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HUMAN RIGHTS –SWAZILAND



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SUBMITTING ORGANISATIONS:

Swaziland Multi-Media Community Network

Swaziland Concerned Church Leaders

Swaziland Coalition of Concerned Civic Organisations

Constituent Assembly – Swaziland

1. FOLLOW UP TO THE PREVIOUS REVIEW

Swaziland appeared under the Universal Periodic Review in October, 2011; where they accepted 107 recommendations and rejected 33 with 3 pending recommendations. Most of the recommendations the country received were in relation to civil and political rights¹. These recommendations were in relation to freedom of expression, and the establishment of community radios; open space for civil society and political parties to assemble peacefully. On civil rights, the recommendations related to improvement of prison and detention centres; and guarantee the independence and impartiality of the judiciary system and train officers responsible for law enforcement and members of the judiciary and further ensure legal oversight for law enforcement officials. The recommendations were in relation to freedom of expression, and the establishment of community radios; open space for civil society and political parties to assemble peacefully. On civil rights, the recommendations related to improvement of prison and detention centres made by Australia; and guarantee the independence and impartiality of the judiciary system and train officers responsible for law enforcement and members of the judiciary and further ensure legal oversight for law enforcement officials. Although Swaziland accepted all of these recommendations, this coalition is disappointed to note that very little steps have been taken by the government to implement the commitments it made at the last UPR. Indeed, most of them are still pending attention by the state under review while in some cases the situation has worsened as elaborated on this report. The country is party to the International Covenant on Civil and Political Rights having signed in 26 March, 2004. The initial state report is overdue since 26 June, 2005. Swaziland is however not party to the Optional Protocols of the ICCPR. It is concerning that the country rejected recommendations to accede to optional protocols of the ICCPR². Further, the state reconfirmed its rejection of recommendations to allow political parties to participate in elections. Swaziland also confirmed that it intended to ratify the Optional Protocol to the UN Convention against Torture, but had not done so as yet. The state cooperation and or willingness to cooperate with the Human Rights Council is wanting; as demonstrated by the state's rejection to issue a standing invitation to the Special Rapporteurs and the Working Group of the United Nations human rights systems³.

2. THE NATIONAL HUMAN RIGHTS FRAMEWORK

The Constitution of Swaziland, 2006 embraces civil and political rights⁴ in its Bill of Rights. However, these rights continue to be compromised by legislations that are not aligned to the

constitution. The Suppression of Terrorism Act 2008, Public Order Act 1963, Swaziland Administration Order 1998, Sedition and Subversive Activities Act (Act No 46 of 1938) and the King's Decree 1973 are pieces of legislations that undermine the progressive nature of the Constitution on civil and political rights. Though the constitution is the Supreme Law of Swaziland, as stated in Section 2 (1); legal judgements continue to apply these laws. There are other matters related to the independence of the judiciary; while there are no alternative remedies for justice as the Human Rights and Public Administration Commission is still not operational. There is a deadlock of cases that are still not investigated by the Commission as it still lacks an enabling legislation to operationalise it and personnel. Moreover, law enforcement officials continue to apply these laws, especially to civil society members.

The right to freedom of assembly and association is limited for political parties as some remain banned and have no enabling legislation that spells out their registration and participation in local government and national elections as the constitution recognises participation the *tinkhundla* system of government⁵. This system of government has limited citizens' rights to change their government in a way that conforms to international standards.

