

The process of recruitment and transfers has been subject to nepotism, abuse and corruption. There are several cases such as the infamous transfer of Clerk to Parliament¹⁵ into a non-existent position in the ministry of agriculture and co-operatives. The then Prime Minister illegally ignored the Civil Service Board which has the mandate to transfer civil servants, and overruled the Industrial Court by transferring the Clerk to Parliament by force; the police physically ejected the Clerk from the parliamentary building and premises. The PM claimed that the transfer was, in his opinion, based on national security.

Members of the Executive, excluding the King, are not immune to prosecution. Indeed, executive decisions are subject to judicial review. The Head of State is immune to prosecution and his decisions are not subject to Judicial review (***Section 11 (a) and (b) of the Constitution***). Where public bodies exceed their powers, the Courts can exercise a restraining influence over such excesses. The problem, however, is that court decisions are seldom respected and adhered to especially where the executive is in the wrong.

A most recent example of judicial review of executive action concerns the case of the former Minister of Health and Social Welfare, Mfomfo Nkambule¹⁶. Mr. Nkambule was dismissed from his cabinet post by the Prime Minister. He challenged the action of the Prime Minister on the grounds that it was unconstitutional in as much as Mr. Nkambule had not been afforded a hearing prior to his dismissal. He lost the case.

Citizens can sue the government for infringement of their civil rights. They continue to sue government for among others, malicious prosecution, unlawful arrest and detention,

unlawful assault by the police and army, dependant's action in respect of relatives who have died in the hands of the law enforcement agencies.

Complaints/Enforcement Mechanisms

Policy formulation of the executive branch of government has no formal stipulations on citizen participation especially as service delivery is through the Tinkhundla system. The role of parliament as a form of popular participation in policy formulation is acknowledged as a system of participation however ineffective the public may perceive it. Through parliamentary process, fiscal and budgetary issues, legal and social policy issues are assessed and deliberated upon before the executive can proceed to effect them. Parliament has in large measure failed the citizenry in its monitoring function over government. Parliament has been considered a toothless dog and rubber stamper in some instances whilst in limited instances, it has received commendations for stemming the excesses of the executive and demanding accountability and transparency on state processes.

Controlling officers or PS's, are political appointees. There is no prerequisite qualification for Principal Secretaries. Their accountability is therefore to the appointing authority than to the public. Recruitment of other staff is through Government's General Orders of 1973 Section 6. The same legislative instrument is used for transfers and promotions¹⁷. The Civil Service Board (CSB) is responsible for appointments, transfers and promotions of all civil servants in government.

Relationship to Other Pillars

The executive is considered the most important and key institution in the NIS. Executive corruption has far reaching implications yet, the executive provides the legal framework to combat corruption and is in the frontline in the implementation of policies relating to corruption and in the prevention of corruption.

Some sectors of the executive allow for interaction with the other pillars. However, most of the consultative processes and interaction are not statutory. It is therefore in the discretion of individual ministries or each minister's prerogative to interact with or consult stakeholders. The incumbent PM has adopted a regular consultative process by way of breakfast meetings with business, civil society, media and other sectors of society. The meetings are regular and are organized and funded through his ministry's budget. Through the meetings, the PM is held accountable by different stakeholders. In a way, this forum allows the PM to explain government action and policy on certain issues, and the stakeholders to interrogate him. This is an important function in ensuring government integrity in terms of accountability and transparency.

Interaction with the legislature is constitutionally premised. Cabinet is collectively responsible to Parliament. The legislature acts as a check and balance on the excesses of Executive powers. Through judicial review, the interaction between the executive and judiciary, although not regularly consultative or engagement phenomenon, it is natural.

Cabinet advises the King on a weekly basis. The public is however not privy to the contents or agenda of such meetings. The private media has managed on occasions to infiltrate the meetings and get information.

Recommendations

- The Executive must give the Swazi people a people-driven Constitution that addresses pertinent issues, particularly redistribution of excessive powers of the King to other arms of Government and establishment of structures that are not dependent on the goodwill of the King. The Constitution should be adopted through a Constituent Assembly, a legal body whose composition must be agreed upon among all relevant stakeholders including civil society and the Church.
- As of now, policies are not constitutional but are a monarchical prerogative which renders the rest of the Executive ineffective and therefore window-dressers.
- In Swaziland, appointments are effected through the King's unjustifiable prerogative which is absolute and cannot be reversed or altered by parliament's vote. Ideally, appointments are supposed to be on merit.

Traditional Authorities

Role of Institution as a Pillar

Traditional authorities and institutions of governance have remained very powerful at all levels in Swaziland since independence. The institution of the monarchy; an embodiment of these authorities and institutions – the King, chiefs and his various advisory councils - control all aspects of the political and legal life of the country. The importance of Swazi tradition and custom on Swazi politics and all spheres of governance and life is readily acknowledged by all commentators on Swazi life. Constitutional developments in Swaziland are informed and inspired by the force of tradition, which apparently pervades every facet of social life in this Kingdom. The most important decisions are anchored on tradition, such as the appointment of the head of government - the prime minister.

Important decisions, changes and processes influencing national policy and direction are initiated and finalized in a traditional setting – at Ludzidzini (the traditional capital of Swaziland). The appointment of the most important commissions is announced at Esibayeni (the main Swazi Kraal). The appointments of the most important offices are announced at Esibayeni.¹⁸ Even though modern structures and institutions of governance, modelled on those at Westminster, were introduced at independence by the British in 1968, traditional political structures were deliberately preserved in the constitution (Proctor, 1977).

Structures/Resources

The traditional structure in Swaziland is made up of the King in his capacity as iNgwenyama, iNdlovukazi (the Queen Mother), Ligunga (Princes of the Realm), Ligoqo, Sibaya, Tikhulu (Chiefs), Umntfwanenkhosi Lomkhulu (Senior Prince) and Tindvuna (Royal Guards). The Constitution makes provision for traditional institutions in Chapter 14 and in Section 227.

The iNgwenyama is the traditional head of the Swazi State and he performs such functions as are outlined under Swazi law and custom (Section 228 of the Constitution). INdlovukazi is traditionally the mother of the iNgwenyama and the symbolic grandmother of the nation (Section 229 of the constitution). She has such powers and performs such functions as Swazi law and custom assigns to her. She largely plays a moderating advisory role on iNgwenyama (Section 229 (5)). Ligunga (Bantfwabankhosi) are princes of the realm, the paternal uncles and half brothers of iNgwenyama who exercise functions of a chief over some area and whose mothers were given authority to oversee and exercise jurisdiction over an area accorded by iNgwenyama in accordance with Swazi law and custom (Section 230). The membership of this body includes the Indvuna and some members of Emabekankhosi (king-makers) determined in accordance with Swazi law and custom.

Ligunga ranks above Ligoqo and is convened by iNgwenyama or the iNdlovukazi when she acts as Queen Regent. Ingwenyama consults this body from time to time on important or sensitive matters or disputes including matters of succession connected with the monarchy. Ligunga will also advise iNgwenyama and the iNdlovukazi as Queen Regent where that advice is necessary in the national interest to ensure the stability and

continuity of the monarchy. Liqoqo is an advisory council whose members are appointed by iNgwenyama from the membership of bantfwabekhosi (emalangeni), chiefs and persons who have distinguished themselves in the service of the Nation. Where necessary, the members of liqoqo may be appointed by the iNdlovukazi as Queen Regent. Liqoqo traditionally advises iNgwenyama on disputes in connection with the selection of chiefs, boundaries of chiefdoms and any other matter iNgwenyama may assign for their advice in confidence.

Sibaya (the Swazi National Council) is the highest policy and advisory council of the nation. It is made up of all adult citizens, Bantfwabekhosi, the chiefs of the realm gathered at the official residence of the iNdlovukazi under the chairmanship of iNgwenyama who may delegate this function to any official. Sibaya functions as the annual general meeting of the nation but may be convened at anytime to present the views of the nation on pressing and controversial national issues (Section 232)

Tikhulu (Chiefs) are the footstool of iNgwenyama and the latter rules through them. Ingwenyama has power to appoint any person to be chief over any area. The position of the Chief as a local head of one or more areas is usually hereditary and is regulated by Swazi law and Custom. A chief is not allowed to take part in partisan politics (Section 233 (6)). Powers and functions of chiefs are in accordance with Swazi law and custom or may be conferred by Parliament or iNgwenyama from time to time.

Umntfwanekhosi Lomkhulu (Senior Prince) is a paternal uncle of the King selected and appointed in accordance with Swazi law and custom (Section 234). He holds fort together with the Queen Regent at the demise of the King. Tindvuna are governors who are in charge of the regiments and royal villages. Tindvuna assist in the traditional government of the country by carrying out certain decisions and advising iNgwenyama or iNdlovukazi in various respects (Section 235). Tindvuna hear cases, give judgements and advise on the temper of the nation in addition to organizing labour for the royal fields. They also ensure that the royal kraals and villages are periodically repaired.

Accountability

The function of these institutions are closed and shrouded in secrecy. Custom and tradition are shields used to prevent investigation on the thorough functioning of these institutions. Traditional leaders are not accountable to their constituencies as such no systems exist to hold them accountable to the people they lord over. They do not consult their people. Traditional leaders are in office at the pleasure of the King and only at his displeasure can they be removed. As a result, no formal reasons are given when some of the traditional leaders are removed from office. The King in his capacity as iNgwenyama exercises unlimited power over the people and as an “*umlomo longacalimanga*” - mouth that tells no lies - may not be opposed in his decisions whatever the impact on the people. He exercises a wide variety of powers over government and over the traditional institutions. Government powers are delegated powers from the King. Similarly all traditional authorities exercise delegated powers from the King. The primary function of all these institutions therefore – modern and traditional - are largely to buttress the will of the iNgwenyama and to ensure the perpetuity of the monarchy.

Integrity Mechanisms

The King is an integral if not the focal point of both modern and traditional government. This means traditional authorities and central government are interrelated although in recent times the former has appeared to overshadow the latter in the most crucial and sensitive matters. An example is when the executive arm of government was ordered by the traditional authorities to evict certain people from Macetjeni and KaMkhweli (adjacent chiefdoms) much against basic tenets of justice. When the courts of the land ruled that the people should be allowed to return to their land, this order was disregarded by central government on instruction from traditional authorities. Another example is the interference of traditional authorities in industrial relations. When private companies and the public sector retrench or disciplinary action is taken against certain individuals; it is common that these individuals or groups approach traditional authorities for recourse – *kwembula ingubo*. This is despite that these decisions may have been ventilated justiciably.

Transparency

The fact, that traditional authorities are routes that can be taken alternate to the normal, accepted, transparent and legal route has also provided avenue for corrupt and illegal acts. It is common knowledge that the use of the King's name in whatever transaction assures compliance. There are cases where people would remove private property from individuals – such as cattle (fines) during the umncwasho ritual – in the name of the King. National policy and the constitution are some things that were fast tracked through parliament ostensibly at the instruction of the King.

Complaints/Enforcement Mechanisms

The King's Private Secretary has come out in the media to dispel perceptions that the King condones corruption and illegal activity. The Private Secretary cites instances where the King has pronounced his disapproval of corruption and illegal acts such as the King's speech when he opened the 7th Parliament. However, some of the King's appointments of individuals that have been previously convicted or suspected to have been engaged in fraudulent and illegal corrupt acts e.g. the former Clerk in Parliament and Attorney General more recently, feed on these perceptions. That it is rare to have punitive legal action taken against individuals in senior public office who are suspected or even found to have contravened the country's moral and legal norms confirms the public perception that traditional authorities condone and, worse still, approve of corruption.

Traditional authority permeates every section of Swazi life. In Swaziland the modern institutions of government run parallel to the traditional institutions. The King features in both institutions and it is this dual system that has been primarily cited as hindering development and promotion of a society rooted on integrity and high moral values.

Relationship to Other Pillars

This is an overwhelmingly important pillar in the NIS. Traditional authority permeates every pillar, sector and section of Swazi society. They are parallel institutions to the modern institutions and branches of government that tend to take precedence to the modern institutional structures. That they are not subject to formal judicial review; that

the Legislature has limitations in dealing with these institutions (Section 115); that they have massive influence on the moral and value fabric of a majority of Swazis; that they significantly influence or even direct the national agenda and that this is a section closed and shrouded in secrecy; traditional institutions and the functioning of traditional authorities provides conducive ground for the perpetuation of corrupt activities. This overwhelming influence that the traditional authorities have in all aspects of Swazi society puts them in the centre of the NIS. They are therefore fundamental in ensuring integrity and in the prevention of corruption in all its guises.

Recommendations

- The King must retain his traditional role and be stripped of all-encompassing power in order to promote development and a society rooted on integrity and high moral values.
- Kings should be subjected to formal judicial review and made accountable for their actions in order curtail corrupt activities.

Legislature

Role of Institution as a Pillar

Parliament regularly summons government to account for its activities. It is through the Government Portfolio committees like the Public Accounts Committee and the Government Assurance Committee that regular interaction with government on policy and implementation is guaranteed. The Public Accounts Committee is renowned for its watchdog role over government finances. The PAC regularly questions procedural anomalies without effecting sanctions. There are a number of parliamentary standing and portfolio committees whose major functions include the investigation and enquiry into the activities and administration of government ministries and departments. Their composition reflects as much as possible the different opinions and interests of Members of Parliament including issues of gender and tradition as well as business. The PAC assesses government expenditure and audits to ensure that government revenue is effectively utilised. It also summons government to explain any discrepancies in such accounts. The PAC has powers to recommend punitive action against any offending government official including Ministers.

The Assurance Committee follows assurances made by ministers in parliamentary debates. It has powers to issue fines and/even jail sentences to ministers in cases of contempt of parliament. The Gender Caucus is composed of women parliamentarians who spearhead gender issues in the discourse of parliament's daily debates and ensures gender mainstreaming in legislation and policy issues.

There is also a Parliamentary Standing Committee on Human Rights, and the Parliamentary Women's Caucus. Others include the Government Portfolio Committees in each chamber generally composed of five or six MPs who discuss and liaise on matters arising from each Government ministry including the Prime Minister's Office, the Senate Sessional Committee and the Senate Government Assurance Committee which is responsible for determining outstanding issues by each ministry. It also determines Statements and promises made by Ministers in the Chamber during debates and makes follow ups on the commitment to such utterances.

Traditional government structures, such as chiefs, royalty, and other leaders, are appointed into parliament by the King. As Swaziland is a no-party political system of representation¹⁹ and people are elected to parliament on individual merit, the issue of political bias in development issues and democratic governance based on ruling party politics is removed from the agenda of applicable criteria for democratic credentials of a State.

Representation of the electorate's mandate is ensured through elected Members of Parliament who each represent a constituency. There is however no method of recall in the event of non-delivery. In the circumstances, accountability and representation is controlled only through the ballot box.

Parliament has an artificial oversight function on national expenditure. It is artificial in the sense that if threatened with dissolution by the King, parliament can pass expenditure

without question. Otherwise all public expenditure requires legislative approval. The National Assembly approves the budget of the government on an annual basis. The Swazi budget is presented to the legislature as the Appropriation Bill. Parliament deliberates on and approves the national budget. Parliament may stay expenditure for a period. However; it may not increase the budget or add a new item to the budget without the government's consent. Additional expenditure by the executive also requires legislative approval. The Civil List is all expenditure relating to the monarchy which does not go through the parliamentary process for debate or approval.

Theoretically, parliament is the law making body in Swaziland and it exercises oversight on the executive. In practice however, parliament is not the only law making body as the King may exercise legislative powers from time to time. In this respect, parliament has, on many instances, failed in her oversight functions. The King's Decrees and the Orders in Council are other sources of national law. The practice over many years has been that all laws are initiated by the executive. This is due to lack of the requisite human expertise in parliament and institutional shortcomings. There has not been a private bill in Swaziland in many years. Furthermore, before any Bill is signed into law, it has to be assented to by the King. The King may refuse to assent to a Bill²⁰

Structures/Resources

There are four components of Parliament in Swaziland: namely the Senate, House of Assembly, House of Chiefs and the King. The House of Assembly consists of 65 members while Senate has 30 members. In the 2008 elections, it is expected that the House of Assembly will have membership increased to no more than 76 members; elected members will increase from 55 to 60. In the event that women do not represent 30% of the elected members, there shall be 4 female members elected from the 4 regions of the country. The attorney general is an *ex officio* member (Section 95 (1 – 3)). The Constitution stipulates a preemptory gender ratio of 30 percent in favour of women.

Accountability

Generally, portfolio committees have sufficient power to ensure oversight such as, in the extreme, a vote of no confidence against a minister leading to the minister's dismissal. Various powers are inherent in these committees and permit them to execute their mandate effectively. However, the result of their utility is still hidden from the public domain due to the fact that their success stories are not documented, neither are they well publicised. These powers and rights enable them to force witnesses to testify under oath and compel the production of documents as supporting evidence. However, the bureaucratic behemoth that is the executive has so far been able to ensure that information is lost within its structures leaving such committees with little to hinge on for effective scrutiny.

Integrity Mechanisms

Parliamentarians enjoy immunity from investigation and prosecution under the Parliamentary Privileges Act of 1969. In addition, no member of the National Assembly shall be held responsible outside the National Assembly for opinions officially expressed or votes cast within the Assembly.

Theoretically, the parliamentary standing orders are supposed to be the legal instrument ensuring the integrity of parliamentarians. However, the standing orders have not been useful in that regard. Until the enactment of the new constitution, parliament had no instrument detailing the codes of conduct, conflict of interest and rules governing gifts and hospitality. At present, three parliamentarians have been charged with fraud and are out on bail, four are engaged in business interests that result in conflict of interest. The new Constitution – under Chapter XVI Sections 239, 240 and 241 introduces codes of conduct for all public servants including members of parliament. An Integrity Commission shall also be established and will be responsible for declarations of property, assets, gains and liabilities owed by the holder. The Prevention of Corruption Act of 2006 supplements the constitutional obligations expected from all public officials with regard to integrity and prevention of corruption.

