



# Holding eSwatini to Account

## Assessing the Country's Compliance with the Commonwealth Charter



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A New Social Contract for Recovery and Resilience

This report was commissioned by TUC Aid, the charitable arm of the Trades Union Congress in Great Britain, in partnership with TUCOSWA and with support from the ITUC and ITUC Africa. The interviews included in the text were conducted during December 2019-February 2020, and the report was edited by Clare Santry. The summary and conclusions are the work of the global trade union movement. It is published jointly by the TUC and ITUC. Permission to quote extracts will not be withheld unreasonably as long as the source is cited.

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# Trade union demands

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## **The government of eSwatini should:**

1. Undertake a constitutional review in an all-inclusive and consultative process including civil society actors and political parties and establish a Law Reform Commission to embark on a law reform exercise.
2. Expressly repeal the 1973 Decree and amend the constitution to allow political parties to contest national elections.
3. Remove all legislative and practical restrictions on political parties to contest democratic multiparty elections and enact legislation to allow for the recognition, registration and operation of political parties.
4. Enact enabling legislation for the establishment of an independent and impartial Commission of Human Rights to undertake activities in the Global Alliance of National Human Rights Institutions in accordance with the Paris Principles.
5. Adopt measures to ensure the independence of the judiciary, including by ensuring the appointment of impartial judges, as well as prosecuting and punishing those responsible for acts undermining the independence or impartiality of judicial proceedings.
6. Align laws on the freedoms of expression, peaceful assembly and association with the Constitution and remove all legislative and practical restrictions to ensure the protection and respect of these rights.
7. Initiate a process of amending the Suppression of Terrorism Act in line with the declaration by the High Court that certain sections were unconstitutional.
8. Guarantee and respect the right to freedom of association and the right to organise, in particular simplifying union recognition across all sectors of the economy.
9. End police brutality against workers participating in peaceful and legal protest actions.
10. Give trade unions freedom to choose officials to represent them in negotiations without employers' interference.
11. Guarantee trade union officials' freedom of association and expression, without fear of victimisation by the employer.

Should these issues not be resolved, the Commonwealth Ministerial Action Group (CMAG) should suspend eSwatini from membership of the Commonwealth.

# Executive summary

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This report outlines a series of breaches of the Commonwealth Charter and the earlier Harare Declaration by the King and government of eSwatini.

These breaches need to be investigated urgently by the Commonwealth Ministerial Action Group (CMAG), the body empowered by the Commonwealth to uphold its values, and, if not resolved, eSwatini's membership of the Commonwealth should be suspended.

Taking those steps would indicate that CMAG was serious about its duty to enforce the Commonwealth Charter in full, which is a point of concern to many in the Commonwealth. All too often, CMAG has taken action only against those countries where the democratically elected government has been overthrown, which is of little help in a country like eSwatini where there is no democratically elected government in the first place.

This report shows, core value by core value, how eSwatini's citizens' rights are being violated. eSwatini falls short, especially but not exclusively, on

- democracy, especially by banning political parties;
- human and trade union rights, as shown by the ILO's frequent criticisms;
- freedom of expression, speech and assembly;
- good governance and sustainable development; and
- equality, especially in terms of gender and income, but also LGBT rights and more.

eSwatini's failure to adhere to the basic principle of democracy, by allowing political parties to operate in the country, remains unaddressed. The brutal suppression of the right to association and assembly in eSwatini highlights the lack of tolerance and respect facing individuals, trade unions and civil society within the country.

In eSwatini there is a systematic undermining of the rule of law and judicial independence by the government, and a failure to root out corruption. Freedom of expression is severely curtailed, with the media firmly under the control of the King.

Overall, it is clear that the principles and values laid out in the Commonwealth Charter are not being reflected in the lived experiences of the people of eSwatini.

# Introduction

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The Kingdom of eSwatini joined the Commonwealth in 1968, shortly after gaining independence from Great Britain.<sup>1</sup> As a member, eSwatini agreed to the Commonwealth's shared goals, values and principles. Membership also requires adherence to Commonwealth declarations, such as the 1991 Harare Declaration which established a framework for the development of democratic values amongst member states.

In 2013, the Commonwealth<sup>2</sup> adopted a Commonwealth Charter, described as “a document of the values and aspirations which unite the Commonwealth. It expresses the commitment of member states to the development of free and democratic societies and the promotion of peace and prosperity to improve the lives of all the people of the Commonwealth. The Charter also acknowledges the role of civil society in supporting the goals and values of the Commonwealth”.<sup>3</sup>

The Secretary General of the Commonwealth, Patricia Scotland, presented the country's hereditary monarch, King Mswati III with a hard copy of the Charter, on a visit to the country in 2020. In his remarks, the King acknowledged the important role played by the Commonwealth in the country, especially the transfer of skills and expertise that have in turn bettered the lives of Swazis.<sup>4</sup>

However, there is unease that the Commonwealth, particularly the Commonwealth Heads of Government Meeting (CHOGM) and Commonwealth Ministerial Action Group (CMAG), has been reticent to act on violations of the Harare Declaration and the Commonwealth Charter by member states. In the case of eSwatini, there is a concern that, since its inception in 1995, CMAG has not paid due consideration to a wide range of issues relating to the conduct of eSwatini.

