

“WORKING TOGETHER FOR A JUST & PROSPEROUS
NATION” sccco



Swaziland Coalition of
Concerned Civic Organizations

Catholic Centre – Caritas
Opposite Cathedral
Sandlane Street

P. O. Box 4173
Mbabane
Swaziland
Telfax: +268 2505 5911
Email: sccco@swazi.net

SUMBISSION OF SWAZILAND COALITION OF CONCERNED CIVIC ORGANISATIONS (SCCCO) ON THE UNIVERSAL PERIODIC REVIEW FOR THE KINGDOM OF SWAZILAND

SCCCO is a non-partisan civil society organisation, established as a Trust in January 2013 for a collective approach by civil society in working on issues of human rights, democracy and good governance. SCCCO comprises the following members: Coordinating Assembly of Non-governmental Organisations (CANGO); Coalition of the Informal Economy Associations of Swaziland (CIEAS); Federation of the Swaziland Business Community (FSBC); Legal Assistance Centre (LAC); *Luvatsi* Swaziland Youth Empowerment Organisation; Media Institute of Southern African (MISA); Swaziland Agricultural and Plantation Workers Union (SAPWU); Swaziland National Association of Teachers (SNAT); and Women and Law in Southern Africa (WLSA) Swaziland. In pursuit of its mandate, SCCCO has four main programmes: community-based civic education and mobilisation which focuses on constitutionalism, human rights, and principles of democracy and good governance such as citizen participation, separation of powers; rule of law, as well as accountability and transparency; advocacy at the national, regional and international level, including monitoring and advocating for ratification and implementation of national, regional and international human rights obligations; capacity-building of civil society in areas such as conflict resolution, leadership, negotiation, campaign management and human rights monitoring; as well as working with Swazis in the diaspora.

I. INTRODUCTION

1. During the Universal Periodic Review (UPR) in 2011/ 2012, a total of 139 recommendations were made to the Kingdom of Swaziland. Swaziland supported 75 recommendations, 57 recommendations were taken for further considerations, and 7 were rejected.
2. Pursuant to the conclusions and recommendations accepted by the Kingdom of Swaziland during the 2011/ 2012¹, SCCCO hereby reports on the developments made by the country in relation to the right to life, focusing on deaths in police custody, extra-judicial killings and gender-based violence. The report also deals with the related right to be free from torture, inhuman and degrading punishment or treatment.
3. The right to life is the supreme right from which no derogation is permitted even in times of public emergency and protection against arbitrarily deprivation of life is of paramount importance². Since the 2011/ 2012 UPR process for Swaziland, SCCCO has noted a number of issues pertaining to the country's recognition and protection of this *right vis a vis* the recommendations accepted.

II. METHODOLOGY

4. SCCCO has been conducting grassroots-based activities including civic education, advocacy and human rights monitoring in which the issues of the right to life, torture , extra-judicial killings and gender-based violence have been raised by community members. Amongst the communities in which these issues were raised are Lubulini, Nkambeni, Nkhube, Malanti, Sigcaweni, and Siphocosini communities.
5. In addition to this SCCCO conducted stakeholder consultative meetings and validation meetings on the UPR report on these issues. Represented in the meetings were civic society organisations who have experience in dealing with such issues, including Coalition of the Informal Economy Associations of Swaziland (CIEAS), Foundation of Socio-Economic Justice (FSE), Lawyers for Human Rights Swaziland (LHRS), SACRO, Trade Union Congress of Swaziland (TUCOSWA), Women and Law in Southern Africa (WLSA Swaziland).

III. NATIONAL, REGIONAL AND INTERNATIONAL FRAMEWORK

6. The 2005 Constitution of Swaziland - the Constitution guarantees a right to life in Section 15 and states that no person shall be deprived of life, rather than providing that "a person has a right to life. Limitations to the rights are made under section 15 (4), which provides

¹ UNHRC, Report of the Working Group on the Universal Periodic Review, Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review, March 2012

² ICCPR General Comment NO.6 Article 6 (the right to life) by the Human Rights Committee, Sixteenth session, Adopted: 30 April 1982

that lethal force could be justifiably used in a range of circumstances. Section 18 states that “The dignity of every person is inviolable” and that “A person shall not be subjected to torture or to inhuman or degrading treatment or punishment.” Section 21 states, “In the determination of civil rights and obligations or any criminal charge a person shall be given a fair and speedy public hearing within a reasonable time by an independent and impartial court or adjudicating authority established by law. And that “A person who is charged with a criminal offence shall be presumed to be innocent until that person is proved or has pleaded guilty.