Transparency

Internal parliamentary functions, in terms of staff recruitment, transfers and internal budgetary process, are the same as any other government ministry. Parliament follows all the processes adhered to by ministries in their budgetary process. The only difference is that parliament is under the Prime Minister's office. The Clerk to Parliament is the Chief Executive Officer of parliament in his administrative role. He is regulated by the Public Service Commission. This position will change to the Parliament Service Commission with the new constitution in-order to enable further independence of the Legislature from the Executive. This change is attributed to both the tenets of separation of powers and of good governance after a conflict of powers became apparent with an incidence regarding the appointment of Clerk of Parliament with underhand influence of the executive due to political interests in an attempt by the executive to hide corrupt practices by its officials through portfolio reshuffles. As the Chief Executive, the Clerk advises and supports the Speaker of the House of Assembly and the President of the Senate in all procedural and administrative matters. The Clerks at Table assist the Clerk in his duties. They also advise the Presiding Officers and other Parliamentarians on Parliamentary procedure and practice during debates.

The new constitution seeks to change this and establishes a structure responsible for the dismissal, promotion and transfer of any parliamentary member of staff. The Parliamentary Service Board (Section 131 and 132) shall regulate and prescribe terms and conditions of service for parliament staff. It is hoped that the Parliament Service Commission will remove the influence of the Executive from parliamentary procedures which is currently exercised through control over the Clerk of Parliament and all subordinate staff by way of salaries, appointment, disciplinary procedures and other methods.

Complaints/Enforcement Mechanisms

The public views Parliament as toothless but also as corrupt in terms of governance. This was especially apparent in parliament's refusal to permit the dissolution of parliament to allow the new dispensation ushered in by the constitution without resultant financial compensation; collusion with the Executive by approving salary increases for select high

ranking civil servants and parliamentarians when the country is facing financial constraints and unable to pay salaries, the inability of parliament to act against government officials facing corruption charges and the corruption of parliamentarians in development projects at the tinkhundla level. Therefore, the public perception of parliament as an important pillar against graft is that it is a very ineffective or weak pillar.

Relationship to Other Pillars

The relationship between parliament and the executive is natural; cabinet members are members of parliament and the executive gets its mandate from parliament in terms of expenditure and other things. More complex is the relationship between parliament and the people, and parliament and the King. Parliamentarians are supposed to be accountable to the people who elect them. Thus parliamentarians are supposed to regularly interface with their constituencies. This happens rarely towards elections. Contributing to this is that the people have a different understanding and expectations from parliament and parliamentarians. The people see parliamentarians, due to the electoral process and political system, as development officers instead of law makers that provide the legal framework for the executive to deliver on these things.

Within parliament are the King's appointees. These naturally are accountable to the King. However, on assuming office, all parliamentarians swear to serve the King and his heirs only. Therefore parliamentarians, elected or appointed, tend to concern themselves with pleasing the King than challenging or exercising oversight on the institution of the monarchy.

All other pillars; civil society, military and others are very distant from parliament and only interface on extraordinary occasions. These occasions include the commission of inquiries and probes, whose recommendations are rarely implemented. On the occasion where interactions take place between parliament and the other pillars such as civil society, the results have been very positive and effective²¹.

Recommendations

- Parliament should have power to debate, proposes and pass legislative bills. At the moment parliament possesses no such power as bills are not passed into law until they are assented to by the King.
- The Legislature must assume its rightful role as watchdog over government activities yet it only questions procedural anomalies without effecting sanctions.
- Committees execute their mandate effectively but results of their utility are hidden from the public domain because their success stories are not documented, neither are they well publicised. Results should therefore be well documented and well publicised.

Political Parties

Role of Institution as a Pillar

Some political parties in the beginning of the last decade (1990s) came out publicly to say that they exist, want immediate regime change and political reform. Their strong emergence came at the height of labour activism in the country as well. Therefore, a marriage resulting from the convergence of issues they dealt with, between political parties, labour (particularly) and organized civil society emerged. However this is was not a new phenomenon as the history of some pre-independence political parties can be traced back to industry.

The global and regional political change that was taking place then collectively contributed or, at least, influenced the political climate in the country. The regional political reforms ‘winds of change’ have evidently subsided over the late last decade. Internally, there was pressure from civil society through labour, especially through strikes, border blockades with assistance from the South African labour movement, to reform. This internal and external pressure led to the King instituting a series of national consultations that recommended a constitutional review process. This process, although flawed in that it was centrally controlled and used a none-scientific methodology for collecting the different opinions on the process, produced the new constitution of 2005.

The Constitution Act of 2005 was signed into law in July 2005 and came into effect on the 8th February 2006. The Constitution states that Swaziland is a democratic Kingdom. Swaziland subscribes to a “democratic, participatory Tinkhundla-based system”. The Tinkhundla-based system of government is said to be a unique democracy peculiar to the people of Swaziland. It allows willing participation of citizens at grassroots level in the process of decision making that affect them.

Chapter VI, of the Constitution contains the bill of rights and protection of freedoms such as expression, assembly and association. Organised and/or informal political, civil and other form of organization is, therefore, allowed according to the new constitution.

However, Section 79 of the constitution emphasizes the continued operation of the Tinkhundla based political system. The fundamental feature of this political system is that election of people into parliament (government) is on individual merit. Citizens and/or party members are therefore not constitutionally allowed to compete for any political position on a political party basis. Sections 25 and 79 are therefore contradictory.

These sections confound the political system; they do not shed light as to whether or not political parties can operate freely in Swaziland. The ultimate goal for political parties is to compete for political power. Indeed they represent particular interests, ideologies etc. However, as opposed to any other form of organised civic society, party interests are more permanent (power) and not issue driven. Therefore, confusion about the Swaziland Constitution is that it appears to allow or create political parties while at the same time preventing them from performing their primary function.

Structures/Resources

The fact that all but one of the existing political parties were born and have existed underground for all their lives, their source of funding, their exact size in-order to determine their levels of influence in the country and their government is difficult to obtain. However, secondary data states that collectively, political parties in Swaziland have an estimated membership of slightly above 100 000 people. The total membership of political parties equates to just about 16% of the potential voting population in Swaziland of 600 000. It can be assumed that given the small size of its membership and the strong co-operation of these parties with their neighbouring counterparts, significant sources of funding are international. Their closeness to labour can also mean a possible transfer or sharing of resources on many instances.

Accountability

Political parties in Swaziland were banned in 1973 when the late King Sobhuza II abrogated the 1968 Independence Constitution through the King's Proclamation to the Nation. Political parties in Swaziland continued to operate as illegal entities. Party politics in independent Swaziland was only in place for only five years since 1968 and one national election. The results of the second election after independence led to the abrogation of the independence constitution. Therefore, political parties are answerable to a small number of the population interested in opposition politics as well as to their perceived external funders.

Integrity Mechanisms

Again, internal dynamics within parties can only be speculated or, at the least, accepted as is from the parties themselves without the benefit of testing their validity. For example, the Peoples United Democratic Movement (PUDEMO) formed around 1983 has had one president since its formation. This might suggest that the internal democratic dynamics are either malfunctioning or that there is no democracy at all. However, sources within the party argue that democracy exists within the party.

The same applies to its public condemnation of corruption and other government ills. Parties have been very vocal in condemning the system. All significantly true sentiments, their position in the political and legal framework is such that similar questions cannot be asked about them. Thus however sympathetic to their voices people are, it is difficult to measure their influence in public discourse. The presence of political formations for any democracy-practicing state can only augur well for institutional transparency and accountability. Only organized civil society, primarily labour, has assumed some of the functions that would otherwise be the purview of political parties and, until recently, they enjoyed great influence in the public discourse.

Transparency

While the Swaziland Constitution appears to allow political parties and, at the same time, prevent them from performing their party function, the political leadership has compounded the confusion by not shedding light on this matter. The government is on record as saying they will uphold the constitution to the letter, at the same time they are on record also saying that political parties are not allowed in the country. Political Parties

have challenged their illegality status arguing that it is their fundamental right to associate and organize, as at the authorship of this work, the High Court is seized with a dispute challenging the denial of registration of a newly formed political party. Government disputes parties' rights to compete for power. The government argues that the constitution indeed allows every citizen the right to associate and organise, however the political system, as determined by Swazis, does not allow the competition for public office on a partisan basis. The courts are yet to pronounce on this matter.

In the absence of political parties, labour and other organized civil society have been trying to keep government in check. Predictably, membership of the labour movements and the banned political parties overlapped such that labour and illegal political parties became synonymous.

Complaints/Enforcement Mechanisms

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Relationship to Other Pillars

The only relationship this pillar has is with labour. This maybe perceived as a relationship of convenience given the status of political parties. In terms of party's relationships with the other pillars, none exists.

Recommendations

- Democratic space must be created as a ban on political parties negates freedom of association.
- Political parties must not be like monarchs where a leader of one of the parties has been at the helm for 23 years.

Electoral Commission

Role of Institution as a Pillar

The electoral process in this country serves only to elect parliamentarians who conduct developmental functions first and legislative functions later. In both functions, parliamentarians remain subject to the King's powers. Elections in Swaziland are, therefore, not an exercise of determining just utility of power and equitable distribution of resources as in many other democracies. The electoral legislative framework in Swaziland is based on three statutes²².

The Elections Commission is responsible for the administration and management of national parliamentary elections and, to a lesser extent, local government elections. Some local government, the two cities in the country Mbabane and Manzini, are semi-independent and therefore occasionally hold their elections on separate dates from the rest of the local authorities. This therefore allows them to engage the elections management body at a different level.

Structures/Resources

The Commission considers itself independent. Nonetheless, the Commission's autonomy is artificial. It is presently under the Ministry of Justice and Constitutional Affairs and receives its budgetary allocations under the ministry's appropriation. The Chief Electoral Commissioner and his deputy were appointed by the King. The rest of the staff of the commission is seconded from the ministry responsible. The earlier mentioned government transfer and recruitment policy applies to the professional and support staff of the commission.

The Constitution seeks to establish a new electoral management body styled like the Elections and Boundaries Commission. It will be an independent body established under Section 90 of the Constitution. It replaces the Electoral Commission. Not much has changed in the new Elections and Boundaries Commission as all members of the commission are appointed by the King on the advice of the Judicial Service Commission. All members of the commission should not have been "actively engaged in politics" for a period of no less than five years. The Chairperson and deputy should be persons qualifying to be judge of superior courts or persons of high moral character with experience in public affairs (S90(6)).

Again, the new body will enjoy artificial autonomy under the new constitutional dispensation. Section 90(13) of the Constitution guarantees against interference in the functions of the commission. However, the Secretariat of the Commission is provided by the ministry responsible. Secondly, the appointees may be removed by the King on recommendation of the Judicial Service Commission.

Accountability

Since 1978, national elections have been regularly conducted every five years. Any dynamics have been superficial in the application of representative government. The national elections confirmed that credibility was not an issue in its assessment of the elections because no elections can be credible if they are for a parliament which has no

power and there are no political parties (Commonwealth Report, 2003). The ban on political parties negates the freedom of association, to which the citizens of a state are entitled. The power of the franchise as a check mechanism against tyrannical power is lost.

Integrity Mechanisms

The office bearers in the Commission are civil servants first before being electoral managers/officials. This establishes serious problems of integrity as civil servants should not be managers of national elections. Fundamentally though, the environment within which elections are held in the country and the function of elections is questionable in itself.

Transparency

The administration of elections has routinely been determined to be efficient and transparent by including domestic and international observers. Fairness is not commented on. For the Electoral Commission, since its inception in 1992 and three elections later; it considers the electoral process as well managed with minimal signs of voting irregularities.

Complaints/Enforcement Mechanisms

However, the major challenge for the Commission has been that some issues have been raised especially the availability of the voter's roll to the public and the timing of its release. The inability of the public to access the roll has been cited as affecting voter turnout. The roll is not collated thereby preventing those who register anywhere other than their constituency an opportunity to participate in the national elections even though they participate in the primary election. Thus the voter's roll needs to be updated. These concerns remain perpetual. Observers cite problems relating to capacity in terms of planning and logistical arrangements.

Any other irregularities are presented to the courts for adjudication. The slow legal process however has been cited as a pitfall to genuine and transparent elections in Swaziland. The delays have led to irrevocable electoral results, especially when raised during the primaries and not resolved before the secondary poll. In the last elections in 2003, a losing parliamentary candidate registered his injustice with the courts. When the courts concluded the matter the accused had already served over a year into the term. The decision was fortunately in favour of the respondent. The independence of the judiciary in the electoral process is generally not considered to be compromised even though political heavyweights tend to fare better in such legal cases.

Relationship to Other Pillars

At present the commission only becomes visible close to, during and immediately after elections. In between the election dates, it remains out of sight and therefore out of the public agenda. Given the context in which elections take place (in a closed political dispensation), their significance as a pillar in the national integrity system is not discernable. Electoral conflicts in the Swazi context are reduced to individuals in a

specific constituency rather than parties, with little or no impact on the broader political landscape.

Therefore relationships with other pillars for the commission are very limited. It naturally interacts with the judiciary and the fraud squad in the police particularly after elections. There are no statutory obligations to that effect. The media plays an important role before, during and after elections. It is an important instrument for the commission for transmitting important information to the electorate. It is also important for the voters as a means for voter and civic education. The radio is the most commonly used medium by the commission due to its accessibility to the broader Swazi nation.

In the new constitutional dispensation, the Commissioner shall present a report after every election to the King. This, therefore, assumes that there shall be frequent interaction of the commission with the executive. No provisions are made for its interactions with parliament or other state institutions in the new order, thereby creating questions of impartiality or accountability to parliament and, hence, the public whose concerns parliamentarians represent.

Recommendations

- The Chief Electoral Commissioner must be appointed by Parliament and be accountable to the same. This will bring the desired independence to EC to deter manipulation from the monarch. As it stands, The Chief Electoral Commissioner and his deputy are handpicked by the King.
- The EC must be granted autonomy to run electoral affairs.
- The Voters' Roll must be collated so that registered voters can vote from any place other than their constituency.
- The Voters' Roll must be updated and made accessible to the people.

Auditor General

Role of Institution as a Pillar

The Finance and Audit Act provides for the accounting procedures to be followed in management and control of public finances. It requires that within a period of six months after the close of each financial year, the Accountant General should sign and submit to the Auditor General the Treasury Annual Report – a statement of accounts showing fully the financial position of the consolidated fund and other public funds on the last day of the financial year. The purpose of the Treasury Annual Report is to report on the financial operations of the government. This, essentially, is a financial report detailing how the allocated funds were used. The Auditor General receives the Treasury Annual Report and his/her responsibility is to audit the government accounts. The Auditor General produces a report based on his/her assessment of the Treasury Annual Report. It provides comments on the government's financial activities. In particular, the AG will have audited the report to determine whether the allocated public funds were used in accordance with the wishes of parliament. The report is presented to parliament for deliberation and action.

An audit is considered to be the independent examination and expression of opinion on the financial statements of an organization by an appointed auditor in pursuance of that appointment and in compliance with any relevant statutory obligation. The functions of auditing in the public sector include the following:

- To ensure that systems of accounting and financial control are efficient and operating properly and that financial transactions have been correctly authorised and accounted for.
- To verify whether the expenditure that has been incurred was in accordance with statutory and other regulations governing them.
- To examine the extent to which the goals of economy and efficiency have been attained as well as bring to light incidents of wasteful, extravagant or unrewarding expenditure and failure to maximize receipts.
- To identify weaknesses in accounting practices.
- To assess effectiveness i.e. whether programmes or projects undertaken to meet established policy goals or objectives have met these goals.

Structures/Resources

Since all Public Enterprises are established by statute, the financial provisions in the founding statute stipulate the rules, principles and procedures to be followed with regard to accounting and auditing. A survey of five statutory bodies revealed that they are obliged to follow certain specified principles and procedures which are briefly summarized below.

The financial year for the statutory bodies which were surveyed coincides with that of the central government and because the statutory bodies have relations with the treasury and some receive government subvention. In that regard, these institutions are required at the commencement of each financial year to prepare and submit to the minister estimates of their financial requirements or expenditure projections in respect of the financial year under consideration. The statute also imposes a responsibility on the Governing Board or

equivalent body to ensure proper books of accounts and records of the income, expenditures, assets and liabilities of the statutory body are kept. At the end of the financial year, statutory bodies must report on their operations for the financial year under consideration.

Before the end of the financial year, the Governing Board must submit to an auditor the accounts of the institution together with a statement of income and expenditure at the end of the financial year and a statement of the assets and liabilities during the same year. The auditor may be appointed by the Governing Board or by the government on the recommendation of the Board. The annual report of the statutory bodies and the audited accounts are to be submitted to the Minister who shall then lay before Parliament both the annual report and audited accounts for examination, consideration and action. From what is said above, it is clear that private auditing firms carry out the auditing function within statutory bodies. The Auditor General confines his/her activities to central government ministries and departments and does not ordinarily audit the accounts of statutory bodies, notwithstanding the provisions of the Finance and Audit Act which empower him/her to do so.

Accountability

The Swaziland government does, to an extent, observe the same principles outlined above. The financial accounts of government ministries and departments, as detailed in the Accountant General's annual report, are indeed audited in accordance with the provisions of the Finance and Audit Act 1967. The Auditor General enjoys a degree of autonomy and independence from the executive authority. This enables the AG to command public confidence as well as maintain a degree of impartiality especially since he/she must examine the financial transactions of executive officials. Thus, to promote and facilitate its effectiveness, the AG's office was established as an independent office. The AG is not accountable to the executive authority or any other authority, save for parliament. The Swaziland Constitution of 1968, Section 133, establishes the office of the Auditor General and pronounces on the independence of this office.

Integrity Mechanisms

The powers of the Auditor General in Swaziland reside in his/her responsibility to audit public accounts on behalf of Parliament. These powers are spelled in both the Constitution and the Finance and Audit Act. The AG audits all the appropriation accounts. The Auditor General has to satisfy himself/herself that there are adequate instructions and laws pertaining to public finances and that these are properly observed. In the exercise of his duties, the Auditor General has unlimited access to all books of accounts, records, reports, vouchers, documents, cash, stamps, securities, stores, or other government property in the possession of public officers. The AG is empowered to ascertain incidents of financial impropriety. The report of the AG pertaining to the government accounts which he/she has audited is forwarded to the Minister for Finance for onward transmission to parliament and must be presented to the House of Assembly at its next meeting.