Unlike countries such as Fiji, Zimbabwe and Pakistan, eSwatini has never been listed amongst the offending countries on the CMAG's agenda. Most of these countries have been reprimanded for infringements of what are now collectively referred to as the Commonwealth Charter's values, such as the deliberate erosion of the institutions of democracy and disrespect for the rule of law and human rights.

The Commonwealth Charter is a document that commits member states to a wide range of values, such as democracy, respect for human rights, and good governance. The Charter has 16 core values and principles – this report focuses on 10 where evidence indicates that eSwatini is clearly failing:

- Democracy
- Human rights
- Tolerance, respect and understanding
- Freedom of expression
- Separation of powers
- Rule of law
- Good governance
- Sustainable development
- Gender equality
- The role of civil society

In this report, eSwatini's compliance with the Charter is evaluated against evidence from various sources. But individual testimonies also form an important part of this report; they reflect the situation on-the-ground and the lived experiences of workers, trade unionists and civil society members. Each section starts with the relevant text from the Charter.

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<sup>1</sup> In 2018 the name of the country changed from Swaziland to eSwatini. Generally, we use the updated version in this report.

<sup>2</sup> Important structures within the organisation include the Commonwealth Secretariat, the Commonwealth Ministerial Action Group (CMAG), and the Heads of Government Meeting (CHOGM) that normally takes place every two years.

<sup>3</sup> The Commonwealth Charter. Available at: <https://thecommonwealth.org/about-us/charter>

<sup>4</sup> Sbusiso Zwane (31 January 2020), Times of eSwatini, “Charter on Human Rights, Democracy for King”. Available at: <http://www.times.co.sz/news/126943-charter-on-human-rights-democracy-for-king.html>

# Historical overview

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It is necessary to give a brief political history of eSwatini, to identify the challenges that civil society and trade unions have faced in bringing about democratic change in the country. eSwatini was a British colony from 1902 until 1968. The constitutional arrangements at the time of independence reflected this colonial influence, establishing a constitutional monarchy and a multi-party system of governance. The late King Sobhuza II proceeded to abrogate the constitution in *The Proclamation to the Nation of 12 April 1973*. This proclamation was a watershed moment in the political history of the Kingdom because it banned political parties and criminalised all forms of political activity. The country was ruled by the decree until 2005 when the Kingdom adopted a new constitution.

The King's 1973 Proclamation curtailed trade union activities and effectively destroyed much of the country's trade union movement, although the teachers' and bankers' unions continued their struggle underground. After eSwatini became a member of the International Labour Organisation (ILO) in 1975, the government tried to bring an undercover police officer (posing as the workers' representative) to the ILO's annual tripartite meeting. The bankers' union exposed this blatant attempt by the government to suppress the workers' voices, and the police officer was replaced by a union member. This incident contributed to the re-emergence of the independent voice of Swazi workers.<sup>5</sup>

Despite calls from civil society to set the tone for a new constitutional era by repealing the 1973 decree, King Mswati III chose to enshrine its controversial provisions within the 2005 Constitution. In particular, the constitution maintained the ban on political parties and consolidated executive, judicial and legislative powers in the hands of the monarch. Since the establishment of the constitution, democracy and human rights have not improved in the country. The promise of constitutionalism and democracy has not materialised for the people of eSwatini. In the words of the human rights lawyer, Thulani Maseko, eSwatini is "*a country with a constitution but without constitutionalism.*"<sup>6</sup>

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<sup>5</sup> The Solidarity Centre (2006) *Justice for All – The Struggle for Worker Rights in Swaziland*. Available at: <https://www.solidaritycenter.org/wp-content/uploads/2015/01/Swaziland-JFA.2006.pdf>

<sup>6</sup> Thulani Maseko (April 2007), *Constitution-making in Swaziland: the cattle-byre Constitution Act 001 of 2005*, paper presented in Nairobi, Kenya at the African Network of Constitutional Law conference on Fostering Constitutionalism in Africa. Available at: <https://ancl-radc.org.za/sites/default/files/Constitution-making%20in%20Swaziland%20by%20Thulani%20Maseko.pdf>

# Democracy (section 1 of the Commonwealth Charter)

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*We recognise the inalienable right of individuals to participate in democratic processes, in particular through free and fair elections in shaping the society in which they live. Governments, political parties and civil society are responsible for upholding and promoting democratic culture and practices and are accountable to the public in this regard. Parliaments and representative local governments and other forms of local governance are essential elements in the exercise of democratic governance.*

