



Swaziland
UPR Submission
September 2015

Summary

This submission highlights concerns about Swaziland's compliance with its constitutional and international human rights obligations. It focuses on Swaziland's failure to implement reforms and the recent, drastic deterioration in the human rights situation. Since 1973, political parties are banned, the independence of the judiciary is severely compromised, and repressive laws have been used to target independent organizations and harass civil society activists.

Swaziland ratified the Convention on the Rights of Persons with Disabilities (CRPD) and its Optional Protocol (OP) on September 25, 2012 and acceded to the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution, and child pornography in September 2012. The government also passed the Children Protection and Welfare Act in 2012 to provide for the protection and welfare of children in Swaziland. While these three steps are positive and commendable, the Swazi government has otherwise made little progress implementing the recommendations it accepted during its last Universal Periodic Review (UPR) in 2011. For example, the government has yet to ratify the Optional Protocol to the Convention Against Torture, despite agreeing to do so.

There has been no progress on essential rights reforms that Swaziland rejected during the 2011 UPR review. These include: removal of all legislative and practical restrictions to free exercise of civil and political rights, in particular those related to freedom of association and expression to allow the registration and operation of political parties; introducing greater political freedoms through free, fair, transparent democratic elections; ensuring the right to health without discrimination on the basis of sexual orientation or gender identity; abolition of the death penalty; and decriminalization of same-sex relations and prevention of discrimination based on marital status and sexual orientation.

Freedom of Association and Assembly

During its previous UPR in 2011, Swaziland agreed to "[a]lign the national legislation with international standards to guarantee freedom of assembly and association, in particular as regards the notification of the organization of peaceful assemblies."

The government has yet to repeal, or amend as appropriate, a number of repressive laws that restrict basic rights guaranteed in Swaziland's 2005 constitution, including freedom of association and assembly. On the contrary the government has intensified restrictions on these rights over the past four years. The laws in need of amendment include the 2008 Suppression of Terrorism Act (STA), the 1938 Sedition and Subversive Activities Act, and the 1963 Public Order Act. Police have

sweeping powers under the Public Order Act. The king's 1973 decree banning political parties remains in force despite repeated calls from local political activists to have it revoked. The constitution does not address the formation or role of political parties. Section 79 of the constitution provides that Swaziland practices an electoral system based on individual merit and excludes the participation of political parties in elections. Traditional leaders and chiefs have powers to restrict access to their territories, and have often used these powers to bar civil society groups and political groups like the Ngwane National Liberatory Congress (NNLC) and the People's United Democratic Movement (PUDEMO) from having meetings, recruiting, or any kind of presence in their areas. In 2011 PUDEMO challenged in court the government's refusal to register political parties but the court said PUDEMO has no legal standing to approach the court as it did not exist as a legal entity.

The Suppression of Terrorism Act (STA) places severe restrictions on civil society organizations, religious groups, and the media because it includes in the definition of "terrorist act" a wide range of legitimate conduct such as criticism of government, enabling officials to use the provisions of the Act to target perceived opponents of the government. The government has also misused the STA to target independent organizations by accusing them of being "terrorist" groups, and harassed civil society activists through abusive surveillance and unlawful searches of homes and offices.

Individuals who have been targeted for arrest or prosecution under the STA include the leaders of People's United Democratic Movement (PUDEMO) and Swaziland Youth Congress (SWAYOCO) who were arrested and detained under the STA in 2014. Police arrested PUDEMO leader Mario Masuku in May 2014, on terrorism charges for criticizing the government in a speech on May 1. At the time of writing Masuku was out of jail on bail pending the outcome of his trial. If convicted he could serve up to 15 years in prison. Police used violence to halt May Day celebrations organized by trade unions in May 2013. In March 2015 police beat leaders of the Swaziland National Association of Teachers and prevented them from hold a meeting ostensibly because the discussions would have included calls for multi-party democracy.

The government has yet to act on an announcement the then Minister of Labour and Social Security, Lufso Dlamini, made at the International Labour Organisation (ILO) Conference in Geneva, Switzerland in June 2013, that the Swazi government had agreed to amend the definition of "terrorist" in the STA.