3. HUMAN RIGHTS SITUATION ON THE GROUND

Freedom of Assembly and Association:

Swaziland has still not repealed the Swaziland Terrorism Act and continued to arrest members of the proscribed political organizations even for the mere fact of wearing a T-shirt with the proscribed political party's insignia. Seven members of the People's United Democratic Movement (PUDEMO) were arrested in Mbabane for wearing T-shirts with PUDEMO logo on the April, 2014 namely; Mr Mlungisi Makhanaya, Mr Bongani Gama, Mr Bafana Mabandla Magongo, Mr Siza Jabulani Tsabedze, Mr Brian Clive Ntshangase, Ntobeko Gedeon Maseko and Mr Mangaliso S'manga Khumalo. These members were released on bail and the docket number for the High Court case is 181/14. The said members of this organization were peacefully attending a court case of another human rights activist Mario Masuku and a Student activist Maxwell Dlamini. Mr Mario Masuku, the President of PUDEMO, had been arrested in Manzini Bosco Sports ground during the 2014 May Day Celebration for delivering a speech as PUDEMO President, which according to the STA is a proscribed entity. Mr Maxwell Dlamini was also arrested on the same day for having sang a song "am sorry mommy, we do not want dictators", which is also classified as a terrorist

crime under the STA. Mr Dlamini and Mario Masuku have been in police custody for 14 months and were released on bail on the 14th July, 2015.

The Secretary General for the Swaziland National Teachers Association SNAT, Muzi Mhlanga was assaulted by police on the 14th March, 2015 at the Teachers Offices (SNAT CENTRE). Police lead by their commanding officer from the Manzini Regional Headquarters, one Jele, stormed the hall with about 15 police officers and stopped the meeting, while about 200 others were outside the building. They moved out and got into their organizations mini bus where also police ordered them out of the mini bus and went further to deflate its tires. They forced the door open and Officer Thembinkosi Mngomezulu dragged the Secretary General out of the mini bus threw him down and they all assaulted him all over the body with fists and kicks which resulted in him losing his front tooth (left incisor). He was bruised all over the body especially the back and had lacerations on his penis. Police admitted having done that and came out to apologize but the absence of a legislation that protects freedom of association and expression; such is most likely to happen in future.

On the labour rights front; government has frustrated the registration of the Amalgamated Trade Union of Swaziland (ATUSWA). This union follows a merge of unions in the textile and apparel, mining, quarrying and related industries, and general manufacturing; metal workers; and unions in the engineering and retail, hospitality and catering sectors. The union filed its request for registration and its constitution with the Commissioner of Labour before its congress in September 2013. The legal advisor of the Ministry requested that they amend their constitution after their meeting in January 2014; to which they duly obliged; and in April 2014 they were told to remove the word “*amalgamated*” even though another union, the Swaziland Amalgamated Trade Union, had previously been registered without any concerns in this regard. The Executive of the Union believes that this is the delaying tactics that has prevented the registration of ATUSWA for over two years without any legitimate reason.

The law imposes substantive requirements on trade union constitutions, for example; that a general meeting open to all members shall be held once a year (Art.29 Industrial Relations Act). Only members of the unions who have paid subscription in full are permitted participate in votes (Art. 20 and 30 Industrial Relations Act⁶). Others categorise of workers are denied the right to freedom of association and assembly; this include the Police, Prison Staff and Export Processing Zone Worker⁷.

Freedom of Expression and Access to Information:

The right to freedom of expression and access to information is threatened in the country. Independent media in Swaziland is still almost non-existent as it is not legally recognized or allowed to operate. Currently there is no enabling legislative measure for the full realization of free press and plurality of information in Swaziland. The Swaziland Broadcasting and Broadcasting Corporation Bills of 2010 have still not been passed five years after they were drafted. However, in 2013 there were two Acts which have a bearing on the Broadcasting Bill, namely the Swaziland Communications Commission (SCC) Act and the Electronic Communications Act that were enacted. This demonstrates the lack of political will about the need for media pluralism in the country, especially providing licences so that community radio can operate. Currently, there are seven⁸ community radios in the country with the Lubombo community radio having formed more than fifteen years ago. The community radios have formed a network registered in October, 2014; called the Swaziland Multi-Media Community Network (SCMN) for purposes of collectively advocating for the passing of the enabling legislations as well as steer the activities of the community radios in Swaziland, including their promotion, licensing, training and technical support. Further, there is undue censorship of information particularly with the State-owned media house, and that the print media is almost invariably threaten with closure if they publish anything that somehow exposes the discrepancies of the obtaining system.