*We support the role of the Commonwealth Ministerial Action Group to address promptly and effectively all instances of serious or persistent violations of Commonwealth values without any fear or favour.<sup>7</sup>*

eSwatini's electoral system is based on 55 constituencies (known as Tinkhundla). But the country cannot be described as a democracy since political parties are effectively banned. Section 79 of the constitution stresses the concept of individual merit for purposes of election, but makes no mention of political parties.<sup>8</sup> Meanwhile section 25 of the constitution guarantees citizens' right to assembly and association<sup>9</sup> – which in terms of international standards and values, should include the right to form, join and belong to a political party of one's free and voluntary choice.<sup>10</sup>

The absence of political parties in the Tinkhundla electoral system has been flagged as fundamentally-undemocratic by both domestic and international observers. The effective prohibition of political parties, and the concentration of power in the hands of the

monarchy, was highlighted as a cause for concern by the 2013 Commonwealth Observer Mission.<sup>11</sup>

Similarly, the African Union Election Observation Mission of 2018 concluded that the Government of eSwatini should “consider reviewing the 1973 decree and allow for the formation, registration and participation of political parties in elections in accordance with the provisions of the 2005 Constitution, and in compliance with the country's international commitment.”<sup>12</sup>

In 2017, the eSwatini government failed to submit a report under the United Nations International Covenant on Civil and Political Rights, leading to an assessment of the situation in the country by the UN Human Rights Committee. The Committee questioned the legitimacy and credibility of the election, given that political parties “are unable to register, contest elections, field candidates or otherwise participate in the formation of a Government.” The report also raised concerns that the King had “excessive powers of appointment over the Government, Parliament and the judiciary.”<sup>13</sup>

Despite consistent criticism of eSwatini's lack of democratic credentials, change has not been forthcoming. In August 2013 the King declared that the Tinkhundla system would be replaced by what he called a ‘Monarchical Democracy.’ However, the constitution has not been amended to include, or even explain, this new ‘system’.<sup>14</sup>

7 The Commonwealth Charter, *Democracy*. Available at: <https://thecommonwealth.org/commonwealth-charter-section/democracy>

8 “The system of government for Swaziland is a democratic, participatory, *tinkhundla*-based system which emphasises devolution of state power from central government to *tinkhundla* areas and individual merit as a basis for election or appointment to public office”, Constitution of eSwatini (2005), Section 79. Available at: <http://www.gov.sz/images/Media/constitution.pdf>

9 “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”, Constitution of eSwatini (2005), Section 25. Available at: <http://www.gov.sz/images/Media/constitution.pdf>

10 Thulani Maseko (April 2007), *Constitution-making in Swaziland: the cattle-byre Constitution Act 001 of 2005*, paper presented in Nairobi, Kenya at the African Network of Constitutional Law conference on Fostering Constitutionalism in Africa. Available at: <https://ancl-radc.org.za/sites/default/files/Constitution-making%20in%20Swaziland%20by%20Thulani%20Maseko.pdf>

11 The Commonwealth (20 September 2013), *Swaziland National Elections: Report of the Commonwealth Observer Mission*. Available at: [https://thecommonwealth.org/sites/default/files/project/documents/Commonwealth\\_Observer\\_Mission\\_to\\_Swaziland\\_National\\_Elections\\_2013\\_Final\\_Report.pdf](https://thecommonwealth.org/sites/default/files/project/documents/Commonwealth_Observer_Mission_to_Swaziland_National_Elections_2013_Final_Report.pdf)

12 African Union Election Observation Mission to the 21 September 2018 Parliamentary Elections in the Kingdom of eSwatini. Available at: <https://au.int/en/documents/20190514/report-african-union-election-observation-mission-25-august-and-21-september-2018>

13 United Nations Human Rights Committee (23 August 2017). Paragraph 52. Available at: <http://ccprcentre.org/files/documents/CCPR.C:SWZ:CO:1.pdf>

14 Times of Swaziland (1 September 2013)

The disturbing case of Sipho Jele also highlights eSwatini's failure to abide by the Commonwealth principle that individuals have the right to participate in democracy. In 2010 Sipho Jele was arrested, while on his way to attend a Workers' Day celebration, for the crime of wearing a political party t-shirt. He subsequently died in police custody.<sup>15</sup>

Another obstacle to the promotion of democracy is the failure to implement the Election of Women Act 2018 one objective of which is to address issues of under representation of women and marginalised groups in Parliament. The 2018 election fell short of the required quotas of women in parliament who only constitute 12.1% of parliamentary seats.<sup>16</sup> Election to parliament is designed for individuals because political parties remain banned and due to a number of reasons that includes lack of resources, women are not able to compete as effectively.

