

Submission to the Universal Periodic Review of Swaziland

Submitted by the Centre for Human Rights, Faculty of Law, University of Pretoria, 14 March 2011

A. Introduction

1. This submission summarises the Centre for Human Rights' key concerns regarding the on-going violations of women's rights, the rights to health, freedom of association, assembly and expression in the Kingdom of Swaziland. In addition to the domestic legal framework which impedes or inadequately provides for the protection of these rights, the submission discusses the promotion or protection of the rights on the ground. After indicating the areas of concern, the Centre for Human Rights outlines recommendations which it urges the Universal Periodic Review on Swaziland to include. This submission is made in compliance with the General Guidelines for the Preparation of Information under the Universal Periodic Review.

B. Violation of women's rights

2. Swaziland is a party to the Convention on Elimination of all forms of Discrimination against Women (CEDAW).

3. The manifestations of the violation of women's rights in Swaziland include their exposure to physical and sexual violence, the absence of a law that recognises the right of women married under the community of property to register property in their own name and their preclusion from entering into contracts without the consent of their husbands.

i. Sexual violence against women

4. In Swaziland, violence against women is widespread. The Girls and Women's Protection Act of 1920 has not been effective in curbing this trend. According to UNICEF:¹

[a]pproximately one in three young women had experienced some form of sexual violence as a child, nearly one in four had experienced physical violence, and approximately 3 in 10 had experienced emotional abuse.

5. In Swaziland, there are no laws criminalising marital rape. The Girls and Women's Protection Act 39 of 1920 which is still in force is silent on the matter. Men can sexually abuse their wives and have done so without fear of sanctions. Spousal rape has become a common occurrence in Swaziland.

6. These forms of violence coupled with the widespread practice of polygamy contribute to the high HIV prevalence rate in the country.² With both parents suffering from the disease and in most cases dying, children are left vulnerable to the vagaries of the world.

ii. Denial of the right to property of married women

7. Section 16(3) of the Deeds Registry Act denied married women the right to register property in their own name by prohibiting immovable property from being registered in the joint names of both spouses who are married to each other in community of property. In February 2010, Swaziland's Supreme Court, which is the final court of appeal in Swaziland, upheld a High Court judgement that held unconstitutional this provision.³ The Supreme Court, however, set aside the remedy given by the High Court and instead gave an order that

¹ UNICEF "Working to reduce violence and abuse against children in Swaziland" (2010) available at http://www.unicef.org/infobycountry/swaziland_53744.html (accessed 26 February 2011).

² See for example, UNDP Human Development Report Swaziland (2008).

³ *Attorney General v Aphane*, Civil Appeal No. 12/2010, Supreme Court of Swaziland (28 May 2010).

the invalidity of section 16(3) be suspended for a period of twelve months to enable parliament to come up with a law that corrects the invalidity of the provision.⁴ This historic judgment grants married women the right to register property in their own name which previously was curtailed by law. Although this judgement marks an important turning point for the rights of women in Swaziland, ten months after the judgement, parliament still has not passed legislation to correct the invalidity in section 16(3) of the Act. In addition, the application of this invalidation is limited to couples married under civil law. There are two kinds of marriages in Swaziland; those regulated by civil law and those regulated by Swazi customary law. The customary law, under which married women cannot register property in their own name, continues to regulate most marriages concluded in Swaziland. This denies women married under customary law the benefits of the judgement and the new law, when it is enacted.

8. Under customary law, a married woman still cannot freely have access to land and cannot inherit land in accordance with the 1902 Administration of Estates Act. Furthermore, under customary law women are regarded as minors who cannot purchase land without the authorisation of their husbands.⁵ This is contrary to the Constitution of Swaziland and Article 16 of CEDAW which grants equal rights to both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property. As a result, most married women in Swaziland do not exercise their right to own property. The consequences of this inequality are enormous. Women are financially dependent on men. According to *The World's Women 2010*, less than a quarter of married women have a say in purchases for daily household needs in Swaziland.⁶

C. The right to health

9. Swaziland has acceded to the International Covenant on Economic Social and Cultural Rights (ICESCR) without any reservations.

10. The right to health is not justiciable in Swaziland but falls under Chapter V of the Constitution which provides for the directive principles of state policy and the duties of the citizen. Section 60 (8) states: 'Without compromising quality the State shall promote free and compulsory basic education for all and shall take all practical measures to ensure the provision of basic health care services to the population.'

11. Although the government of Swaziland has taken steps to facilitate access to healthcare services to its citizens, its efforts are insufficient. Swaziland has the highest HIV/AIDS prevalence rate in the world. According to UNAIDS, in 2009 there was an estimated 180,000 people living with HIV/AIDS of a total population of 1.4 million⁷ and women are the most infected group.⁸ The scourge does not leave out children as there are about 14,000 children infected with HIV and 69,000 orphaned due to AIDS.⁹

⁴ *Attorney General v Aphane* (n 4 above), para 70.

