



ESWATINI

AMNESTY INTERNATIONAL SUBMISSION TO THE UN UNIVERSAL PERIODIC REVIEW 39TH SESSION OF THE UPR WORKING GROUP, 1-12 NOVEMBER 2021

FOLLOW UP TO THE PREVIOUS REVIEW

1. Eswatini accepted 131 of the 181 recommendations made to it by member states at its second Universal Periodic Review in May 2016¹. Amongst the recommendations supported, Eswatini agreed to undertake measures to guarantee the impartiality and independence of the judiciary²; guarantee the rights to freedom of expression, association and peaceful assembly³; and eliminate all forms of discrimination against women.⁴
2. Eswatini also accepted recommendations to remove the restrictions which prevent the full enjoyment of fundamental freedoms, including amendment of the 2008 Suppression of Terrorism Act. In September 2016, the High Court ruled that sections of the 1938 Sedition and Subversive Activities Act (SSA) and the 2008 Suppression of Terrorism Act (STA) were invalid as they infringed on constitutionally protected rights to freedom of expression, association and peaceful assembly. The government appealed against the High Court's decision in the same month, but the appeal is yet to heard.⁵ The Suppression of Terrorism (Amendment) Act No. 11 of 2017 is not in line with Swaziland's Constitution and obligations under international and regional human rights law.⁶
3. The Public Order Act was amended in August 2017, which curtails the rights to freedom of expression, peaceful assembly. Its provisions allow any criticism of Swazi culture and traditions or defacement of national symbols—including the king's image—to be punished with fines and up to two years in prison. Holding a public gathering without giving at least 48 hours' notice to the Local Authority is an offence. Other provisions were more positive, with police only permitted to intervene in a gathering if it is not in line with the law and only if failure to do so would create an immediate danger to public order or safety.⁷
4. Eswatini has made positive progress towards implementing the recommendation to eliminate all forms of discrimination against women. The Sexual Offences Domestic Violence Act 2018 was enacted nine years after it was first introduced in 2009⁸. However, customary norms and practices continue to undermine the rights of women. These customs can or often disadvantage women where traditional leaders and chiefs are relied on to settle land disputes.
5. Regretfully, recommendations to decriminalise same-sex relations and to lift restrictions on political parties and multi-party democratic elections were merely noted.⁹

6. Eswatini accepted recommendations to ratify the Convention on the Prevention and Punishment of the Crime of Genocide and the Optional Protocols to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Convention on the Elimination of Discrimination against Women but has not done so yet.

THE NATIONAL HUMAN RIGHTS FRAMEWORK

7. The Constitution of Swaziland, Act No. 1 of 2005 (“the Constitution”), provides that the death sentence shall not be mandatory¹⁰, however Eswatini also only noted recommendations to ratify the Optional Protocol to the International Covenant on Civil and Political Rights.¹¹

RESTRICTIONS TO FUNDAMENTAL FREEDOMS

8. Although Eswatini amended the 2008 Suppression of Terrorism Act in 2017, the Act continues to be used to silence and punish dissent. The Act’s amendments limit the definitions of what constitutes a terrorist act although the wording is overly broad and vague in relation to terrorism related acts. The law also contained provisions that undermined the rights to freedom of expression, association and peaceful assembly. The STA (Amendment) Act 2017 remains inconsistent with Eswatini’s obligations under international and regional human rights law as well as Eswatini’s Constitution.¹²
9. The right to freedom of association and expression is fully entrenched in the Constitution. It provides that “[a] person shall not except with the free consent of that person be hindered in the enjoyment of the freedom of peaceful assembly and association, that is to say, the right to assemble peacefully and associate freely with other persons for the promotion or protection of the interests of that person”.¹³