Transparency

The PAC in Swaziland can be credited with promoting transparency in as far as its deliberations are concerned. The practice is to have the AG's report published in the local Media. A major weakness of the whole accounting and auditing process, as described above, is that the disclosure and publication of the AG's report seems to be a means as well as an end itself given that none of the reported cases of corruption ever reach the courts for prosecution. There are no records to indicate that legal action was ever taken to punish the wrongdoers. The general apathy, which manifest in the reluctance to pursue cases involving corruption in the courts is an old problem. The perceived or real absence of penalties for financial mismanagement and/or misappropriation of public funds serves to undermine what otherwise could be an effective system for financial control in central government.

Complaints/Enforcement Mechanisms

Although the Auditor General investigates and examines all the financial activities and transactions of the executive authority for efficiency, effectiveness and regularity, he/she has no authority to demand accountability from the executive authority. Only the legislature has the authority to demand accountability from the executive. In fact, an important function of parliament is to hold the executive authority accountable for its spending of the taxpayer's money and its performance in the management and control of public assets. The legislature considers the report of the AG on the financial activities of the executive and confirms it if necessary.

However, since the legislature normally does not command the expertise for the proper evaluation of the issues raised in the AG's report and also because the legislature does not have the time to enter into a lengthy evaluation of the report, it has become standard practice in many countries to refer the Auditor's Report to a standing committee of the legislature, which ideally should be properly constituted of persons with the knowledge and expertise to discharge an adequate evaluation of the AG's report.

Accordingly, the laws of the country make provision for the establishment of a Public Accounts Committee. This committee is constituted of twelve members, none of whom should be a minister. The Public Accounts Committee (PAC) studies the Auditor General's report. In particular, the committee examines the accounting and financial matters raised in the AG's report. The PAC is also entrusted with ensuring that the policies and programs of government are implemented in an effective, efficient and economical manner and that the taxpayer receives value for money spent. Through the media, the committee informs the public about matters under its investigation, why those matters are of concern, and how they may be resolved. [progressive]

Powers of the PAC

- The committee is empowered to review reports pertaining to public accounts and in particular, the audited reports of all government ministries and departments and other agencies receiving funding from government.

- The PAC may, on the strength of the points raised by the AG, call officials of the various government ministries and other institutions audited by the AG who are accountable to appear before it.
- The committee may call witnesses from government including ministers, expert witnesses and private citizens to testify and provide information on specific issues (under oath if necessary). This includes individuals currently responsible for matters under consideration, as well as those who were responsible at the time the events occurred.
- The Committee has a right of access to all financial information and other documents it requires for its investigation except those that are privileged or secret in the narrowest sense of the law, such as cabinet documents.
- The Committee reports to the full house thus providing an opportunity for members of the House to debate the report it (the PAC) has produced. The PAC has the right to request the executive authority to table a comprehensive response to issues it has raised in its report to the house and such response to be made available within 120 days.

Relationship to Other Pillars

The supreme audit (Auditor General's Office) is a key part of the country's NIS. The above position is underscored by the fact that government institutions employ the greatest number of people as civil servants or employees of public enterprises, receive and spend a substantial proportion of national income amounting to billions of emalangeni, services on an unprecedented scale - services often of vital importance to the individuals who consume them. It is the sector that is responsible for meeting the needs of the people through public service delivery, a function that is discharged by the various multipurpose government institutions. It is also the office that carries the greatest responsibility in terms of monitoring and evaluating spending public sector spending to ensure that it is responsible and accountable since it is the only sector in which taxes are compulsorily levied. The people, as taxpayers and recipients of public services, are entitled to due accountability for the manner in which their money is spent.

The supreme audit and its affiliates (PAC) interacts with civil servants and all individual and organizations in society by virtue of the fact that they review expenditure in all service oriented departments of government.

Recommendations

- The monarchical expenditure must also be audited.
- Corruption, where detected, must be reported on and prosecution in the courts of law effected. To date there are no legal records to show that wrongdoers have been punished.
- Penalties for financial mismanagement and/or misappropriation of public funds must be set.

Judiciary

Role of Institution as a Pillar

The Constitution entrenches and guarantees the independence of the Judiciary in Section 138. Section 141 (1) provides that the judiciary shall be independent and not be subject to the control or direction of any person or authority in both its judicial and administrative functions including financial administration.

The country operates a dual legal system. At the apex, there is the Court of appeal (Supreme Court). The court of Appeal only has appellate jurisdiction. Then the High Court has unlimited original civil and criminal jurisdiction. The High court also has power to review decisions of the subordinate Courts. This Court also has the power to pronounce on the constitutionality of Acts of Parliament.

There is also the Industrial Court which deals with labour related cases. The Industrial court is a specialized court whose judgements are subject to review by the High court. Appeals from the Industrial court go to the Industrial court of Appeal. The Magistrates' Courts on the other hand are a creature of statute whose jurisdiction on both criminal and civil cases is determined by the enabling statute. The Swazi National courts deal with matters relating to Swazi Law and Custom. Swazi courts only have jurisdiction over matters where both parties are members of the Swazi nation, see s139 of the constitution.

The Court of appeal is the immediate oversight Court to determine errors of law and/or fact. The High Court has the power to review decisions, not only of subordinate Courts but even for decisions of domestic administrative tribunals as well as quasi-judicial bodies.

Structures/Resources

In order for judicial independence to exist, the judiciary must have an independent budget and coffers. For a long time, the Ministry of Justice controlled the budget of the Judiciary. The constitution gives the Judiciary power to control its finances. As long as the budget of the Judiciary is controlled by the executive, the institutional independence of the Judiciary will continue to be hampered. As far as industrial independence is concerned, there is no interference.

On the administrative functions of the Judiciary, the situation is still unclear. The executive runs the administration of the Judiciary. The Principal Secretary of the Ministry of Justice is the CEO of the Ministry as well as the Secretary of the Judicial Service Commission. The JSC is responsible for the recruitment of the members of the judiciary. The less favourable terms and conditions of service for members of the judiciary leave the members vulnerable to corruption. There is no independent body looking into their terms and conditions of service, only the executive determines what is good for the Judiciary.

There is no transparency in the recruitment process as such recruitments are shrouded in secrecy. The composition and stature of the Judicial Service Commission leaves a lot to

be desired in terms of its capacity to recruit members of the Judiciary. The JSC consists of the Chief Justice, the chairperson of the civil service board who has no legal training or experience, the Principal Secretary in the Ministry of Justice who also has no legal qualifications but has limited experience in practice while the other has never practiced law. Section 159 (2) (b) of the Constitution states that JSC members must have practiced for not less than 7 years. The qualifications of other members of the Judiciary are questionable as some Magistrates only have certificates in law yet preside over serious cases. It would be best if the JSC advertised the vacancies and left the selection process to an independent panel of jurists, most preferably selected from the neighbouring countries as Swaziland is small and everyone is related in one way or the other.

At present, the Judiciary does not have financial independence as its budget and staffing requirements are administered by the Ministry of Justice and Constitutional Affairs. This is contrary to the constitution, which envisages an independent budget for the Judiciary. There is little or no information from written sources or from the government officials on the budgetary process that governs the Judiciary. Transparency is lacking. There is also no information on the Judiciary's access to off the books funds.

The Chief Justice is the head of the Judiciary and is responsible for the administration and supervision of the Judiciary.

Accountability

The Judiciary, through the Ministry of Justice, is accountable to the Executive. The constitution provides that members of the judiciary will only be removed from office after disciplinary process and for valid reasons. Section 158 states that a Justice of the Superior Court may only be removed from office for reasons of serious misbehaviour or inability to perform the functions of office arising from infirmity of body or mind. The affected party must be given a fair hearing.

However there have been cases where Judicial Officers (JO) have been removed from office without the disciplinary process being followed. In 1996 the then Acting Chief Justice was demoted to the position of ordinary judge yet at the time he was the only highly ranked and qualified judge in the country. No reasons were given for this demotion. His successor had never worked as judge let alone Chief Justice anywhere in the world. The law was not adhered to when the then CJ was dismissed from office. In the history of this country no JO has ever gone through the disciplinary proceedings. It is hoped that the new constitution will be adhered to.

Integrity Mechanisms

The interference and/or conflict between the Judiciary and executive arm of Government is evident even though it is difficult to substantiate because the Executive carries out its machinations in secret. An example to underscore this point is the fact that some judges of the High Court who are expatriates are still employed on contract which are either abruptly terminated or not renewed if their decisions do not sit well with the authorities. Reasons are never furnished for termination or non-renewal of such contracts. The result is that judges in this position tend to be loath to issue judgements which are averse to the

government, much to the detriment of private litigants. This interference by the Executive results in the limitation of the Judiciary's freedom in the course of executing its duties.

The Rule against bias regulates rules of conflict of interest for the judiciary. These rules are derived from the common law. This includes the law regarding recusal of judicial officers.

On the ethical level, there are rules on gifts and hospitality. Ethically, members of the Judiciary must declare what ever honorarium they get or alternatively donate it to charity. In practice there are no written rules.

There are no post employment restrictions within the legal system in Swaziland. Previously, a former Attorney General was later appointed as a judge. After his resignation from the bench he set up a private legal practice. Two other former judicial officers from the magistracy are now in private practice.

It is difficult to prove lack of transparency, as this ingrained in the nature of the political system. Public officials cannot be compelled to act in a transparent manner because there is no legal instrument to this effect. Public officials in senior positions are political appointees who are answerable to no one but the King as the head of State. Sometimes the political appointees will brazenly brag that they are answerable to no one but the King. As a rule information on anything relating to public discourse is obtainable as a privilege than as a right.

There are no rules on disclosure of assets applicable to judges or senior officials because there is no ethical code of conduct in the country. However, with the advent of the constitution, there shall be an Integrity Commission to which such disclosures must be made. There is no lifestyle monitoring mechanism. However, Court records are readily accessible to the public. Interested parties only need to declare their interest and they are allowed access subject to the *subjudice principle*.

There is no general whistle blowing protection within the Judiciary. There have been no recent instances of successful prosecutions of corrupt judges or senior judicial officials.

Judges have to give reasons for their decisions, for foundation and relationally. It is preferable to have written reasons, and most of the time JO's give written reasons for their decisions. There are no mechanisms for the protection of witnesses in cases of corruption. There has not been any case against judicial officials yet, but ordinarily justice would be left to take its course should such action arise. The institutions of justice are there and open to anyone but in practical terms, the position favours the affluent. The courts are also not accessible to most people because geographically courts are in the metropolitan cities. From this premise, the precise answer to accessibility to the courts is not real. There is also no legal aid system in Swaziland except for *Pro Deo* Services in criminal cases where the accused is facing capital punishment.

It is rather unfortunate that the culture of fear has permeated even the Judiciary in Swaziland such that everything or rather a majority of issues reported about the Judiciary is all hearsay. Nothing is ever formalized.

Transparency

The only rules governing oversight of the Judiciary is the right to appeal and judicial review by aggrieved parties. There is need for an instrument spelling out rules of ethical conduct for the Judiciary.

There are also rules of Natural Justice that judicial officers must adhere to. There are no existing formal rules dealing with this aspect. Ideally, the Chief Justice as the Administrative Head of the Judiciary reports to parliament through the line Minister. This is a constitutional requirement. The reporting in question though is not on the daily functions of the Judiciary, rather it is in the context of the administrative functions of the chief Justice as the CEO of the Judiciary.

Hearings are conducted in public and are open to the scrutiny of the public. Only in limited cases of sexual offences are cases held in camera in order to protect the identity of the victim and sometimes witnesses. Section 21 (1) of the constitution provides for the protection of the right to a fair trial.

Complaints/Enforcement Mechanisms

Judges are appointed by the King on the advice of the Judicial Service Commission in terms of Section 153 of the constitution. Government has tended to reserve corruption issues to the Anti-Corruption Unit which has not only disappointed but has dismally failed to take off due to lack of personnel and other resources.

There is no training plan in place for judges for prosecuting corruption cases. If it exists, it is ad hoc and very informal. There is only one case dealing with prosecution of corruption as a statutory offence-, *Rex Vs Mandla Ablon Dlamini* Unreported High Court criminal case No: 7 This case nullified the Prevention of Corruption Order of 1993, a law that was subsequently re-instated on appeal in 2005. There have been cases based on corruption under common law, this includes bribery of public officials.

The *Rex vs. Mandla Ablon Dlamini* case was a criminal matter in which the accused was charged under the Anti Corruption Order of 1993. The defence raised a point of law. The defence contended that the said order was invalid because it was enacted by the King and the Council of Ministers, the latter having been established on the strength of the Legislative Procedure Decree No-4 of 1993 and the Legislative Procedure Decree (Amendment) Decree No-1 of 1993 both of which were invalid. They urged the court to find that the accused had no case to answer and that he should be acquitted and discharged. The court upheld the point of law raised by the Defence and ordered that the Prevention of Corruption order of 1993 was null and void for its unconstitutionality. The accused was accordingly acquitted and discharged. This decision of the High Court was however later set aside on appeal.

Relationship to Other Pillars

The Judiciary is a key part of the country's NIS, because of the role it plays in interpreting, applying and enforcing the law. The police, the Director of Public Prosecutions (DPP), the Legislature, the Anti-Corruption Unit, and the business community interact regularly with the Judiciary. Others are the Law Society and NGOs. Courts have the jurisdiction to review actions of the Executive. This they do through their power of judicial review. This however can happen only if the aggrieved parties have brought the matter for review. The Court cannot do this *mero moto* or on its own accord. As to how effective this is in practice, the answer depends on the way the Executive upholds the rule of law in general.

Recommendations

- The Judiciary must be completely detached from the Executive.
- The Judiciary must control its own finances. As long as the budget of the Judiciary is controlled by the Ministry of Justice, the institutional independence of the Judiciary is hampered.
- Judges should be transparently chosen into office based on qualifications and in case of failure to perform, dismissals should be fair.

Civil Service/Public Sector Agencies

Role of Institution as a Pillar

Civil service refers to the administrative structure set up by the national government, consisting of ministries to assist in the provision of public services. This sector operates under the principle that all government ministries follow political directives and their accountability is to parliament. To facilitate accountability to parliament, each ministry has a political head - a minister who is accountable to parliament for the activities of his/her portfolio. The Civil Service Act, No 8, 1973, governs the central government ministries. The detailed rules and regulations to be observed by the civil service are spelled out in the General Orders. The Finance and Audit Act and other financial regulations, such as the Stores Regulations, govern the financial activities and transactions of the government ministerial departments. The finance and accounting instructions of the government are issued in accordance with the terms of the Finance Management Audit Act, 1967. The current Financial and Accounting Instructions were issued in 1970. It is noteworthy that the new Constitution contains some provisions relating to public administration including financial management, accountability and legislative oversight in relation to the activities of the civil service and the whole of the public sector.

Public sector agencies consist of statutory bodies or state owned enterprises or parastatals set up specifically to provide economic and social services to the people. Public enterprises are created by separate legal instruments which outline the functions, powers, administration, monitoring and accountability of each of these organisations. All public enterprises are accountable to Parliament through a parent ministry.

The objective of creating the civil service is to assist in policy implementation. As an important part of national government, the civil service retains and performs the most significant governmental functions: health, education, enterprise/commerce, law and order, defence, transport, infrastructure services, agriculture, housing, etc. Notwithstanding that the civil service invariably operates under political directives and is accountable directly to parliament, the civil service ought to be independent from the influence of politicians. There must be observed a separation of roles and terms and conditions of service for politicians and civil servants.

The public enterprise sector too is created to assist in the delivery of public services. The underlying rationale for its creation is the need to have some of the services provided with greater efficiency and effectiveness. All the public enterprises are granted a degree of autonomy from the central government but are not entirely independent. The relative autonomy is granted by statute to allow public enterprises to operate efficiently outside the ambit of the government bureaucracy and engage in commercial activities as well as compete with private sector organizations. Because public enterprises are created by statute as public bodies and receive government financial support in the form of subventions, they must be accountable for their activities under the public sector.

Structures/Resources

The civil service is a very large sector in Swaziland consisting of over 15 ministries and employs over 20 000 people. The public enterprise sector is also very large consisting of over 25 public enterprises and commanding substantial annual budgets. The budget for public enterprises differs according to whether a public enterprise belongs to the category that is entirely owned by the government and must receive subventions or is in the second category where the enterprises ownership and equity are shared between the government, other partners and shareholders. The budget for the civil service is formulated based on estimates produced by the government. The budget is facilitated mainly through the Planning and Budget Committee (PBC) and reflects the financial requirements of the various ministerial departments. Budget formulation for public enterprises is designed to coincide with the national government's budget cycle. The budget is prepared in such a manner as to indicate the operating budget and recurrent budget of each public enterprise. A significant number of public enterprises receive government subvention, either because they are loss making or because they are entirely government owned and are mainly service-oriented and therefore do not generate income or profit from their activities.

For the civil service, the only source of income is government funding through the budget. Government departments may charge user fees but this money accrues to the consolidated fund and must be budgeted for in the normal way. The financial allocations for ministries are made through the budget and are used to finance projects or activities. Public enterprises are different from ministries in that some may charge for services and may also show profit for their activities. Public enterprises therefore enjoy a degree of financial autonomy in addition to the administrative autonomy in the sense that they have the ability to generate income from their own sources and need not rely completely on central government for funding.

In relation to the government's financial accountability, it is important to highlight the role that is played by the accounting officers. The Accountant General plays a key role in the management of public funds in Swaziland. Some of the key duties and responsibilities of the Accountant General are:

- ❑ To ensure that a proper system of accounts is established;
- ❑ To issue accounting instructions which provide guidance to those with accounting responsibilities;
- ❑ To exercise supervision over receipt of public revenue and secure its punctual collection;
- ❑ To ensure proper safekeeping of all public monies, stamps, receipts, securities, stores and valuable documents;
- ❑ To supervise all public officers entrusted with the receipt or expenditure of public money and to take efficient checks against the occurrence of fraud, embezzlement or carelessness waste;
- ❑ To supervise the expenditures and disbursements of the government and ensure that there are no unauthorized expenditures;

The Finance and Audit Act outlines accounting procedures. It requires the Accountant General to prepare and present the Treasury Annual Report and submit same to the Auditor General within a fixed period. The purpose of the Treasury Annual Report is to report on the financial operations of the government. This, essentially, is a financial report detailing how the allocated funds were used.

