



# INTERNATIONAL COMMISSION OF JURISTS

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Johannesburg, 4<sup>th</sup> June 2009

## PRESS RELEASE

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### **Statement Regarding the Swaziland Supreme Court's Ruling in the Case of *National Constitutional Assembly (NCA) v. Prime Minister & Others, 2009***

The International Commission of Jurists (ICJ) has carefully followed the recent developments in the Swaziland Supreme Court. In its judgment in the appeal case of *National Constitutional Assembly v. Prime Minister and Others* decided on 21 May 2009, Swaziland's highest court ruled that the *Tinkhundla*-based electoral system - which excludes political parties from the electoral process - did not constitute a violation of freedom of association as guaranteed by article 25 of the Swaziland constitution.

Without attempting to undermine or interfere with the independence of the Swaziland Supreme Court, the ICJ notes that the Supreme Court's restrictive approach seriously violates the freedom of association and restrains the scope of freedom of expression and the right to participate in public affairs. As an essential component of the right protected under article 25 of the Swaziland Bill of Rights, the freedom to form and join political parties is protected by article 10 of the African Charter on Human and Peoples' Rights and article 22 of the International Covenant on Civil and Political Rights, to which Swaziland is a State Party. In that respect, 'Swaziland courts have an obligation to give full effect to the rights and freedoms guaranteed in those instruments': says Martin Masiga, Senior Legal Officer of ICJ's Africa Programme.

The ICJ wishes to express deep disappointment over the fact that the Swaziland Supreme Court failed to uphold fundamental rights which are constitutionally guaranteed. 'This is a serious setback for judicial protection of human rights in Swaziland,' says Martin Masiga. The ICJ contends that respect for the freedom of association and its full exercise by all sections of society, including political parties, are indispensable for the establishment of genuine democracy and to ensure that, once achieved, it remains viable and flourishing. As reiterated by the Resolution of the African Commission on Human and Peoples' Rights on freedom of association, the ICJ believes that the formation of political parties is a significant manifestation of the freedom of association.

The ICJ further contends that political parties play a key role in strengthening political participation; in shaping political opinion; in integrating peoples' demands into

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coherent policy programs; in selecting and preparing legislative candidates and political leaders; in providing voters with informed choices; and in shaping political accountability of the ruling regime. In this regard, undermining the existence of political parties constitutes a serious restriction of the right to participate in public affairs, freedom of expression and opinion, and freedom of peaceful assembly. The inextricable link between those fundamental rights and freedoms was spelled out in the African Commission's decision in *Lawyers for Human Rights v. Swaziland*, Comm. No. 251/2002 (2005) which Swaziland has not fully implemented. The African Commission held that, inasmuch as the ability of the citizens of Swaziland to participate in the governance of their country was confined to the structures of *Tinkhundla* system which did not allow for the exercise of the freedom of assembly, association and conscience, the Kingdom of Swaziland was in breach of articles 1, 10, 11, and 13 of the African Charter on Human and Peoples' Rights.

The ICJ urges Swaziland judicial bodies to play their fundamental role in the judicial protection of human rights and fundamental rights as guaranteed in the regional and international instruments binding on Swaziland.

The ICJ further urges the Kingdom of Swaziland to bring all its domestic laws and practices in conformity with the human rights obligations it assumed under the African Charter; the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights and to fully implement the decisions of the African Commission in *Lawyers for Human Rights v. Swaziland*, Comm. No. 251/2002 (2005).

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