LAND GOVERNANCE

10. The 2005 Constitution stipulates that the state shall “endeavour to settle the land issue and the issue of land concessions expeditiously so as to enhance economic development and the unity of the Swazi people.”¹⁴ However, continued delays in legal and policy reform have meant that the government is yet to take the necessary steps to ensure security of tenure and protection of right to adequate housing, thus leaving hundreds of people vulnerable to forced evictions.¹⁵
11. A draft Land Policy was introduced in 2009, which acknowledges the insecurity of all tenure types as an issue to be addressed. In 2013, a Draft Land Bill was introduced which would expressly repeal 19 archaic pieces of legislation.¹⁶ However, while some steps have been taken to finalize both the Draft Land Policy and the Draft Land Bill, neither has been finalised.
12. In April 2017, the High Court ruled that the constitutional provision of compensation to evicted residents was limited to evictions carried out by the state with residents affected by forced evictions carried out by private actors excluded from access to certain remedies. This lack of remedy for any forced eviction is contrary to Eswatini’s international human rights obligations.

SEXUAL AND REPRODUCTIVE HEALTH AND RIGHTS

13. Abortion remains illegal in Eswatini, except in instances provided for under section 15 (5) of the Constitution of Eswatini.¹⁷

THE HUMAN RIGHTS SITUATION ON THE GROUND

FREEDOM OF EXPRESSION

14. Eswatini continues to ignore the Constitution's provision for fundamental freedoms and uses law enforcement and the courts to threaten and silence dissent. William Mkhalihi, an elderly sugar cane farmer from Vuvulane, in north-eastern Swaziland, was arrested by police in August 2016 after he voiced concerns about alleged royal investments and land grabbing. He had raised concerns at the traditional Sibaya meeting convened by the King in Ludzidzini Royal Village where the community were invited to give their views on national issues. William Mkhalihi was charged following spurious allegations of theft and released on bail by the Magistrates' Court in Simunye the same month.¹⁸
15. In February 2020, Zweli Martin Dlamini, editor of Swaziland News, was arrested for publishing articles which criticised the King. He claimed to have been tortured while in custody at Mbabane police headquarters, including by having a plastic bag over his head. He was released without charge six hours later and fled to South Africa the following day. The police later raided Dlamini's home in April 2020 and arrested his wife, Nompendolo Nokuthula Mkhonta, leaving their minor children on their own. She alleges that she was tortured by police who wanted to know the whereabouts of her husband. Mkhonta was released after three hours without charge.¹⁹
16. On 23 April 2020, another journalist Eugene Dube was arrested and his mobile phones, laptop and work documents confiscated after he reported critically about King Mswati III. He claimed that the police questioned him for seven hours about the articles that were recently published in Swati Newsweek. He was released without charge and he also claims that his devices and documents were not returned to him.²⁰

FREEDOM OF ASSOCIATION AND PEACEFUL ASSEMBLY

17. Despite the improved provisions for public gatherings in the 2017 Public Order Act, the right to peaceful assembly continues to be restricted, especially for prodemocracy protests where protesters are usually dispersed, while those that are not seen as challenging the king are allowed to proceed. In March 2018 a group of civil society groups, community-based organisations and political parties marching to parliament to deliver a petition were blocked by the police who refused them entry for the reason that they would disturb Labadzala (the authorities).²¹
18. Political activists face repression on account of their peaceful activities. On 21 January 2019, Goodwill Sibaya was charged with contravening the Section 19(1) of the 2018 Suppression of Terrorism Act (STA) and Section 3(1)(A) of the 1938 Seditious and Subversive Activities Act (SSA) after he claimed to be a member of the People's United Democratic Movement (PUDEMO).²²
19. On 20 December 2019, police raided the homes of pro-democracy activists with a search warrant that indicated the intention to confiscate all laptops, computers, cell phones and tablets in their possession. Jan Sithole, President of the Swazi Democratic Party (SWADEPA), Sikelela Dlamini, Secretary General of the Swaziland National Association of Teachers (SNAT), Sibongile Mazibuko, President of the Ngwane National Liberation Congress (NNLC), Wandile Dlodlu, Secretary General

of the People's United Democratic Movement (PUDEMO), Amos Bulunga, PUDEMO Manzini Secretary, Dumsane Fakudze, chairperson of the Communist Party of Swaziland, Themba Mabuza from the Swaziland United Democratic Front (SUDF) were detained, interrogated and later released.²³

