

## JOINT UNIVERSAL PERIODIC REVIEW SUBMISSION SWAZILAND

**The Centre for Human Rights and Development leading a coalition of members of civil society.**

### **1. Methodology**

This civil society contribution to the Universal Periodic Review was conducted through a national participatory process which involved members of civil society working in the sphere of human rights. These are: The Centre for Human Rights and Development (CHR), Swaziland Federation of Labour (SFL), Swaziland Federation of Trade Unions (SFTU), Swaziland National Association of Teachers (SNAT), and the Media Workers' Union of Swaziland and the Coalition of Informal Economy Associations of Swaziland (CEIAS).

### **2. Executive summary**

In this submission, the Centre for Human Rights and Development leading a coalition of civil society organizations in Swaziland, provides information under sections B, C, and D as stipulated in the General Guidelines for the Preparation of Information under the Universal Periodic Review as contained in Human Rights Council decision 6/102, Follow-up to Human Rights Council resolution 5/1, section 1 adopted 27 September 2007. These submissions are made in light of Swaziland's accession to a number of United Nations instruments in 2004 and its adoption of a constitution in 2005, as well as its alignment with regional human rights instruments.<sup>i</sup> These submissions are made in the backdrop of a political and legal climate which combines aspects of modern law and customary law, as provided for in the constitution of the country under review. This duality is not only limited to the legal sphere alone, but also permeates to the political and governance spheres as well. As a result, State behavior in Swaziland is influenced by both customary law and the constitution.

### **3. Socio- economic and workers rights**

#### **3.1 General trends in relation to socio-economic rights**

The Constitution of Swaziland of 2006 does not contain Socio-economic Rights (SERs) in the Bill of Rights. It only makes reference to SERs in the directive principles of State policy, which are not justiciable and cannot be used by citizens to make claims against the State. This raises concern, especially given the high levels of poverty, unemployment and HIV/AIDS in Swaziland. The State has over the years failed to address issues of lack of drugs in public hospitals, lack of doctors and other health personnel as well as lack of infrastructure. There have been cases of lack of key treatment such as anti-retroviral treatment, rabies treatment as well as snake venom treatment. All these happen in light of a constitutional right to life, to dignity as well as Swaziland's obligations under the African Charter on Human and Peoples' Rights as well as human rights instruments of the United Nations.

#### **3.2 Closure of major companies**

In recent years, and especially in 2010, several big industries closed down. These include SAPPI-Usutu which employed over 600 people in the mill section, Swazi Paper Mills, Peak Timbers, Royal Jozini Big Six and many others. This negatively impacts on the socio-economic standing of a number of Swazis. Coupled with the high HIV/AIDS prevalence rate, unemployment and poverty, the overall effect of this is to deny Swazis enjoyment of their socio-economic rights much against the International Covenant on Economic Social and Cultural Rights. It also goes against the constitutionally guaranteed rights of citizens to employment.<sup>ii</sup>

### 3.3 Positive aspects

The Government of Swaziland must be commended for the positive action in addressing most of the recommendations of the International Labour Organisation (ILO). However, there is still a glaring need for the State to address the Public Order Act of 1963 and its far reaching consequences, as recommended by the ILO High Level Mission in 2010. One of the recommendations of the Mission was to the effect that personnel employed by the State under His Majesty's Correctional Services must be allowed to unionize. Moreover, the Mission urged the Government to address issues of political rights and eventually produce a clear document abrogating the 1973 King's Proclamation,<sup>iii</sup> since the Constitution does not have a clear provision revoking it.<sup>iv</sup>

The labour laws of Swaziland grant rights of inspection of work premises to specified State agents to ensure that workers operate in safe and healthy conditions. However, this is not frequently done, and in some cases it is not done at all. There is no clear strategy or plan on the State's part on how such inspections are to happen, leading to a number of companies subjecting workers to sub-standard working conditions. In one instance in the Siteki Industrial Area, workers were repeatedly bitten by dogs kept within the factory premises.

Despite the State's attempts to set minimum wages via legislation and the Constitution, workers in Swaziland continue to be subjected to exploitation and underpayment. An illustrative case is that of the security sector, where even though there are about 57 companies in operation, only a few comply with the wages regulation. There is no evidence of commitment on the part of the State to the effectively deal with this misdemeanor by companies.

