

## IS SWAZILAND A DEMOCRACY?

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Democracy, according to the *Oxford Dictionary*, is a system of government by the whole population, usually through elected representatives. This definition, according to my opinion, is incomplete because it leaves out the fact that democracy also requires that the electorate makes informed choices, not only in respect of individual candidates who are to be representatives of the people in government, but also, and most importantly, the different and separate sets of national policies on health, education, agriculture, economy, environment and other fields of public life. This point is further canvassed below.

It is also regarded as the government of the people, for the people, by the people. In terms of this latter definition, the electorate has a continuous functional role to play in the governance of its country in the sense that it does not only have the right to vote, but also demand accountability and transparency on the part of its government.

According to those who are oriented towards the noble ideals and norms of Marxism, it is dictatorship by the proletariat. Others regard it as government based on the will of the majority obtainable from the free and fair elections held periodically under a conducive climate. Some of the essentials of such a climate are recognition, exercise and enjoyment of relevant rights and freedoms enshrined in the United Nations Universal Declaration of Human Rights and freedom of association, assembly and expression. Notwithstanding that these freedoms and rights are indispensable in ensuring that democratic governance is in place, they are not only missing, but also not legalized in Swaziland.

Swaziland's 1968 Independence Constitution, though wanting in terms of some essentials of democracy, guaranteed and protected the aforesaid rights and freedoms. That constitution, was, however unlawfully repealed by King Sobhuza II in terms of the 1973 King's Proclamation to the Nation, which to date, serves as the supreme law of the country. The reasons for saying that he acted unlawfully are:

- In terms of that constitution, its repeal was supposed to be initiated by an introduction of a bill expressly providing that it was going to be repealed in a joint sitting of the Senate and the House of Assembly summoned for that purpose;
- Note that no such bill was introduced in such a sitting and published in a gazette as required in terms of that constitution and/or at all;
- No such bill was passed at the joint sitting of the two Houses of Parliament, let alone by not less than three quarters of members of both chambers.

Further, it must not be omitted that such a bill purporting to repeal or alter that constitution was never submitted to a national referendum as required in terms of

that constitution and/or at all. In the light of this latter fact, it is apparent that the Swazi nation had no hand in the repeal of that constitution.

This was a palace *coup d'etat* executed by King Sobhuza II and his Imbhokodvo National Movement, on the advice of Van Wyk Devries, who was Sobhuza II's legal adviser and a member of the Broederbond – the cradle of Apartheid. This proclamation was written and completed in Apartheid South Africa and the Swaziland's Attorney General had only to put it in the statute book. It introduced a State of Emergency, which is still in force and continuing intimidation, fear and insecurity in the minds of the Swazi people. The aforesaid rights and freedoms are, in terms of Decrees 11 to 14 of the said Proclamation, illegalised. It militates against the existence of a climate conducive to recognized democratic practices and procedures. It further clubs together and places into the hands of an individual – the King – the legislative, judicial and executive powers, and in this way makes him an absolute dictator. It also undermines good governance which requires, *inter alia*, that these powers be separated and assigned to the respective and relevant arms of government where they would be exercised in accordance with constitutional stipulations.

After the repeal of the constitution and the coming into force of the said Proclamation, those that remained in the corridors of power (the Council of Ministers and the King) governing the nation without its mandate, imposed on the nation the Tinkhundla system of government. This did not and still does not ensure sovereignty by the people but plays an important role in maintaining the *status quo*. The electoral process under this system is undemocratic and a critical element of deception. The candidates and the voting under the system do not decide or determine anything basic or fundamental, but are used to rigidly set the terms and parameters of acceptable positions on major political questions. It introduces a group of independent candidates who are basically ignorant of the specific needs and aspirations of the electorate in terms of the aforesaid Proclamation, precluded formulating and agreeing on the national policies that are necessary to guide the parliamentarians in their in their legislative duties. Notwithstanding this, the parliamentarians claim to represent the interest of the electorate.

### **Return to Democratic Cause**

This paper basically focuses on whether or not Swaziland is a democracy. As this question cannot be answered *in abstracto*, but with due reference to the actual practices and procedures employed by the Swaziland government in the constitutional and political dispensation, it is prudent at this juncture to refer to these.

It is common knowledge among the leaders of the SADC states that the Swaziland government, in its effort to fool its people and the world at large, established the following commissions purportedly for the purpose of discovering the will of its people on either the constitutional or political dispensation.

Prince Masitsela Vusela Commission, Prince Mahlalengangeni Tinkhundla Review Commission, Prince Mangaliso Constitutional Review Commission and Prince David Constitutional Drafting Commission were all created by King Mswati III, by way of decrees and who also handpicked the commissioners and imposed the terms of reference. I believe it is common cause that a duty of such fundamental importance such as seeking to return the country to constitutional, democratic rule was supposed to be initiated and implemented by a body that had been created through conventionally recognized democratic principles. Any body, such as the said commissions, created outside this basic minimum standard invariably lacks the necessary mandate and is unable to command the essential respect of the nation. Indeed, these commissions were not the product of this suggested democratic process. They were not people-driven, but royal projects specifically designed to protect, promote and sustain the *status quo*.

Prince Masitsela's commission worked without any terms of reference and, as such, it was incapable of achieving any meaningful purpose, but spent substantial national resources. The other commissions had such terms that unfortunately disallowed any input by organized groups, such as political organizations, organised labour, organized business, the church and the like. According to their various and separate terms of reference, they had to obtain the views of individual Swazis, based on which they had to formulate the general will of the Swazi people. It was this regime's divide and rule strategy and the terms of reference were impossible to accomplish given that the Swazi population, at the time numbered about a million people and to fulfill its mandate, the Commission would have had to consult some 650,000 people.

These commissions were illegal. It is noteworthy that:

- In the conduct of their duties, there was no transparency. There were no independent monitors and even the media was not allowed to report on their activities. I hold the view that it is common cause that transparency is one of the elements of good democratic governance;
- The commissions did their consultations while the country was indeed still under a State of Emergency and with draconian regimes, such as aforesaid Proclamation and the 1988 Swaziland Administration Order, still in place. In other words, the consultations took place under a non-conducive environment and in the light hereof, the reports of the commissions are suspect. In terms of the Order alluded to, the chiefs in the rural areas are authorised to punish, even by evicting any one of their subjects who does not tow the line, in ways such as rendering them available for forced communal labour, which is done for the sole benefit of the king and/or his chiefs.

Save and except a national referendum convened under conducive circumstances, there seems to be no other scientific and democratic way of obtaining the will of the people on any matter of national interest. In the premise, the conclusion that the findings of the commissions are not reflective of the genuine needs and aspirations of the Swazi nation is unavoidable. The aims and objectives of putting in place the aforesaid commissions were undoubtedly to protect and sustain the undemocratic *status quo* at the expense of national interest.

Having due regard to the special circumstances of the subject at issue, that are outlined above and applying thereto, with the best consideration and judgement of which I am capable, I reach the conclusion that there is no reasonable person acting carefully and without culpable negligence that would fail to finally state that Swaziland is not a democracy.