### **Lucky Dlamini – Treasurer, Swaziland United Democratic Front**

Our organisation is drawn from various movements, including young people, labour groups, the unemployed and the informal sector. We have led several protests demanding socio-economic reforms. One of the most difficult things we face is being permitted the right to protest.

We try to mobilise for democratic reforms in the country, such as lobbying the African Union to force Swaziland to repeal the ban on political parties. In the case of the Matsapha Town Council, the people elected their council representatives, but the Minister of Housing unilaterally disbanded the councillors – despite them being elected through popular vote. This would not happen in any normal democracy.

Even elected public representatives, serving as Members of Parliament under the Tinkhundla system, prove to be powerless. For example a vote of no confidence against the late Prime Minister Sibusiso Dlamini's government was passed by a two thirds majority in parliament, but was then overruled by the King. This is why we continue to raise awareness amongst the international community that the country is not democratic, and that the power of the people is easily undermined by the powers vested in the King.

<sup>15</sup> Magnificent Mndebele (14 March 2019), Mail and Guardian, "eSwatini fights for free political expression"

<sup>16</sup> Human Rights Watch World Report 2020, available at HRW – Human Rights Watch: "World Report 2020 - ESwatini (formerly Swaziland)", Document #2022790 - ecoi.net



# Human rights (section 2 of the Commonwealth Charter)

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*We are committed to the Universal Declaration of Human Rights and other relevant human rights covenants and international instruments. We are committed to equality and respect for the protection and promotion of civil, political, economic, social and cultural rights, including the right to development, for all without discrimination on any grounds as the foundations of peaceful, just and stable societies.*

*We note that these rights are universal, indivisible, interdependent and interrelated and cannot be implemented selectively. We are implacably opposed to all forms of discrimination, whether rooted in gender, race, colour, creed, political belief or other grounds.<sup>17</sup>*

In addition to the Charter's stipulations on human rights, eSwatini is also signatory to the ILO Convention on Discrimination of 1958 which prohibits any employment discrimination based on race, colour, sex, religion, political opinion, national extraction or social origin.<sup>18</sup> Furthermore, the right to equality and non-discrimination are core principles as enshrined in the United Nations Charter, and the Universal Declaration of Human Rights (UDHR). The opening words of the UDHR are unequivocal: "All human beings are born free and equal in dignity and rights."<sup>19</sup>

Unfortunately, despite eSwatini being a member and a signatory to all these treaties, human rights violations are still occurring in the country. One example is the case of the LGBTIQ advocacy group, ESwatini Sexual and Gender Minorities (ESGM). The Group was denied permission to register and operate legally in the country, on the grounds that the organisation's activities offend the Kingdom's sodomy laws. Melusi Simelane, Founder and Executive Director of ESGM, filed an application at the High Court challenging the registrar of companies, but was told that "the

Constitution clearly states that marriage is between a man and a woman and ESGM aims to promote same sex relations." The eSwatini government also told ESGM that the constitution did not include 'sexual orientation' as a protection against discrimination.<sup>20</sup>

The treatment of ESGM is an example of the discrimination faced by LGBTIQ groups and individuals in eSwatini. This discrimination violates the fundamental human rights, as laid out in the Commonwealth Charter, and also the guiding principle of the Commonwealth Equality Network, which aims to end discrimination on the basis of sexual orientation and gender identity.<sup>21</sup>

Another example of human rights abuses is prisoners kept in squalid and overcrowded conditions. The prisons that were designed to hold 2,838 inmates held 3,776 in 2019 and some facilities are dilapidated.<sup>22</sup> In this time of COVID-19, social distance measures are difficult to observe under such conditions. Pre-trial detention constitutes about 18.1% of the prison population, is common and lengthy. The presumption of innocence until proven guilty is being undermined under these circumstances.

<sup>17</sup> The Commonwealth Charter, Human rights. Available at: <https://thecommonwealth.org/commonwealth-charter-section/human-rights>

<sup>18</sup> ILO, C111 - Discrimination (Employment and Occupation) Convention, 1958 (No. 111). Available at: [https://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100\\_INSTRUMENT\\_ID,P12100\\_LANG\\_CODE:312256,en:NO](https://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_INSTRUMENT_ID,P12100_LANG_CODE:312256,en:NO)

<sup>19</sup> United Nations (1948), Universal Declaration of Human Rights. Available at: <https://www.un.org/en/universal-declaration-human-rights/>

<sup>20</sup> ESwatini Sexual and Gender Minorities (2020), LGBTIQ Experiences in ESwatini. Available at: <https://eSwatiniminorities.org/wp-content/uploads/2020/01/LGBTIQ-Experiences-in-ESwatini.pdf>

<sup>21</sup> The Commonwealth Equality Network. Available at: <https://thecommonwealth.org/organisation/commonwealth-equality-network>

