

# Swaziland's Downward Spiral

## The International Community Must Act Now



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Trade unions and other civil society organisations protest in Swaziland's capital, Mbabane

### Introduction

Swaziland is Africa's last absolute monarchy. King Mswati III has been on the throne since 1986; his rule has been deeply corrupt and relentlessly repressive. This has contributed to a range of serious social and economic problems, in particular the world's highest HIV prevalence,<sup>1</sup> systematic discrimination against women, widespread poverty (63% of the population live below the poverty line)<sup>2</sup> and extreme inequality.

Mswati III must swiftly change course and ensure that the state upholds human rights and begins a transition to democratic governance, including by holding free and fair elections, developing inclusive, responsive and accountable institutions, and implementing the rule of law. If not, the country could plunge into a protracted - and potentially violent - crisis, which would inevitably result in even greater deprivation and the further undermining of basic freedoms. Thus this is a critical moment for the international community to seriously engage with the Government of Swaziland regarding human rights

and the need for it to genuinely listen to the legitimate aspirations of the Swazi people. Ultimately, real and lasting change will only come about if the King enters into meaningful dialogue with his political opponents, as well as with all sections of civil society.

Internationally respected governance assessments paint a grim picture of Swaziland. Ranking Swaziland 140th out of 167 countries, the Economist Intelligence Unit's *Democracy Index 2014* classes it as an authoritarian state. The 2015 *Ibrahim Index of African Governance* ranks Swaziland 49th out of 54 countries on Participation and Human Rights, the lowest in the Southern African Development Community (SADC) region.

According to Forbes, Mswati III has an estimated personal fortune of at least US\$50 million, as well as control of the US\$140 million Tibiyo Taka Ngwane fund,<sup>3</sup> established in trust for the Swazi nation, but used by the King as a slush fund to finance his extravagant life style (among his assets are 13 royal

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palaces and a private jet).<sup>4</sup> Despite Mswati III's wealth, the 2014 national budget allocated \$61 million to the royal household.<sup>5</sup> The King owns approximately 60% of the country's land,<sup>6</sup> and through his network of local chiefs is not afraid to forcibly evict his subjects in order to further expand his personal wealth.

## Background

The Kingdom of Swaziland was a British protectorate from the 1880s until independence in 1968. Its first constitution was largely written by the British authority and created a highly limited multi-party system, with the King having veto power, as well as absolute rights over various sectors, including minerals and land.

In April 1973 King Sobhuza II, with the support of the apartheid regime in South Africa, suspended the constitution and proclaimed a state of emergency. As a result, political parties and demonstrations were banned, the military was massively expanded, and Sobhuza II began ruling by decree. The King claimed that 'the constitution has permitted the importation into our country of highly undesirable political practices alien to, and incompatible with, the way of life in our society'.<sup>7</sup> Many features of the state of emergency are still in place today.

Following the death of Sobhuza II in 1982, the country experienced a period of political uncertainty, with the interim government led by a Queen regent and the Liqoqo (a council of traditional leaders who had advised the King). In April 1986, one of Sobhuza II's sons was crowned King Mswati III.

In February 2006, with the support of the Commonwealth, a new constitution came into effect, which confirmed most of the King's powers. While it did provide for an independent judiciary and introduced an extremely limited Bill of Rights, which includes freedom of association, it does not allow parliamentary candidates to stand for election as members of political parties, only as individuals. The constitution also maintains the executive role of the monarch. The Government and the Prime Minister are appointed by the King. The King must approve legislation passed by parliament before it becomes law, and he possesses the power to veto any legislation.

## Illegitimate elections

The House of Assembly is composed of 65 members; 55 are indirectly elected/selected under the Tinkhundla system (see below) and 10 are appointed by the King. The Senate has 30 members; 20 are appointed by the King and 10 are appointed by the House of Assembly.

Under the Tinkhundla system, local chiefs who report directly to the King vet candidates who are nominated by a show of hands (candidates require 10 people to support them). Successfully nominated candidates then compete in popular elections at the chiefdom level, with winners going on to compete at the Inkhundla (an administrative subdivision) level, where the new Members of Parliament (MPs) are selected by popular vote.

This system gives local chiefs undue influence over the electoral process. It is more a selection than a free election process. In the 2013 elections, some candidates said they were not nominated as they failed to catch their chief's eye. A former MP, Jennifer Dupont, lost her husband on the eve of the election. The local chief ordered his subjects not to vote for her, as a widow under Swazi law and custom is deemed unclean. Another chief ordered his subjects not to vote for a woman wearing trousers. Only one woman was elected to parliament.