RIGHT TO HOUSING AND FORCED EVICTIONS

20. The absence of a legal and policy framework governing land has left many vulnerable to forced evictions. Although the Constitution prohibits arbitrary deprivation of property without compensation, in practice the lack of legal security of tenure has left people vulnerable to repeated forced evictions. Consequently, Eswatini has failed to protect the right to adequate housing, in particular to ensure security of tenure for people who find themselves living on what was once concession land, now converted to privately-owned title-deed land (TDL), without being officially recognized as a "farm dweller".²⁴
21. On 09 April 2018, the Deputy Sheriff in Mbabane High Court executed a court order which resulted in the forced eviction of an entire community of 61 people in the Malkerns. The Malkerns had witnessed forced evictions previously in 2016 and subsequently some families continued to live under threat of imminent eviction. The affected families told Amnesty International they had a verbal agreement with previous farm owners to live on the land, yet when new farm owners bought TDL, they decided to evict the families.²⁵ Although the eviction orders were granted by the courts, due process requirements as required by Eswatini's regional and international human rights obligations were not followed. As such, the evictions constitute forced evictions.
22. Amnesty International has also documented other cases of forced evictions in Nokwane where the Royal Science and Technology Park now stands, demonstrating that this is a problem impacting hundreds of people that needs to be urgently addressed.²⁶

VIOLENCE AGAINST WOMEN AND GIRLS

23. Nhlenhla Dlamini was the first man to be charged with rape under the SODV act in January 2020. The arrest was met with mixed reactions, with civil society and women affected by gender-based violence welcoming it, while some prominent people, including at least one parliamentarian, criticised it.^{27 28}
24. Swaziland Action Group Against Abuse (SWAGAA) estimates that 1 in 3 Swazi women experience some form of sexual violence by the time they are 18 and report that 48.2% of Swazi women experience some form of sexual violence in their lifetime, with boyfriends and husbands being the most frequent perpetrators. Only 3% of these incidents are reported to the police, only 7% of victims access counselling services, 2.1% utilize a clinic or hospital and 62.3% say they would have liked to receive some form of help.²⁹

SEXUAL AND REPRODUCTIVE HEALTH

25. While Eswatini's Ministry of Health acknowledges gaps such as limited decentralization of SRH services to community level in its National policy on sexual and reproductive health 2013³⁰, a medical doctor in Raleigh Fitkin Memorial Hospital in Manzini claims to treat an average of four

women a day for incomplete or botched abortions.³¹

26. The Ministry of Health further acknowledges gaps which include inadequate skill and competence among health professionals to deliver SRH Health services; inadequate skills in demand creation for SRH services; and inadequate youth friendly services.³² Although rape is one of the circumstances where abortion would be allowed, two NGOs, SWAGAA and Save the Children, have not helped any individual procure an abortion.³³ This indicates that women who are entitled to undergo an abortion may face barriers in doing so.

RIGHTS OF LESBIAN, GAY, BISEXUAL, TRANSGENDER AND INTERSEX PEOPLE (LGBTI)

27. LGBTI persons face ongoing stigma and discrimination which, along with the same-sex relations prohibition, are barriers that hinder access to HIV services and human rights for LGBTI persons and more specifically men who have sex with men in Eswatini,³⁴ as they are often afraid of seeking healthcare services.³⁵
28. A 2019 study approved by the Scientific and Ethics Committee of the Ministry of Health of Eswatini found that compared to the general population, LGBTI people have higher levels of mental health concerns, have experienced more violence, and have faced barriers to healthcare directly linked to their sexual orientation, gender identity or gender expression. The study found that in some instances, LGBTI persons were even denied healthcare.³⁶
29. Despite the robust constitutional protections that apply to all persons equally, in September 2019 the government rejected an application for registration of Eswatini Sexual and Gender Minorities, a LGBTI group that was created earlier in 2019 to advocate for the rights and freedoms of LGBTI persons.³⁷ The Eswatini Registrar of Companies denied the registration for several reasons, including that same-sex sexual acts are criminalized in Eswatini and therefore the government cannot register an organisation that promotes the interest and aspirations of the LGBTI community. The group's legal challenge the Minister of Commerce and Industries' decision to reject its application for registration remained pending in March 2021.^{38 39}