Whilst the State is to be commended for ensuring that Swaziland's labour laws allow women the right to go on maternity leave, it is to be lamented that men cannot go on nursing (paternity) leave. However, that notwithstanding, women who work mostly in the low income bracket are denied maternity and sick leave by some of their employers. As a result, there have been cases of women going into labour on the shop floor.<sup>v</sup>

Since the Constitution came into force in 2006, the government of Swaziland has been in continued violation of its provisions, particularly in relation to the rights of workers to assembly and express themselves. In recent years, the State has continued to forcefully and unlawfully disrupt workers' marches, rallies and celebrations without just cause. Use of violence against workers and protestors has become a norm. In 2009, protestors comprising workers and student leaders were abducted by police from Manzini and dumped over 100km away. In these abduction cases, the State police keep the workers in custody (usually at the back of their police vans) without preferring charges, and further deny their whereabouts. During that period, the captives are denied access to a lawyer or family members, and in some instances, food and medication. Over the years Mr Mphandlana Shongwe, a political activist and member of the party People's United Democratic Movement (PUDEMO) has been abducted several times during protest marches. In the most recent incident, Mr Shongwe was abducted from a protest march in Manzini and dumped at his mother's place some 120km away. These abductions which are aimed at restricting workers' rights to assemble and expression are a drain on State resources, as much needed police vans are used to carry and escort peaceful marchers abducted by the police.

Attempts to use the courts to prevent abduction of activists and workers are also frustrated by the State. Subsequent to his last abduction in 2010, Mr Shongwe approached the High Court with an application for an order restraining the police from abducting him in a forthcoming protest march. The High Court Registrar refused to facilitate the application, citing improper papers and lack of a judge to handle the

matter. This is evidence of a calculated move by the State to frustrate citizens from enjoying their fundamental rights and freedoms.

### **3.3 The death in custody of Sipho Jele**

Several workers have been violently assaulted by State police. During May Day celebrations on 1 May 2010, the police violently disrupted celebrations by workers at Salesian Sports Ground in Manzini. Many workers were either assaulted, arrested, detained and/or eventually tortured by State police. Of note is the case of the late Sipho Jele, who was also detained for wearing a t-shirt inscribed with the writing, PUDEMO.<sup>vi</sup>

After Jele was arrested, the police made sure that his relatives could not have access to him, much against the tenor of the law. After a lengthy interrogation, during which he was denied access to food, the police drove with Jele to his homestead in Ncabaneni some 33km away where they sought to find his PUDEMO membership card. When it was eventually found, the card revealed that his membership with the organization had actually expired. Eventually the police brought Jele before a judge after hours, where he pleaded with the judge to be sent to the correctional services facility rather than the police holding cells to avoid torture. The judge indulged him and ordered that he be sent to the correctional facility instead. The following day, he was discovered dead inside the facility, with the State claiming he had committed suicide.

Soon after Jele had died, a high-powered police delegation descended on the Jele homestead to intimidate the family members and left instructions that he should be buried quickly. Even when the time came for Jele's funeral to take place, the State continued to frustrate his relatives, by refusing to allow the burial to proceed in his home area. The area's chief, who constitutionally is an extension of the King (*iNgwenyama*), issued orders prohibiting the burial from taking place in that chiefdom, and demanding the payment of a fine of a cow (approximately US\$571) from surviving family members for Jele to be buried there.

When the family tried approaching the courts for an order preventing such harassment, there were further frustrations. Despite the matter having been brought to court on a certificate of urgency, the duty judge was kept waiting while the registry claimed the Jele papers were lost. When the judge eventually left chambers after hours, the 'missing' papers resurfaced.

Even though the State did initiate an inquiry into the death of Sipho Jele, there were concerns with the coroner appointed to lead such an inquest, especially regarding her impartiality. The coroner, Magistrate Nondumiso Simelane, who was previously stationed in the small town of Nhlangano as an ordinary magistrate was recalled to handle this mammoth task. The fact that she is a former police officer also raised questions of impartiality and objectivity in the eyes of the public. There are also concerns that the report of this inquest will not be made available to the public as has happened with previous similar enquiries, such as the one involving the death in police custody of one Mathousand Ngubane in 2004. Eventually, the coroner in the Sipho Jele matter ruled that Jele died of suicide. Despite the number of deaths in police custody over the past years, there is no record of prosecution of offending police officers by the State.

