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### A NOTE ON THE MACHINERY OF GOVERNMENT DURING THE SOBBUSA II HEA IN SWASILAND

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#### Summary

Nost African countries have blamed the Western system of government, inherited at independence, as the cause of their political and socio-economic woes. They have therefore embarked on a search for a viable alternative system of government based on traditional or indigenous institutions. This article examines the machinery of government during the Sobhuza II era in Swaziland (1968-1982), which is undisputably based on an amalgam of traditional Swazi institutions and Western political ones.

The article argues that the fusion of traditional with western institutions by King Sobhuza II in Swaziland resulted in a breakdown of lines of co-ordination, communication and accountability, which are essential ingredients to the functioning of a modern government. Apart from creating tension and distrust between the traditional elites and civil servants, the machinery of government is a cover-up to perpetuate Sobhuza's aristocratic regime.

# Introduction

The machinery of government of the tiny Southern African Kingdom of Swaziland presents an attempt at the synthesis of Swazi customs and traditions on one hand, and Western concepts and practices, on the other.

This paper attempts to examine the machinery of government during the Sobhusa II period in Swaziland, and in so doing evaluates the mixture of the traditional approach with the modern approach.

# The 1968 Independence Constitution: An Overview

The Independence Constitution of 1968 established a bicameral legislature, in which one chamber (the House of Assembly) consisted of directly elected representatives, while the other chamber, the Senate, contained representatives indirectly elected. It also provided for a cabinet whose members were principally drawn from the House of Assembly and were responsible to it. The Hymenyama (the Lion) was recognized as the king of Swaziland and designated as Head of State. His powers vis-a-vis Parliament and Cabinet, as formally defined, were in most part those usually exercised by constitutional monarchs.<sup>1</sup>

However, one can discern significant departures from the Westminster model. The legislative authority of Parliament did not extend to the offices of the Mgwenyama (the Lion), the Mdlovukazi (the Blephant), the Swasi National Council and other Swasi traditional institutions.<sup>2</sup>

The Constitution also provided that if the King objected to a bill (other than an appropriation bill) which had been passed by both Houses, he could in his discretion (emphasis mine), refer it back for reconsidenation at a joint sitting of both Houses of Parliament.<sup>3</sup> He was also empowered to ask the cabinet to reconsider if he disagreed with its advice regarding the exercise of executive power.4 The king was obliged to comply, however, if Parliament or the Cabinet re-affirmed its original decision. In addition, the King was given the power to appoint at his discretion six of the twelve members of the Senate and six of the thirty members of the House of Assembly; although he was directed to choose persons able to represent "interests not already adequately represented" or in the case of the Senate, possessing "particular merit" which would enable them "to contribute substantially to the good government of Swaziland".5 Moreover, he was restrained from exercising this power so as to denv a majority to the party or coalition which had won most of the elected seats.6

According to the constitution the other six Senators were to be chosen by the House of Assembly and the other twenty-four Assembly men elected by the people on the "basis of universal adult suffrage with the electorate divided into eight territorial constituencies. each of which returned three representatives."7 Every elector voted for three candidates and of the three, the one who received most votes was declared elected. The framers of the constitution explained that they decided against single-member distrits because "the number of voters in each constituency would be so small as to make the members too subject to disruptive local pressures and to open the way to intimidation and corruption. "8

Article 135 of the Constitution provided that the Swazi National Council should continue its functions of advising the king on all matters regulated by Swazi law and custom, while Articles 24 and 79 vested executive authority of the kingdom of Swaziland in the king. The king had the power of appointment and the prerogative of mercy.<sup>9</sup>

There was provision for a High Court composed of a Chief Justice and puisne judges appointed by the king under Articles 97 and 98. There was also provision for a Court of Appeal whose members were appointed by the king. The High and Appeal Courts were to be courts of record. Articles 113 and 114 also stipulated the establishment of a Judicial Service Commission.

The Constitution also vested control over the country's mineral wealth and land ownership in the king, to be held "in trust" for the Swazi Nation. Royalties were paid directly to the

#### monarch.<sup>10</sup>

It should be noted at this point that the 1968 Constitution gave the king sweeping and unlimited powers over and above all other institutions of government. These unlimited powers, although implied in the Constitution, were later capitalized on by King Sobhuza II when he declared a state of emergency and abolished the Constitution in 1973.