<sup>22</sup> World Prison Brief: Swaziland/eSwatini. Available at [Swaziland/eSwatini | World Prison Brief \(prisonstudies.org\)](https://www.prisonstudies.org/country/swaziland)

# Tolerance, respect and understanding, and freedom of expression (sections 4 and 5 of the Commonwealth Charter)

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*We emphasise the need to promote tolerance, respect, understanding, moderation and religious freedom which are essential to the development of free and democratic societies, and recall that respect for the dignity of all human beings is critical to promoting peace and prosperity.*

*We accept that diversity and understanding the richness of our multiple identities are fundamental to the Commonwealth's principles and approach.<sup>23</sup>*

*We are committed to peaceful, open dialogue and the free flow of information, including through a free and responsible media, and to enhancing democratic traditions and strengthening democratic processes.<sup>24</sup>*

In addition to the Charter's provisions, eSwatini is also bound by the 1948 ILO Convention on Freedom of Association and Protection of the Right to Organise.<sup>25</sup> This Convention is one of eight that form the core of international labour law. Notably, eSwatini has been examined 14 times with respect to violation of the Convention, and has been highlighted as of special concern at least four times in recent years (2009, 2010, 2011 and 2015).<sup>26</sup>

eSwatini has repeatedly failed to show tolerance and respect for the freedom of assembly and association. Workers and trade unions continue to face obstacles in organising, including the detrimental effects of eSwatini's Industrial Relations Act which poses significant barriers to free association.<sup>27</sup>

The government of eSwatini routinely threatens trade unions and democracy activists with torture or arrest if they criticise the government, engage in

lawful protest, or wear political party regalia. On 2 October 2019, about 300 police officers disrupted a peaceful workers' march, led by public sector workers demanding a wage increase and cost of living allowances. The police fired rubber bullets and tear gas causing injuries to several people. Dumisani Nkuni, Secretary General of the Manzini branch of the National Public Service and Allied Workers Union (NAPSAWU), was shot in the back by a rubber bullet whilst fleeing the police violence and was hospitalised for three days. In addition, 15 other people were admitted to hospital in Manzini and Mbabane with various injuries.<sup>28</sup> A number of people were also arrested, including 18 activists from the teachers' union.

The police violence of 2 October followed an earlier protest in the city of Mbabane on 25 September 2019 in which police used excessive force to disperse protestors. Rubber bullets and tear gas were fired on peaceful demonstrators, injuring scores of people.<sup>29</sup>

In another example of violating freedom of assembly and the right to organise, an independent trade union, the Amalgamated Trade Union of Swaziland (ATUSWA), was denied recognition by an employer. Workers at Montigny Investments were instead compelled to belong to an employer-controlled union called SEIWU. ATUSWA members were not allowed to organise or hold meetings, and the union's representatives were intimidated and harassed. A complaint to the government was rejected, resulting instead in a letter from the Labour Commissioner to the employers in that industry, questioning the legitimacy of ATUSWA's elected leadership. Police also ignore with impunity reports of assault and harassment of ATUSWA officials.

23 The Commonwealth Charter, *Tolerance, respect and understanding*. Available at: <https://thecommonwealth.org/commonwealth-charter-section/tolerance-respect-and-understanding>

24 The Commonwealth Charter, *Freedom of Expression*. Available at: <https://thecommonwealth.org/commonwealth-charter-section/freedom-expression>

25 ILO, *C087 - Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)*. Available at: [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_INSTRUMENT\\_ID:312232](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312232)

26 ILO, *eSwatini Country Profile*. Available at: [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11110:0::NO::P11110\\_COUNTRY\\_ID:103336](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11110:0::NO::P11110_COUNTRY_ID:103336)

27 ILO, *Direct Request (CEACR) - adopted 2018, published 108th ILC session (2019)*. Available at: [https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100\\_COMMENT\\_ID,P11110\\_COUNTRY\\_ID,P11110\\_COUNTRY\\_NAME,P11110\\_COMMENT\\_YEAR:3963818,103336,ESwatini,2018](https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNTRY_NAME,P11110_COMMENT_YEAR:3963818,103336,ESwatini,2018)

28 Those injured include: Phinda Gama, Celiwe Mkhabela, Samkeliswe Simelane, Simkhumbazo Dlamini, Fikile Nhlabatsi, Joe Semelane, Nokuthula Monro

29 Those injured include: Busie Dlamini, Sanela Masina, Virginia Thring, Siindile Shonhwe, Dcebila Dlamini, Gabi Mkhabela, Lungile Dlamini, Girlie Magagula, Sibusiso Mbuli, Luyanda Mngometulu, Zaman Makhanya, Lomasiko Palesa Dlamini

## Mduduzi Gina – Secretary General, Trade Union Congress of Swaziland

We have repeatedly reported the eSwatini government to the ILO for violating the 1948 Convention on the right to freedom of association and protection of the right to organise. In a case on 24 August 2018, teachers attending a meeting of the Swaziland National Association of Teachers were violently dispersed by the police. One teacher, Willy Dlamini, was shot in the hand by the police.