In September 2010, State police using State funds disrupted a planning meeting by civil society organizations (CSOs) under the Swaziland Democracy Campaign held at the Tums George Hotel in Manzini Swaziland. In the meeting were members of sympathetic organizations in the region, such as the Congress of South African Trade Unions (COSATU) and various CSOs from Swaziland. During the disruption, police used violence to stop the proceedings, arrested those present and later did not prefer any charges against them. Participants from neighbouring states were abducted and driven over 160km to the southern border

where they were dumped. Again here the police were using the already limited State resources to stifle constitutionally guaranteed rights of workers and other citizens.<sup>vii</sup>

Soon after these violent disruptions, the Prime Minister, Sibusiso Dlamini was on record that the government would consider using torture for rowdy foreigners who come to Swaziland.<sup>viii</sup> His choice of torture was *bastinado* which he said would teach dissidents to behave. *Bastinado* is a form of torture that uses a wooden tool with spikes or nails to hit the soles of the feet, leaving the victim in excruciating pain and unable to walk for days. The Prime Minister's statement is lamentable given the longstanding policy of the State police to torture suspects and those in custody. The fact that the premier is the head of the police does not bode well for the State's obligation to promote human rights. On 7 March 2011, State police torture students from Ekubongeni High School, for allegedly being ring leaders during a class boycott.<sup>ix</sup> The police were called by the school's principal to mete out punishment to the students.

#### **4. Media freedom not guaranteed**

Swaziland's Constitution does not provide for the right to information or the right of access to information. This is much more pronounced in the sphere of the media, which does not operate freely in Swaziland. There are two State-owned radio stations and one private station, owned by a Christian group. There is only one television station in the country, owned by the State. Print media has seen a rise in the establishment of new publishing houses in the form of newspapers, magazines and newsletters recently. The State has a stake in one of the leading newspapers, the Swazi Observer. Despite constitutional provisions protecting freedom of expression, the State continues to muzzle free expression by media houses.

Attempts by citizens to operate private radio stations have and continue to be frustrated by the State. Of note here are unsuccessful attempts made by Mr Ambrose Zwane to apply for a licence to operate the Lubombo Community Radio Station for over ten years. This has limited members of the public's access to alternative radio stations. This does not bode well for the Swazi citizens as both the State-owned television station and the national radio station do not allow entities or organizations perceived as being anti-State, anti-royalty and pro-democracy to have access to these facilities. The State is thus enjoying a monopoly over the airwaves, thereby restricting the rights of citizens to disseminate and to receive information.

Journalists have been harassed by State police on a number of occasions, particularly where the police suspect the journalist might expose a violation of a citizen's constitutional right. The media have been assaulted, had their equipment confiscated and footage deleted by State police in the hope of preventing unconstitutional behavior from being published. During the Swaziland Democracy Campaign on 6 September 2010, Mr Manqoba Nxumalo a journalist from the Times of Swaziland was harassed and detained by the police who also grabbed his camera. He was later released without charge. On 9 September 2010, yet another journalist from the Swazi Observer newspaper, Ms Sibusisiwe Ngozo was attacked by members of the para-military unit, known as OSSU whilst covering a riot scene in Mbabane. She was pushed and shoved by over five members of this unit.

Threats and attacks on journalists do not only come from the State police, but also from influential members of the royal family, who wield a lot of power in Swaziland. During a national dialogue in 2010 dubbed the Smart Partnership Dialogue, Prince Mahlaba, a senior prince issued threats against members of the media to the effect that journalists who report negatively about the country will die.

Despite these utterances by State officials and violence from police, journalists' work is also limited by a number of laws that pre-date the Constitution. These include, the Proscribed Publications Act of 1968, the

Obscene Publications Act of 1927, the Books and Newspapers Act of 1963, the Official Secrets Act of 1968, the Cinematograph Act of 1920, and the Sedition and Subversive Activities Act of 1938. The Sedition and Subversive Activities Act limits journalistic freedom in that it proscribes criticism of the king and the Swaziland government. It makes it an offence to do anything with seditious intent. It defines seditious intent as an intention to bring the King into hatred or contempt, or to excite disaffection against the King, his heirs, his successors and the government of Swaziland.<sup>x</sup> These pieces of legislation, in particular the sedition law is aimed at preventing those who hold public office from scrutiny, by threatening to criminally punish those who exercise their freedoms of expression, political thought and opinion.