#### The Pre-Independence Elections of 1967

The pre-independence elections of 1967 were contested by four political parties; viz, the Imbokodvo National Movement (INM), formed by the Swazi National Council in 1964 on the initiative of King Sobhuza II, the Swaziland Democratic Party (SDP), the Swaziland's People's Party (SPP) and the more "radical' Ngwane National Liberatory Congress (NNLC). In the elections all 24 seats were won by the "traditionalist" INM led by King Sobhuza II, even though the candidates of the NNLC received 20.2 per cent of the votes cast. The NNLC leaders attributed their defeat not only to the electoral system but also to the obstruction of their campaign efforts by chiefs.

The traditional power structure was manifested clearly in the composition of Sobhuza's cabinet. Proctor writes:

of the 12 Ministers and Assistant Ministers, five were members of the royal Dlamini clan (and three of these were princes), two were members of the high-ranking Nxumalo clan (from which came Sobhuza's mother), and one was a white attorney. The four others were Swazi commoners by birth, but two of them were married to daughters of the Mgwenyamm. Bight of the 12 were known to have been among members of the Swazi National Council whom the Mgwényamma regularly consulted.<sup>11</sup>

It should be pointed out that the first Parliament was wholly Imbokodvo National Movement with all opposition parties having been defeated in the general elections. This Parliament, it should be noted, ran its full course without disruption.

#### The 1972 Elections

Unlike the 1967 elections in which the INM had a landslide victory by winning all the 24 seats, the 1972 elections produced "radical" а different picture. The NNLC won three constituencies, which contained a high concentration of workers. while the INM won 21 seats. The NNLC members' election to Parliament was regarded as a "direct challenge to the INM hegemony and insult to the king".12 An elected member of the NNLC, whose nationality was disputed, was refused his seat in Parliament by the INM. The WMLC took the matter to the Swaziland Appeal Court (then, as it is now, comprised of three South African judges) in 1973 which declared as unconstitutional the Immigration Amendment Act passed by Parliament to deal with cases of disputed nationality, under which the NNLC member was debarred from taking his seat in Parliament.<sup>13</sup> This ruling was seen as a threat and challenge to the dominance and legitimacy of the monarchy. The reaction of the king was arbitrary and dictatorial, to say the least:

the king declared a state of emergency, dismissed parliament, and dissolved all political parties, including his own. All legislative, executive and judicial powers were now assumed by the monarchy. The King's "coup" was carried out in the name of Swazi tradition. It was argued that a Westminster type of Parliament was an un-Swazi institution and encouraged disloyalty to the king.<sup>14</sup>

Of course, Sobhuza's reaction was not unexpected, since he had for a long time been very sceptical about Western political practices and institutions, but at the same time cherished Swazi ones. In fact, he preferred Swazi political practices and institutions to those of the West.<sup>15</sup>

The suspicion of Western political institutions goaded Sobhuza to apply the coup-de-grace on the Westminster system of government on 12th April, 1973. In his famous 12 midnight Proclamation Sobhuza blamed the 1968 constitution for not being able to provide the machinery for good government and for the maintenance of peace and order in Swaziland.<sup>16</sup>

We should not lose sight of the fact that Sobhuza's dislike of Western political institutions and practices was supported by the legislature at the time. The then Prime Minister, while introducing the government's motion for the abrogation of the constitution concluded that the Constitution contained "offending provisions," which were wholly impracticable and prevented Parliament from amending it.<sup>17</sup>

Supporting the motion, the then Finance Minister oversimplified the matter in his comparison of the constitutions of the United States of America and Swaziland:

The great constitution of the United States of America which is perhaps the earliest of all written constitutions has been altered 25 times ... When Abraham Lincoln moved his famous 13th Amendment, he likened the great American constitution to the pants of a small boy - a comparison which rather shocked the constitutional Americal experts. He said that as the boy grew, so the pants must be changed to keep pace with his development. It is obvious that in this case of the United States, the pants fit originally. However, in our case, the pants never fitted and now pinch badly.<sup>18</sup>

From our discussion so far, it is clear that the declaration of a state of emergency meant that Sobhusa exercised, by decree, supreme executive, legislative and judicial power. This centralization of absolute power, it should be emphasized, was concomittant to or a response to a number of developments namely, the loss to the opposition in the 1972 elections of three seats and the blocking by the Appeal Court of an atempt to deport one of three opposition members of Parliament. We now turn our attention to the most important Swazi traditional political institutions, the cause of which Sgbhuza championed.