On 18 September 2018, TUCOSWA engaged in protests, following the laid-out process so the action would be protected in accordance with the country's laws. The protests were scheduled for three consecutive days in four different cities: Nhlanguano, Manzini, Siteki and Mbabane. The first day of action went smoothly in all the cities except Manzini, where there were disagreements between the police and workers on the approved routes. The police decided to disperse the protestors, using rubber bullets, tear gas and water cannons, despite this being legally-protected industrial action. They also assaulted people indiscriminately, one such victim was Ncobile Simelane whose leg was fractured. That night, the National Police Commissioner issued a statement declaring that the protests were to be discontinued. Union officials were rounded up and detained in Nhlanguano. These included Sikelela Dlamini, Sibonelo Tsabedze, Bawinile Ndlovu and Nhlanhla Tsabedze, all members of the TUCOSWA National Executive Committee. The prohibition of the protests by the Police Commissioner violated Article 3(1) and (2) of the ILO Convention, as well as the 2017 Public Order Act 2017. According to the law, the Police Commissioner is obliged to issue a notice of prohibition accompanied by brief reasons (in writing) for the prohibition, which he failed to do.

Workers' right to choose their own representatives is under attack in eSwatini, a clear violation of the ILO Convention on Freedom of Association and Protection of the Right to Organise which states that "workers' and employers' organisations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes."<sup>30</sup>

Freedom of expression for individuals and unions is threatened in eSwatini. For example, the eSwatini Electricity Company sued the Secretary General of the Swaziland Electricity Supply, Maintenance and Allied Workers Union, after the Secretary General spoke to the media about working conditions at the company. This contravenes section 5 of the Commonwealth Charter, and the ILO provision that "the right to express opinions without previous authorisation through the press is one of the essential elements of the rights of occupational organisations".<sup>31</sup>

Another example of restrictions on free speech came in January 2020 when the National Police Commissioner, William Dlamini, warned that anyone using social media to criticise the King or the authorities would now face the full might of the law. He stated that the police service was tracking down perpetrators of what he calls the 'cybercrime' of 'insulting' the country's authorities.<sup>32</sup>

The country's Sedition and Subversive Activities Act of 1938 also limits freedom of expression in eSwatini. An amendment to the Act in 1983 actually increased (to 20 years) the prison term for activities claimed to be subversive, which included the use of words that "may excite disaffection" against the King.<sup>33</sup> Human rights lawyer Thulani Maseko, President of the Peoples United Democratic Movement (PUDEMO) Mario Masuku, and youth activist Maxwell Dlamini are among those who have been charged with sedition via the Act.

30 ILO, C087 - Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). Available at: [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEX-PUB:12100:0::NO::P12100\\_INSTRUMENT\\_ID:312232](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEX-PUB:12100:0::NO::P12100_INSTRUMENT_ID:312232)

31 ILO, *Freedom of Association*, digest 5th edition, paragraph 156. Available at: [https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---normes/documents/publication/wcms\\_090632.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_090632.pdf)

32 Times of eSwatini (30 January 2020)

33 Freedom House, *Freedom in the World 2020: eSwatini*. Available at: <https://freedomhouse.org/country/eSwatini/freedom-world/2020>

Section 5 of the Commonwealth Charter emphasises the need for a “*free and responsible media*”. However, in eSwatini the media is firmly under state control, effectively operating as a propaganda machine for the King and his government. The Swazi Observer group of newspapers is owned by the King, through the royal fund called Tibiyo Taka Ngwane.<sup>34</sup> The other allegedly independent newspaper group contains the Times of eSwatini and the Times Sunday. However, the Managing Editor of the Times group, Martin Dlamini, also works as a speech writer for the King, a clear conflict of interest and breach of the principle of impartiality.<sup>35</sup>

## **Bheki Mamba – President, Swaziland Democratic Nurses Union**

I have been with the union for 20 years, serving as President for the last ten years. My experience is that this country works from a position of anti-union and anti-politics in general.

One example is the case of our Secretary General, Sibusiso Lushaba, who resigned as a government employee in September 2017 to join a private organisation. Lushaba continued to lead the union. However, when it was time for Lushaba to sit on the wage negotiating forum, the government denied his participation. We asked what law or policy he was violating, but we received no answer. We took the matter to court and lost, even though the court agreed that Lushaba was violating no law or policy by representing his union.

Our constitution spells out clearly that we are for all nurses, not just those who are employed with the government. We start from the position that workers’ rights are also human rights. In our case as nurses we can say that the country has a long way to go before it respects human rights and commitments made to the Commonwealth or other international organisations.