THE DEATH PENALTY

30. Eswatini has not carried out any executions on people that had been sentenced to death since 1983 and has commuted 44 of 45 death sentences to life imprisonment.⁴⁰

RECOMMENDATIONS FOR ACTION BY THE STATE UNDER REVIEW

Amnesty International calls on the government of Eswatini to:

NATIONAL HUMAN RIGHTS FRAMEWORK

- Lift the ban on political parties and allow candidates who are from political parties to operate freely without fear of detention, harassment, or attacks.

- Expedite the finalization of the land policy and land bill and ensure they are compatible with international human rights obligations arising from the right to adequate housing.
- Ratify the Convention on the Prevention and Punishment of the Crime of Genocide and the Optional Protocols to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Convention on the Elimination of Discrimination against Women.

FREEDOM OF EXPRESSION, ASSOCIATION AND PEACEFUL ASSEMBLY

- Repeal the Suppression of Terrorism Act, 2008 (as amended in 2017) immediately as it is an inherently flawed piece of legislation to bring it in line with Swaziland's obligations under international and regional human rights law as well as the Swaziland.
- Amend the Public Order Act of 2017 so that it fully protects the rights to freedom of expression and to peaceful assembly.
- Allow journalists, human right defenders and activists to do their work without fear of harassment and attacks from authorities.
- Allow and create an enabling environment that would encourage public debate and dialogue even on sensitive and controversial issues such as LGBTI.
- Allow registration of all NGOs without discrimination and restrictions.

RIGHT TO HOUSING AND FORCED EVICTIONS

- Declare a nationwide moratorium on mass evictions until adequate legal and procedural safeguards are in place to ensure that all evictions comply with international and regional human rights law and standards. This should include a public announcement and immediate measures that the government should take to ensure that those under threat of eviction are protected.
- Begin the process of drafting legislation, which explicitly prohibits forced evictions and sets out safeguards that must be strictly followed before any eviction is carried out. This law should be in strict compliance with Eswatini's Constitution and international and regional human rights law and standards, including in respect of the provision of effective remedies.
- Ensure that in the development of the law which prohibits forced evictions that there are genuine and transparent consultations with all stakeholders, including those living on Swazi Nation Land, farm dwellers and those whom the government terms "squatters" and who live with a lack of security of tenure.

VIOLENCE AGAINST WOMEN AND GIRLS

- Implement a public education programme to combat domestic violence, including by disseminating publicly, information in Siswati regarding the Sexual Offences Domestic Violence Act 2018 and ensure publication of a summarised version of the SODV act is widely circulated at community level.
- Take steps to ensure that the Swazi customary law is in line with the international and regional

instruments to which Eswatini acceded or ratified, especially the elimination of discrimination against women.

SEXUAL AND REPRODUCTIVE HEALTH

- Decriminalise abortion and guarantee the provision of, and access to comprehensive sexual and reproductive health services and goods, including safe abortion and post-abortion care, and modern contraceptives.

RIGHTS OF LESBIAN, GAY, BISEXUAL, TRANSGENDER AND INTERSEX PEOPLE (LGBTI)

- Repeal all laws that criminalize consensual same-sex sexual conduct and guarantee elimination of all forms of discrimination based on sexual orientation and gender identity.
- Take steps and measures to address the root causes of stigma and discrimination towards LGBTI persons.

THE DEATH PENALTY

- Commute, without delay, all death sentences to terms of imprisonment with a view to abolishing the death penalty.