On receipt of the Treasury Annual Report, the Auditor General must audit the government accounts. The Auditor General (AG) produces a report based on his assessment of the Treasury Annual Report. It provides comments on the government's financial activities. In particular, the AG will have audited the report to determine whether the allocated public funds were used in accordance with the wishes of parliament. The report is presented to parliament for deliberation and action.

Accountability

The ministry is accountable directly to parliament through the Minister. The ministers report to parliament periodically and are required to answer questions raised by MPs' on specific issues pertaining to the ministry. Ministers must also account to the Portfolio Committees concerning their ministries, achievements, failures and progress made.

In addition, all government ministries are required to produce annual performance reports. The requirement for performance reports is a relatively new innovation associated with performance budgeting. Traditionally, it was considered sufficient for the executive authority to provide an account in the form of treasury annual reports to be audited by the AG, indicating how public money had been spent and whether it had been spent according to legal mandate. This approach was considered inadequate because it failed to emphasise the outputs of government activities i.e. what the various ministerial departments were achieving with the allocated funds.

Internationally accepted accounting and auditing principles and practices apply both to government ministries and departments and also to statutory bodies as well. Public Enterprises are linked to the treasury in that they may be allocated funds from the central government budget to assist them in fulfilling their statutory obligations. As a statutory obligation, all public enterprises in Swaziland are required to keep proper books of accounts and at the end of the financial year they should have their financial accounts audited by an external auditor appointed in terms of the enabling Act.

The Public Enterprise Unit (PEU) was established to monitor all public enterprises in Swaziland. It is located in the Ministry of Finance. An important function of the PEU is to ensure that all public enterprises achieve the standards in relation to performance and financial regularity. The annual report of the Public Enterprise Unit contains details of the financial performance of public enterprises. Public Enterprises must produce annual reports which outline their performance.

The parent ministry performs an oversight function in that the minister appoints some or all of the members of the governing body. The governing body monitors the performance aspects and reports to the minister. The cabinet performs an oversight function also by

approving major decisions taken by a parastatal. As an illustration, major decisions by public enterprises, such as increment of tariffs (proposal to increase prices on goods and services if the increase is major), is subject to approval by the select committee of cabinet responsible for public enterprises. The public enterprise is expected to publish audited financial statements.

The strength of parliament as the main institution responsible for holding the executive authority accountable, as regards financial matters, has on some occasions been put to the test. In the past, government was found to have sidestepped normal procedures and incurred expenditure without parliamentary approval. This pertained to some suspect projects whose viability was questionable, e.g. the proposed purchase of a new airline for use by the King. A deposit of E 28 million was paid to the seller. Parliament opposed the purchase of the airline and the whole initiative was subsequently abandoned. The consequence of the cancellation of the deal was that the country forfeited the deposit of E28 million.

Integrity Mechanisms

The authority to raise and spend money derives from Parliament, which passes an Appropriation Act on an annual basis. The Ministry of Finance plays a key role in public financial management, including the formulation of the budget. The Minister for Finance presents the Appropriations Bill to Parliament indicating the estimates of revenue and estimates of expenditure. Revenue Estimates are required to show the anticipated receipts into the consolidated fund whilst the expenditure estimates reveal the proposed outlays in respect of the various government activities. The effect of passing the Appropriations Bill is to give legislative authority for the expenditures described in the estimates.

Transparency

The objective of the civil service is to render services to the people, which have been paid for through public money. The government system is designed such that it facilitates accountability and transparency. Thus, various mechanisms, rules and regulations, exist for the civil service, as well as the public enterprise sector, to be accountable and transparent. The accountability of the civil service to Parliament is facilitated through ministerial responsibility and the existence system. The management of a public enterprise is accountable to a Governing Board or body that in turn reports to the Minister. Since government departments and parastatals operate in the public domain, the media may report on their activities. Significantly, in the public domain there exist a number of oversight bodies to monitor or report on their activities: Auditor General, Parliament (legislative oversight), including the select committees of parliament, and the Public Enterprise Unit (PEU). In Swaziland, the select committees of Parliament that have grown in stature and improved in terms of promoting a higher level of accountability are the Public Accounts Committee and the Portfolio Committees. The former deals with the financial aspects of government and it is mainly the controlling officers who must appear before this committee whilst the latter considers the performance aspects of the government system and it is the ministers who are expected to appear before the committee.

Complaints/Enforcement Mechanisms

In spite of the existence of the mechanisms of control and accountability, there have been reports of corruption in the government. Some of the incidents of corruption have been exposed through the auditing process and others by the media. The report of the Auditor General is received by parliament, through the PAC. Whilst the PAC is considered to be an effective body, it is powerless to punish the wrong doers, thus removing the deterrent effect associated with the work of the Auditor General and the PAC.

There are no rules governing whistle blowing or the protection of whistleblowers. There are disciplinary procedures for civil servants. As for politicians, there are provisions for prosecution, or a surcharge in respect of financial irregularities. However, there has been observed some weaknesses in this regard - absence of mechanisms to punish those who infringe the rules. The members of the public can report perceived acts of corruption to the Anti-corruption Unit.

Relationship to Other Pillars

The operations of the civil service are governed by the General Orders and this document contains rules governing the conduct only of civil servants. At present, there is no ministerial code in place.

The public bodies operate in the public domain. There exist rules and regulations as well as statutory requirements for transparency. The budget is organized in such a way that it is a transparent process facilitated by debates in parliament especially the budget approval (a priori control) and the budget evaluation (ex post facto control).

All expenditures of government ought to be debated in and voted by parliament in the interest of transparency and accountability. However, there is evidence to suggest that the government has not succeeded in meeting this requirement in relation to certain expenditures. Whereas virtually all government expenditure proposals are a subject of intense and lively debate in parliament and the executive officials are given the opportunity to justify those expenditures, the same does not apply to military expenditure. Since 1978, when the Tinkundla system of government was first introduced, the practice has been to include the defence budget in the Appropriations bill simply for parliament to note and subsequently approve without any debate or amendments. Comments or questions from parliamentarians on the defence budget are neither encouraged nor entertained during parliamentary debates on the Appropriations bill.

Recommendations

- There must exist a clear separation of roles, terms of reference and conditions of service between politicians and civil servants.
- All expenditure must be approved by parliament and no cases of side-stepping parliament in this regard must be observed.
- Corruption must be totally eradicated.

Law Enforcement Agencies

Role of Institution as a Pillar

The following legal instruments are used by the police and public prosecutors for the investigation and prosecution of cases of corruption and bribery:

a) The Prevention of Corruption Act of 2006

The short-comings of this Act are that it gives investigation powers only to the Anti-Corruption Unit and not to the police. Also, this Act is applicable only to cases of corruption that are committed after its coming into effect. This means that all the cases that were committed before its commencement must be dealt with in line with Common Law.

b) The Prevention of Corruption Order of 1993

This legislation deals with cases of corruption that took place between 1993 and 2006.

c) Under the Common Law, bribery is a crime and as such the police can charge people with bribery as a common law offence. Notably, bribery has a broader scope under common law than under the Act.

The Directorate of Public Prosecutions has specialized units and amongst others is a Corruption Unit which deals strictly with corruption cases. It is hoped that the DPP will now be able to effectively prosecute corruption cases.

Generally, prosecutors are not able to include the military in their remit, save for cases where the military has busted corruption cases especially people trying to evade the customs and excise laws by illegally entering imported goods along the border as opposed to legitimate entry points.

Structures/Resources

The law enforcement agencies in this country are the police, the public prosecution, and to a limited extent, the correctional services and the army. The head of the police, like many of his ilk, has been accused of corruption but nothing concrete has come out of that as his juniors do not have the power to investigate him and bring him to justice. Ultimately the Executive can be viewed as working hand in hand with the head of the police.

The Directorate of Public Prosecutions (DPP) is headed by an admitted attorney. Her competence for the job is wanting as she was appointed into the position when she had not practised long enough to execute the onerous duty of this office. The Executive arm of government also interferes with her duties and given her inexperience, she is careful not to expose corruption in government.

The DPP's role is to institute criminal prosecution in all matters where there is sufficient evidence to prosecute. This she does on receipt of dockets of cases from the police. Theoretically, she is independent but in a country where the Executive runs the show everywhere, the independence of the DPP is largely compromised. The subordinate

officers in the DPP's chambers prosecute on behalf of the DPP who gives them the mandate so to act. If the DPP instructs them to abandon prosecution, they must oblige. In law, the DPP is entitled to decline to prosecute in certain cases and she is not obliged to furnish reasons for failure to prosecute. It then becomes impossible to know what necessitated her refusal to prosecute.

Even though the independence of the DPP is provided for in the constitution, such independence is not foolproof in practice as at times one gets the impression he operates under pressure. The Director of Public Prosecutions heads public prosecutions and the Commissioner of Police heads the police services. The DPP reports to the Ministry of Justice while the Commissioner of Police is responsible to the Prime Minister.

The officials in DPP's office exercise a degree of independence but on contentious cases with political connotations the independence is illusory. The same is true of the Commissioner of Police. To a large extent, he is not independent as most of the time he takes instructions from the Prime Minister and many other authorities including the traditional authorities.

Ideally, appointments of the DPP and her Deputy must be based on merit, but such are the exclusive preserve of the King. The same is true of the appointment of the Commissioner of Police and his Deputy. The constitution provides that the DPP must be removed from his position in the same way as judges of the superior courts.

There are seven (7) institutions that comprise law enforcement in the country and they are:

- a) The Courts of law.
- b) The prosecution (Director of Public Prosecutions)
- c) The police
- d) The military
- e) The Correctional Services
- f) The Attorney General's Chambers
- g) The Law Society

The budgetary and staffing issues of these key institutions are determined by the line ministries. The heads of departments participate in the budgetary deliberations. This year alone, there has been a great improvement on the staffing of the prosecution because eight (8) new posts for senior crown counsels, five (5) for crown counsels, and four (4) for prosecutors have been approved. The police force is almost always adequately staffed. The budgetary process is also the brain child of the line ministries in line with government policies (see executive discussion).

Accountability

The law enforcement agencies in Swaziland have no mandate from the public. This is mainly because the people who head the law enforcement agencies are appointed by the King. In Swaziland, corruption is largely carried out by senior government authorities including law enforcement agencies. The result is that no cases implicating the law

enforcement agencies are adjudicated by the courts. This, in many cases, is due to the fact that the officials implicated in corruption are in law expected to investigate matters which may either implicate them or those closest to the status quo. The law enforcement agencies in Swaziland are primarily designed to secure the interests of the government as opposed to ensuring that justice is done to all those who contravene the law in spite of their standing in society.

Before the annual budget is approved, every department, through the ministry must submit an annual performance report. This mechanism does encourage departments to guard against any oversight. Also, in theory anyone not properly executing his/her functions must be reported to the DPP who must investigate the allegation and report to the ministry which in turn will report to the immediate disciplinary body, in this case being the Civil Service Board.

Public Prosecutors report to the Director of Public Prosecutions. This they do as and when the need arises. The police on the other hand report first to the immediate supervisor, then to the Station Commanders, Regional Commanders, Section Heads and ultimately to the Commissioner of Police. There is no legal requirement that the public must be consulted in the work of the prosecution and police. The DPP is not subject to any authority, although her decisions are reviewable by the High Court to ensure that she exercised her discretion judiciously. Where the DPP declines to prosecute, private parties can institute private prosecutions in terms of the Criminal Procedure and Evidence Act of 1938. These are some of the checks and balances in the exercise of her powers. The public is not consulted in the work of the police nor does the police account to the public on what they do.

Transparency

The public perception of these agencies is very poor as well. This is a consequent of the fact that they are not really accountable to the people and there is no expectation on the part of the citizens to have them accountable. The analysis of the responses given by the public with regard to public perceptions about the law enforcement agencies can be summarized as follows: (a) the Police Force is perceived to be generally corrupt and almost non-effective, that they act on government orders as opposed to being people oriented and that they are there to serve the monarch and its organs only; (b) the public does not perceive the army to serve any positive and constructive role in civic protection since it tends to emerge merely in times of strife and demonstrations to inflict injuries upon demonstrators on government orders. The army is seen as an extension of the monarch that is also seen as an economic drain for in almost every ten (10) cars on the public roads, there is at least one or two posh army vehicles and senior executives of the army. Over and above that, their salaries are supplied with monthly groceries.

Senior government officials have been accused by the media of interfering with the government tendering process by ensuring that certain tenders are awarded to specific contractors and then get kick-backs in return. Other government officials are evidently living far beyond their means, but no investigations are undertaken. In the few instances where such is undertaken, the outcome is kept under wraps while the officials continue to

thrive in their ‘successes’. Whether this is because of the incompetence of the police and the DPP or as a result of the alleged collusion existing between them remains unknown.

The training that members of the law enforcement agencies receive leaves a lot to be desired. Most of the topical criminal cases where evidence is available and sufficient have been lost in court due to poor investigation by the police and shoddy prosecution by the prosecutors. Law enforcement agencies also work under budgetary constraints which may account for their poor performance.

In most government departments however, a bigger portion of the budget goes towards funding trips abroad for senior officials and also pays for internal tenders from which senior personnel derive personal gain in the form of kick-backs. Such issues are not documented but are well known. There has never been prosecution of a senior government official, minister or former ministers in Swaziland.

According to the General Orders, a public servant is not allowed to engage in operations that will result in a conflict of interest. It is in this respect that their offices do not have access to off-the-book fund.

Integrity Mechanisms

There are no rules of conflict of interest for prosecutors/police that are statutory save for those based on the rules of ethics. Rules of Ethics have been very effective because there has not been any cases reported touching on conflict of interest. Similarly, there are no rules on gifts and hospitality for prosecutors and police subject to the Anti – corruption laws. The Prevention of Corruption Act does not address the issue of entertainment. There are no post employment restrictions subject to the confidentiality rules on information. Prosecutors cannot use information which was availed to them in the course of their employment once they leave government employment to pursue private legal practice. If he attempts to do so, he may be charged with professional misconduct.

Generally, prosecutors and the police are not required to disclose their assets but the Prevention of Corruption Act of 2006 provides that if a public servant’s assets and lifestyle appears to exceed his/her income by way of salary, then that person may be called upon to disclose his/her assets. The Director of Public Prosecutions and her Deputy are expected to disclose their assets; this is in terms of the constitution. The Director of Public Prosecutions and her Deputy are monitored. It is not clear whether the disclosure is made public. No public disclosures have been witnessed yet. It is recommended that similar rules should apply to the Commissioner of Police and his Deputy.

Complaints/Enforcement Mechanisms

There are no provisions for whistle blowing on misconduct in law enforcement agencies except that the law governing all informers is applied to prosecutors so that the name of the informer cannot be disclosed. Moreover, under the new Prevention of Corruption Act there is protection for whistleblowers. There is also no independent mechanism to handle complaints of corruption against prosecutors and the police. In the last two (2) years, there has been one case of alleged corruption against a prosecutor but he was eventually

acquitted of the charge by the Court of Appeal. At present, there are no cases of corruption within the prosecuting agencies.

There is, however, a special unit for prosecuting corruption cases within the DPP's chambers. The same applies to the police service. No prosecutions for corruption have been undertaken in the past years owing to the fact that in 2003 the High court invalidated the Prevention of Corruption Order. It was not until June 2005 that the Court of Appeal set aside the decision of the High Court which meant that the anti-corruption unit could not apply the law as per the 1993 Order.

Relationship to Other Pillars

By virtue of the fact that all criminal matters (inclusive of corruption) end up in the DPP's Chambers, the prosecution is an integral part of this country's NIS. Without the prosecution, corruption cases can not be prosecuted in court. The same is true of the police. Most investigations on corruption are unearthed by the police who then transmit the dockets to the Directorate of Public Prosecution. They are therefore important in the country's NIS. Prosecutors and police interact with the following other pillars:

- ✚ the Anti – Corruption Unit
- ✚ Occasionally, the army/military
- ✚ correctional services
- ✚ the Attorney General's chambers
- ✚ the Legislature
- ✚ the Law Society
- ✚ Non-Governmental Organizations
- ✚ Civic Society

In the 1993 Prevention of Corruption Order, it was necessary for the DPP to get the consent of the Attorney General before prosecuting corruption matters. This is no longer the case under the Prevention of Corruption Act of 2006.

Recommendations

- Prosecutors must be allowed to prosecute all wrongdoers without fear or favour, including the military.
- Officials must be appointed on merit, with the requisite qualifications and experience.
- Foolproof independence of DPP must be guaranteed.
- Must not only serve the monarch and its organs but the whole population at large.
- There must be proper training of law enforcement agents.
- Tender systems must be transparent.
- Validate prevention of corruption order.

Public Contracting System

Role of Institution as a Pillar

There is no specific law that governs public administrations' procurement. Procurement/bidding is regulated by Stores Regulations of 1975. These regulations were issued in accordance with Section 26 of the Finance and Audit Act of 1967. The Act is being amended to cater for the privatization of the Treasury and Income tax departments (i.e. Finance Management Bill).

Privatization has no determinable effect on the procurement market. This is because there has been no privatization of public enterprises. As highlighted, public procurement is centralized because it is to a large extent controlled by the Ministry of Finance. There is no procurement agency but it is anticipated and recommended by the African Development Bank Procurement Review - 2003¹. There exists an ad hoc e-procurement system for construction tenders and its impact is unknown. Lobbying for the inclusion/exclusion of projects in plans is legally regulated by Parliamentary Standing Orders.

Structures/Resources

In government tender boards, there is no selection for board members; board membership is determined by designation/positions in the relevant ministries. In public enterprises, membership is determined by duration/selection into board of directors by the Ministry of Finance.

Contracting processes are subjected to the budget and plans of government but quite often it is not done. Ministries commit more than what is budgeted for. They take advantage of the existence of a supplementary budget, hence payments are made from an outstanding account. Of late the supplementary budget is being phased out and only very exceptional cases of over expenditure are tolerated.

