



SWAZILAND

AMNESTY INTERNATIONAL SUBMISSION FOR THE UN UNIVERSAL PERIODIC REVIEW 25TH SESSION OF THE UPR WORKING GROUP, APRIL/MAY 2016

FOLLOW UP TO THE PREVIOUS REVIEW

During its first Universal Periodic Review (UPR) in October 2011, Swaziland accepted most of the recommendations made to it by member states.¹ Unfortunately, a number of important recommendations were rejected, including recommendations to remove restrictions on political parties and to introduce multi-party democratic elections,² to extend a standing invitation to the UN Special Procedures,³ and to decriminalise same-sex relations.⁴

Swaziland accepted recommendations to ensure unhindered enjoyment of the right to freedom of expression, and to take immediate steps to repeal laws which criminalize or restrict freedom of expression and freedom of the media, in particular the Sedition and Subversive Activities Act (1938) and the Proscribed Publications Act (1968).⁵ Swaziland also agreed to create an enabling environment for civil society where citizens are free to exercise fully their rights to freedom of peaceful assembly and association in accordance with the principles of democracy and in line with international obligations under the International Covenant on Civil and Political Rights, including revoking the royal decree of 1973.⁶ Swaziland further agreed to repeal or urgently amend the Suppression of Terrorism Act of 2008 and other pieces of security legislation to bring them in line with international human rights standards.⁷ In addition, Swaziland agreed take concrete and immediate measures to guarantee the independence and impartiality of the judiciary.⁸

Despite these positive commitments, no steps have been taken to implement any of these recommendations. The restrictive laws outlined above remain in effect, with no steps taken to amend or repeal them. The crisis in the rule of law and judicial independence has only deepened. The rights to freedom of expression, association and assembly continue to be violated. Repressive legislation continues to be used to suppress dissent and there has been an upsurge in politically motivated trials. Unfair trials have resulted in people being imprisoned for reasons of opinion and conscience.

THE NATIONAL HUMAN RIGHTS FRAMEWORK

¹ *Report of the Working Group on the Universal Periodic Review of Swaziland*, 12 December 2011, A/HRC/19/6; *Addendum to Report of the Working Group on the Universal Periodic Review of Swaziland*, 6 March 2012, A/HRC/19/6/Add.1; and *Report of the Human Rights Council on its fourteenth session*, 4 October 2011, A/HRC/14/L.10. Swaziland initially accepted 75 recommendations, rejected seven and took under consideration the remaining 57. At the nineteenth session of the UN Human Rights Council in March 2012, Swaziland accepted most of the recommendations taken under consideration.

² A/HRC/19/6, recommendations 77.48 [France], 77.52 [Switzerland], 77.54 [Norway], 77.55 [Australia], and 78.7 [UK].

³ A/HRC/19/6, recommendations 77.17-77.19 [Norway, Romania, Latvia].

⁴ A/HRC/19/6, recommendations 78.4 [USA], 78.5 [Spain], and 78.6 [Portugal].

⁵ A/HRC/19/6, recommendations 77.50 [Slovakia] and 77.54 [Norway].

⁶ A/HRC/19/6, recommendations 77.49 [Hungary] and 77.53 [Norway].

⁷ A/HRC/19/6, recommendation 77.57 [Sweden].

⁸ *Ibid*, paragraph 8, recommendation by Canada.

The Constitution of the Kingdom of Swaziland has been supreme law since 2005. Its enactment followed more than three decades of *de facto* emergency rule under the King's Proclamation of 12 April 1973. Emerging from a prolonged and contested process, the Constitution contains an enforceable Bill of Rights and a set of Directive Principles, which make reference to social and economic rights. During the drafting of the Constitution and at Swaziland's previous UPR, Amnesty International raised concerns that the proposed provisions allowed wide scope for the government to excessively restrict the rights and freedoms it guarantees.⁹ As outlined below, these concerns still stand. A further concern is the continued slow pace of bringing subordinate laws in line with constitutional and international human rights obligations.

Independence of the judiciary

Since 2011, Swaziland has been experiencing a crisis in the rule of law, affecting protection of human rights, access to justice for victims of human rights violations, and the ability of members of the judiciary to work impartially and independently. The process of allocation of cases and decision-making was marred from 2011 onwards by political or other unwarranted interference. This was evidenced by the blatantly unfair trial proceedings against human rights lawyer Thulani Maseko and editor Bheki Makhubu in 2014 (detailed below).