7. The regional human rights framework on these rights comprises the African Charter on Human and People’s Rights³; Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa⁴; African Charter on the Rights and Welfare of the Child; and SADC Protocol on Gender and Development.
8. The International human rights framework on these rights includes the United Nations Universal Declaration of Human Rights⁵, International Covenant on Civil and Political Rights (ICCPR)⁶, Convention Against Torture (CAT), Convention on the Rights of Persons with Disability, Convention on the Elimination of All Forms of Discrimination Against Women and Convention on the Rights of the Child.

IV. RECOMMENDATIONS OF 2012 UPR AND PROGRESS ON IMPLEMENTATION

i. The Death Penalty

9. In 2011, a significant number of countries recommended that Swaziland should accede to the Second Optional Protocol to the ICCPR and abolish the death penalty⁷. Swaziland did not accept that important recommendation on the ground that the country was not ready to accept it.
10. Swaziland still retains the death penalty, with the Criminal Procedure and Evidence Act of 1938 permitting the use of the death penalty in the execution of the sentence of a court in respect of a criminal offence of which that person has been convicted. Although the death penalty is not mandatory⁸, and no executions have taken place since the 1980’s, this

³ Article 4

⁴ Protocol to the African Charter on Human and Peoples’ rights of Women in Africa, Article 4 (1) (2).

⁵ Article 3 of the UDHR

⁶ Article of the ICCPR

⁷ See also UPR Recommendations on the death penalty: 77.3-6, 77.8, 77.14, 77.16, 77.24, 77.26, 77.29-30, 77.32-33, 77.37, 77.39-43

⁸ Section 15 (2), which clearly provides that the death penalty shall not be mandatory.

provision is clearly not enough to ensure the full guarantee of the right to life. It must be well noted that, imposition of the death penalty itself is not only a violation of the right to life, but also the ultimate form of cruel, inhuman or degrading punishment or treatment.

11. The Swaziland Criminal Procedure and Evidence Act, provides for procedure for death sentences. Prior to 2005, courts exercised discretionary sentencing only if they found such extenuating circumstances. While the new Constitution resolved the issue and clarified that courts may always exercise discretion, this does not change the fact that the country still retains the death penalty as already stated above. Government has, within the period advertised the post of hangman⁹ raising the possibility of executions. However, it must be noted that King Mswati III recently pardoned two death row inmates, commuting their sentences to life imprisonment.
12. It is recommended that in order to fully guarantee the right to life, Swaziland should abolish the death penalty as per the recommendations and make the requisite amendments to statutes such as the Criminal Procedure and Evidence Act of 1938.

ii. Freedom from torture and degrading treatment including death in police custody

13. It was recommended that Swaziland should ratify the Optional Protocol Convention Against Torture and criminalise torture¹⁰ including other important recommendations on torture. Swaziland did accept almost all the recommendations thereof. On national mechanism on torture, there is the Constitution which provides for the protection against torture and inhumane and degrading treatment¹¹. The problem is the lack of effective legislative framework on torture as per the UPR recommendations. This has led to a plethora of torture cases allegedly committed by both the state and private persons.
14. During the period, cases of mob justice or killings, and or torture of persons usually suspected of witchcraft, or theft have been observed. A case in point is that of Mciniseli Mgabhi of the Ngculwini area, where a mob burnt his home fencing with the intention of burning his homestead but they were disturbed with the prompt response from the police. However, no charges were preferred against the mob. He was tried by the Inner Council of the Ngculwini Royal Kraal wherein he was ordered to leave the area within 21 days for alleged witchcraft committed by his son together with his wife and a child as they were found naked at night in the community. He has relocated to the Mpumalanga province in South Africa.
15. In relation to torture and degrading punishment perpetrated by the army, in particular along the borderlines or informal crossings, there is the case of *The Swaziland*

⁹ www.observer.org.sz/index.php?news=47538

¹⁰ See also UPR Recommendations on torture: 77:34, 77.35, 77.44, and 77.46

¹¹ Section 18 (1) and (2) of the Constitution of Swaziland.

*Government v Aaron Ngomane*¹², where the plaintiff defecated in the open near the Lomahasha border. The Defendant, a fully armed soldier ordered the plaintiff to do push-ups for three (3) hours, ordered plaintiff to collect his faeces from Swaziland to South Africa in a plastic, threatened to shoot the plaintiff when he was failing to do the push-ups, and hit him with the barrel of the rifle for failure to do the push-ups. Plaintiff sued the government in the sum of E350, 000 as damages for infringement of his dignity; the court a quo awarded E50,000 as damages for *injuria* and *contumelia*; on appeal held: material misdirection in the process of the award warranting interference with the award; the award of E50, 000 was set aside and replaced with an award of E30, 000 as damages for the *injuria* and *contumelia*.