The size of the market is greater than the procurement budget. The market has increased after the 2005 Job Summit.

There are three main tender boards in government, namely:

- Central Tender Board – Deals with bids exceeding E500, 000 (\$72, 000, and appointment of consultants Members are mainly Principal Secretaries from Finance (Chair), Works, Enterprise and Employment, and Agriculture respectively. The Accountant General and Controller of Government Stores (Secretary)
- Treasury Tender Board – Deals with bids for annual supplies and other bids less than E500, 000 (\$72, 000). Members are Accountant General (Chair), Ass. Finance Secretary – Finance, Ass Secretary – Tourism, Ass. Secretary – Agriculture, and Controller of Government Stores (Secretary)
- Tender Waiver Committee – Deals with urgent bids for supplies not in excess of E500, 000. Members are senior staff members in the Ministry of Finance and the P.S (Controlling Officer).

There is also the Ministry of Works' Internal Tender Board – it advertises, evaluates and submits qualifying construction tenders to CTB for further evaluation. Members are mainly the Heads of Departments.

In the public enterprises' tendering that involves substantial amounts of money is consented to by Board of Directors.

Accountability

The Ministry of Finance centrally controls all tendering boards. This apparently reduces the potential for underground dealings. Therefore, the public contracting system can be said to be independent in practice.

Integrity Mechanisms

There is a contracting plan for the annual tenders (Annual Sources of Supplies) derived from proceedings of the Treasury Tender Board. It is a practice to open tenders in public or in the presence of bidders by the Central Tender Board and the Treasury Tender Board but it is not mandatory and the impact of such practice has never been evaluated. The contracting process of the Tender Waiver Committee is the only one that is not open to public hearings.

There is no special qualification that is required of staff involved in contracting. Membership in government tender boards is determined by position/designation in the relevant ministries, and in the public enterprises board membership is at the discretion of the authorities in the Ministry of Finance. In government there is no provision for staff rotation, duration and membership may be for a lifetime if a member continues to hold the same position in the ministry. Members leave the tender boards mainly by way of promotions and transfers from the respective ministries.

The controlling officers and heads of departments in the various ministries compile the bidding documents. An exception is the Ministry of Public Works and Transport where these officers are members of the Internal Tender Board. Otherwise staff prepare bidding documents, notify CTB or TTB, advertise and submit non-tampered returns to CTB or TTB.

The ADB Procurement Review - 2003 Report recommends that bidding and contracting documents and special anti-corruption clauses should be implemented. These regulations require bidders to be registered, be *stockists*, have premises and tax clearance certificates. Construction companies should also be registered with the Ministry of Public Works and Transport.

All members are regularly encouraged in their meetings to uphold integrity. Evaluators are obliged to attach a compulsory disclaimer to their evaluation submissions. However, there are no formal restrictions in the Stores Regulations for acceptance of gifts by public officials. The General Orders do not sanction public officials to do such. Employees are forbidden from involvement in contracting with bidding companies by the Stores

Regulations and General Orders (i.e. conflict of interest). Conflict of interest is also prohibited in the public enterprises' tendering processes.

Officials are not obliged to make periodical affidavits or declare their assets and income before and after being in office. After advertising, procurement rules are documented and availed to the public and interested bidders at a nominal fee. In most cases, invitations to tender are published in local newspapers. Terms of reference are also disseminated and enclosed in the bid documents. However, award decisions are not made public.

There are no registers and statistics on contracts. The secretaries to tender boards are only required to file the contracts. But all relevant contracting process documents are accessible to the public (i.e. bidders). Procurement regulations do not require the publication on adjustments and changes of contracts. All changes and adjustments, especially price changes, have to be authorized by tender boards.

Transparency

Bidding is open in the Central Tender Board (CTB) and Treasury Tender Board (TTB) for the public. If special supplies are urgently required with a bid price less than E500,000 (\$72,000) and supplier has not tendered for inclusion in the Annual Sources of Supply (i.e. TTB evaluation), ministries/departments can seek three (3) quotations and submit them to the Tender Waiver Committee (TWC) for approval of one supplier. A majority of tenders go through the CTB and TTB, a few get authorizations from the TWC and are restricted by Principal Secretary in the Ministry of Finance. However, in the past 2 years (i.e. after the Smart Partnership Conference) there has been an increase in tenders for TTC coming to TWC. This scenario emanated from the TWC's fast tracking of special tenders for the Smart partnership Conference.

Stores Regulations ensure objectivity in the open bidding (CTB and TTB) but in the TWC the process is open to abuse (i.e. overpricing). Also, the three quotations may be sought from the same company/supplier disguised as three different suppliers. Suspect quotations are subject to inspection by the committee. The Stores Regulations provide the rules for evaluation, standards, etc. for contract selection. Call for bids are advertised by the CTB or TTB in the local media and bid documents are supplied to all interested suppliers. The date for opening bids is communicated to all. However, there is no criterion on when contracts can be awarded. The Stores Regulations provide the use standard documents and in this regard the Regulations are balanced by the Bill of Quantities.

There is no explicit policy for industry protection but the implementation of the African Development Bank Procurement Review 2003 will make provision for local industry protection. Currently, public enterprise units and private companies have their own policies. The Small and Medium Enterprise Unit in the Ministry of Enterprise and Employment has drafted an explicit policy but it has not yet been implemented.

Ongoing contracts can be modified. This is outstanding in the road construction contracts, where the bid price can unilaterally be increased by the contractor and the contract

changed and/or modified after awarding of contract. A good example is the ongoing Ngwenya –Mbabane road. Initially, Government had set aside E90 million (\$11 million) for the construction of the Mbabane-Ngwenya by-pass road. A contractor was awarded a tender to construct a one lane road. Without tendering, the Ministry of Public Works and Transport in consultations with authorities of the country announced that the road would be upgraded to a Highway (two lanes) to join the Mbabane-Manzini Highway. The costs escalated to E250 million (\$31.2 million). The costs were later inflated to E500 million (\$62.5 million) on the grounds that rains damaged the road and further delayed construction. Due to technical costs that are yet to be disclosed to the public, costs were lately escalated to E800 million (\$100 million) this year...

Complaints/Enforcement Mechanisms

There are no provisions for whistle blowing but occasionally members of the public engage in whistle blowing. One famous whistle blower is former senator Walter Bennett. He is the only person in Swaziland who summons journalists to a media conference to reveal corruption. He does so in his personal capacity. The media regards him as a whistle-blower and has nicknamed him "Chief Corruption Buster". In parliament he used to expose corruption and wrongdoing in both private and public sectors. There is also no control bodies responsible for the supervision of activities related to public contracting.

Special control mechanisms to govern contracts are confined to the TWC that is controlled by the Principal Secretary in the Ministry of Finance. In the CTB, there is no room for exceptional cases. There is no procedure to request review of procurement decisions but it is possible by submitting a request for review to the Principal Secretary for Finance. This is a very rare occurrence.

Any aggrieved bidder can seek redress in a court of law. This happened recently when the MPD group sued government for black listing them from all public tenders. Companies proved to have bribed their way in a procurement process can be excluded from future procurement processes but there is no single case where this ever happened. Only companies involved in other corruption practices are blacklisted. Prior to the Anti-corruption Act of 2006, there were no formal and effective administrative sanctions for criminal offences against public administration in connection with contracting. The Act provides sanctions for criminal offences against the public administration. Such offences are rarely prosecuted. For instance, certain government officials including ministers were not prosecuted or sanctioned for paying E28 million to a foreign company with public resources as a deposit for the Kings jet, without following procurement procedures. Parliament stopped the purchase but the deposit was not recovered.

Regulations prohibit internal and external corruption but fail to curb corruption that has become systemic in the contracting system.

Relationship to Other Pillars

The Public contracting system plays a major role in NIS because it has links with most pillars/sectors. It interacts mostly with the business sector. It also should engage more actively with anti-corruption agencies and the judiciary. The ongoing implementation of

the 2003 ADB procurement review will demonstrate links of the procurement system to the NIS.

The Public Accounts Committee's system is one political control body that has direct links with the Tender Board since it monitors expenditure by ministries and this expenditure has to be justified quarterly before Parliamentary Select Committees.

Recommendations

- Mechanisms should be put in place to rid corruption from the Public Contracting System.
- Selection of Board Members should be based on qualifications and experience, not by designation or position as is the current scenario.
- Procurement officials must be required to declare their assets and their lifestyles must be monitored.

Ombudsperson

Swaziland does not have an ombudsperson. However, the new constitution makes provisions for such an institution. An ombudsperson in Swaziland has not been appointed by the government or parliament in a long time (speculated to be since the late 1980s). This is the same even in the private sector (banking, mining, media etc.) and other sectors; ombudsmen are not in place. In addition, there are no equivalent institutions such as a public protector that may perform the functions of an ombudsperson namely to represent the interests of the public by investigating and addressing complaints by citizens. The common phenomenon in Swaziland has been the appointment of institutional spokespersons who unsuccessfully try to perform the same function but end up defending the interests of their organizations or institutions.

The rationale for the non-existence of an ombudsperson may be that the culture of challenging the status quo, whether private or public sector institutions or any form of service provider, is not entrenched in Swaziland. In cases where an individual may be injured in anyway, they would rather pull all their resources to seek recourse in the national courts as a suit. The consequence of this is an overburdened court system with backlogs spanning years. The other side for private firms is that they are now a law unto themselves. Challenging a multinational or big company as an individual can be prohibitively expensive and not worth the effort in the end.

The private media, specifically the Times of Swaziland Newspaper, occasionally refers to its ombudsperson. However, by definition, the person or institution referred to by the paper is a mere official, again, whose function is to apologise for misrepresentation of dates and minor events. This person does not have the authority to investigate the newspaper and recommend sanction against the newspaper or compensation to the injured complainant.

Recommendations

- In order to introduce transparency, increasing public awareness as well as boosting its image, Swaziland should appoint an Ombudsperson in accordance with the constitution.
- Private companies should be encouraged to differentiate between an Ombudsperson and a company spokesperson.

Anti-Corruption Agencies

Role of Institution as a Pillar

The Anti-Corruption Unit is the product of the Prevention of Corruption Order of 1993. This Unit did not bring any case of corruption for prosecution until it was temporarily declared unlawful by the High court in 2002. The Prevention of Corruption Act No 3 of 2006 establishes an independent Anti-Corruption Commission headed by a Commissioner, which presumably will take all necessary measures to prevent corruption in both public and private bodies.

The scope of the commission and commissioner is nation-wide. In terms of Section 10 (1) (a) of the Act, the functions of the commissioner shall be to take the necessary measures for the prevention of corruption in public and private bodies. Whereas Section 3 (1) of the Act provides that it shall be independent in the execution of its functions, practice may however prove otherwise. The Act also states that the Commissioner and the Deputy shall be independent in the performance of their functions and subject to the control or authority of no one.

Nevertheless, until and unless the commission is established and fully constituted and operational, we can only play a game of wait and see. Previous experience though, shows that the previous Anti-Corruption Commission had no independence in practice. That fact is further illustrated by its failure to produce any cases for prosecution though many factors could have played a role in that regard.

Structures/Resources

The Act provides that the Commissioner and his Deputy shall be appointed by the King on the advice of the Judicial Service Commission. No person in terms of the Act and in particular Section 5 (1) shall qualify for appointment as a Commissioner unless that person qualifies for appointment as a judge of the High Court, is of high moral character, proven integrity, possesses considerable experience and demonstrated competence in the conduct of public affairs. Over and above that, he must have acceptable academic qualification and experience in law, economics, accounting, criminal investigation or other related profession relevant to the functions of the commission for the role of Deputy Commissioner.

It is hoped that those standards will be maintained. With the previous Commission, many of the appointments were suspect and perhaps this led to its ultimate failure to produce results.

Issues of the budget for the Commission are still in the hands of the Ministry of Justice and constitutional Affairs. With regard to staffing, the Act states that the commission shall appoint investigating and other officers to assist the commission in the performance of its functions after consultation with the Minister of Justice. This provision is a confirmation that issues of the budget and staffing of the commission are almost entirely dependent on the decisions of the Minister. In the circumstances, it would be folly even to talk about the budgetary process that governs the commission.

The 1993 Anti-Corruption Commission did not have its own budget; instead it was dependent on the Ministry of Justice and Constitutional Affairs within which it was a department. There is nothing in the new Act that seems to suggest a departure from this position. Even though the Act refers to the Commission as independent, this independence will be hard to realize without financial independence.

Accountability

The entire body of laws and rules with regards to appeals and review under the common law and statute govern the oversight of the commission. They have been effective in other fora and hopefully this will not change.

In terms of Section 20 of the Act, the commissioner must, on a yearly basis, submit to the Minister a report on the activities of the commission. The Minister in turn tables this in parliament. This is a new legal position which did not obtain under Prevention of Corruption Order. It is hoped that once the new commission is in place, reporting to the Minister and to Parliament will be the norm.

The public is never consulted on the work of the commission. It would appear that the public only meets the Commission during the course of its work and such encounters will probably be noticed also during the educational and awareness campaign practices.

Decree No-4 of 1992 headed Legislative Procedure Decree, 1992 provides for the procedure to be followed in the passing of legislation in the absence of and pending the establishment of a new parliament within the first six months of 1993. The six months period was extended to ten months by Decree No.[missing] of 1993.

In terms of that procedure, a relevant Minister would present a draft proposal of the legislative enactment to the Council of Ministers which would approve, reject or approve the enactment, subject to amendments. Once approved with or without amendments, such enactment would be submitted to the King for assent or rejection thereof, whether in full or in part. Once assented to, that enactment would become law and would come into operation on publication in the Gazette. This enactment would be referred to as a “King’s Order- in- Council.”

The Prevention of Corruption Order No 19 of 1993 was passed while Parliament was prorogued by the King and his Council of Ministers.

Integrity Mechanisms

The Commission does not, as yet, have an internal code of conduct save that the Act provides that members should not be found in situations which may result in conflict of interest. If such be the case, it would amount to an offence of corruption.

Section 27 of the Act makes it an offence for public officials or their relations to deal with public corporations without disclosing their interests particularly if such dealing will result in pecuniary gain.

There are no explicit rules on gift and hospitality but where it is shown that an officer directly or indirectly demanded or accepted or agreed or offered to accept any advantage, whether for the benefit of that officer or any other person that will amount to the commission of an offence of corruption. There are also no post employment restrictions.

In terms of transparency, it appears that reports of the commission will not to be made public. Section 19 of Act provides that even where a report of the commission is sought to be produced during legal proceedings, it shall be privileged if the Minister satisfies the requirement that its production is not in the public interest. Save for the annual reports of the commission, which the Commissioner submits to the Minister, who in turn presents it to Parliament, there is no publication of the agency's reports.

If reports of the commission are not published, the work of the commission is not easily accessible to the public. Only a small fraction of the population will presumably know how and where to report cases of corruption.

Section 56 of the Act makes provision for the protection of informers. In any trial, a witness shall not be obliged to disclose the name or address of any informer or state any matter which might lead to the discovery of that informer. The only exception is where the Court is of the opinion that that informer wilfully made to the commission a statement which he or she knew or believed to be false or did not believe to be true, or that justice can not be done between the parties without the discovery of the informer.

People may report to the commission without fear of recrimination. Therefore, all forms of whistle blowing are allowed in any form and in respect of everyone, be it in the public or private sector.

The commission's mandate *inter alia*, is to receive and investigate complaints or suspected corrupt practices made against any person and refers appropriate cases to the Director of the Public Prosecutions. From that premise therefore, there must be an internal complaints mechanism. It has been stated that the previous commission failed in the performance of its functions mainly because it lacked not only administrative and financial independence but also because it had no capacity to effectively carry out its task. It did not have qualified and experienced personnel. There was also the problem of interference from various authorities and sometimes corrupt tendencies within the members and/or officers of the agency itself.

Transparency

In the previous commission, guarantee from removal from office without justification was not in place. The new Act however provides that the Commissioner or the Deputy, save for resignation, may be removed from office by the King for inability to perform the functions of the office and such inability may arise either from infirmity of body or mind or any other cause or for stated misconduct. If it is for misconduct, he shall first be investigated by the Judicial Service Commission.

The main functions of the Commission amongst others are the prevention of corruption, investigation of alleged cases of corruption, conduct of education and awareness campaigns on corruption and its deadly effects and enlisting and fostering public support against corrupt practices. The Act stipulates that the commission shall do all such things as may be necessary for the prevention of corruption and the furtherance of the objects of the Act. The end result of all these efforts would then lead to the prosecution of those allegedly involved in the corrupt activities.

With reference to the Anti-Corruption Commission established under the 1993 order, the scales tilted more in favour of reactivity rather than proactively. That resulted in its many failures. It is impossible yet to say what will be the balance of scales in respect of the new commission until it is up and fully operational.

Complaints/Enforcement Mechanisms

During the year 2000, a senior government employee was arrested and charged under the Prevention of Corruption Order on allegations of corruption. The citation of the case is *Rex Vs Mandla Ablon Dlamini Unreported* High court of Swaziland Criminal Case No-7 of 2002.

During the trial, the defence contended that the Legislative Procedure Decrees referred to above are invalid because they were passed before the advent of new constitution of the Kingdom contrary to the provisions of Section 80 (2) of the Establishment of Parliament Order of 1978 which requires that a King's Decree can only be made once the new constitution is in place.

The defence argued further that it stands to reason that if the Legislative Procedure Decree and its amendment are invalid for the afore-stated reason, then the Prevention of Corruption Order, passed by the King in collaboration with his Council of Ministers was also invalid.

The High Court agreed with the arguments advanced by defence counsel and accordingly invalidated the Prevention of Corruption Order 1993. It also held that any proceedings initiated in terms of the Prevention of Corruption Order were likewise invalid.

The court went further to state that *“whilst the need to root out corrupt practices in Swaziland were necessary and real, it would appear that it would be unconscionable to implement this exercise using a defective instrument that has been shown to have been put in place contrary to the laws of the country”* (emphasis).