Recommendations

- Guarantee freedoms of association, assembly, and expression.
- Revoke the king's 1973 decree on political parties, allow the registration and operation of political parties, and introduce multi-party democratic elections.

Human Rights Defenders

In spite of accepting general recommendations to "respect the rights of all its citizens to freedom of assembly, freedom of association and freedom of expression", police harassment and surveillance of civil society organizations continues, and many human rights defenders operate

under conditions of extreme fear. Police frequently use the STA, the Public Order Act, and the Sedition and Subversive Activities Act, to arrest, detain, and prosecute political activists. Human rights defenders have been charged with treason and imprisoned for merely criticizing the government. In September 2015, eight human rights defenders challenged the legality of these security laws in the High Court of Swaziland and the case is ongoing.

Recommendation:

- Repeal or amend as appropriate repressive laws to comply with the constitution and international human rights standards, including the 2008 Suppression of Terrorism Act (STA), the 1938 Sedition and Subversive Activities Act, and the 1963 Public Order Act.

Freedom of Expression and the Media

During its previous review in 2011, Swaziland accepted recommendations to “develop a legislative framework which guarantees freedom of expression and freedom of the press” and to “take immediate steps to repeal laws which criminalize and/or restrict freedom of expression and of the media”. Nevertheless, although section 24 of the constitution guarantees freedom of expression, including media freedom, journalists and activists who criticize the government face harassment and arrests. In March 2014, after human rights lawyer Thulani Maseko teamed up with Bheki Makhubu, Swaziland's editor of the Nation magazine, and published two articles criticizing the judiciary, both were arrested, tried, and convicted of contempt of court. On July 25, 2015, both were sentenced to two years in prison. Civil society groups dismissed the trial as a sham. On June 30, 2015, the Supreme Court in Swaziland granted Maseko and Makhubu's appeal and ordered their release from prison.

The Sedition and Subversive Activities Act is often used to restrict freedom of expression through criminalization of seditious publications and use of seditious words which broadly refers to anything which “may excite disaffection” against the king. The Nation Magazine, the only truly independent publication in Swaziland, and its publishers were in July 2014 fined an equivalent of USD \$9,500.00 by the Swaziland High court for allegedly publishing seditious information.

There are high levels of media censorship with the authorities regularly barring the media from reporting issues deemed sensitive. For example, when scores of young girls died in a road traffic accident on their way to an annual Umhlanga reed dance on August 28, 2015, the authorities barred the media and eye witnesses from talking about the incident. The government later said 13 people had died in an accident while regional and international media disputed this figure and estimated the number to the dead to be 65. When police used force to stop trade union May Day celebrations in 2013, local Swaziland television did not broadcast anything about the event which its reporters had witnessed. Many journalists practice self-censorship, especially with regards to reports involving the king, to avoid harassment by the authorities. There is no freedom of information act or other law providing for a right of citizens to access to information held by the government.

Recommendation:

- End all unjustified interference with and harassment of journalists and media.
- Enact laws that protect full freedom of expression in accordance with international standards.
- Consider positively the request for a visit by the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and extend a standing invitation to all special procedures of the Human Rights Council.

Rule of Law

Although the Constitution provides for three separate organs of government – the executive, legislature, and judiciary - under Swaziland's law and custom, all powers are vested in the king. Since King Mswati III came to power in 1986, he has run Swaziland as an absolute monarchy, exercising absolute authority over the cabinet, parliament, and judiciary. The king appoints 20 members of the 30-member senate, 10 members of the house of assembly, and approves all legislation passed by parliament.

Section 138 of the constitution provides for the independence of the judiciary. However, in practice the king exercises control over the judiciary. The king appoints judges on the advice of the Judicial Service Commission which he also appoints. On June 17, 2015, King Mswati III fired Chief Justice Michael Ramodibedi for "serious misbehavior" following allegations of abuse of office and corruption. Some Swazi lawyers raised concerns that the firing of Ramodibedi was flawed, violated due process of law, and demonstrated the king's supreme authority over the judiciary. Equally, the appointment of the acting Chief Justice raised questions as the appointment was neither transparent nor competitive.