The National Security Act of 1968 stipulates that public servants are prohibited, unless authorized, from disclosing any document or information they possess or have acquired by virtue of their employment with government. The application of this provision is wide, and is not limited to information that poses a threat to national security. It therefore negates the public's right of access to information, as the media cannot freely source information from public servants.

#### **4.1 Access to information**

The right to access to information is not guaranteed in Swaziland. The Constitution is silent in that regard. However, Swaziland has acceded to the International Covenant on Civil and Political Rights (ICCPR) which in article 19 guarantees the citizen's right to seek, receive and impart information. As a result, the public is deprived access to critical public information on public funds, spending, and other issues related to governance. Because of the clamp down on information, civil society cannot hold the State accountable for its behavior or fiscal spending. The need for civil society to scrutinize public spending and State behavior cannot be overemphasized in a society like Swaziland where political parties remain banned and political plurality frowned upon.

#### **4.2 Self-censorship**

Aside from the death threats issued by Prince Mhlabha that journalists who report negatively about royalty will die, the State has also managed to instill a culture of self-censorship amongst journalists. This is much more pronounced in media houses that receive subventions from the State. This compromises the ability of the Swazi media to report fairly, and openly on issues involving the State and the royal family. Self-censorship is not only limited to news or reports involving the State, but also cases where influential members of the society are cited. Because of the threats that are directed at journalists nationwide, self-censorship is not only limited to State-sponsored media houses. Journalists from private media houses also exercise restraint on reporting about royalty or the State. As a result, issues of national importance and that touch on fundamental rights, such as government and royal spending hardly find their way to the media.

### **5. Corruption**

The government of Swaziland must be commended for setting up the Anti-Corruption Commission (ACC) to fight the looting of public funds and other financial crimes. However, evidence on the ground shows that this commission, which works very closely with the office of the Prime Minister is fast losing credibility in the eyes of the citizens, especially since it deals with corruption cases selectively. Despite clear indications of corrupt tendencies in some cases involving influential politicians, members of parliament and cabinet ministers, the commission has failed to institute investigations or prosecutions. The Minister of Finance, Majosi Sithole recently complained that Swaziland loses over SZL60 Million (approximately US\$8.6 Million)

monthly through corruption. In his February 2011 budget speech in parliament, the minister disclosed that some of the cabinet ministers are involved in corrupt activities.

The independence of the Commission is also in doubt, given the heavy hand of the Prime Minister in its dealings. In February 2011, the premier together with the commission were in the media announcing that a high profile case was due in April 2011, whilst the same Commission has failed to investigate cases of corrupt land purchases by cabinet ministers.

## **6. Human Rights Commission**

In 2009, the national human rights institution (NHRI) aptly known as the Commission on Human Rights and Public Affairs was established in terms of section 163 of the Constitution. This was a welcome move given that Swaziland does not have any form of legal aid, and that most human rights violations affect the poorest of the poor. Whilst this appears as a bold and positive step given Swaziland's dire human rights record, this institution was only set up way after the one-year limit imposed by the constitution. Further, it has maintained an invisible existence to date. The State has not done much to bring the existence, location and mandate of this NHRI to the knowledge of the public.

The NHRI has been very silent in the face of ongoing human rights violations by both State agents and non-State actors. To date it has only issued two statements, one of which was to discourage people from committing suicide. The NHRI conveniently shies away from making pronouncements on serious human rights violations occasioned by the State. Notable in this regard is that despite a number of cases involving use of force against suspects, unarmed civilians, protesters and workers by State police, the NHRI has not addressed itself to that matter.

The State has also conveniently placed the NHRI in a physical location that excludes certain members of society from accessing it. Its current offices are at Nkhanini in Lobamba, a traditional or customary capital. The compound within which this institution is housed is heavily regulated by customary law, and the main gate entrance is guarded by members of the military, who enforce the dictates of customary law for members of the public wishing to have access to these offices. This raises concern given that customary law prohibits women from wearing pants, and as a result, trouser-clad women cannot access this institution. Further, women wearing black mourning gowns cannot access such premises as per custom. All these prohibitions and denial of access occur in light of section 28 of the Constitution which calls on equality of men and women; and further prohibits subjecting a woman to a custom to which she is by conscience opposed.