The High Court, subject to the opinion of the Court of Appeal, ordered that government be afforded a period of eight (8) months from the date of confirmation of this judgment to address and remedy the defects which may include but not limited to referring this matter to Parliament for enactment of new appropriate legislation.

The court also opined that it was unadvisable for the Director of Public Prosecutions to prosecute any further crimes under this order, pending the opinion of the Court of Appeal.

The afore-going position obtained until 2005 when the Court of Appeal finally set aside the ruling of the High Court and remitted the case to the High Court for consideration of the merits of the matter. This ruling effectively declared that the Prevention of Corruption Order of 1993 is valid and enforceable.

The incapacitation that the Anti- Corruption Unit had experienced after the High Court ruling did not seem to end even with its supposed resuscitation by the decision of the Court of Appeal. It remained blunt and almost non-effective until the Prevention of Corruption Act No.3 of 2006 was passed. The Anti-Corruption Unit is bound to be ineffective because of the lack of competent personnel as well as unclear operational parameters. Without proper and qualified personnel, the Unit is not able to conduct proper investigations which can result in the successful prosecution of the culprits. The following sections must therefore be read with this introduction in mind.

Relationship to Other Pillars

It is difficult and almost impossible to talk of the interaction between the anti-corruption unit with the other pillars when even its operation, modus operandi, is a mystery. All the powers to prevent and control corruption in the country vest with the Anti Corruption Commission. Prosecution of corruption matters is initiated at the instance of the Unit and where it fails to function properly, the DPP's office cannot act. It is also through the performance of the commission that it then can be gauged whether the legislative instruments on corruption in the country are useful and effective in practice or they need some modifications. The commission relies upon the Ministry of Justice and Constitutional Affairs and Government for its budget and staffing. This may militate against its independence and function in the long term. The commission interacts most frequently with the police, the prosecution agency (the Director of Public Prosecution Chambers) and members of the public who must bring complaints to the commission and alleged or suspected cases of corruption. Other pillars are the Legislator, the Law Society, Non-Governmental Organizations (NGO's), or Civic Society.

Recommendations

- The Commissioners must be appointed by Parliament rather than the King. This will bring more independence to the operations of the Commission.
- Publicise operations of the Commission. Presently, operation of the Commission is shrouded in mystery.
- The Commission must be independent from the Ministry of Justice.
- Selection criteria of Commissioners must be adhered to where only High Court judges or people with high moral standards are considered...
- The Commission must come up with an internal code of conduct upon which it operates.

Media

Role of Institution as a Pillar

The role of the media in Swaziland is largely perceived to be that of watchdog more than anything else. The Constitution²³ guarantees freedom of speech and of the press. In the previous constitutional dispensation, there was no law guaranteeing these freedoms. Except for the Constitutional provision, there is still no legislation on Freedom of Information. The media is not satisfactorily free in Swaziland because of the dual system of governance. The media is free to report on the central government and private sector but the traditional system (Monarchy) is not freely accessible to the media. Currently, Government is in the process of piloting a Bill²⁴ which seeks to remove certain ceremonies, places, areas and people from the prying eye of the media. Government had already drafted the Freedom of Information and Protection of Privacy Bill, 2007. The Bill seeks to encourage a culture of openness, transparency and accountability of public bodies. However, Section 41 of the Bill prohibits the media from discussing prices, rent, borrowing and spending of government. This section exacerbates the situation of infringed press freedom since there exists the Royal Emoluments Order (The media has no access to financial records of the Swazi National Treasury – a royal finance department that is responsible for the financial affairs of the royal family).

Structures/Resources

The key media and media oversight bodies in the country are as follows: In *broadcasting*: Swaziland Broadcasting and Information Services (SBIS), Swazi TV, and Channel S. In *print*: Times of Swaziland, Swazi Observer, and The Nation Magazine. The *oversight bodies are*: the Swaziland National Association of Journalists (SNAJ), Swaziland Editors Forum and Media Institute of Southern Africa-Swaziland (MISA) Chapter. SNAJ is not vibrant, MISA is not focused on media issues but more centred on an NGO agenda of social responsibility.

The media market is small. It is not possible to determine its contribution to GDP. Journalist salaries are equally not competitive with other similar professions as they are still paid poorly compared to any profession, especially public relations officers and communication managers. This is probably a result of the spread and diversity of media ownership. There is absolutely no spread. The broadcasting station is state owned. Swazi TV is a public enterprise and gets substantial subvention from the government. The only independent major newspaper (The Times of Swaziland) is family owned, which is also a problem. An institution²⁵ that has formal links with the Monarchy controls the Swazi Observer. Consequently therefore, two thirds of the media is public owned. There is therefore plenty of political control of the media, mainly in broadcast media, except Voice of the Church that is a Christian Broadcaster. Only Channel S is a private TV station but many perceive it to support the status quo

Accountability

According to a study conducted by Lindiwe Khumalo²⁶ there are 32 pieces of legislation that infringe on press freedom. Most of these laws, like the Sedition and Subversive Act of 1938, unduly restrict media freedom. Following the closure of the Guardian in 2001 by traditional councils because of perceived negative reporting on the royal family, a law stipulating payment of E15, 000 as a bond on registration of a newspaper was enacted.

This law was meant to discourage most people from venturing into the newspaper business.

The media appears to be independent because of the covert nature of legislation that infringe on press freedom. Nevertheless, there is no formal legislation that undoubtedly ensures independence. No one has been persecuted or jailed but the media is always at risk of being banned as happened in the case of The Guardian, when it writes or talks ill of government. There exists an old culture of self-censorship in the media. The media is never too critical of the institution of the monarch. The proprietor or editor will always guard against publishing information that is seen to be too critical of the institution of the monarch. In the event they publish negative reports on the royal family, they are harshly dealt with, through extra judicial means, hence the self censorship. In most cases, they are threatened with closure or reminded that they must be respectful of the elders or risk losing their business. For instance, in 1998, the employer of The Times of Swaziland fired the editor of the Sunday publication (Times Sunday) Bhekhe Makhubu for an article that only revealed the education background of King Mswati III's wife. The article stated that the King's wife did not finish school. There was a big storm in the country to an extent that the proprietors of The Times of Swaziland, under duress, ended up dismissing the editor. In most cases, they are threatened with closure or reminded that they must be respectful of the elders or risk losing their business.

Integrity Mechanisms

There is great need to harmonize legislation. The 32 legislations govern the media but not directly. The Swaziland Television Authority can grant broadcast licences but the Swaziland Post and Telecommunications Authority that is in a different ministry authorizes frequency allocations. Nothing is in place to ensure media accountability except for internal accountability. The Media Complaints Commission failed. There is no national ombudsperson. Internal ombudsperson is not very effective because self-regulation is not adequate.

Codes of conduct for journalists exist; the Swaziland National Association of Journalists (SNAJ) in 2002 developed and approved a code of ethics to ensure professional standards are maintained by all journalists practicing in the country. The code was recently updated to include clauses on the coverage of HIV/AIDS and gender issues. However, in the absence of an enforcement instrument to ensure the code of ethics is adhered to, SNAJ currently relies on willing editors in newsrooms to sensitise journalists about the code. Most media houses have adopted them, but these are not easily enforceable. There also exists editorial policies. Although they are much broader and specific to certain media, they serve as a guide. Professional organisations governing media ethics presently do not exist and that aspect is consequently allotted to the institutions' internal bureaucratic restraint mechanisms. The Media Complaints Commission could have catered for such. On that note, the Swaziland Media Commission Bill, 2007, which seeks to promote, supervise and maintain responsible standards of journalism, give effect to a code of ethics for the media. It also establishes a Media Commission for the purpose of promoting and preserving the freedom of the press in Swaziland. The Bill is yet to be piloted in parliament. Journalists cannot differentiate between a gift and a freebie due to the flaws in the rules of ethics.

Transparency

Any tradition of investigative journalism is compromised by the existing environment where threats of closure or losing business reign supreme. The corporate sector is no better as any criticism against their companies is always followed by threats not to advertise in the media concerned. In 1998, the Times of Swaziland carried perceived negative stories about the royal family. The Government instructed Chief Executive Officers heading Parastatals and Principal Secretaries in the Government Ministries to withdraw adverts from The Times. Following the threat to withdraw the adverts, companies that were doing business with government through the tendering system wanted to follow suit in an attempt to please government. The management of The Times, led by Vusie Ginindza had to sweet-talk the former Prime Minister to change his mind. The management promised the ex-Prime Minister that journalists under its employ would be extra-careful in their writings and negative reports on the royal family would come to an end and government obliged.

There are no structures or policies and training programmes for media personnel and therefore there is lack of professionalism. A lot of reporting tends to be gossip and scandals. Although the media does cover corruption, it could do better. Corruption scandals tend to be highlighted but not followed through to the end to build pressure for there to be public interest and censure. The threats to pull-out adverts and toeing the establishment's line are some of the things that undermine investigative journalism. The media is still challenged by the absence of an independent self-regulatory body and media policies/programmes. Also, the corporate and government interference has affected the quality and standard of reporting.

The media licensing authorities do not use transparent, independent and competitive criteria and procedures. All the licensing authorities are state controlled. There are no licensing guidelines. Channel S was given a license through an order "from above". The Swaziland Television Authority (STA) is mandated to grant licenses, but it shelves all applications because there are no guidelines. At the moment Swazi TV station and STA are one and the same thing, hence the conflicts of interest.

Publicly owned media regularly cover the views of government critics, but with a lot of self-censorship. The Media relies much on government financially (subventions, adverts, etc). There are no clear rules on coverage of political advertising in the news media since political parties are banned. Allocation of coverage of political parties is non-existent. Nevertheless, government follows the policy of advertising in all mainstream media without discriminating whether it is government controlled or not. Although political parties are banned, editors determine coverage for the informal political parties.

The media is able to withhold disclosure of sources. In recent times, no case of forced disclosure was reported. The only one occurred in 2000, where the proprietor (Tibiyo TakaNgwane) closed down the Swazi Observer after a Zimbabwean chief editor had adamantly refused to let his journalist, Thulani Mtsetfwa handover to government a copy of a confidential letter from Royal Swaziland Police Commissioner Edgar Hillary to his South African counterpart. The letter detailed events leading to the arrest of a Swazi

multi-millionaire who was investigated for allegations of drug trafficking. Before the publication of the letter, The Swazi Observer had put on the front page a story of a confidential meeting between the King and a multi-millionaire industrialist, Nathan Kirsh. Government authorities and police reportedly used the two scenarios to put pressure on the King to force Tibiyo TakaNgwane into closing down the newspaper.

Court Orders have been issued compelling journalists to reveal their sources (e.g. Government VS Times of Swaziland on Bheki Simelane's story by the late Vusi Ginindza). There is no law on the disclosure of donations/reduced rates to political interests practice.

No harm or obvious persecution of journalists investigating cases of corruption in the last five years has been noted. Only libel laws or other sanctions are used to restrict reporting of corruption. There is a pending case before court, where the Public Service and Information Minister is contesting a series of articles published about him in the Times of Swaziland. Also, the former Prime Minister once threatened to withdraw advertising to the Times of Swaziland because of perceived negative reporting.

Complaints/Enforcement Mechanisms

Rules on conflict of interest for journalists are in the Code of Ethics, but enforcing them is not easy. A good example of conflict of interest is the case of a Swazi TV employee that owned a private television station (Channel S). The employee was fired by the Board but was reinstated by the Minister for Public Service and Broadcasting and Information. The Conditions of Service are not conducive as journalists work long hours and are not provided with transport from places such as parliament where they sometimes work.

Relationship to Other Pillars

The media is a key part of this country's NIS as it plays a central role in providing information to the NIS. The Legislature depends on the media in order to conduct debates, hence the promotion of the individual MPs. It interacts mostly with the Judiciary as a lot of reporting comes from the courts and the business sector because it affects revenue generation of the media. Civil society still needs to know and understand the role of the media and challenge it to perform its role of being the watchdog.

Recommendations

- There must be reduced political control over the media. Further, there must be granting of absolute media freedom.
- Media institutions need to invest in investigative journalism in order to dig out issues on corruption in a more thorough and professional manner and follow such cases through. Currently, there is no formal training for media practitioners.
- Blackmail of media institutions by way of threats to withdraw adverts whenever negative cases are reported on should be thoroughly discouraged.

Civil Society

Role of Institution as a Pillar

Political Parties cannot be substituted by civil society. Nonetheless, civil society complements these institutions. In the event these institutions, i.e. political parties, are ineffective or in the extreme do not exist as is the case in Swaziland, labour (and generally civil society organizations) have exploited the vacuum by raising issues that would otherwise be the purview of political parties. Until recently, labour has been the most prominent organized civil society in Swaziland. The activist history of organised labour in Swaziland can be traced as far back as pre-independence in the late 1960s. The 1973 King's Proclamation to the Nation ensured the first serious attempt at silencing civil society. The Proclamation was directed at the emerging opposition to the dominant conservative monarchical Imbokodvo National Movement, also referred to as the Kings Party (Mzizi, 2003). The lull in industrial labour activism was an unintended consequence of the banning of political parties that lasted until the mid 1980s when the Swaziland National Association of Teachers led the teachers through a historic industrial strike that shook the status quo. The consequence of the 1980's teachers strike was the subsequent targeting of union leaders for incorporation into government by the state. For example, former union leaders Obed Dlamini was appointed as PM in the 1990s and subsequently the late DPM Albert Shabangu.

Structures/Resources

Until the year 2005, civil society in Swaziland operated under no legal or policy framework. In 2005, a policy was adopted to regulate the framework within which civil society can operate. Civil society organizations in Swaziland were under the administrative ambit of the Ministry of Home Affairs. The national policy maintains this order. However, the problem with the old order is how civil society in general and NGO's in particular were expected to register as legal entities in the country. Organised civil society registered with the Ministry of Justice and Constitutional Affairs. Registration was done through two statutes; Section 21 of the Companies Act of 1912 and the Protection of Names, Uniforms and Badges Act of 1969 (Mzizi, 2002). The problem is that both statutes were intended and are used in the registration of private companies and/or profit making institutions. Civil society is by definition, non profit making.

According to the Policy of 2004 (adopted in late 2005) NGO's are "...legally formed, autonomous organizations (locally or internationally affiliated) that are voluntary, not for profit, not self serving and whose primary motivation is to improve the well being of the people" (Ministry of Home Affairs, 2004 p.g.7).

The Ministry of Home Affairs has no definitive figure of registered non profit making institutions. The Ministry of Home Affairs is dependent on CANGO for the exact number of Civic Society Organizations (CSOs) that exist. CANGO on the other hand only registers CSOs as members if and when they meet CANGO's constitutional requirements including the payment of annual membership fees (CANGO Constitution, 2003). The National NGO Policy changes the registration process for NGOs by separating it from

private profit oriented entities. CANGO has a total of 70 members and effectively 68 fully paid voting members (CANGO Annual Report 2005).

The management of organizational resources for some civil society organizations has been on the spotlight in the last few years. For most issue driven NGOs e.g. family planning, faith based, HIV/Aids etc. the major source of their income has been the international donor community such as the Global Fund for HIV, Open Society Institute of Southern Africa (OSISA) for social justice issues, USAID for broader issues etc.

Internal sources of income are very limited and insignificant in terms of size in most NGO budgets. However, in the case of labour organizations from union to federation level, internal funding in the form of member subscriptions and investments of those subscriptions make the largest portion of the funding.

Accountability

The sources of funding make accounting different for civil society from public institutions. Civil society in Swaziland accounts to those who fund them only. Their accounting books are therefore only available to those who legally have the right of access to those books. Labour, for instance, is expected by law to submit audited books to the labour commissioner on an annual basis. This they do. The SFTU has had instances where it has failed to submit audited books and for that it received public scorn. NGOs on the other hand submit their audited books in their annual general meetings. These audited books also make-up the annual general reports produced by these institutions. These reports are mostly freely available but not accessible to the public because of a number of reasons i.e. because of resource constraints there are few copies and also that they are not circulated in public areas. There are cases in the public domain where leaders of these institutions have been accused of not being transparent, extravagant or plain corrupt in terms of how they spend the institutions' resources. The leadership of the SFTU has been accused in the media of squandering money and failing to pay rental which resulted in its ejection. This is despite that its membership would claim to have met all their subscription obligations. There are cases as well in the NGO sector where leaders of such organizations are suspected and accused of abusing institutional resources.

Integrity Mechanisms

Civil Society has no internal mechanisms to ensure integrity and prevent corruption. The majority of interviewed civil society mentioned that the issue of staffing in civil society is normally the prerogative of the Director. The consequence is a system of patronage and a sustained perception of civil society is corrupt in itself. Senior managers and directors are hired by the Boards of Directors or Executive Committees. The members of these bodies are drawn from the target groups in which the organizations serve. For instance, the governing board in CANGO is derived from the leaders and senior managers of the NGOs CANGO serves and is elected on a rotational basis.

Methods of ensuring integrity are found in terms and conditions of service. The employment contract normally states the expected behaviour from an employee and what would constitute unbecoming behaviour and consequences of that behaviour.

Employment contracts made available to the study did not state the process of promotion and development. Only procedures outlining issues of resignation and termination of employment were available.

The second instrument for ensuring integrity cited by most organizations is the publication of annual reports, hosting of Annual General Meetings and financial reports. All institutions investigated produce annual reports including financial statements. The last mechanisms are the regular reports submitted to donors or partners. These are a requirement for most organizations and take a specified format. The donors apparently can determine if and when an organization is abusing funds through corrupt or other means.

Transparency

All the organizations interviewed viewed corruption as an eternal and distant phenomenon. As a matter of fact, corruption is seen as a public sector problem. All the institutions admitted corruption exists within their sector but not in their institutions. If it existed in their institutions, they argued, the environment would automatically flush-out individuals prone to corrupt practices.

Institutions such as the Council of Swaziland Churches and World Vision rely on the moral values of the people employed and the values these institutions are supposed to uphold as a mechanism for ensuring integrity. In 2005 CANGO circulated a draft code of conduct for the sector. This document was comprehensive as it dealt with a vast array of issues in terms of conduct of employees to the core values of non-governmental institutions. All those interviewed in this sector were not aware of where the discussion on the document is at this stage.