The turmoil in the judiciary continued with the impeachment and subsequent dismissal of Chief Justice Michael Ramodibedi by King Mswati III for "serious misbehavior", including corruption and abuse of power on 17 June 2015.¹⁰ Similarly, Minister of Justice Sibusiso Shongwe and other judicial officers, including Judge Mpendulo Simelane, were arrested on 20 April 2015 and face charges, including abuse of power and defeating or obstructing the course of justice.¹¹ While there may be legitimate grounds for the dismissal and prosecution of these members of the judiciary, the flawed appointment and dismissal process of judicial officers demonstrates the fundamental rule of law problems and the susceptibility of the judiciary to political interference.

Restrictions on fundamental freedoms

The Constitution guarantees fundamental rights such as the freedoms of thought, conscience and religion; expression and opinion; and peaceful assembly and association.¹² The relevant provisions are, however, undermined by extensive limitation clauses that permit the state to restrict the enjoyment of these rights.¹³ Freedom of association, particularly for purposes of contesting political power, is further restricted by Section 79 of the Constitution, which stipulates that individuals wishing to stand as candidates in elections can do so only on the basis of "individual merit" and conducted within constituencies controlled by traditional leaders appointed by the King, effectively precluding anyone from standing for election under the banner of a political party.¹⁴

⁹ Amnesty International, *Swaziland: Human rights at risk in a climate of political and legal uncertainty*, July 2004 (AFR 55/004/2004), pages 70-91.

¹⁰ On 17 April 2015, an arrest warrant on 23 charges, including defeating the ends of justice and abuse of power, was issued for Chief Justice Ramodibedi and High Court Judge Mpendulo Simelane. The Chief Justice evaded arrest by refusing to come out of his home for 38 days. On 7 May, Chief Justice Ramodibedi was suspended and replaced with an acting Chief Justice, Bheki Maphalala. The warrant of arrest against him was set aside as a result of his suspension. Following impeachment proceedings on three charges of abuse of office conducted by the Judicial Services Commission, Michael Ramodibedi was dismissed on 17 June. The warrant of arrest against him was re-issued by the High Court on 24 June, after his departure from the country on 19 June.

¹¹ Judges Mpendulo Simelane and Jacobus Annandale, Minister of Justice, Sibusiso Shongwe, and High Court Registrar Fikile Nhlabatsi were arrested on charges brought by the Anti-Corruption Commission which include, among others, abuse of power, defeating or obstructing the course of justice and theft. On 23 April Mpendulo Simelane, Jacobus Annandale and Fikile Nhlabatsi were released on bail. Minister of Justice, Sibusiso Shongwe, was denied bail and remained in custody until 30 June 2015 when he was granted bail by the Supreme Court. He was dismissed as Minister of Justice on 21 April. High Court Judges Jacobus Annandale and Mpendulo Simelane and High Court Registrar Fikile Nhlabatsi have all turned state witnesses and are assisting the prosecution in the case against Sibusiso Shongwe. Judge Jacobus Annandale was appointed to the Supreme Court in late June 2015.

¹² The Constitution of the Kingdom of Swaziland Act, 2005. Sections 23-25.

¹³ Amnesty International, *Swaziland: Human rights at risk in a climate of political and legal uncertainty*, July 2004 (AFR 55/004/2004, Appendix A

¹⁴ In May 2009, the Supreme Court ruled that there was no conflict between the right of Swazi citizens to form and join political parties under Section 25 of the Constitution, and Section 79. A dissenting ruling was issued by Justice Thomas Masuku, who argued that Section 79 did nullify the substantive right protected under Section 25. In 2011, Justice Masuku was dismissed after grossly unfair dismissal proceedings against him.

The enjoyment of fundamental human rights remain further affected by draconian security legislation. For example, vague provisions¹⁵ in the 1938 Sedition and Subversive Activities Act can be interpreted in such a manner as to severely curtail the enjoyment of freedom of expression and allow for punishments of up to twenty years' imprisonment.¹⁶ Likewise, the 2008 Suppression of Terrorism Act contains sweeping and vague provisions and severe penalties for breaches. Amnesty International outlined its concerns about these provisions in its submission to the previous review of Swaziland, and in other public documentation.¹⁷