⁵ Office of the Resident Coordinator for the United Nations (Swaziland) United Nation Millennium Development Goal, Gender equality and empowering women – Goal 3 available at http://www.un.org.sz/index.php?option=com_content&view=article&id=18&Itemid=61 (accessed 11 February 2011).

⁶ United Nations report "The world's women 2010" (2010) 171.

⁷ Government of the Kingdom of Swaziland "Monitoring the declaration of commitment on HIV/AIDS (UNGASS) Swaziland country report" available at <http://www.unaids.org/en/Regionscountries/Countries/Swaziland/> (2010) (accessed 6 March 2011).

⁸ As above.

⁹ As above.

12. A key factor that contributes to the spread of HIV/AIDS is the customary practices of the Swazi people who are mostly rural. There exist a myriad of practices that are inimical to combating HIV/AIDS such as polygamy and the resultant general acceptance of men having multiple partners, women having many children and the dislike of condoms and family planning.¹⁰

13. People living with HIV/AIDS face stigma and discrimination. They are treated with disdain and are socially excluded. This prevents them from seeking prompt medical attention and, when they do, complying with the drug administration.¹¹

14. The prevalence of tuberculosis (TB) in Swaziland is at a high record with a TB/HIV co-infection rate of 80%.¹² There have been cases of unavailability of TB drugs and also a lack of information and advocacy on the means of transmission of TB. Hospitals are breeding grounds for the spread of TB as most patients are exposed to infection when they come to the hospital.¹³

D. Violation of freedom of expression, association and assembly

15. Freedom of expression is guaranteed by section 24 of the Constitution. This right is also provided by the article 19 of the International Covenant on Civil and Political Rights (ICCPR) which the Kingdom of Swaziland acceded to on 26 March 2004. However, the freedom of expression is being flagrantly violated by the government of Swaziland.

16. The definition of terrorism provided by section 2 of the Suppression of Terrorism Act (STA) is broad and imprecise and suppresses freedom of opinion, expression, association and assembly. The definition is not limited acts committed with the intention of causing death or serious bodily injury, or the taking of hostages or acts committed with the aim to further an underlying political or ideological goal.

17. The problems caused by this broad and imprecise definition is intensified by section 19(2) of the Act which shifts the onus of proof to the accused by stipulating that ‘it shall be a defense for a person charged with an offence under this section to prove that the entity in respect of which the charge is brought was not a terrorist group...’. As long as the impreciseness in the Act is not averted, the application scope of the STA can be extended as far as needed to target those who express legitimate criticism against government.

18. Furthermore, the Sedition and Subversive Activities Act provides that anyone ‘who utters any words with subversive intention shall be guilty of an offence’. Subversive is defined as ‘supporting, propagating or advocating any act or thing prejudicial’ to ‘public order’ or ‘the security of Swaziland’ or ‘indicating ... any connection, association or affiliation with or support for an unlawful society’. This is an overly broad and vague definition, places extensive restrictions on freedom of expression and is not in compliance with international human rights instruments guaranteeing freedom of expression as it fails to limit the definition to acts that represent a real danger to national security.

¹⁰ See for example, Integrated Regional Information Networks (IRIN), “Swaziland: A culture that encourages HIV/AIDS” 15 April 2009 available at <http://www.unhcr.org/refworld/docid/49e6ef2dc.html> (accessed 13 March 2011).

¹¹ See for example, USAID, “Health profile: Swaziland” (2005).

¹² B Ramakant “Swaziland: Fight against TB in troubled waters” Now Public Crowd Powered Media (2010) available at <http://www.nowpublic.com/health/swaziland-fight-against-tb-troubled-waters#ixzz1DjjTTSed> (accessed 11 February 2011).

¹³ As above.

19. The lives of journalists are threatened if they report against the government and especially the King. In November 2008, the Attorney General issued warnings of criminal prosecution to journalists who criticised the government and said that they could be considered as supporting terrorists and consequently be arrested under the STA.¹⁴

20. Mr Masuku, the president of People's United Democratic Movement (PUDEMO), a political party which has been banned by the government in November 2008 under STA, had been detained since 15 November 2008 on charges of terrorism and sedition until his acquittal for lack of evidence on 21 September 2009.¹⁵ This is a clear demonstration of the intended abuse of the STA which includes a very broad definition of terrorism that could and has been used to criminalise legitimate political opposition.

21. The President of the Senate Chamber, Gelane Zwane received international travel bans for criticising Swaziland's Prime Minister, Barnabas Dlamini on 26 February 2010.¹⁶ On 3 June 2009, a Swazi human rights lawyer named Thulani Maseko was arrested under section 5 of the Sedition and Subversive Activities Act. The apprehension of Mr Maseko is connected with a statement he made on Workers' Day in 2009 in which he is alleged to have portrayed as freedom fighters two men who died in 2008 in what the government claims to have been a botched terrorist attack.¹⁷ Mr Maseko was later released on bail and his case still pending until now. He is allowed to travel on condition that every time he leaves Swaziland, he has to inform the police and Director Public Prosecution.