<sup>34</sup> Mail and Guardian (29 July 2011), “Calls to open Mswati’s ‘feedlot’”. Available at: <https://mg.co.za/article/2011-07-29-calls-to-open-mswatis-feedlot/>

<sup>35</sup> Zweli Dlamini (3 May 2020), Swaziland News, “Press Freedom Day: How royalty captured eSwatini media”. Available at: <http://www.swazilandnews.co.za/fundza.php?nguyiphi=373>

# Separation of powers, and rule of law (sections 6 and 7 of the Commonwealth Charter)

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*We recognise the importance of maintaining the integrity of the roles of the Legislature, Executive and Judiciary. These are the guarantors in their respective spheres of the rule of law, the promotion and protection of fundamental human rights and adherence to good governance.*<sup>36</sup>

*We believe in the rule of law as an essential protection for the people of the Commonwealth and as an assurance of limited and accountable government. In particular we support an independent, impartial, honest and competent judiciary and recognise that an independent, effective and competent legal system is integral to upholding the rule of law, engendering public confidence and dispensing justice.*<sup>37</sup>

Although the 1973 King's Proclamation retained eSwatini's judiciary, there are concerns that subsequent legislation has blurred the lines between an independent judiciary, the rule of law and the ambitions of the King. For example, when Judge Thomas Masuku penned a judgement that was deemed too critical of the monarch, 12 charges were brought against him and he was subsequently dismissed from the bench. In his offending judgement Masuku had rebuked police officers who wrongfully seized cattle in the King's name. The country's authorities were particularly angered by the part of the judgement which said: "*It would be hard to imagine that his majesty could conceivably speak with a forked tongue, saying one thing and authorising his officers to do the opposite*".<sup>38</sup>

With seemingly deliberate disregard for the law, King Mswati III in 2013 illegally appointed Sibusiso Barnabas Dlamini as Prime Minister. The constitution clearly states that the Prime Minister must be a member of the House of Assembly before being made the head of government, but Dlamini was not a member when he was appointed.<sup>39</sup>

Meanwhile, the Industrial Court is battling with a backlog of cases, which hampers the ability of workers to enforce their rights in a timely and financially-viable manner. Employers take advantage of the potential for cases to stall by offering low settlements. Workers faced with mounting bills and uncertain job prospects are vulnerable to settling for less than appropriate sums, to avoid waiting years for justice and a better deal.<sup>40</sup>

In January 2019 the Chief Justice made three acting appointments to the Industrial Court. These appointments were not transparent and were outside the scope of the Chief Justice's powers. In addition to being unlawful, the appointment of *acting* judges violates 'security of tenure', which is one of the key safeguards of an independent judiciary.<sup>41</sup>

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<sup>36</sup> The Commonwealth Charter, *Separation of Powers*. Available at: <https://thecommonwealth.org/commonwealth-charter-section/separation-powers>

<sup>37</sup> The Commonwealth Charter, *Rule of Law*. Available at: <https://thecommonwealth.org/commonwealth-charter-section/rule-law>

<sup>38</sup> BBC News (30 June 2011), "Swaziland judge suspended for 'insulting king'". Available at: <https://www.bbc.com/news/world-africa-13980535>

<sup>39</sup> Constitution of eSwatini (2005), *Section 67*. Available at: <http://www.gov.sz/images/Media/constitution.pdf>

<sup>40</sup> The Solidarity Centre (2006) *Justice for All – The Struggle for Worker Rights in Swaziland*. Available at: <https://www.solidaritycenter.org/wp-content/uploads/2015/01/Swaziland-JFA.2006.pdf>

<sup>41</sup> Nguboyenja Khumalo (15 October 2019). Available at: <https://lingashoni.com/2019/10/14/the-danger-of-turning-our-courts-into-holly-woods/>

## **Wander Mkhonza – Amalgamated Trade Union of Swaziland (ATUSWA)**

My union organises in the textile sector, representing the group most vulnerable to abuse and exploitation and doing the most precarious jobs.

Our work is made even more difficult by the fact that employers often refuse to recognise our union, even when we have met the required threshold for a collective agreement. If there is a dispute about recognition the matter can then be taken to the arbitration commission. What employers now do is that once the decision from arbitration has come out instead of enforcing it and recognising the union they then go to the high court to contest the decision. Going to the high court brings a lot of new challenges. One of which is that you now need to have money to defend the case, and secondly the case may drag on for so long that by the time we win many of the employees we had organised would have already left the company. In the majority of instances the cases drag on for two years.

As a result of the government's anti-union sentiment most companies are no longer paying a basic minimum wage and are not adhering to occupational health and safety measures at work. For example, the companies New Garment, New Light and Far East set daily targets that workers must meet, meaning sometimes workers are forced to knock-off as late as 10pm. In some cases in the textile sector, especially in Matsapha, companies close the exit/safety door, that is meant to stay unlocked to ensure workers can get out if there is a fire in the workplace. Employers lock the door claiming that workers steal. The result is that a number of ILO Conventions on safety at work are violated and workers' rights in general are undermined.