There are no recorded cases of any organized civil society organisation being held liable for tax fraud or evasion. So far all meet their legal obligations.

Complaints/Enforcement Mechanisms

Organized labour re-emerged very strongly again in the early 1990s reaching a climax towards the second half of the decade. It is labour¹ that pushed hard for the constitutional reform that has led to the new constitutional dispensation. Public administration and industrial labour experts interviewed in the study argue that the resurgence of organized labour was a result of two factors, namely;

1. the weak leadership in the government and
2. the conducive legal framework.

The consequence of all these policies combined and the length of the period in which these policies were strongly enforced weakened the labour movement as evident today.

All industry and other sectors in Swaziland are unionised. The Swaziland Federation of Trade Unions is the largest federation in the country with its membership from the agricultural and manufacturing industries. The Swaziland Federation of Labour is the second federation in the country with its membership drawn from the commercial industry, specifically the banking sector.

Relationship to Other Pillars

The effectiveness of civil society in dealing with external corruption is dependant on its ability to network and organize on a common issue. Presently, civil society has competing agendas. They all want priority status in the national agenda. Despite the common interests in ensuring holistic national development, very rarely have civil organizations effectively forged ties and worked together. Where civil society has organized on a particular national matter, they have been very effective in drawing attention to, and/or preventing, the matter from reaching socially destructive levels, e.g. the issue of the King's Jet in 2003 and the issue of the Rule of Law in 2004¹.

Secondly and most importantly is the capacity of civil society to mobilize popular support on matters of national interest. During the process of constitutional development, civil society was disorganized and fragmented in its approach intended at discrediting the process as flawed and centralized. This approach highlighted the weakness in organized civil society to mobilize and involve the broader population. The competing ideas and agendas of civil society have a negative consequence on the ability of civil society to mobilize. Some members of the public have concluded that with the combination of individual and irrelevant agendas, organized civil society has failed to serve their needs and appeal to the broader citizenry.

Recommendations

- Internal mechanisms to ensure integrity and prevent corruption must be set up.
- Transparency with regards to staffing must prevail. Currently, staffing is mainly prerogative of Directors consequently leading to patronage and a sustained perception of corruption.
- Unity among organisations is encouraged to mobilise support on matters of national interest.

Business Sector

Role of Institution as a Pillar

Swaziland's economic livelihood is heavily reliant on exports earnings (\$2.4 billion) as well as on Foreign Direct Investment (FDI accounts for \$ 65.1 million). Also, Swaziland is dependent on The Republic of South Africa (SA) for 95% of her imports. In Swaziland, significant business activities are concentrated in the urban areas whereas about 70% of the population is in the rural areas. Swazis in the rural areas have limited control over land (Swazi Nation Land) and banks deem it risky to grant loans to Swazis to start their businesses on Swazi Nation Land because they have no security over the land. Most of the Swazis have nothing to show as sureties since the land on which they have set up structures belongs to the King. The King in turn delegates powers to oversee the land to a community's chief. According to the Heritage organization's 2007 assessment²⁷ Swaziland's economy is 61.6 % free (World average = 60.6%), which makes it the world's 64th freest economy, 6th out of 40 in the sub-Saharan Africa). Furthermore, she also scores highly in business freedom (71.5%), fiscal freedom (81.5%) and labour freedom (77.2%). Its weaknesses are in financial freedom (50%), trade freedom (59%), property rights (50%), freedom from corruption (27%), investment freedom (50%) and there is no effective privatization policy.

Structures/Resources

The leading generator of wealth in Swaziland is the manufacturing industry but sugar accounts for more than three quarters of the country's exports revenue and amounted to an annual turnover of E750 million (\$93 million) for 2004/2005. The Sugar Industry sells into four main markets, namely; South Africa (52%), Africa, excluding South Africa (16%), the European Union (25%) and USA (3%).

The ratio of private vs. state owned enterprise is about 60: 40 in favour of the private sector. The basic services industry is predominantly under the control of the state; namely electricity – Swaziland electricity Board, telecommunication – Swaziland Post and telecommunications Corporation, MTN, water services – Swaziland water and Services Corporation, railway – Swaziland Railways, and air transport – Airlink Swaziland. The state is also involved in agriculture through the National Maize Corporation (NMC) and National Agricultural Marketing Board (NAMBOARD), finance - Swazi Bank. Given the size of the economy, this is significant. Otherwise trade is independent and controlled by private business, even though there exists select import permits and weak enforcement intellectual property rights.

The maximum share holding that government often has is a 51% share. Shareholding by the state rather than total ownership is common. The government indirectly owns key industries through quasi private enterprises such as Tibiyo ta Kangwane, Tisuka taka Ngwane. These institutions solicit substantial shares in key industries in trust for the nation and are exempted from paying tax to the State. Stakeholders that prepared the country's National Development Strategy (NDS) had suggested that the royal companies should pay tax because they owned shares in all mineral companies, sugar companies,

citrus, manufacturing, print media and many more firms across the country. Traditional authorities objected to this proposal.

The business sector is a much-organised sector. There is a Federation of Swaziland Employers and Chamber of Commerce (FSECC) and the Association of Swazi Business Community (ASBC) through which lobbying and advocacy on behalf of the private sector is done.

Accountability

There are rules to curb money laundering and capitalization ratio minimum that were set by the Central Bank of Swaziland (i.e. Money Laundering Act – 2004). Consequently, money laundering is effectively contained, especially in the banking sector. There are no sufficient regulations in other sectors to guard against money laundering, e.g. the property market. Facilitation payments have not been eliminated from business practice; in fact there are no measures in place to eliminate it. The practice is rife in private-public dealings. Recently, a commission of enquiry was established to investigate how the government spent approximately \$7 million (50 million Emalangeni) on a business training exercise for which it had allocated \$1.5 million (10 million Emalangeni). Government officials are implicated in coercing companies to pay them substantial amounts to fast track payment for services rendered.

No draft laws are in place to address the issues raised by high-profile corporate failings. Recently, the Swaziland Post and Telecommunications Corporation (SPTC) have demonstrated high profile failing but no law is being drafted to address such. The Corporation's situation is worsened by unfair competition from MTN – Swaziland, whereas SPTC is the regulator of MTN's licence. Seemingly, this is because of the fact that the King is a shareholder at MTN-Swaziland. Initially, the Swaziland Posts and Telecommunications (SPTC) (Parastatal) owned 10% shares at MTN), which were later questionably sold to the Head of State. There was no advertisement of the sale of the shares. The King was just given exclusive rights to buy them.

Swaziland is mostly a recipient of international conventions and laws rather than a proactive law designer. There is wide spread bid rigging (public tendering), predatory pricing (public transport), and price fixing (financial services). Parliament bitterly complained of widespread reports that senior government officers operate businesses behind the scenes. There are allegations that the senior government officers trade with government through tenders that are always won by companies that have been registered under the names of their friends and relatives.

The capital market structure is more *laizes faire*. Rules on liquidity fall short of required capitalization ratios. Also, there are no rules on transaction volumes and costs except not to charge over 100% interest. There is a growing awareness about stock markets due to aggressive campaigns by the Central Bank of Swaziland. Shareholders are not very active as most of them are mostly minority shareholders. Other stakeholders, such as Africa Alliance and Swaziland Stock Brokers Ltd are very active.

Integrity Mechanisms

There are general laws and rules that govern oversight of the business sector. Specific rules are confined to various oversight bodies such as the Swaziland Institute of Accountants, Liquor Licensing Board, Swaziland Environmental Authority, etc. A register of all companies is compiled and audited at the Ministry of Justice (Registrar General's office).

The private sector, through their associations, reports to the Ministry of Enterprise and Employment about business operations and challenges but for financial reporting, they report to the Ministry of Finance (Income Tax Department). Quoted companies also report to shareholders. The public is required to be consulted in the work of business especially for environmental impact assessments and industrial related disturbances. Consultation is to a large extent practiced in the construction sector.

Integrity is a major concern for Swaziland businesses for both ends of the business. There is no local private corruption reported in the private sector as it is concentrated chiefly on exportation of goods although undocumented cross border private corruption is rife. Local businesses that import goods from South Africa under-declare the value of goods at the Customs and Excise department because they collude with their South African counterparts by producing false invoices. Also worth mentioning is the fact that at the moment, there are no guidelines on how the Head of State should be involved in businesses.

By subscribing to good corporate governance, business prevents corruption and implements the corporate social responsibility agenda. Presently, in relation to this aspect, the benefits of the new Anti-corruption Act are yet to be realised. A lot of large businesses are subscribing to corporate governance ethics, wherein conflict of interest and cronyism are disapproved. It is in public enterprises where the outcry of cronyism and conflict of interest is a common fact. Codes of conduct are not widely known and upheld in most of the businesses in Swaziland. Where they exist, in the private sector, not in the state-owned enterprises, they are effective. Anti-bribery and/or anti-corruption provisions are contained in almost all code of conduct/ethics documents.

General data on registered companies is not available to the public. Nevertheless, ownership of business and investments is totally transparent. Information is available at the Ministry of Justice and Constitutional Affairs (Registrar General's office). Disclosure of company financial records is common. Financial records for public enterprises are open to the public because they are obliged to provide audited financial statements to the Ministry of Finance (Public Enterprise Unit) and published in annual reports and the media. Most private companies only disclose to the Commissioner of Taxes. But lately there is a tendency by private companies (especially banks) to publish them in local newspapers as a marketing strategy. Companies normally disclose their annual financial statements. A third party or external verification of such reporting is independent audits of these statements before they are publicized.

Bribery and corruption cases reported publicly are very limited. Known cases are reported in the media, especially print media. So far there is no whistle blowing protection regarding corruption, except under Police Act. No company is publicly known to have a whistle blowing mechanism. The Anti-corruption Act provides for the protection of whistleblowers. Non-compliance to procurement procedures particularly government procurement regulations and squandering of funds are the only accusations of corruption that have been made against companies in recent years.

There is no stock market oversight body but stock markets fall under the Central Bank of Swaziland. So far no company or individuals have been sanctioned. The public as stakeholders is not consulted in developing or improving companies' anti-corruption policies and practice. Lately, the subject of business sector corruption has been part of public debate. This is very ad hoc because it is just a talk show for some politicians. The Public is not involved in reforming the sector.

Transparency

There are various laws that govern different companies. They encompass fair trade (Competition Bill of 2006 still in parliament), public safety & environment (Environment Management Act – 2002), industrial relations (Industrial Relations Act – 2000), taxation (Finance Management Bill), etc. The Anti-corruption Act of 2006 governs corruption in all sectors of the economy. It is applicable under civil law and its effectiveness is yet to be evaluated because it has just been enacted. Presently, there is no evidence that corruption in the business sector is punishable by law.

The relationship between business leaders and politicians is smooth, except when politicians (MPs) scrutinize most actions taken by business leaders, especially when public resources are involved. Otherwise politicians do not interfere with businesses. Most MPs are business people themselves. There is a high degree of conflict of interest and corruption. An investigation is pending into allegations of government being supplied substandard materials in the procurement of pharmaceuticals where a minister and MP's are said to be involved in the equation, hence the shortage of medicines in government hospitals.

The anti-bribery provisions normally extend to boards, as well as family owned companies and nonetheless they are not effectively communicated down the supply chain. Companies fall-short in actively training their employees to take a no-bribery stance including training in the above codes. Thus no one private business has yet been identified as having adequate/strong anti-corruption policies. In fact none of the sectors or business associations has mandatory anti-corruption rules. What exist are somewhat sectoral anti-corruption initiatives, but only for professionalism and sectoral ethics. A number of the multilateral enterprises comply with the corporate governance recommendations.

Complaints/Enforcement Mechanisms

There are significant voluntary anti-corruption initiatives within the business sector. However, they entirely depend on individual company policies. Of late, government has a

“black list” of potentially corrupt businesses/companies with which they will not do business. The blacklisting is partly due to the Price Waterhouse Coopers Commission that conducted a forensic investigation of the Department of Customs and Excise and the department of Income Tax. The commission found that computer user identifications of seven custom officials had been used to manipulate data to undercharge importers by approximately \$4 million (28.5 million Emalangen).

Relationship to Other Pillars

The degree of the business sector in the NIS is moderate. This sector does not have strong links with most sectors in the NIS. Businesses interact principally with and rely on the public procurement system. In future it is expected to engage more actively with anti-corruption agencies to avoid corporate failings with the coming into effect of the Prevention of Corruption Act of 2006.

There is a high need for small and medium business licences and permits. A hurdle for business is that small and medium businesses have to obtain a licence through an association, e.g. Swazi Commercial Amadoda. This bureaucracy encourages bribery. The Ministry of Enterprise and Employment however is working towards removing such hurdles.

Business cooperates with the Income Tax Department very well because it is proactive. On the other hand, they are outsmarting the Customs department to a large extent. Business concerns about civil/public agencies are often successful in courts. Regulations for renewal of trading licences/permits enforce transparency in the business sector. The media plays a major role in keeping the business sector transparent. The Media often resorts to tabloid reporting and that way, benefits business transparency.

Recommendations

- All businesses need to develop Codes of Ethics in order to develop a culture of integrity in this sector. While Codes of Ethics may be difficult to implement in the informal sector, Government must find ways of regulating this sector in order to deal with corruption particularly at the borders of entry and address issues pertaining to conflict of interest.
- An effective privatisation policy must be put in place.
- Government must increase investment freedom from the current 30% in order to attract more investors.

Local Government

Role of Institution as a Pillar

Regional administration is the administrative structure found within the four regions of Swaziland. It provides services as well as promotes community development. Each region is headed by a Regional Administrator who is the political head of the regional administration and serves as the chief co-ordinator of all development activities and initiatives within the region. Regional Administration exists within the framework of de-concentration. Therefore, the regional administration system is an integral part of the government bureaucracy. In this system the political head is accountable to the Ministry of Regional Development and Youth Affairs, as well as the *Tinkhundla*. The office of the Regional Administrator is expected to co-ordinate the activities of a number of factors, including civil servants and chiefs, within the framework of the *Tinkhundla* to promote community and regional development.

The objective or purpose of the regional and local government sector is to facilitate decentralization and allows for the sharing of power by central government with the decentralised institutions of government. This is expected to bring government closer to the people as well as increase the efficiency and effectiveness with which services are provided. However, the present policy of decentralization has a number of limitations. The national government possesses significant powers vis-à-vis local government. The national government also retains the major/significant functions (health and education, law and order) whilst local government performs only the minor/insignificant functions (sanitary services, markets, street lights and land development).

Structures/Resources

For administrative purposes, the country has four regions, Hhohho, Manzini, Lubombo and Shiselweni. Each regional administration has a number of departments responsible for service rendering and performing a range of decentralized functions, such as community development, management of the regional development fund, etc. The local government system too is growing in terms of significance in national development. At present there are twelve urban local authorities in the country. Of these, two are city councils (Mbabane and Manzini), three are town councils (Nhlangano, Piggs Peak and Siteki), and seven are town boards (Mankaiyane, Hlatikhulu, Lavumisa, Matsapha, Ezulwini, Ngwenya, and Vuvulane). The three categories of local government (city council, town council, and town board) reflect the stage of development and maturity reached by a particular local authority. City councils are the biggest in size and town boards the smallest.

The local government system is not entirely independent. There is some degree of autonomy but there is a sense that the system is *prefectoral* in the sense that central government plays a dominant role in relation to city/town councils. A new decentralization policy has only just recently been enacted and it is too early to determine whether it will bring about any improvements in terms of devolution of power and transfer of meaningful functions to local government. Regional administration in Swaziland does not have any autonomy at all because it is not another level of government. Regional administration is governed by the same rules as government

ministerial departments and is in fact part and parcel of the civil service, i.e. it is part of the Ministry of Regional Development and Youth Affairs²⁸.

Regional administration is a relatively developed sector. The budget for the regional administration and local government sector is formulated based on estimates produced by the institutions themselves reflecting their requirements for funding. Budget formulation for local councils is designed to coincide with the national government's budget cycle. The budget is prepared in such a manner as to indicate the operating budget and recurrent budget of the institution. For regional administration, the only source of income is government funding. The budget allocations, which are received through the parent ministry, are used to finance projects such as the regional development fund. Whilst the regional administration's projects and programmes are funded entirely from the central government budget as part of the annual government appropriations, local government bodies have various other sources of income besides government grant aid. Only town boards rely entirely on government for funding.

The 12 local councils have varying abilities to generate income. The two city councils are able to generate a substantial proportion of their income (approximately 80%) from property tax (rates) with the remainder coming from government grants and miscellaneous sources. The intermediate category of local authorities and town councils also levy rates on property and generate income from this source which, however, is far less than that which is generated by city councils hence town councils require more government grant aid than city councils. The town boards (found in towns that are still at an embryonic stage) generate very little or nothing at all from rates, with a few exceptions such as Matsapha town board, which is able to generate an adequate amount from rates by virtue of its location in the industrial heartland of the country. The staffing level within local government institutions varies according to the size of the organisation and whether the municipal authority is a city council or town council or town board. Therefore, city councils are relatively well resourced in terms of staffing and have filled many positions in all areas – town clerk, heads of department (human resources, environment and health, community development, engineering and treasury, staff including support staff). However, the town councils have fewer positions (5-8 positions) and some of the officials are seconded from the ministry. The town boards have even fewer positions than town councils.

The ability of local government bodies to generate income from their own sources and the dependence on central government grants and the ability to employ their own staff determine their level of autonomy. Thus, city councils have a degree of autonomy compared to town council or town boards because they have a greater ability to generate income from their own sources and employ their own staff. The only exception is the top position of clerk to council where there is a requirement for ministerial approval. Because the national government pays the bills for services administered by town boards and to a lesser extent, town councils, the central government is placed in a position where it is able to dictate terms concerning the affairs of the town boards and town councils.

Accountability

The Regional administration is accountable directly to parliament through the Minister responsible. The accountability of local authorities is facilitated through a number of mechanisms. The parent ministry (MHUD) performs an oversight function in that it receives periodic reports about council matters. There are provisions for approval of major decisions by council such as, for example, recruitment of the chief executive, the borrowing of funds by council and major commercial undertakings. The local authority is expected to publish audited financial statements for viewing by the residents.