Discrimination against women

In Section 28 (1), the Constitution guarantees women the right to equal treatment with men, a right that "shall include equal opportunities in political, economic and social activities". However, other provisions of the Constitution appear to fall short of international human rights standards. For example, Section 15 (1) prohibits discrimination on various grounds but does not include marital status.¹⁸ Women's right to equality in the cultural sphere is also inadequately protected by the provision in Section 28 (3) guaranteeing that "a woman shall not be compelled to undergo or uphold any custom to which she is in conscience opposed". While this formulation appears to protect women from harmful practices, as Amnesty International has previously outlined, it falls short of international human rights law in that it places an undue burden on the individual woman when it is the responsibility of the state to prohibit and condemn all forms of harmful practices which negatively affect women.¹⁹

As no domestic legislation has been enacted that protects those who choose not to participate, women remain at risk of harmful practices. The final adoption of the Sexual Offences and Domestic Violence (SODV) Bill is delayed and is yet to take place at the time of writing. Until the SODV draft law is passed, women experiencing gender-based violence have few remedies available to them under domestic law. Furthermore, girls and young women are not sufficiently protected from forced or early marriages as these are not prohibited by law.

Right to life and physical integrity

Under Section 15 (4) of the Constitution, lethal force can potentially be used in a range of circumstances, including to defend property, to make a lawful arrest or to prevent the escape of a lawfully detained person, to suppress a riot, or to prevent the commission of a serious criminal offence. These grounds are inconsistent with international human rights standards on the use of force and firearms by law enforcement officials, and open to abuse.

The use of torture or "inhuman or degrading treatment or punishment" is prohibited under Section 18 (2) of the Constitution, and the right to freedom from torture is non-derogable during declared states of emergency.²⁰ However, the Constitution and subordinate laws fail to provide much needed safeguards against torture and other ill-treatment. In addition, the government has not taken steps to domesticate the country's obligations under the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, including by developing legislation which specifically defines and criminalizes torture and stipulates effective measures to prevent and punish acts of torture. Certain subordinate laws, such as the Suppression of Terrorism Act, also increase the risk of torture, including by providing for detention without trial and not obliging the authorities to produce the detainee in court at any stage.

¹⁵ Among other provisions of the Sedition and Subversive Activities Act which violate Swaziland's human rights obligations, Section 3 places the onus on the accused to prove that their alleged acts, utterances or documents published were not done with "seditious intention". Section 8 also obliges courts to conduct proceedings in camera relating to an offence under the Act if so requested by the prosecution.

¹⁶ Act No 46 of 1938 as amended.

¹⁷ See *Suppression of Terrorism Act Undermines Human Rights in Swaziland*, Amnesty International and the Human Rights Institute of the International Bar Association, January 2009 (AFR 55/001/2009) and Amnesty International, *Swaziland: Key Human Rights Concerns Highlighted By Amnesty International in Advance Of Swaziland's Universal Periodic Review Hearing In October 2011*, 21 September 2011 (AFR 55/006/2011).

¹⁸ Nor does it include the ground of sexual orientation.

¹⁹ *Swaziland: Too Late, Too Little: The Failure of Law Reform for Women in Swaziland*, 25 November 2010 (AFR 55/007/2010).

²⁰ The Constitution of the Kingdom of Swaziland Act, 2005. Section 38(e).

THE HUMAN RIGHTS SITUATION ON THE GROUND

Repression of dissent

The rule of law, access to effective remedies and protection of human rights have deteriorated since the last review. Journalists, lawyers, independent-minded judges, trade union officials and parliamentarians have been threatened with violence, arrest, prosecution and other forms of harassments as a consequence of their advocacy for human rights, the rule of law or political reforms. During 2015, there have been some signs of improvement, but these gains remain very fragile without fundamental legislative reform, full commitment to human rights standards and accountability for violations.

In 2014, there was an upsurge in politically motivated trials and the use of laws to suppress dissent. On 25 July 2014, Bheki Makhubu, editor of the monthly news magazine *The Nation*, and human rights lawyer Thulani Maseko were sentenced by the High Court to two years in prison after a grossly unfair trial which led to their conviction on two counts of contempt of court.²¹ In addition, *The Nation*, an independent publication, and Swaziland Independent Publishers were fined 50,000 emalangeni (US\$4,273) for each of the two counts, with the total payable within one month.