Also Thulani Maseko (human rights lawyer), and Bheki Makhubu (Chief editor of the Nation Magazine) were recently released by the Supreme Court on charges of contempt of court after serving a sentence of 15 months behind bars for exercising the right of expression. Mr. Maseko and Mr. Makhubu, were being charged with two counts for the offence of contempt of court alleging that they violated and undermined the dignity, repute and authority of the High Court of Swaziland by publishing malicious and contemptuous statements in the monthly Nation Magazine, about the case of *The King v Bhantsana Vincent Gwebu*.

While there are limitation of free media; space for civic engagement are threatened to be closed too. Government is currently working on a Tinkhundla and Regional Administration Bill of 2010 that has negative effects for civil society organisations to access community at grass root level, especially those that do awareness rising on human rights as they have not received any favour from state agents who had previously invaded and stopped their meetings. The Bill vest authority to access and convene community meetings to the local

authority; *chiefs and tindvuna*; and that permission to convene community meetings will be sought through the Ministry of Tinkhundla. These will have negative ramifications for organisations to access communities; especially those organisations that are deemed a threat to the status core. The general observation is that government embraces organisations working on soft issues such as service delivery; and have intimidated community meetings for advocacy organisations and those doing human rights education in the ground.

Civic Participation & Pluralism in Elections

While it was recommended that Swaziland has to enact a legislation that registers, legalizes and operationalizes political parties, the country still do not have the legislation and political parties still are not allowed to register and participate in election processes. The Constitution has clashing provisions (Section 25 and Section 79)⁹. Members of political parties and concerned citizens took the government to court in the case by *J.J. Sithole et-al V Government of Swaziland* to test the validity of the clashing constitutional provisions and the court ruled in favour of Section 79. This undemocratic act reveals that the countries' political play field is still not level as legislations and practical restrictions impeding on freedom of association, assembly and expression still exist despite previous recommendations towards same. More human rights activist continue to skip the country into neighbouring countries in seek for refuge as they run away from police torture for having delivered speeches or campaign for democracy in Swaziland. The most vulnerable are the youth and students at tertiary institutions (members of the Swaziland National Union of Students) whom when they speak out they then find themselves on the 'wrong side of the law'. This is an attempt by government to clamp down and limit students' activism in tertiary institutions as they are perceived to be a force that increases the membership of political parties.

In Shiselweni Region of Swaziland at Zindwendweni area on the 14th June, 2015, police detained one Mr Qolani Myeni for conducting civic education on democracy and human rights. Police from Lavumisa Police Station came and stopped the meeting saying that it was an illegal gathering. They took Mr Qolani Myeni into a police van and drove to the Lavumisa Police Station where he was questioned and later released after he was given strong warning never to hold an 'illegal' meeting again. On the 16th February 2013 Swaziland United Democratic Front organized a prayer service on a theme; "The call for a national prayer for a People's government" in Manzini at Bosco Skill Centre. The venue was then changed to the Cathedral Church in Manzini because the State Security Police were threatening to stop the

prayer service. Police stormed inside the Cathedral Church while the Bishop Pail Verryn was on pulpit and forcefully stopped the prayer service and ordered everyone out of the church and its surroundings. The State Security Police were led by Matsapha Police Station's Commander, Howard Hlophe.