### Swaxi Traditional Political Institutions

- A. The Ngwenyama: Literally the "Lion". He is the traditional monarch and the Head of State. As both King and Ngwenyama, the Head of State fulfils two parallel roles which differ from each other in a number of minor respects and yet overlap. As king, he is, of course, Head of State and is advised in the government of the country by a Cabinet of Ministers responsible to a two-chamber parliament. On the other hand, and simultaneously as Ngwenyama, he is advised by the Ligogo, or Council of State, which is traditionally responsible to the Swazi National Council made up of all Swasi male adults.<sup>19</sup> It should be noted here that the roles being fulfilled by the king are a blend of Swazi tradition and Western political practices.
- The Milovukasi: Literally "She Blephant". She is the Queen в. Mother and customarily is either the natural mother of the reigning King or a member of the royalty, acting the role of mother to the king. During an interregnum, such as before the installation of a king, the Queen Mother automatically becomes Queen Regent and Head of State. In fact, according to Swazi tradition the king is supposed to "rule and reign" with the Queen Mother. This loose traditional arrangement may result in a conflict or clash of personalities between the king and the Queen Mother. Their traditional areas of authority need to be clearly defined to avoid possible clash of interests and personalities. Therefore, Swasi tradition has it that in case of a clash between the King and the Milovukazi, the King's advice supersedes that of the Mclowukazi. In effect, the king has the final say in matters of state policy, tradition and custom.
- C. The Swazi National Council (SNS): This Council consists of the Ngwenyan, the Mdlowakazi and every male adult. Its role is to advise the Ngwenyama on all matters relating to the traditional institutions and culture.
- D. Libendla: According to Article 144(1) of the 1968 constitution the Libendla means "a council consisting of advisers of the Hypergenn and of representatives of the

Swazi Nation or part of that nation, meeting to discuss any matters of communal concern in accordance with Swasi law and custom." In effect. the Libandla is a large and representative body composed of chiefs, councillors, headmen and adult males. As such it differs from the Sitho putso or peoples' gathering, as Swazi females and minors are not entitled to attend sessions of the libendla. The only female person permitted to attend the libendle meetings is the Queen Mother. The king normally presides at the libandla, which deals with traditional laws and customs and has to serve as a communicative platform between the King-in-Council and the nation. It is said that the libsodia seldom met and functioned largely to ratify decisions. It only conferred for specific purposes. One such purpose, according to Proctor. was to protest against British plans to implement the 1964 constitutional proposals, and the libandla was convened at the King's instigation.<sup>20</sup> The libandla has "no real decision making powers as decisions mainly taken by âre the ligogo, a more specialized institution than the libandla. \*21

E. The Ligogo: Article 144(1) of the 1968 Constitution defines the Ligogo as a "council the membership of which is in part elected by the Swari National Council from among their number, in part selected by the Ngwenyama and in part traditionally appointed, and of which both the Ngwenyama and Ndlovukasi are themselves members." The Wamalwa the Commission Report describes the Ligogo as "an inner Council which manages the day-to-day affairs of the Swazi National Council. \*22 According to Breytenback, the "Ligogo consists of a few members of the Dlamini royal family aided by chosen advisors, and merited tindvama (headman), most of whom are commoners reputedly from the Zwane, Fakudze, Hlophe and Nkambule clans, as these clans are associated with the "bomdzabu aristocracy."<sup>23</sup>

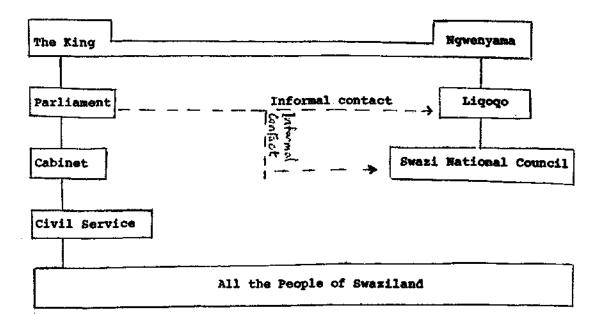
The Ligogo before June 1982 was a "small, informal and near anonymous body". However Decree No.1 of June 1982 for the first time sought to formalize in general terms the Ligogo and its function. In the Decree, the Ligogo was described as the Supreme Council of State with the function "to advise the King on all matters of state." The Decree stipulated that members of the Ligogo were "appointed by the king to hold office at his pleasure." The Chairman of the Ligogo was the "Authorised Person" with the traditional right to perform the functions of the Regent in the event of the latter being "for any reason unable to perform those functions."<sup>24</sup>