The two men were first arrested in March 2014 after *The Nation* published articles questioning judicial independence and political accountability in Swaziland. The arrests were conducted under defective warrants issued by the (then) Chief Justice Michael Ramodibedi.²² They were initially detained at Mbabane police station, where the police appeared to act under instructions in denying their lawyers access. The two men were remanded into custody by the Chief Justice following a brief procedure behind closed doors. In April 2014, they were briefly released, following a ruling by High Court judge Mumcy Dlamini that the warrants used to arrest them were indeed defective. The Chief Justice immediately lodged an appeal against her ruling, the two men were rearrested and the trial against them began under High Court judge Mpendulo Simelane. The judge had a clear conflict of interest in the matter as he was named in one of the cited articles and intervened as a factual witness during the course of the trial. The two men were released on 30 June 2015 following an appeal hearing before the Supreme Court. The Crown prosecutor conceded that it had no case against them. The sentence against *The Nation* magazine was also overturned.

While in custody at Big Bend prison in March 2015, Thulani Maseko was in solitary confinement for three weeks as a disciplinary punishment for an alleged breach of prison rules. Solitary confinement is a serious restriction of a prisoner's rights,²³ and the manner in which this punishment was administered breached international human rights standards and Swaziland's Constitution.²⁴

In addition to using contempt of court charges against its critics, the authorities are actively using the 2008 Suppression of Terrorism Act and the 1938 Seditious and Subversive Activities Act to intimidate activists.

Fourteen people are currently charged under these laws in five separate trials. Ten are charged under both laws for offences which include shouting slogans, possessing People's United Democratic Movement (PUDEMO) leaflets, wearing PUDEMO t-shirts and calling for a boycott of the elections held in 2013.²⁵ The trials have all been postponed, pending the outcome of a constitutional challenge to the laws under which the charges were made. This challenge began to be heard

²¹ *Swaziland: Deplorable sentences against journalist and lawyer stifle free speech* (News story), 25 July 2014, www.amnesty.org/en/articles/news/2014/07/swaziland-deplorable-sentences-against-journalist-and-lawyer-stifle-free-speech

²² The warrants of arrest that were issued exceeded the authority of Chief Justice Ramodibedi as he had a conflict of interest in the entire matter and did not follow proper procedure.

²³ Solitary confinement involves inherent risks to the prisoner affected, and if prolonged, amounts to a violation of the prohibition against torture and other ill-treatment. The United Nations Special Rapporteur on torture has stated that solitary confinement becomes prolonged after 15 consecutive days. Report of the Special Rapporteur on Torture, UN Doc. A/66/268 (2011), para 26.

²⁴ The punishment was apparently in response to a letter published under his name on 17 March 2015, thanking the international community for its support. Thulani Maseko had no access to legal counsel during the course of the disciplinary proceedings. On 20 March his lawyer was granted a brief meeting with him, simply for the purpose of confirming that he was being held in solitary confinement. Not only do these restrictions on access to legal counsel fail to meet international human rights standards, they also violate Article 16 of Swaziland's Constitution.

²⁵ *Swaziland: Amnesty International Condemns Repression of Fundamental Freedoms*, 29 March 2015, (AFR 55/1345/2015).

in the High Court in September 2015, but has been postponed to October 2015.

Among those charged are several people involved in the opposition organization PUDEMO, including its Secretary General, Mlungisi Makhanya, its President, Mario Masuku and its youth leader Maxwell Dlamini.²⁶ Mario Masuku was denied access to adequate and independent medical care, which he needed urgently, throughout his 14 months in detention.

Freedom of association

In April 2012, the Trade Union Congress of Swaziland (TUCOSWA) was informed that it was unlawfully registered, despite its registration having been previously confirmed. For over three years, trade union members were harassed, including public threats against trade union leaders, arbitrary arrests of activists for wearing TUCOSWA T-shirts or for attempting to hold meetings.²⁷ Swaziland National Association of Teachers (SNAT) Secretary General, Muzi Mhlanga, was assaulted by police during an attempt by the National Executive Committee of TUCOSWA to hold a meeting at the SNAT offices in Manzini in March 2015. TUCOSWA was finally registered in May 2015 in a welcome step towards the unrestricted enjoyment of freedom of association.

Violations of the right to life and physical integrity

Over a number of years, Amnesty International has repeatedly raised concerns with the authorities that law enforcement officials use excessive force against peaceful demonstrators, use lethal force without justification against criminal suspects, and use torture and other ill-treatment against arrested or detained persons.