Detention Centres & Prison Conditions

There is evidence that detention centres and prison conditions are graded to be below humane and liveable standards. In a matter between *Tsela v The Commissioner of Police and others* it was ascertained that Tsela was arrested by police officers and placed in police cells at Mbabane police station for two days. The court noted that he was he complained of poor living conditions. He offered that the cell was too small and he had to sleep or sit curled up. He was given food once a day at about 3:00 PM. He had to use a bucket to relieve himself otherwise he was allowed out of the cell once a day to relieve himself¹⁰; while another plaintiff complained of deprivation of basic amenities in police cells such as clean blanket, good food and reasonable sanitation¹¹. A more recent statistic released by the His Majesty's Correctional Services Public Relations Officer Bongani Khumalo in February 21, 2015 reveals that there are 3 500 inmates countrywide¹². A dormitory with a holding capacity of 80 inmates holds 185 prisoners; and this is report from one inmate¹³. According to the Swaziland Correctional Services, the prisons are overpopulated attributed to the bag log of cases within the courts also that those less serious offences are not usually remitted to community work. Statistics released by His Majesty's Correctional Services (HMCS) in January 2013 indicated there were 3,280 sentenced inmates, which exceeded the prison system's holding capacity by 442 inmates. As of May there were 619 pre-trial detainees¹⁴. Overcrowding in prison and detention centres exposes inmates and officers to diseases and illness. In 2010 alone, a total of 1 173 inmates were referred to government hospitals for treatment, and 14 died due to illness¹⁵. The country has one female prison centre. There is no separation between female detainees and convicts; female juveniles are also held in adult correctional facility¹⁶.

Deaths in police custody and unlawful deprivation of life

A Mozambican national, Luciano Reginaldo Zavale (35) died in police custody after being taken in for questioning. Three police officers who had held Zavale for questioning claimed he complained of feeling hot and he striped himself to the waist; while reports from his brother who went to inspect his body found a gaping wound at the back of head¹⁷. The three police officers were ordered to remain at the police camp and not report to work for concerns

over their safety¹⁸, as opposed to pending investigations of their misconduct or alleged torture while extracting information from the alleged suspect. The family hired an independent pathologists (Dr Steve Naidoo) based in Durban. It was then that Dr Naidoo discovered that two pathologists who had previously worked on the case did not inspect the scene or the pictures taken of the scene. He confirmed that he and the state pathologist were not allowed to inspect either the scene or the pictures taken where Zavale is said to have died. Police Deputy Information and Communications Officer Inspector said the pathologists may not have viewed the scene but usually they were allowed access to the docket, which she said contained everything pertaining to an inquiry¹⁹.

Of concern are the weak accountability measures for police officials. There is no Commission of inquest in place to investigate cases of police brutality. They are usually set-up especially after a public outcry. However, the problem is always the question of independence and impartiality of the said Commission and the high level of secrecy involved therein. The police have an internal disciplinary mechanism – the Internal Investigation Unit (IIU). The IIU refers some unresolved cases to the Director of Public Prosecution. Section 162 (4) and (6)(a) of the Constitution of Swaziland holds that the Director of Public Prosecution (DPP) is required to *‘institute and undertake criminal proceedings against any person in respect of any alleged offence’ which must be ‘with regard to the public interest, the interest of the administration of justice and to the need to prevent abuse of legal process’*. However, as an accountability mechanism, the DPP indicated that there were no cases reported in 2011²⁰ which have a bearing on police officials despite having been numerous allegations of police abuse in that period. The absence of or none operation of the Human Rights and Public Administration Commission further compounds the problem for aggrieved individuals; and the office of the Ombudsman as an alternative has not been operational since 1985 after the death of the Ombudsman then in office²¹. Unlawful losses of life still persist as Game Rangers have unbridled authority to respond to transgressions of game conservation through the Game Act²². A number of extra-judicial killings have been reported. A parliamentary committee was appointed to investigate the alleged brutality of game rangers; and the committee reported nine incidents of deaths and injuries against game rangers and 33 against suspected poachers²³.

Torture and inhuman degrading treatment

The Constitution protects individuals from inhuman or degrading treatment, slavery and forced labour. It provides that law enforcement officials may not inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment, nor may any law enforcement official invoke superior orders or exceptional circumstances as a justification of torture or other cruel, inhuman or degrading treatment or punishment²⁴. However, this provision is not regarded as legally enforceable in any court or tribunal since it is contained under the 'guideline principles' section of the Constitution.