It is significant to note that these traditional Swari institutions evolved during the colonial period with the monarchy. It should be pointed out that although the repealed

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constitution of 1968 and the King's Council Orders recognized the Libandla, Swazi National Council and the Ligogo, they failed to define clearly the relationship between these three traditional institutions and their relationships with the Western institutions, like Parliament and the cabinet. Particularly important was the relationship between the Ligogo and the cabinet for, whereas before the upgrading of the constitutional status of the Ligogo to that of the Supreme Council of State decrees had been issued in the name of the King-in-Council (the cabinet), it seemed that policy making and

#### Figure I



# MACHINERY OF GOVERNMENT UP TO 1968

- <u>NB.</u>: Normally informal contact is from Cabinet to Liqogo and from Cabinet to the Swazi National Council.
- SOURCE: Report of the Commission of Enquiry (Structure, Conditions of Service and Remuneration of the Public Service of the Kingdom of Swamiland) 1975-76 (The Mamalum Report) p.6,

policy-issuing authority had passed to the Liqoqo. In these circumstances, it should be noted, factional strife and power struggle among the traditional Swazi and Western institutions were inevitable.

The period of the reign of Sobhuza II can be divided into three phases: namely 1968-1973, 1973-1978 and 1978-1982.

# The Machinery of Government During the Period 1968-1973

Daniel and Vilane argue that the Swazi political system is a complex diarchic one with two distinct but interrelated sets of institutions - those of the "Swazi government", comprising Parliament and the cabinet. It was in the latter that the instruments of independence vested most constitutional authority. But the king, as head of state, was given authority to nominate sufficient members of Parliament as well as select the Prime Minister to make him more than just a symbolic figurehead.<sup>25</sup>

The machinery of government during this period was the Westminster parliamentary system enshrined in the 1968 Constitution, which we have already outlined. It should be noted however that although the constitution recognized the Prime Minister and his cabinet as the real power brokers, in practice, the king dominated the political process, because, at independence, every Parliamentary seat was won by Imbokodvo and he nominated the rest of the membership. Figure I shows the machinery of government during the period.

The figure reveals that the King had not only a dual role as King and Ngwenyama but also a role that was absolutely vital to the working of the Government of Swaziland. We should also note that the king received advice from two parallel and separate bodies, Parliament and Cabinet under the parliamentary system of government and the Swazi National Council and the Ligogo under the traditional system.

# The Machinery of Government During the Period 1973-1978

As we noted earlier on, the king declared a state of emergency on 12th April 1973 and ruled the country for five years by decree. Between 1973 and 1978, all legislative, executive and judicial powers were vested in the king and, in collaboration with council constituted by his cabinet of ministers, were exercised by the king through Decrees and king's Orders-in-Council.

This period, undoubtedly, marked the darkest spot in the constitutional development of Swaziland. The king became repressive, dictatorial and tyrannical. In the words of Daniel:

Accompanying the king's suspension of the constitution in 1973 was the introduction of a provision allowing for the detention without trial of individuals for periods of 60 days at a time. It has not been widely used although some 15 individuals were held for two years in the late 1970s ... Gatherings of a political nature of ten or more individuals require police authorization and this permission has not simply been given ... trade union movement has been forced into non-activity and has just withered away ... Party politics is proscribed and non-traditional political elements have no effective political outlet.<sup>26</sup>

It should be pointed out that, unlike the king of Morocco who has constitutional right in Article 35 of the Moroccan Constitution to declare a state of emergency and exercise the power during its period of validity, the king of Swaziland, on the other hand, had no such right. His action therefore in declaring a state of emergency was unconstitutional and undemocratic. The constitution had several procedural clauses to set in motion the processes for amendment but Subhuza and his traditional aristocracy did not avail themselves of that opportunity. It should be reiterated that Sobhuza declared the state of emergency in order to preserve the image, integrity, dominance and legitimacy of the monarchy. Perhaps angered by the decision of the Appeal Court in declaring the deportation of one of the opposition M.Ps unconstitutional, Sobhuza decided to vent his spleen on the judiciary when he assumed even judicial powers and abolished the Judicial Service Commission. The legislative procedures followed in declaring the state of emergency were also highly questionable.27