16. Police brutality and or torture, committed by police in their line of criminal investigations, where suspects are interrogated using unconventional means which often results in death in police custody. For instance, the on-going case of Luciano Zavela (a Mozambican National who died in police custody, on Friday the 12th of June 2015, the police took the man to assist them in an investigation at about 8:30am, and few hours later, he was reported dead. It was alleged the man was suffocated using the now infamous technique known as tubing. There was public outcry and protest over his death¹³. A Commission of enquiry has been set up; however, the question of the extent of the independence of the Commission is always a concern, coupled with the public's reluctance to appear before the commission for fear of possible reprisals. Further some provisions of the Suppression of Terrorism Act (STA) could allow the use of torture by the police on those viewed as political dissidents¹⁴.
17. It was also reported that during the first week of July correctional services officers from Big Bend correctional facility re-apprehended an escaped prisoner, beat him, and locked him overnight in a truck as punishment for escaping. The inmate died, reportedly due to lack of medical attention and exposure to the cold¹⁵.

iii. Extra-Judicial killings by game rangers

18. There are numerous of cases where citizen are shot and killed by game rangers for alleged poaching as raised by community members in several communities such as Lubulini, Nkambeni, Nkhube, Malanti, Sigcaweni, and Siphocosini communities. In terms of Section 23 (3) game rangers are immune from prosecution for killing suspected poachers and empowered to use firearm in the execution of their duties and to search without warrant¹⁶. For example, there is a case of Jika Jika Mabila and another, who were

¹² Swaziland Government v Aaron Ngomane (25/2013) 2013] SZSC 73 (29 November 2013)

¹³ Swazi news, www.times.co.sz/

¹⁴ See also the Times of Swaziland, 28 September 2013, where in Gege, one photojournalist was assaulted with a gun for photographing police brutality during a protest action.

¹⁵ Times of Swaziland, 28 July 2013, www.times.co.sz/

¹⁶ Section 23 (2), and Section 22 of the Game Act of 1953

shot by the Mlawula game rangers for suspected poaching during the night inside the game reserve. The other died on the spot, and Jika Jika was hospitalised at the Good Shepard Hospital, as he shot on the leg, on the ribs, and on the left arm, and was eventually arrested. Currently, he is out on bail, and he will appear before the Simunye Magistrate Court on the 4th of November, 2015¹⁷.

19. It is recommended that the Game Act be amended to give effect to the full protection and realisation of the right to life and to allow for the prosecution of all perpetrators of extra-judicial killings. There should be private/ public partnership of all stakeholders in the issue of protecting wildlife and preventing poaching. There should also be training of game rangers on the importance of upholding the law, and human rights. Further the state should ensure proper fencing and clearly defined boundaries of all the game areas, to prevent livestock grazing in the area.

iv. Gender based violence

20. Gender based violence (GBV) particularly sexual violence, is a growing problem in Swaziland. The most common forms of GBV in Swaziland are rape, marital rape, and incest and women and girl-children are the most affected. In 2011, it was recommended that Swaziland should abrogate without delay the legislative and regulatory provisions that discriminate against women, and adopt new laws in accordance with the principles of gender equality as set out by CEDAW¹⁸. However, to date no such laws have been enacted, including the Sexual Offences and Domestic Violence law.
21. There is an urgent need to establish a Law Review Commission to expedite the alignment of the legislative framework with the Constitution and domesticated ratified sub-regional, regional and international instruments. These will include the enactment into law of Sexual Offences and Domestic Violence legislation, after consultation with all stakeholders. It would also review all criminal laws and procedures on sexual offences and GBV to eliminate gender bias and ensure that justice and fairness are accorded to both the survivor and the perpetrator. The Commission will also consider the establishment, strengthening of National Human Rights Monitoring bodies, in particular the Human Rights Commission.
22. In relation to the future implementation of the Sexual Offences and Domestic Violence Act should include viable and progressive mechanism, for example, a decentralised state legal aid services based on an advertised means test based on consultation with stakeholders. Currently, there is no specialised and/or affordable legal aid service to survivors of GBV. The limited services offered by NGOs are compromised by lack of funds.

¹⁷ See also Swazi Observer, www.observer.org.sz/ where it was recently reported that a school going pupil was shot by rangers of the Inyoni Yami Irrigation Farm as they were found inside looking after cattle.

¹⁸ See also UPR recommendation 77.21

V. Conclusion

Despite accepting recommendations related to the right to life and freedom from torture, inhuman and degrading punishment, the Kingdom of Swaziland has still not implemented the following:

- “Ratify the Optional Protocol to the Convention Against Torture;
- Put in place the national mechanism for prevention of torture as set out in that instrument; abrogate the provisions of 2008 law on suppression of terrorism, which could allow the use of torture by the Police;
- Specifically criminalize torture and put in place effective measures to prevent and sanction the use of torture;
- Enact legislation, as a matter of priority that criminalizes the use of torture and ensure impartial and effective investigation in line with its obligations under the Convention Against Torture; and
- Enact legislation which specifically defines and criminalizes torture and stipulates effective measures to prevent and punish any violations.