The 2013 elections were criticised by most international observers. They failed to meet most of the SADC principles for conducting democratic elections. The African Union's (AU) Election Observation Mission said that Swaziland should change its constitution so that it conforms with international principles for free and fair elections. Furthermore, the Mission urged the Swazi government to '... to respect, protect and fulfil the rights to freedom of expression, freedom of association and freedom of assembly'.<sup>8</sup>

In addition, the Commonwealth Observer Mission noted the presence of police at polling stations, compromised privacy in polling booths and identifying factors on ballot papers that prevented anonymity. The Mission recommended that the constitution should be revisited, ideally 'through a fully inclusive, consultative process with all Swazi political organisations and civil society to harmonise provisions which are in conflict ... to ensure that Swaziland's commitment to political pluralism is unequivocal'.<sup>9</sup>

The Swaziland Elections and Boundaries Commission (EBC), which ran the election, has still not announced the total election turnout or the number of votes cast for unsuccessful candidates. Some have questioned the independence of the EBC, which is chaired by Chief Gija Dlamini. He was appointed to the position by his half-brother, King Mswati III. According to the constitution, the chair of the EBC should be a judge: Chief Gija is an electrical engineer. Following the election the King re-appointed his half-brother, Barnabas Dlamini, as Prime Minister. Ten of Mswati III's siblings were among the King's appointments to the House of Assembly and the Senate.<sup>10</sup>

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## Restrictions on political activists/ human rights defenders

In 1983 the People's United Democratic Movement (PUDEMO) was formed as a political party opposed to the status quo in Swaziland, with the goal of installing a multi-party democracy through peaceful means. Since its conception, PUDEMO has grown to become the country's main opposition party, despite its members facing systematic oppression.

The Sedition and Subversive Activities Act of 1938 and the Suppression of Terrorism Act of 2008 (STA) play a critical role in restricting the freedoms of expression, association and assembly. The STA allows the Prime Minister to declare anyone or anything a terrorist entity, due to vague definitions in its provisions. Successful prosecutions can carry a sentence of up to 25 years imprisonment. Four political organisations have been proscribed under the STA, including PUDEMO.

Numerous activists have been arrested under the two Acts, and some of these individuals have alleged that they were mistreated while being arrested and/or while in detention. At the end of April 2014 seven members of PUDEMO were arrested and charged under the STA and the Sedition and Subversive Activities Act for allegedly wearing political T-shirts. Similarly, on 1 May 2014, PUDEMO President Mario Masuku and youth leader Maxwell Dlamini were arrested and charged under both Acts for allegedly saying 'Viva PUDEMO' and 'Down with Tinkhundla' at a rally. While the Supreme Court ordered the release on bail of both men on 14 July 2015 (after they had served almost 15 months in jail), the charges against them were not dropped, and they were banned from attending and addressing political meetings. Over two years on, they have still not been put on trial. Many journalists and political activists feel forced to practice self-censorship, and when they do not, their legitimate activities are blocked or, if this is not possible, criminalised.

Many in the pro-democracy movement ran a boycott campaign ahead of the 2013 elections. A number of meetings and protests were broken up as a result. For example, in February 2013 around 60 armed police raided a prayer meeting for democracy in Manzini's Catholic Cathedral.<sup>11</sup> The meeting was jointly organised by the Swaziland United Democratic Front (a coalition of pro-democracy forces in Swaziland) and the Swaziland Democracy Campaign (a coalition of organisations in Swaziland and South Africa that advocate for democracy in Swaziland). The Catholic Church in Swaziland was deeply critical of the raid.

## Rule of law

Swaziland's constitution clearly states that the judicial branch of the state is independent, and is subject solely to the authority of the constitution itself. But the constitution grants the King legal immunity and the power to appoint and remove judges. In addition, the constitution provides for a dual legal system comprising Roman-Dutch law and uncodified customary law. Customary law is administered by local chiefs who report directly to the King. Ultimately, the international norm of the 'separation of powers' is not respected in Swaziland, as the King is the head of both the executive and legislative branches of the state.

According to the constitution, a Swazi Chief Justice should have been appointed by 26 July 2012. Yet until 17 June 2015 the Chief Justice was Michael Ramodibedi, a Lesotho national who resigned in 2014 from the Lesotho judiciary after facing impeachment charges. Ramodibedi was accused by many of bringing the justice system into disrepute because of a number of highly contentious decisions. This includes his role in the arbitrary arrests and highly irregular legal proceedings suffered by news magazine editor Bheki Makhubu and human rights lawyer Thulani Maseko in March 2014.

In the past year, appointments to the Supreme Court have raised serious questions of nepotism, and further call into question the independence of the judiciary, since many of the new appointees are related to one another. The appointment of the Attorney General Majahenkhaba Dlamini to the Supreme Court has caused particular controversy, as Dlamini is a member of the Swazi government handpicked by the King and is now also a judge.