The most persistent forms of ill-treatment of people taken into police custody are severe beatings and suffocation, in police stations and other settings. The targets are usually criminal suspects and government opponents. In some cases, such ill-treatment has resulted in deaths in custody. For example, on 12 June 2015 a 35-year-old Mozambican national, Luciano Reginaldo Zavale died in custody following arrest for possession of a stolen laptop. Objective evidence indicates that he died in suspicious circumstances. An inquest into this death has been ordered and was proceeding in September 2015. Other deaths at the hands of security forces include 26-year-old Phumelela Mkhweli who died shortly after being assaulted by police for "jay-walking" in Siteki on 5 December 2011 and 43-year-old Lucky Montero who was kicked and beaten in the head and body by soldiers at a border checkpoint on 12 March 2012. He died 12 days later in Mbabane Government Hospital from medical complications arising from his injuries.

There are also concerns about lack of proper investigations into and accountability for such cases of death in custody. An example is the coroner's inquest to investigate the death in custody in May 2010 of political activist Siphon Jele. The coroner presented her report to the Prime Minister in March 2011. To date, neither the report nor its recommendation have been made public, and Amnesty International is not aware of any investigations or prosecutions related to this case.

There is no effective, independent and impartial body for the oversight and investigation of alleged human rights violations by the security forces. The only effective legal remedy available to victims is to pursue civil damages suits against the authorities, but this route is usually very slow and requires access to legal assistance.

²⁶ Mario Masuku and Maxwell Dlamini were arrested and remanded in custody in connection with slogans they allegedly shouted at a 2014 May Day rally. They were released on bail on 14 July 2015 when their appeal against denial of bail was finally heard by the Supreme Court. They had unsuccessfully applied for bail twice in 2014, and had appealed the High Court's refusal to release them to the Supreme Court.

²⁷ In August 2014, the Prime Minister, Sibusiso Barnabas Dlamini, publicly threatened Siphon Gumedze from Lawyers for Human Rights and TUCOSWA General Secretary Vincent Ncongwane in a speech in Parliament because of their participation in the US Africa Leaders' Summit in Washington DC. TUCOSWA members have been arrested on a number of occasions between April 2012 and May 2015, including, but not limited to, the arrest of two TUCOSWA members on 1 May 2012 in Manzini; the raiding of the TUCOSWA offices and the placing under house arrest of three trade union leaders in May 2013 and the arrest of TUCOSWA General Secretary Vincent Ncongwane on 5 September 2013.

RECOMMENDATIONS FOR ACTION BY THE STATE UNDER REVIEW

Amnesty International calls on the government of Swaziland to:

Independence of the judiciary

- Put in place measures to safeguard the independence of the judiciary in line with the UN Basic Principles on the Independence of the Judiciary, as Swaziland had accepted to do in the previous review.

Restrictions on fundamental freedoms

- Remove all restrictions, in law and practice, which prevent the full enjoyment of the right to freedom of association, including associating for purposes of contesting political power, as guaranteed under the International Covenant on Civil and Political Rights and other international standards, as Swaziland had accepted to do in the previous review;
- Repeal or immediately amend the Suppression of Terrorism Act of 2008 and other pieces of security legislation to bring them in line with international human rights standards, as Swaziland had accepted to do in the previous review;
- Withdraw all criminal charges brought against human rights defenders and political opponents under laws such as the Suppression of Terrorism Act of 2008 and the Seditious and Subversive Activities Act of 1938;
- Stop using the criminal justice system to violate the rights of freedom of expression and association;
- Ensure that freedom of association is protected and that membership and activities of trade unions and non-violent political organisations are not restricted.

Discrimination against women

- Urgently enact the Sexual Offences and Domestic Violence Bill, which will override existing legislation that is in conflict with obligations under the Convention on the Elimination of All Forms of Discrimination against Women, and to publicly commit to a time-frame within which this will be accomplished.

Right to life and physical integrity

- Institute an urgent review of laws, regulations and procedures relating to the use of force and firearms by law enforcement officials;
- Enact legislation which specifically defines and criminalizes torture and stipulates effective measures to prevent and punish any violations of the right not to be subjected to torture, as Swaziland had accepted to do in the previous review;
- Seek advice and to implement a process leading to the establishment of an effective, independent and impartial body to oversee and investigate alleged human rights violations by the security forces with the power to recommend a remedy, including prosecutions;
- Ensure that the Coroner's report into the death in custody of Luciano Reginaldo Zavale, when completed, is made public and that investigations into possible criminal charges and/or disciplinary proceedings are conducted, as appropriate.