In November 2010, a researcher from the Centre for Human Rights and Development was temporarily blocked from entering these premises on a rainy day because custom prohibits umbrellas on the premises of the Nkhanini office block. The uncompromising army personnel informed the researcher that his options were to either fold the umbrella and proceed in the rain, or simply walk back unassisted. He chose to fold it and get drenched in the 100metre stretch to the reception. This demonstrates that whilst the State has managed to establish human rights oversight mechanisms, it has also placed barriers for citizens who attempt to use those mechanisms.

The insistence by the State on locating a national institution within a traditional compound is influenced by the State's view of Swaziland as a homogenous State. However, statistics will show that not all Swazi citizens are ethnically Swazi. There are other ethnicities living within the borders of Swaziland, such as Zulu, Shangaan and Sotho ethnic minorities, who are nevertheless Swazi citizens. The effect of placing the NHRI inside a Swazi traditional capital is to subject other ethnicities to a culture that is not theirs.

It is also worth noting that the NHRI's mandate is unclear, as parliament has not enacted legislation to govern its day to day operations.

Another worrying feature of the NHRI is that matters done under royal prerogative are constitutionally excluded from its jurisdiction. This presents major problems for the indigent in Swaziland, since most violations, such as property grabbing and forced evictions, are done under royal prerogative. Effectively this denies those who have no financial muscle to litigate a chance to have their rights protected through a cheap and accessible adjudication mechanism.

Soon after the death of Sipho Jele (who died in custody) the NHRI issued a statement condemning the act of suicide by citizens. The Swaziland Democracy Campaign has written and hand delivered two letters to the NHRI, raising concerns on the continuing police brutality but to date there is still no correspondence or acknowledgement of receipt.

## **7. Environment**

Public participation in decision making is a right contained in the Constitution.<sup>xi</sup> The Environmental Management Act (EMA) provides for public participation in issues of environmental management and development. However, that notwithstanding, the State has not done its part in sensitizing members of the public on this important aspect of public participation. The processes of Environmental Scoping Meetings (EIAs) are conducted in English and in deep scientific jargon, leading to a number of affected communities being unable to comprehend the proceedings. Also, with the current clamp down on civil society activities in chiefdoms by the State, the impact is that civil society organizations cannot have access to communities to teach them about environmental rights. Whilst the State has abdicated the civic education role to non-governmental organizations, it simultaneously impedes their effectiveness through recalcitrant traditional chiefs and State police. An example can be made here of meetings cancelled by State police where civil society wanted to educate citizens on human rights. One such incident happened in KaNgcamphalala area in 2009 where the Centre for Human Rights and Development's drive to educate community police on human rights, the constitution and anti-torture methods was cancelled by police officers from Siphofaneni. The person charged with organizing residents for this meeting was interrogated by a group of senior police officers from Siphofaneni and warned that they were watching him, and further declared that the meeting should not take off. Fearing for the safety of the organizer on the ground, the Centre decided to cancel the meeting.

Another illustrative case is that of a moratorium imposed on community meetings in the KaShali area after 18 homesteads were demolished in November 2010. Civil society organizations could not have access to assist affected residents and meetings with residents had to be held far away from their homes, thereby increasing the costs of intervention.

Swaziland has also allowed a private person, a company called Big Game Parks (BGP) to monopolise the management of wildlife and the legislation pertinent thereto. Of note is the Game Act of 1991, which is a law aimed at protecting wildlife. This Act entitles game protection officers known as game rangers to immunity from prosecution for any act or omission in the line of duty. As a result, communities surrounding game protection areas have been harassed by these immunity-clad game rangers. These game protection areas include Hlane National Park, Mkhaya Game Reserve and Mlilwane Game Sanctuary. Some of the villagers have been short, tortured, killed and left paralyzed, after being suspected of poaching by these rangers. In some cases, villagers are shot in the presence of State police, who later fail to bring the killers to justice. The fences erected around game reserves, coupled with the threat of being shot and killed precludes villagers from accessing water, wild fruits and vegetables as well as firewood which is locked

away in the reserves. The State does not have a mechanism for benefit sharing that would allow such residents controlled access to these natural resources. Marauding animals often escape from the reserves and destroy crops of neighbouring homesteads. There is no compensation mechanism for such losses.