Further complicating the situation is the - often highly problematic - role of customary law. As noted above, the customary legal system is presided over by the traditional chiefs, and the system functions in parallel to the judiciary (which is headed by the Chief Justice). In theory, Swazi civil law is superior to customary law. However, in practice, they are treated equally. The constitution states that 'the powers and functions of the chiefs are in accordance with Swazi law and custom',<sup>12</sup> without offering any clarity regarding the content of Swazi laws and customs. This lack of clarity provides ample cover for individual chiefs to interpret laws and customs subjectively and arbitrarily.

## Women's rights and gender equality

Women bear the brunt of the various unjust aspects of customary law in Swaziland. More broadly, they

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face exclusionary attitudes and behaviour in a wide range of social, economic and political areas. A women's rights movement is slowly building in the country, but it faces considerable challenges, in part because of traditional structures (especially those in deeply rural areas) harassing those who promote gender equality, but also because strong political sensitivities exist at higher levels of the state, leading to a lack of leadership for change. The latter issue is compounded by the lack of women in senior political positions. For instance, only 14.7% of parliamentary seats are held by women,<sup>13</sup> even though the Swazi constitution states that women should make up at least 30% of parliamentarians.<sup>14</sup>

There is no law criminalising domestic violence and marital rape is not recognised as a crime. Women married under Swazi law and custom are subject to the 'marital power' of their husbands. Widows are expected to enter a period of mourning for up to two years, during which they are expected to wear black and should not address people in public. The Swaziland Central Statistical Office's (CSO) *Swaziland Demographic and Health Survey 2006-07* found that 18% of women and girls between 13 and 44 years old had contemplated suicide, primarily as a result of domestic violence.

In addition, women are disproportionately affected by Swaziland's HIV epidemic. Thirty-one per cent of women aged between 15 and 49 years are infected, compared to 20% of men.<sup>15</sup>

In the economic sphere, there are manifold examples of discrimination against women. For instance, the CSO survey found that half of widows between 15 and 49 years of age had been dispossessed of property. Following a 2012 amendment to the Deeds Registry Act 1968, women can technically own property, but traditional law and custom prevents most from doing so. Many banks insist that women obtain a signature from their husband in order to obtain bank loans. Additional examples can be found in relation to paid work: unemployment rates are much higher for women than for men<sup>16</sup> and paid leave for new mothers is not required by law.

The Government of Swaziland regularly informs women's organisations and the international community of its intention to improve women's rights. In 2008, Swaziland signed the SADC Gender and Development Protocol, and then ratified it in 2012. The Protocol sets targets for gender quality in a number of areas, to be achieved by 2015. Yet little progress has been made in achieving these targets. Swaziland is also a party to the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). In July 2014, the Committee on the

Elimination of Discrimination against Women set out concluding observations and recommendations for Swaziland following receipt of periodic reports from the Swazi government. The Committee raised a number of concerns in regard to the position of women in Swaziland, including with respect to all of the issues noted above.

## Trade unions and workers' rights

Swazi law does in principle provide for the right to organise and join labour unions and engage in collective bargaining. However, trade unions face massive restrictions, and workers who want to join unions or participate in union activity have frequently been intimidated and harassed. In 2015, the International Trade Union Confederation awarded Swaziland a Global Rights Index rating of 5, thus classifying it as a country where there is no guarantee of rights and as one of the 10 worst countries in the world in which to work.<sup>17</sup>

Swaziland has ratified all of the International Labour Organization's core conventions, but as with many other international legal instruments to which it is a party, has failed to implement them. Indeed, the ILO has repeatedly reprimanded Swaziland for its failure to comply with Convention 87, which covers freedom of association. At the International Labour Conference in June 2015, the ILO's Committee on the Application of Standards decided to include its conclusions on Swaziland in a special paragraph of its report, citing 'grave and persisting issues of non-compliance with the Convention'.<sup>18</sup>

In 2009, the Swazi government proposed the Public Services Bill, which sought to prevent public workers from being active in trade unions and organisations that the government deemed to be 'political'. The Bill proposed to make it an offence for a public servant to be 'visibly associated' with a political formation or association. The Bill received international condemnation for its role in suppressing trade union organisations and their efforts to represent the interests of their members. Despite this criticism, the Bill is still under consideration and thus remains a potential threat.<sup>19</sup>

The Trade Union Congress of Swaziland (TUCOSWA) has faced particular repression. In August 2014, Prime Minister Dlamini told parliament that the Secretary General of TUCOSWA and a human rights lawyer who had attended the US-Africa Leaders Summit in Washington DC should be strangled for criticising the Swazi government. Police have also harassed and arrested TUCOSWA's leaders and activists. On 28 February 2015, for example, TUCOSWA's attempts to hold a meeting in Manzini

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(the country's second largest city) were obstructed by the police, who blocked the entrance to the meeting venue and set up roadblocks to stop people from attending.