¹ Report of the Working Group on the Universal Periodic Review – Swaziland 13 July 2016; A/HRC/33/14

² A/HRC/33/14 – Recommendations 107.51 (Canada), 107.52 (Mexico), 107.53 (Czech Republic), 107.49 (South Africa)

³ A/HRC/33/14 – Recommendations 107.56 (Czech Republic), 107.57 (Spain) 107.58 (United States of America) 107.55 (Algeria), 109.63 (Netherlands), 109.62 (Latvia), 109.61 (France)

⁴ A/HRC/33/14 – Recommendations 109.49 (Latvia), 107.32 (Côte d'Ivoire), 109.30 (France), 109.51 (Australia) 107.26 (Uganda), 107.27 (Honduras), 107.28 (Indonesia), 107.29 (Uganda), 107.30 (United Kingdom of Great Britain and Northern Ireland), 107.31 (Ukraine), 107.22 (Turkey), 109.31 (Botswana), 108.3 (Sudan), 107.20 (Cyprus), 109.50 (Algeria), 107.21 (Mexico), 107.25 (Panama), 107.33 (Spain), 107.44 (Italy)

⁵ Amnesty International, *Human Rights in Africa, Review of 2019* (Index: AFR 01/1352/2020)

⁶ Amnesty International, *Memorandum to the government of Swaziland on the Suppression of Terrorism (Amendment) Bill, 2016*, Index: AFR 55/3971/2016

⁷ Southern Africa Litigation Centre, Alignment of Eswatini's Domestic Laws with Recommendations of United Nations Human Rights Mechanisms, <https://www.southernafricalitigationcentre.org/wp-content/uploads/2018/09/Eswatini-Human-Rights-Research-Report.pdf>

⁸ Swaziland Government Gazette, 16 July 2018

<https://www.ilo.org/dyn/natlex/docs/SERIAL/108709/134536/F1384531235/SWZ108709%20Eng.pdf>

⁹ A/HRC/33/14 – Recommendations 110.03 (Slovenia), 109.72 (Australia), 109.70 (Norway), 109.71 (Czech Republic)

¹⁰ Section 15 of the Constitution of the Kingdom of Swaziland 2005,

<http://www.gov.sz/images/stories/Constitution%20of%20%20SD-2005A001.pdf>

¹¹ A/HRC/33/14 – Recommendations 109.38 (France), 109.39 (Italy), 109.37 (Slovenia)

¹² Amnesty International, *Memorandum to the government of Swaziland on the Suppression of Terrorism (Amendment) Bill, 2016* (Index: AFR 55/3971/2016) <https://www.amnesty.org/download/Documents/AFR5539712016ENGLISH.pdf>

¹³ Article 25 (2), Constitution of the Kingdom of Swaziland 2005,

<http://www.gov.sz/images/stories/Constitution%20of%20%20SD-2005A001.pdf>

¹⁴ Article 59 (6), Constitution of the Kingdom of Swaziland 2005,

<http://www.gov.sz/images/stories/Constitution%20of%20%20SD-2005A001.pdf>

¹⁵ Amnesty International, *"They don't see us as people": Security of Tenure and forced evictions in Eswatini*, 30 August 2018, (AFR 55/8785/2018) <https://www.amnesty.org/en/documents/afr55/8785/2018/en/>

¹⁶ Amnesty International, *"They don't see us as people": Security of Tenure and forced evictions in Eswatini*, 30 August 2018, (AFR 55/8785/2018) <https://www.amnesty.org/en/documents/afr55/8785/2018/en/>

¹⁷ Section 15 of the Constitution of the Kingdom of Swaziland 2005,

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¹⁸ Kenworthy news media, *William dared to challenge the king*, 16 September 2016 <https://stiffkitten.wordpress.com/2016/09/16/william-dared-to-challenge-the-king/>

¹⁹ Committee to Protect Journalists, *Swazi editor flees to South Africa, wanted in false news investigation*, 15 May 2020, <https://cpj.org/2020/05/swazi-editor-flees-to-south-africa-wanted-in-false/>

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