In Mbabane, police tortured a 15 year old boy after his mother had reported him for stealing SZL85.00. The boy alleges that he was beaten with a slasher (metal blade tool for cutting grass) and knobkerrie (club) for five hours. While enduring the pain, he alleges that he was made to count the strokes aloud for the police to hear. Instead of being charged, the boy was physically assaulted and made to sit in a chair for thirty minutes before he was sent back home²⁵. Phumelela Mkhweli, a political activist died after alleged assault by police after they arrested him²⁶. In April 2011, a 66 years old woman was confronted by three police officers regarding the wording on her t-shirt and headscarf. The police allegedly pulled off her T-shirt, throttled her, banged her head against the wall, sexually molested her, kicked her and threw her against a police truck²⁷. The US Department of State reported on many allegations of torture and ill-treatment by police; including beatings and temporary suffocation using rubber tube tied around the face, nose, and mouth, or plastic bags over the head²⁸.

Death Penalty

There is currently a de facto moratorium on executions in the Kingdom. The last executions took place in 1983. Conflicting reasons have been advanced for this. While it is claimed by some that executions have not taken place because the Government has not been able to procure another executioner since the last one died, the official reason given is that the Government has suspended executions while it searches for a more humane way of carrying out the death sentence. However, there was once a government advertisement calling for applications for the post of hang person. That means the death penalty still exist in; and there is no instrument abolishing the death penalty though the Constitution only provides the death penalty shall not be mandatory. This is evidenced through Mciniseli Jomo Simelane who was sentenced to death by the High Court for murder in November, 2012.

Independence of the Judiciary

For the full enjoyment, protection, and administration of Justice, the independence and impartiality of courts is central. The Constitution provides for independence of the judiciary. However, it's a question of the extent of the independence, bearing in mind of the unclear appointments of judges. For example, the appointment of the suspended Justice Mpendulo Simelane, which had sent the whole judiciary into disrepute as miscarriage of justice, was witnessed with shock and dismay.

Judge Mpendulo was appointed as a High Court in February, 2014 though he was constitutionally not qualified for the position. The Constitution states that, for one qualify to be a judge, they must be “*a legal practitioner, barrister or advocate of not less than ten years practice in Swaziland or any part of the Commonwealth or the Republic of Ireland*”; “*a judge of a superior court of unlimited jurisdiction in civil and criminal matters in any part of the Commonwealth or the Republic of Ireland for a period of not less than five years*”; *Alternatively, that individual should have either been a legal practitioner, barrister or advocate and a judge of a superior court as stated above for a combined period of such practice and service of not less than ten years.* Judge Mpendulo Simelane had none of these requirements. The Law Society of Swaziland challenged Simelane’s appointment²⁹, but their case was dismissed.

Right to Fair Trial

The director of public prosecutions has the legal authority to determine which court should hear a case, and has delegated this responsibility to public prosecutors. Judicial powers are based on two systems: Roman-Dutch law and a system of traditional courts that follows traditional law and custom. The dual system permits for unfairness for offenders. For instance the police make a determination of which case to refer to which court; and often took cases not properly investigated to the traditional courts because the standard of evidence required for conviction was not as high as in the western-style courts³⁰. Persons convicted in the traditional courts may appeal to the High Court, though this is often impossible as most people cannot afford the legal costs involved.

4. RECOMMENDATIONS FOR ACTION BY THE STATE UNDER REVIEW

1. Repeal the Suppression of Terrorism Act of 2008

2. An act a legislation that facilitate the registration, operationalization of political parties
3. Develop a legal framework that guarantees freedom of expression, free media and operationalization of other independent media houses.
4. Ensure the protection and respect for human rights through freedom of association, expression and assembly.
5. Government to engage on an all-inclusive (cross section of the civil society including political parties) meaningful dialogue to map out the country's political way forward.