Following international pressure, in particular through the ILO, TUCOSWA was effectively unbanned on 12 May 2015 by the Swaziland Ministry of Labour and Social Security, when it was registered with the Commissioner of Labour. TUCOSWA was initially registered in January 2012, although this registration was withdrawn by the Swaziland authorities 15 months later, in effect rendering the organisation illegal. However, there is still a long way to go before TUCOSWA can fully play its legitimate role in safeguarding labour rights in Swaziland.

## Economy

Swaziland's economy has experienced significantly lower levels of growth in recent times compared to many of its neighbours. Despite Swaziland's classification as a lower middle-income country, it is characterised by economic problems – such as a weak business climate and low foreign direct investment inflows – that are more often associated with low-income countries. In addition, this classification masks the great inequality between an extremely wealthy minority linked to the regime and the majority, who suffer high levels of poverty. For example, the country's unemployment rate is 26.1%<sup>20</sup> and 23.7% of the population are moderately to severely food insecure.<sup>21</sup>

There has been much criticism of Swaziland's spending priorities, particularly the high budget allocations to the royal household (described above) and Swaziland's disproportionately large security sector. The International Monetary Fund has repeatedly raised concerns about Swaziland's economy, even advising in 2012 reductions in travel allowances and security spending, and increases in social expenditure.

Swaziland is a member of the Southern Africa Customs Union (SACU). The Swazi government's budget has historically been highly dependent on SACU receipts. However, these revenues fell by almost 60% between 2008 and 2011.<sup>22</sup> As a result of poor planning, the government nearly ran out of funds to pay government employees' salaries, which led to street protests calling for economic reform and democracy.

Furthermore, the Swazi government's disregard for labour and other human rights is hurting the export sector. In June 2014, the USA suspended Swaziland from the benefits of the African Growth and Opportunity Act, citing 'Swaziland's use of security forces and arbitrary arrests to stifle peaceful

demonstrations, and the lack of legal recognition for labour and employer federations',<sup>23</sup> and insufficient progress towards certain democratic standards, including the Swazi government's systematic violations of workers' rights and restrictions on the freedom of assembly. Consequently, garment workers, the vast majority of whom are women, have been hardest hit, with the layoff of up to 3,000 jobs so far.<sup>24</sup> Similarly, in May 2015, the European Parliament called on the European Commission to open an investigation into Swaziland's human rights violations in relation to the trade preferences that the country enjoys with respect to the European Union (EU) market. Thus Swaziland risks losing access to the EU's market for sugar and other commodities.

Taken together, the issues and trends outlined above mean that Swaziland's prospects for reducing poverty and inequality are dismal. It is extremely unlikely that the country will be able to enjoy equitable and sustainable development without fundamental political reforms.

## Recommendations

ACTSA's work on Swaziland is informed by the positions of its partner organisations in the country. In our view, the international community has not sufficiently engaged with the denial of human rights and with authoritarianism in Swaziland. Some, especially those within the country, interpret this as condoning the current government.

ACTSA calls on the international community, including SADC, the AU, the Commonwealth, the EU and the UN, to:

- **Publicly condemn** the violation of international human rights law and standards, as well as the disregard for democratic norms, in Swaziland.
- **Vigorously engage with the Government of Swaziland so that it:** releases all political prisoners; removes repressive laws, including those that in effect ban political parties; implements new laws to improve human rights; and enters into meaningful and transparent dialogue with political parties and civil society with the aim of urgently creating a realistic plan for the establishment of a genuinely democratic constitution.
- **Pursue international monitoring and accountability mechanisms**, including referring Swaziland to the Commonwealth Ministerial Action Group and ensuring that Swaziland is subject to the system of Special Procedures of the UN Human Rights Council.

- **Consistently support Swazi civil society** in its efforts to uphold human rights and allow people to freely and fairly choose their elected representatives.
- **Work with the Swazi trade union movement** to design and implement policies and programmes that reduce poverty, inequality and discrimination.
- **Not condone or offer diplomatic support to the Government of Swaziland** as long it continues to

violate human rights and fails to meet its international commitments.

- **Cease arms sales and military (including technical) support to the Government of Swaziland** until the human rights situation in the country significantly improves.
- **Ensure financial institutions do not contribute to corruption** or help perpetuate human rights violations.

## Notes

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