We should also note that the hostile attitude of the Sobhura government towards the opposition portrays the common belief of most African leaders that the opposition is an alien institution and inimical to the development of their countries, which must be eradicated at all cost, fair or foul. While opening Parliament in 1972, Sobhura cautioned:

The advent of an opposition in Parliament is a wholly new thing in Swaziland and something which had been inherited from the British Colonial Administration ... while England managed to forge ahead in spite of an official opposition, this concept was strange and foreign to Swaziland.<sup>28</sup>

Certainly, Sobhuza's declaration of a state of emergency in 1973 was a calculated and deliberate attempt to entrench and perpetuate his rule and power, and in so doing preserve the status quo. Like some monarchs elsewhere, he was conservative and reactionary. He wanted the traditional institutions to continue to function as a "cultural watchdog" dealing with all matters regulating Swasi law and custom. According to Kuper, it was one of Sobhusa's concerns "to keep the two bodies (the modern state system and traditional institution) distinct but complementary and not let their lines of authority conflict."<sup>29</sup>

# The Machinery of Government During the Period 1978-1982

By the promulgation of King's Order-in-Council 23 of 1978, parliamentary government based upon a new electoral system was restored with a two-chamber Parliament consisting of a House of Assembly and a Senate. Under this system of promulgation, forty members of the House of Assembly were elected by secret ballot by an Electoral College composed of eighty persons who were themselves openly elected by the forty Tinkhundla (or traditional constituencies) into which the country was divided for electoral and other administrative purposes. A further ten members of the House of Assembly were appointed by the King acting in his discretion.

The Senate was composed of twenty members, of whom ten were elected by the House of Assembly and the other ten were appointed by the King acting in his discretion. In terms of the Establishment of the Parliament of Swaziland Order of 1978, the king in the exercise of this prerogative to appoint members of the House and of the Senate, might consult with other persons and bodies in an endeavour to appoint "persons who are by reason of their special knowledge or practical experience able to represent economic, social or cultural interests not already adequately represented in Parliament or who are by reason of their special merit able to contribute substantially to the good Swaziland. 30 The Attorney General government of was an ex-officio member of the House of Assembly. Figure II illustrates the machinery of Government during the period:

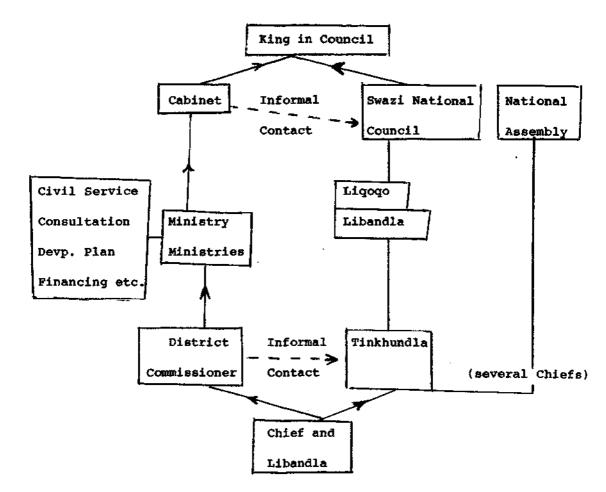
The figure shows the diarchical system of government between 1978-82. This system, according to the Wamalwa Report, was nebulous and idealistic.<sup>31</sup> The Report was also not happy with the marriage between the traditional Swazi institutions and Western ones, since communication between the two were inadequate for the purposes of modern government.<sup>32</sup>

It should be noted that the need for co-ordination and clear lines of responsibility and accountability between the three arms of government is obviously vital and important to the management of the business of any modern government. Sobhuza's attempt to blend Swazi institutions with those of Western ones failed because of the diffused and imprecise lines of accountability and communication between the two institutions. The undesirability of blending Swazi institutions with those of Western ones has been emphasized by Picard:

The Weberian model of administration assumes that traditional authority will over time evolve into what Weber called the legal-rational model of administration, both linked at the apex by the personage of the Swazi monarchy ... Much of the resulting tensions exhibited themselves in splits between Weberian and traditional institutions.<sup>33</sup>



MACHINERY OF GOVERIDENT IN SWALLAND 1978-1982



<u>NB</u>.: Every member of the Swazi National Council has the traditional right of access to the king.