¹ Report of the Working Group of the Universal Periodic Review of Swaziland, October 2011 (A/HRC/WG.6/12/L.4).

² The recommendations were made by Hungary, Switzerland, Turkey, Germany, Slovenia, Romania, Portugal and Spain

³ Swaziland First Review, Session 12: Recommendations made by Norway, Romania and Latvia

⁴ These rights are the right to life; protection to personal liberty, protection from inhuman and degrading treatment, equality before the law, right to fair hearing, protection against arbitrary search or entry, protection of freedom of expression, protection of freedom of movement and protection of freedom of assembly and association

⁵ Section 79 of the Constitution holds that the system of government for Swaziland is a democratic, participatory, tinkhundla based system which emphasises devolution of state power from central government to tinkhundla areas and individual merit as a basis for election or appointment to public office.

⁶Restrictions on trade unions' right to organise their administration. <http://survey.ituc-csi.org/Swaziland.html#tabs-2>, accessed 8 August, 2015

⁷ ibid

⁸ The seven community radios awaiting licensing in Swaziland are Matsenjeni, Ngwempisi, Lubombo, Sidvashin – Mbabane, Kwaluseni Community radios; the Seventh Day Adventists and Voice of the Church Community Radios. The Voice of the Church currently broadcast through a permit for TransWorld Radio.

⁹ Section 25 grants the right to associate and assembly; while section 79 emphasises that elections are conducted on the Tinkhundla systems of government which recognises only individual merit as a basis for political office.

¹⁰ Human Rights and Policing: Accessing South African countries' compliance with the SARPCCO Code of Conduct for Police Officials

¹¹ ibid

¹² Times of Swaziland, 21 February 2015

¹³ ibid

¹⁴ United States Department of State (2013) Country Report on Human Rights Practices for 2013: Swaziland. <http://www.state.gov/documents/organization/220377.pdf>

¹⁵ United States Department of State (2010) Country Report on Human Rights Practices for 2010: Swaziland

¹⁶ ibid

¹⁷ Times of Swaziland: ZAVALE HAS GAPING WOUND IN THE HEAD (June 19, 2015) <http://www.times.co.sz/news/103305-zavale-has-gaping-wound-in-the-head.html>

¹⁸ Times of Swaziland: ZAVALE'S ARRESTING COPS BACK AT WORK (July 9, 2015) <http://www.times.co.sz/news/103618-zavale%E2%80%99s-arresting-cops-back-at-work.html>

¹⁹ Times of Swaziland <http://www.times.co.sz/news/103348-zavale-pathologists-blocked-from-viewing-scene-of-death.html>

²⁰ There being no latest report from the Police

²¹ Policing and Human Rights: Assessing Southern African Countries' Compliance with the SARPCCO Code of Conduct for Police Officials

²² Game Act No. 51 of 1953

²³ Swazi Media Commentary (20 January, 2014) KING LETS GAME RANGERS SHOOT-TO-KILL
<http://swazimedia.blogspot.com/2014/01/king-lets-game-rangers-shoot-to-kill.html>

²⁴ Constitution of Swaziland, section 57 (3)

²⁵ Swazi Media Commentary (1 April, 2012) Swaziland Police Torture Boy, 15
<http://allafrica.com/stories/201204010225.html>

²⁶ Amnesty International (2012) Annual Report

²⁷ Amnesty International (2012) Annual Report

²⁸ United States Department of State Report (2012) Country Reports on Human Rights Practices for 2011

²⁹ Law Society of Swaziland V Simelane and Others (527/2014) [2014] SZHC 179 (1 August 2014)
<http://www.swazilii.org>

³⁰ United States Department of State (2013) Country Report on Human Rights Practices for 2013: Swaziland.
<http://www.state.gov/documents/organization/220377.pdf>