The State has allowed this problem to persist for over two decades. Currently, it is not only game rangers that enjoy this immunity, but persons acting on their instructions as well. This is guaranteed by the Game Act. As a result, private farm owners also harass and torture villagers and later claim to be either game rangers or to have been acting on the instructions of a game ranger. To date, the State fully adheres to the immunity that game rangers have, and no game ranger has been prosecuted for human rights violations, despite attempts to lay charges by victims. Even though Swazi law allows for private prosecution, attempts to do so by at least one widow whose husband was killed in 1992 by game rangers have been frustrated by the State, in particular the office of the chief prosecutor. This was in the case of Mrs Ngcamphalala whose husband Sibhabane Ngcamphalala was shot and killed by rangers in 1992, and has since then been fighting to have his killers prosecuted. The costs of private prosecution are also prohibitively high, especially for the indigent. The chief prosecutor has also been unco-operative, by refusing to issue the requisite certificate to allow private prosecution by the widow.

The striking feature of the Swaziland Constitution is that unlike most constitutions, it does not expressly provide for the right to a clean environment. Instead in section 216 it places a duty on every citizen to promote the protection of the environment. This is a weak provision. The rampant abuse of human rights occur despite the constitutional provisions on the right to life, dignity, and access to justice; as well as the ICCPR, which Swaziland acceded to in 2004.

## **8. Education**

The right to education is guaranteed in the Constitution. The State recently scraped the GCE O-Level system in favour of a localized IGCSE/SGCSE. This effectively weakened the education system and the quality of graduates produced.

Tertiary education has for a long time been made possible for many Swazi students through the provision of scholarships by the government. However, the government has announced that as of 2012 it will begin phasing out State funding of learners. In his 2011 Budget Speech the Minister of Finance, Majozi Sithole Stated that government will reduce funding for tertiary students beginning in 2012. At the same time, the government intends implementing a scholarship policy, whose drafting was not participatory as student formations, amongst other stakeholders were not consulted. In a meeting between the responsible minister, the Minister for Labour and Social Security Magobetane Mamba and student leaders in February 2011, a representative of the Swaziland National Union of Students (SNUS) was kicked out of the meeting. This meeting was expected to discuss the scholarship policy, which contains clauses that are likely to negatively impact upon the ability of students to access tertiary education.

The scaling down on funding for tertiary education will have a bad impact on education since tertiary education is costly and very few parents can afford such fees. The new scholarship policy seeks to introduce a new system through which government will prioritize areas of tertiary support, thus leaving particular subjects outside the fundable bracket.

The government run Orphaned and Vulnerable Children (OVC) fund has somewhat alleviated the plight of needy children. However, the fund administrators have been failing to pay school fees on time, or provide book fees when needed. As a result, some students falling within the OVC category have had their studies



interrupted. Lack of classrooms, teaching aids, books, and qualified teachers also negatively impact upon access to education of OVC.

The Constitution in section 28 clearly stipulates the rights of a child to free primary education beginning with the first grade. Be that as it may, the State failed to show political will to implement this provision, even though the Constitution stipulated clearly that such right would begin to operate three years after the commencement of the Constitution. Civil society organizations had to expend funds and litigate, in order to force the State to ensure the rights of children to free primary education.<sup>xii</sup>

## **9. Health**

The health system in the country is in disarray. The budget for the health sector still does not meet of the generally accepted standard of 15% of the national budget. For example, the ministry of health has endorsed the Public Private Partnership (PPP) which aims at forming partnership between itself and a South African company, Netcare. This partnership does not help the citizens as it only covers what the country already has in terms of expertise, and it does not address the issue of other terminal illnesses where the country does not have sufficient capacity. There have also been moves to outsource pharmacies from the ministry and this will prevent effective enjoyment of the right of people to health. It will render health a commodity that can be bought and sold, but only accessible to the minority who can afford.