One important and remarkable feature of the machinery of government during this period, which was a marked departure from the election process enshrined in the repealed 1968 constitution, was the use of the **Tinkhundla** in 1979 as mechanisms for election for the whole legislature. As one European who participated in the process put it:

The elections were held in the traditional manner. On the day announced all adults were supposed to present themselves at their **Tinkhundla**. Here they found four candidates, nominated by the monarchy and each stood before a gate to a cattle byre. No speeches nor discussion of political positions took place. The population then marched through the gate of the individuals they preferred. The two individuals with the most "votes" were thus elected to the electoral college. The electoral college was then presented with a list of parliamentary candidates by the monarch, from among which it chose forty members of parliament.<sup>34</sup>

However, the use of the **Tinkhundla** as a mechanism for election in 1979 was not unprecedented in the history of Swaziland, since Sobhuza used it as a mechanism for voting in the 1964 unofficial plebiscite against the British "imposed" constitution.<sup>35</sup>

One doubts the "democratic process" inherent in the Tinkhundla system of elections because "the king's ultimate control over the procedure is achieved by provisions empowering him to approve all candidates at the Tinkhundla level as well as to nominate some members of the lower house and the upper house."<sup>36</sup>

From the discussion so far it is tempting to say that the machinery of government during this period amounted to an imposition over the entire society of the long-standing traditional governmental structures to which certain forms of the Westminster parliamentary system had been incorporated. The Swazi cabinet and civil service were merely the administrative agents for decisions which originated with the King and the Swazi National Council.

Another important feature of the machinery of government during this period, which was conspicuously absent from the repealed 1968 constitution, was the **proviso** that the king could ask the Prime Minister and other ministers to brief him on any matter relating to the general conduct of government.<sup>37</sup> This was to forestall any attempt again by the cabinet and parliament to take certain decisions without consulting Sobhuza, as he claimed was the case when the country was operating the 1968 constitution.

# Conclusion

What concluding remarks can we make on the machinery of government during the Sobhuza period in Swaziland? First, there was at the centre an unlimited government dominated by the king with the final say in every matter, legislative, executive or judicial. The second is Sobhuza's preference for traditional Swazi institutions to Western ones, although little attempt was made to transform traditional institutions like the Tinkhundla system into local councils. In the words of Butler, "Tinkhundla

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... have no executive authority and have only served as talking shops and as convenient organisations through which district commissioners have been able to meet and talk to chiefs. They are in no way rural local authorities."<sup>38</sup>

Third, and more importantly, the diarchical system or the fusion of traditional Swazi institutions with Western parliamentary practices had resulted in a breakdown of lines of communication, co-ordination and accountability which are the bedrock of any modern government. The trend had led to a feeling of tension, distrust, mistrust and deep suspicion between the traditional and Western institutions.<sup>39</sup> The result was that the failure of the Swazi aristocracy to integrate all branches of the civil service into traditional structures made an expansion of the administrative capacity and service delivery down to the grassroots of society rather unlikely and difficult.

Sobhuza's machinery of government undoubtedly demonstrates an aristocratic structure that was conservative. His abrogation of the 1968 constitution and the subsequent amalgam of Swazi traditional institutions with Western ones showed his consistency and wish to perpetuate and entrench his highly personalized style of rule. His attempt to fuse the "modern" with the "tradi- tional" has undoubtedly been a failure. This was borne out by the factional strive, intrique, in-fighting and cabal within the royal palace and among the various parallel "traditional" and "modern" institutions after his death in August 1982. In this regard Daniel and Vilane's comment looks portentous and ominous:

Fundamental is the fact that the political institutions of the "Swazi Nation" are becoming increasingly unsuited to the level of the country's development. They exclude the Swazi people as a whole from effective participation in the body politic and, as long as this is the case, political crisis will be endemic to the Swazi State. The installation of a rightful monarch will make no essential difference. In a region experiencing the currents of revolutionary change, the day is passing when the monarchical institutions can serve to satisfy the Swazi people's aspirations.<sup>40</sup>

The failure of Sobhuza to integrate the "modern" with the "traditional" in his machinery of government should serve as an eye opener to other African leaders who blame Western institutions as the cause of their political and socio-economic woes and seek panacea in a system of government based on conservative and reactionary traditional institutions.

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