22. Freedom of assembly is guaranteed by section 25 of Swaziland's Constitution and Article 21 of the ICCPR. This, however, did not prevent police in Swaziland from violating this freedom with impunity. On 29 January 2010, students demonstrating against the government's proposals to reduce funds allocated to education were shot at by the police. This was followed by the detention of some of the students on 10 February.¹⁸ It has been alleged by the Swaziland Solidarity Network (SSN) that a student was arrested and tortured by the police and charged with contravening section 19 of the STA.¹⁹

23. Freedom of association which is guaranteed by section 25 of the Constitution of Swaziland as well as article 22 of the ICCPR is also infringed by the government. Due to arrests, torture and killing of members of opposition parties most of the citizens are scared of participating in politics of any kind. And when they do participate they are constantly arrested by the security agencies under suspicions of terrorism and tortured. Siphon Jele, a member of PUDEMO was arrested on 1 May 2010 for wearing a t-shirt with a PUDEMO logo. On 4 May 2010, he was found hanging dead in the toilet of Sidvashini Correctional Services.²⁰

¹⁴ US Department of State "2009 Country Reports on Human Rights Practices" 11 March 2010 available at <http://www.state.gov/g/drl/rls/hrrpt/2009/af/135979.htm> (accessed 6 February 2011).

¹⁵ "Mario Masuku a free man" *Times of Swaziland* (2009) available at <http://www.times.co.sz/index.php?news=10788> (accessed 6 March 2011).

¹⁶ Action for Southern Africa (ACTSA) "Swaziland: Democracy and Rights Update" (2010) available at www.actsa.org/.../Democracy%20and%20Rights%20in%20Swaziland%202010%20update.pdf... (accessed on 6 February 2011).

¹⁷ Mr Maseko is an alumnus of the Centre for Human Rights. On 5 June 2009, the Centre produced a Media Release calling for release of Mr Maseko. The Media release is available on line, at http://www.chr.up.ac.za/images/files/news/press/press_release_release_swzi_hr_lawyer_5june_2009.pdf (accessed on 7 March 2011).

¹⁸ Action for Southern Africa (ACTSA) "Swaziland: Democracy and Rights Update" (n 22 above).

¹⁹ As above.

²⁰ "Swazi party leader killed in jail" *News24*, 5 May 2010 available at <http://www.news24.com/Africa/News/Swazi-party-leader-killed-in-jail-20100506> (accessed 13 March 2011).

24. Although the Attorney General spoke in January 2011 that political parties are free to operate in the country and that the 1973 decree that banned political parties is no longer operational,²¹ the 2005 Constitution makes no express mention of this and the freedom of association for political parties still remains under serious threat. The STA has been used in 2008 to ban four political parties as terrorist groups.²² This demonstrates that the adoption of the Constitution, although it guarantees freedom of association, has not changed the exclusion of political parties from political participation.

E. Recommendations

Women's rights

- Marital rape and domestic violence should be criminalized in Swaziland in order to protect women from sexual abuse within their homes;
- Swaziland must comply with its obligations under CEDAW and adopt legislation that corrects the invalidity of section 16(3) of the Deeds Registry Act. In addition, all customary law inconsistent with the Constitution and the CEDAW must be unlawful.

Right to Health

- The government of Swaziland must spend more funds on the health sector. In compliance with the Abuja Declaration on HIV/AIDS, Tuberculosis and Other Infectious Diseases (2001), Swaziland must allocate 15% of its annual budget to the health sector and also attach utmost importance to combating these diseases;
- The Swaziland government must consult with the people on the designing and implementing of advocacy campaigns aimed at discouraging cultural practices which encourage the spread of HIV/AIDS. Such advocacy campaigns should also be aimed at initiating sustainable behavioural change and ending discrimination and stigma;

Freedom of expression, association and assembly

- The government of Swaziland should be compelled to act in compliance with its obligations under international instruments that protect freedom of expression, association and assembly;
- All persons detained for political reasons, such as human rights activists, members of the media, pacific demonstrators must be released without any delay;
- The government of Swaziland shall consider the amendment of the STA and the Sedition and Subversive Activities Act as an urgent matter and make it a priority;
- A law that expressly permits and regulates the activities of political parties in politics must be enacted.

²¹“Political parties no longer banned” *Times of Swaziland* 30 January, 2011 available at <http://www.times.co.sz/News/25278.html> (accessed 10 March 2011).

²² See D Stuart “Chapter 12: Swaziland” in D Kadima and S Booysen (eds) *Compendium of Elections in Southern Africa 1989-2009: 20 Years of Multiparty Democracy* (2009) 497-498.