## **10. Recommendations**

The coalition of civil society organizations therefore recommends that:

- 10.1 The State of Swaziland initiates a constitutional review and amendment in order to incorporate socio-economic rights in the Bill of Rights.
- 10.2 The seat of the national human rights commission and other constitutional bodies be moved to a more neutral and accessible place.
- 10.3 The State should develop a programme that will create space for civil society in the promotion of human rights and do away with the current clampdown on civil society operations.
- 10.4 The State should expressly abrogate the 1973 King's Proclamation and put in place a law to register and operate political parties.
- 10.5 The State should make public and accessible all findings of the Siphon Jele inquest and others conducted before it.
- 10.6 The State should amend offending legislation, such as the Game Act, and others which pre-date the Constitution.
- 10.7 The State should facilitate establishment of privately owned media houses by removing current legislative and procedural barriers.
- 10.8 The State should prioritize the enactment of a law to operationalise the national human rights institution, and further grant it jurisdiction over matters done by royal prerogative.

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<sup>i</sup> Swaziland acceded to the International Covenant on Civil and Political Rights (2004), the International Covenant on Economic Social and Cultural Rights (2004), the Convention on the Elimination of all forms of Discrimination Against Women (2004), the Convention Against Torture (2004), the Convention on Biodiversity, and ratified the Convention on the Rights of the Child (1995). Swaziland has also aligned itself with a number of regional instruments such as the African Charter on Human and Peoples' Rights (15 September 1995), the Constitutive Act of the African Union (8 August 2001).

<sup>ii</sup> Section 32(1) of the Swaziland Constitution provides that a person has the right to practice a profession and to carry on any lawful occupation, trade or business.

<sup>iii</sup> The 1973 King's Proclamation to the nation was an instrument used by the then King Sobhuza II to do away with the Independence Constitution and to further ban all political parties. It remained a working instrument for the State of Swaziland until 2006 when the new constitution came into force. Be that as it may, there still exists uncertainty as to the status of this instrument, as the Government of Swaziland continues to treat human rights and political parties in the same manner they did when the Proclamation was still the supreme law of the land.

<sup>iv</sup> The Constitution asserts its supremacy over any law in Swaziland, yet despite this provision, the attitude of the State towards fundamental rights, such as freedoms of association, assembly and expression is informed by the now supposedly defunct King's Proclamation of 1973.

<sup>v</sup> Section 32 of the Constitution guarantees the rights of workers, including protection of female workers before and after child birth.

<sup>vi</sup> PUDEMO is regarded as a proscribed entity by the State in terms of the Suppression of Terrorism Act of 2008. Jele later died in custody, and as at the time of submission of this report, the inquest that had been set up to investigate his death had still not returned its findings.

<sup>vii</sup> See Times of Swaziland, Tuesday 7 September 2010, page 2. The police spokesperson later stated that the unionists who were detained were found with disturbing documents. The detainees included Ntokozi Mbhele of Public Service International, COSATU's George Mahlangu, Zanele Mathebula and National Union of Mine Workers in South Africa's Christina Oliver.

<sup>viii</sup> See Times of Swaziland, Tuesday 10 September 2010. Despite calls from civil society for the Prime Minister to withdraw this Statement endorsing torture, he refused to do so.

<sup>ix</sup> Times of Swaziland, *We were tortured by 12 Cops*, 9 March 2011, page 2. The pupils, who were suspected of organising a class boycott, were beaten with fists and baton by 12 officers who were called to the school by the principal to quash the impending boycott.

<sup>x</sup> Given the deeply entrenched customary principle that the King can do no wrong (*umlomo longacali manga*), any form of criticism of government policy, of which the King is head, would likely be seen as an attack on the person of the King. The Act lists other forms of seditious intent, such as an intention to raise discontent amongst citizens and inhabitants of Swaziland; to promote feelings of ill-will and hostility between different classes of the population, as well as to bring the Swaziland justice administration system into hatred, contempt or disaffection.

<sup>xi</sup> Section 216 of the Constitution provides that every person shall promote the protection of the environment; and that the government shall ensure a holistic and comprehensive approach to environmental preservation.

<sup>xii</sup> See the *Swaziland National Ex-Miners Association and Another v the Minister of Education and Others* Civil Case Number 335 of 2009. Aside from the provision of some mobile classrooms, the school infrastructure still has to take into account issues of accessibility of classrooms by children living with disabilities.