Integrity Mechanisms

Local government is the second level of government, after the national government. The local government system in urban areas was created through and is governed by the Urban Government Act No 8, 1969 while in rural areas, separate instruments were used to create it, namely the Regional Councils Order, 1978 and the Establishment of Parliament Order, 1978. The said laws contemplated some form of local administration of public services in a decentralized governmental structure.

The architects of the decentralization policy envisioned a dual system of local government consisting of a Western system (municipal authorities) and a traditional system (*Tinkhundla*). Therefore, there are two parallel systems of local government. The first is local government in the country's urban areas constituted as city councils, town councils and town boards. The Ministry of Housing and Urban Development (MHUD) is responsible for local government. The second is the traditional system of local government constituted as the *Tinkhundla*, found in rural areas. The Ministry of Regional Development and Youth Affairs is responsible for *Tinkhundla*. The political/administrative arrangement described above creates a situation where the focus of regional development is on the rural areas rather than on urban areas. The task of spearheading provision of public services in the urban areas for the benefit of urban inhabitants rests with the municipal/local authorities. The enabling act describes the range of services that must be provided by urban government.

The council Standing Orders deal specifically with conflict of interest as this applies to employment of staff. The councillor is required to disclose to the Town Clerk any relationship between himself and the candidate for an appointment. The practice calls for the disclosure of assets to council but this does not happen in practice. The Town Clerk is the official who is responsible for communicating information on council matters to the media. It is an offence for an individual councillor to disclose published confidential information prejudicial to the institution.

The minutes of council and the financial reports are public documents. In theory members of the public may view the audited financial reports and request for the minutes of council. The limitation of this is the general apathy displayed by the public including the inhabitants of the urban area.

There are at present no rules governing whistle blowing or the protection of whistle-blowers. However, the Standing Orders give the Chairman power to deal with members of council who are guilty of misconduct e.g. unruliness, disrespect and obstruction. The

rule provides for suspension and exclusion for stipulated periods of those who are involved in misconduct but does not deal specifically with acts of corruption. The members of the public can report perceived acts of corruption to the Anti-corruption institution that has been set up by parliament for investigation.

The Standing Orders do not deal with the aspect of post employment cooling-off period.

Transparency

The local government system is designed to facilitate accountability and transparency. With respect to the accountability of the elected councillors, accountability is facilitated through periodic elections. The councillors are directly elected with a few exceptions i.e. those who are appointed by the Minister. This means that as the peoples' representatives, councillors are ultimately accountable to their constituencies. The councillors are elected for two years and vested with power to formulate policies and monitor their implementation. At the end of the term of office the electorate has an opportunity to judge performance and to re-elect or dismiss them from office. Transparency for local government is promoted through the provisions of the standing orders which allow for open council meetings. The public and the media may attend council meetings or debates. The agenda and minutes of such meetings are available for public scrutiny. Only committee meeting(s) of council are held in private. The minutes of council and other correspondence are availed to the parent ministry and there are regular briefings and consultations between ministry and council officials on important council business. Lastly, financial accountability and transparency are facilitated through the practice of financial reporting and publication of audited annual reports. As for regional administration, the accountability is facilitated through the role of oversight bodies that exist in the government sphere - Auditor General, Legislative accountability through the PAC. However, in spite of the existence of mechanisms of control, a number of local government institutions have been investigated or are being investigated for financial irregularities.

It is noteworthy that just like in local government, the mechanisms of control that exist at regional level in respect of regional administration have not succeeded in eradicating corruption as there have been reports of corruption in the regional administration particularly at the *Tinkhundla* level. The Ministry responsible for regional development recently instituted a probe into the abuse of the Tinkhundla Development Fund.

Complaints/Enforcement Mechanisms

For local government institutions, there must also be direct accountability of councillors to the people. Councillors are expected to consult and give feedback to their constituencies regarding important council matters. It has been observed that the local residents take an interest in council matters and are largely dissatisfied with council decisions as evidenced by their decisions to organize themselves into associations in order to influence council policies and decisions.

The operations of councils are governed by the Standing Orders which do not contain a code of conduct for council members, the political wing of council. The Urban

Government Act, Sections 24 and 122 have provisions relating to pecuniary interest and the acceptance of gifts and rewards. A councillor is presumed to have knowledge of provisions of the Urban Government Act, which may render him liable to disciplinary proceedings, prosecution or dismissal. The Standing Orders do not deal with rules, gifts, and hospitality but the attention of councillors is drawn to the provisions of the Act which prohibits the acceptance of gifts and the rendering of hospitality.

Relationship to Other Pillars

Regional and local government is a key part of the country's NIS. This sector is increasing in importance. The above position is underscored by the fact that regional and local government institutions employ an increasing number of public employees, receive and spend a substantial proportion of national income, have been growing in terms of size and geographical spread, and provide a range of services often of vital importance to the individuals who consume them. Regional and local government is the main way of facilitating democratic and accountable government for local communities. It is there to ensure the provision of services to communities in a sustainable manner, promote social and economic development and encourage the involvement of communities and community organizations in matters of local government. In this way, local government provides citizens with more opportunities to make government and administration meaningful and useful particularly in the local sphere and give effect to the theories of democracy as well as their practical application. Regional administration interacts with all ministries of government. It also interacts with the traditional authorities/leaders in the communities, mainly the chiefs. Local government interacts with the national government through the parent ministry.

Recommendations

- Central Government interference (dictation of terms) must be done away with and a transfer of power to regional administration witnessed.
- Control mechanisms must be tightened to minimise cases of financial irregularities.

International Institutions

Role of Institution as a Pillar

Soliciting any type of information for this pillar proved to be very difficult and finally yielded no results whatsoever. The afore-going owes to the complete unwillingness of the international organizations and/or institutions in the country to co-operate for purposes of either securing interviews or obtaining pertinent documents and information for this discourse. The reason for the aforesaid non-co-operation could be that they do not want to be in bad taste with the government for their contributions to this work. Under the present government, you do not need to make only bad remarks about the status quo but it is sometimes enough that you have said something to someone about their affairs.

The United Nations Development Program is the one international institution that has been actively involved in the fight against corruption in the country. It has on many occasions committed itself to the agenda of integrity, transparency and good governance in Swaziland. Their involvement in this regard has been witnessed by their efforts in holding and hosting talk shows and open lectures on corruption and recently in the year 2006 UNDP sponsored an Anti- Corruption Summit which became a catalyst to the coming into operation of the new Prevention of Corruption Act of 2006.

It is important to note that the present constitutional dispensation is premised on the absence of human rights. Since 1973 till the coming into force of the Constitution in 2006; common law and statutory law ensured some basic rights of Swazi citizens, for example, the presumption of innocence until proven guilty of suspects, the right to an attorney etc. The problem with such sources of human rights is that it was availed to only the few who are aware of such, specifically practitioners in the legal field whereas the non-lawyers and masses generally are left ignorant. Secondly, the state managed between 1973 and 2006 to enact or make laws that prevented implied protection of rights by common law, for instance the non-bailable offences act, the detention without trial law etc.

Swaziland is signatory to a number of international conventions and a very active member of a number of sub-regional (SADC, COMESA etc.), regional (A.U.) and global international organizations. Reflections of Swaziland's ratification²⁹ of international instruments aimed at instilling integrity in the government process and as a measure of the country's commitment to membership of international bodies only, present a country deliberate in its attempt to rid itself of inequity, corruption and instill a culture of the respect of human rights.

Swaziland does not have a good record however in domestication of international instruments. Even though it is signatory to a plethora of conventions, the process of domestication of international conventions in Swaziland has always been hampered by the duality of the government system and the insistence of the political structure in

maintaining its uniqueness. No recorded protocol, convention or declaration ever ratified or acceded by Swaziland has been domesticated.

In addition, Swaziland is not part of the about 16 out of 53 African states that have acceded to the African Peer Review Mechanism (APRM)³⁰. The APRM is a very comprehensive document in the evaluation of state behaviour – looking at corporate, political economic and social governance. It has a component which provides for civil society to participate in the process.

This is a very important mechanism if Swaziland wants to create a culture of good governance, integrity and respect for human rights.

Recommendations

- International Institutions need to be given enough democratic space to freely air their sentiments without fear of reprisal from Government.
- International Institutions need to focus on Government-based pillars such as DPP, AG, ACC, Judiciary and ECZ to build more capacity in these institutions to effectively execute their functions.
- Donors should also help in the process of decentralization and build capacity in Councils to prevent corruption.
- International Institutions should come together and gently but persistently lobby government to subscribe to the African Peer Review Mechanism since it is all encompassing (looking at state behaviour in terms of corporate, political, economic and social governance) providing civil society participation in the process.

References

1. Aphane, Doo. 2003. National Coordinator of Women and Law in Southern Africa (WLSA) *Swaziland*. <http://www.genderlinks.org.za/gemcomm/gemcommall.asp>
2. Constitution of the Kingdom of Swaziland, 2006
3. Economic Commission for Africa 2005: National Governance Assessment: Monitoring Progress towards Good Governance in Africa
4. Establishment of Parliament Order, 1978
5. Establishment of Parliament Order, 1992
6. Government of Swaziland – Decentralisation Policy, August 2005, Mbabane
Government of Swaziland – National Development Plan
7. Government of Swaziland – Public Sector Management Programme (PSMP) 1993
8. Government of Swaziland; 2002 The State of Service Delivery in the Civil Service
9. Hlatshwayo, Nkondo, et al. 1997. *Human Right in Swaziland: A Legal Response*. Uniswa Swaziland.
10. International Monetary Fund. 2002. *Article IV consultation on Swaziland*. Economic Report by the Executive Board of the IMF. December 19, 2002.
11. Lansburg, Chris and Shaun, McKay. 2004. *Engaging the New Pan-Africanism: Strategies for Civil Society*. Open Society Initiative for Southern Africa Pretoria, South Africa.
12. Masuku, Muzi. 2005. *The Condition of Swaziland on the Eve of the Adoption of the New Constitution*. Open Society Initiative for Southern Africa
13. Matlosa, Khabele. 2003. *Constitutional Development*. Swaziland Election Dossier 2003 No. 1, October 2003.
14. Matsebula, J.S.M. 1983. *A tribute to the late His Majesty King Sobhuza II*. Mbabane. Websters
15. Mzizi, Joshua B. (2005) *Political Movements and the Challenges for Democracy in Swaziland*. UNISWA. Swaziland.
16. Mzizi, Joshua B. 2002. *Leadership, Civil Society and Democratization in Swaziland. Leadership, Civil Society and Democratization in Africa; Case studies from Southern Africa*. Development Policy Management Forum.
17. Regional Councils Order, 1978
18. Statement of the National Democratic Institute for International Affairs August 24-29 1998 Assessment Mission to Swaziland.
19. Swaziland Coalition of Concerned Civic Organizations (2005) Coalition Position on the Draft Constitution. Matsapha Swaziland.
20. Swaziland Coalition of Concerned Civic Organizations. February 5, 2003. Pastoral Message from the Christian Church Leaders. Matsapha, Swaziland.
21. Swaziland National Elections 2003. Report of the Commonwealth Expert Team. Commonwealth Secretariat.
22. The Coordinating Assembly of Non-Governmental Organizations Constitution. August 2003.
23. The Coordinating Assembly of Non-Governmental Organizations. Essentials of Programmatic Mainstreaming in the NGO Sector. Annual Report of 2004 – 2005
24. *Times of Swaziland* – Sunday. April 20, 2003. “Multi party democracy is evil says Pastors: King concurred with pastors and said if multi party democracy works for other

- countries, it does not mean it would work for Swaziland”. Story by Phiwokwakhe Ngidi
25. *Times of Swaziland* – Swazi News, March 15 2003. “The people have spoken; Don’t buy Jet for the King”.
 26. *Times of Swaziland* - Swazi News. April 5 2005. “Who are they to tell us what to do? PM scorns and ridicules advice from the IBA citing members that are from countries that thrive on conflict”. Story by Sydney Matse
 27. *Times of Swaziland*. March 21, 2003. “Parliament votes no to purchase of King’s jet”. Story by Alec Lushaba.
 28. *Times of Swaziland*. April 26, 2003. “Peace be unto ‘bootlicking’ pastors”. Letter to the Editor. Authored by Bishop Meshack Mabuza Anglican Church.
 29. *Times of Swaziland*. April 9, 2003. “AG Burns IBA Report”. Story by Alec Lushaba
 30. *Times of Swaziland*. April 9, 2003. “Govt. muzzles state owned media houses – banned from covering issues such as the King’s jet, disrespect of the rule of law”. Story by Muzie Yende.
 31. *Times of Swaziland*. January 20, 2003. “IMF Warns Against Jet”. Story by Alec Lushaba.
 32. *Times of Swaziland*. January 24, 2003. “... And they Gain Foreign Support. Coalition gains international support.” Story by Alec Lushaba.
 33. *Times of Swaziland*. May 30, 2003. “God Angry with women who wear pants – King”. Story by Zanele Dlamini
 34. Urban Government Act, Act No. 8 of 1969
 35. Wole, Olaleye. 2004. *Chieftdom Politics vs. Electoral Processes in Swaziland*. Electoral Institute of Southern Africa. Election Update 2003 Swaziland number 2 · 20 April 2004
 36. World Bank: Main Report 1999, Swaziland: Fiscal Decentralisation and Sub-National Government in Relation to Infrastructure and Service Provision

Endnotes

¹ Constitution of the Kingdom of Swaziland Act, 2005

² According to the official census, the population is slightly above the 1 million mark; about 1.2 million people.

³ Prevention of Corruption Act of 2006.

⁴ See introduction to Electoral Commission for the reasons for the abrogation of the independence constitution.

⁵ The Government of the Kingdom of Swaziland Estimates, April 2006.

⁶ Coordinating Assembly for Non Governmental Organizations Swaziland's Medium Term Budgetary Process Workshop, November 2005, Mbabane Swaziland

⁷ The Government of the Kingdom of Swaziland Estimates, April 2006.

⁸ This included Mr Mario Masuku, President of the People's Democratic Movement (PUDEMO) a banned political party in Swaziland.

⁹ The UN special envoy on AIDS, Stephen Lewis and Sentinel - HIV/Aids Study 2004

¹⁰ Chapter 6 of the Constitution of Swaziland, Section 64 (3)

¹¹ See The Establishment of Parliament of Swaziland Order, 1992, Section 50 (1)

¹² For instance Dr Sibusiso Barnabas Dlamini was not a Member of Parliament on appointment.

¹³ For example in the year 2000 the Executive sought to buy an airplane for the use of the King and consequently transferred a sum of E15million worth of public money towards payment of deposit without Parliament's knowledge or approval.

¹⁴ Oil Rig Scandal: Senator Mr. Mpheni Dlomo, a director of a group of companies trading with government, successfully won a tender to provide the government geological department with and oil rig machinery. It turned out that government had fully paid and signed for the delivery of the rig without receiving it. This led to other tenders won by this group of companies being investigated by parliament. The commission of inquiry by parliament decided to recommend criminal and punitive action to be instituted against the company. Eventually cabinet decided to blacklist the company from trading any further with government.

¹⁵ The former Clerk to Parliament, Mr. Ben Zwane, was, in early 2000, transferred by the then Prime Minister Dr Sibusiso Barnabas Dlamini from parliament to the ministry of agriculture. It turned out that the PM had not followed all the legal requirements to transfer a civil servant including e.g. consultation with the CSB and recommendation from the Ministry of Information and Public Service. Mr. Zwane took the matter to the Industrial court and superior courts where in all instances the courts ruled that the transfer was illegal. Despite all these court decisions, the PM refused to re-instate Mr. Zwane to his position as clerk to parliament on the grounds that he was a threat to the security of the Head of state. However the PM, soon before he left office, under pressure reinstated Zwane to his position in parliament only to transfer him later to the ministry of agriculture albeit this time legally.

¹⁶ Mr Nkhambule is a former Minister of Health and Social Welfare fired from cabinet by the PM earlier this year. Mr. Nkhambule's, according to him, conflict with the PM began early this year when it was first reported by the media that he had formed a political party. The conflict intensified after the PM announced that he was setting-up an investigation into allegation by MP Marwick Khumalo that he had evidence that Mr. Nkhambule – as minister of natural resources and energy – and his colleague Minister of Information and Public Service Themba Msibi were corrupt or had engaged in corrupt activities in their capacities as ministers. The PM decided to institute a ban from international travel to both ministers. Minister Nkhambule challenged the ban in court. The PM then fired the Minister with the consent of the King. Mr. Nkhambule further challenged the authority of the PM to fire him under the new constitution and wanted to be re-instated to his position. He lost the case.

¹⁷ Labour experts argue that the General Orders are inconsistent with the Employment Act, 1980 and the Industrial Relations Act, 2000.

¹⁸ Swaziland Constitutional Framework; Mr Nkonzo Hlatshwayo, University of Pretoria

¹⁹ However, in terms of Section 25 of the Constitution dealing with the freedom of assembly and association, it is possible to envisage liberal judicial pronouncements reading a right to form parties.

²⁰ In the 1990s, the Dipping Chemicals Bill was approved by both Houses of Parliament but was not signed into law as the King declined to assent to it.

²¹ Rule of law crisis, 2002; and at the time the Executive sought to buy the King a private jet.

²² The Elections Order, 1992; The Establishment of Parliament of Swaziland Order, 1992 and the Voters Registration Order, 1992.

²³ Constitution of the Kingdom of Swaziland Act, 2005; Article 24 (2)

²⁴ The Protected Ceremonies, Places and Areas Bill, 2007

²⁵ Tibiyo TakaNgwane.

²⁶ (Commissioned by the Media Institute of Southern Africa-Swaziland Chapter)

²⁷ Copy of the Heritage report downloaded from the following website:

www.heritage.org/research/features/index/countryFiles/pdfs/Swaziland.pdf

²⁸ This position is effective, 2006

²⁹ Source: Office of the United Nations High Commissioner for Human Rights, Status of Ratification of the Principal International Human Rights Treaties as of 09 June 2004 (accessed November 22, 2005 on www.unhcr.org)

³⁰ Source: www.africa-union.org (accessed 15 August 2005)