The constitution provides for equality before the law, but also places the king above the law. Section 11 of the constitution provides that the king is immune from suit or legal process in any cause in respect of all things done or omitted by him. In June 2011, when a Swazi businessman tried to sue after the king confiscated his hotel, then-Chief Justice Michael Ramodibedi published a directive protecting the king from any civil law suits in the high court or any other courts, a clear violation of a citizen's right to be protected by the law and to be heard before an independent judiciary. In practice, anyone acting on behalf of the king is treated as above the law.

The government has failed to take the necessary steps to fully operationalize the Human Rights and Public Administration Commission (established in 2009) which remains ineffective due to lack of funding, human resources, and enabling legislation. This is despite Swaziland's acceptance of recommendations to "enact legislation to fully operationalize the Human Rights and Public Administration Commission, to provide it adequate funding, and to clarify its mandate to civil society and the international community" during its last review in 2011. The Trade Union Coalition of Swaziland (TUCOSWA) wrote to the Human Rights and Public Administration Commission regarding violations of prisoners' rights and multi-party democracy but received no response. In its five years of existence the Human Rights and Public Administration Commission has not produced any report about its work or role.

Recommendation

- Respect and implement constitutional protections that ensure the independence of the judiciary and Parliament, and revise or amend legislation providing excessive powers to the king.

Women's Rights

In 2011, Swaziland accepted recommendations to “combat gender inequality and discriminatory practices and consider legislative reforms to ensure equality between men and women before the law”, and noted more specific calls to “consider acceding to OP-CEDAW and OP-CAT” or to “ratify the Optional Protocol to CEDAW”. Swaziland’s dual legal system where both Roman Dutch common law and Swazi customary law operate side by side, has resulted in conflict leading to numerous violations of women’s rights. Section 28 of the constitution provides for women’s right to equal treatment with men including equal opportunities in political, economic, and social activities. It further provides that no woman shall be compelled to undergo or uphold any custom to which she is in conscience opposed. However, the constitution does not include marital status or sexual orientation as a protected ground against discrimination.

Despite the equality provision in the constitution, in practice, women, especially those living in rural areas under traditional leaders and governed by highly patriarchal Swazi law and custom, are often subjected to discrimination and harmful practices. Young women and girls are forced to take part in cultural activities like the *Umhlanga* reed dance, an annual festival where thousands of virgins dance before the king to celebrate womanhood and virginity. Families of girls and young women who fail to take part in such cultural activities are often punished or fined by their chiefs. Traditional structures and practices prohibit women from speaking in public at men’s gatherings and present significant challenges for women’s political participation. Violence against women is endemic. Survivors of gender based violence have few avenues for help as both formal and customary justice processes discriminate against them.

Civil society activists have criticized the widely held view among traditional authorities that human rights and equal rights for women are foreign values that should be subordinated to Swazi culture and tradition.

A Sexual Offences Bill, first developed in 2009, is currently being debated in Parliament to provide for the protection of women’s rights. But activists say the Bill, in its current form, will not effectively protect women’s rights because it does not prohibit discrimination of women under Swazi law and custom, and does not provide for marital rape. Delays in enacting the Sexual Offences Bill point to a lack of priority and urgency by the government.

Recommendations

- Ratify the Optional Protocol to the Convention Against Torture (OP-CAT) and the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW-OP).

- Enact reforms to ensure equality for women and prevent their discrimination in law and practice, particularly under Swazi law and custom. This includes resolving the conflict between civil law and traditional law and values to ensure that human rights standards are not ignored.
- Fully enforce and implement the constitutional provision that no woman shall be forced to take part in a custom which she objects to.
- Reconsider and commit to recommendations for reforms rejected during the 2011 UPR review. These include ensuring enjoyment of the right to health without discrimination on the basis of sexual orientation or gender identity; decriminalization of same-sex relations and prevention of discrimination based on marital status and sexual orientation; and abolition of the death penalty.