# Good governance (section 8 of the Commonwealth Charter)

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*We reiterate our commitment to promote good governance through the rule of law, to ensure transparency and accountability and to root out, both at national and international levels, systemic and systematic corruption.*<sup>42</sup>

eSwatini was encouraged by the ILO to improve its governance by establishing a tripartite social dialogue structure – bringing to the table the government, employers and unions to discuss international labour standards and socio-economic issues.<sup>43</sup> Unfortunately these meetings have not become a mainstay in eSwatini, with the ILO noting the infrequency of their meetings and the lack of substance in tripartite conclusions over the years.

eSwatini has two national social dialogue structures, the Labour Advisory Board (LAB)<sup>44</sup> and the National Steering Committee on Social Dialogue (NSCSD).<sup>45</sup> But there appears to be confusion over the role and remit of these two institutions. The government complains that socio-economic issues raised at the NSCSD should be discussed at the LAB. Yet, the government legislated that the LAB, currently chaired by the Minister of Labour, should only deal with day-to-day issues. So the LAB also refuses to tackle the socio-economic issues raised by trade unions.<sup>46</sup>

The Trade Union Congress of Swaziland (TUCOSWA) believes that the current legislative framework, which established both the LAB and the NSCSD, is unable to deal effectively with all the issues that a social dialogue should discuss. The government is now trying to establish a new structure that merges both the NSCSD and LAB, but it is unclear if this will solve the problems. The inability of the government to discuss socio-economic issues makes industrial action more likely, and undermines the country's ability to ensure good governance. The ban on political parties and the fact that the country's executive is appointed by the King makes it difficult for unions and civil society to influence the government agenda in any other meaningful way.<sup>47</sup>

In its 2019 review of human rights in eSwatini, the USA Department of State found that there was a widespread public perception of corruption in the executive and legislative branches of government, and a consensus that the government “*did little to combat it.*”<sup>48</sup> According to Transparency International's corruption perception index, eSwatini ranked 113 out of 180 countries in 2019. This is a worse ranking than in 2018, indicating that the country is going in the wrong direction in the fight against corruption.<sup>49</sup>

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42 The Commonwealth Charter, *Good Governance*. Available at: <https://thecommonwealth.org/commonwealth-charter-section/good-governance>

43 ILO, *Observation (CEACR)* - adopted 2017, published 107th ILC session (2018). Available at: [https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100\\_COMMENT\\_ID,P11110\\_COUNTRY\\_ID,P11110\\_COUNTRY\\_NAME,P11110\\_COMMENT\\_YEAR:3342058,1033336,ESwatini,2017](https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNTRY_NAME,P11110_COMMENT_YEAR:3342058,1033336,ESwatini,2017)

44 Established in terms of Part III of the Industrial Relations Act No. 1 of 2000

45 Established in terms of Legal Notice No.83 of 2010

46 Interview with Mduduzi Gina, Secretary General of TUCOSWA

47 Ibid.

48 United States Department of State, *eSwatini 2019 Human Rights Report*. Available at: <https://www.state.gov/wp-content/uploads/2020/02/ESWATINI-2019-HUMAN-RIGHTS-REPORT.pdf>

49 Transparency International (2019) *Corruption Perception Index*. Available at: <https://www.transparency.org/en/cpi/2019/index/swz>

# Sustainable development (section 9 of the Commonwealth Charter)

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*We recognise that sustainable development can help to eradicate poverty by pursuing inclusive growth whilst preserving and conserving natural ecosystems and promoting social equity.*

*We stress the importance of sustainable economic and social transformation to eliminate poverty and meet the basic needs of the vast majority of the people of the world and reiterate that economic and social progress enhances the sustainability of democracy.*

*We are committed to removing wide disparities and unequal living standards as guided by internationally agreed development goals. We are also committed to building economic resilience and promoting social equity, and we reiterate the value in technical assistance, capacity building and practical cooperation in promoting development.*

*We are committed to an effective, equitable, rules-based multilateral trading system, the freest possible flow of multilateral trade on terms fair and equitable to all, while taking into account the special requirements of small states and developing countries.*

*We also recognise the importance of information and communication technologies as powerful instruments of development; delivering savings, efficiencies and growth in our economies, as well as promoting education, learning and the sharing of culture. We are committed to strengthening its use while enhancing its security, for the purpose of advancing our societies.<sup>50</sup>*

In addition to the Commonwealth Charter's provisions, eSwatini is also committed to meeting the UN Sustainable Development Goals, including goal number 8 which focuses on decent work and economic growth.<sup>51</sup> However, poor working conditions, wealth disparities, and forced evictions from homesteads are just some of the issues that undermine the country's commitment to these goals.<sup>52</sup>

50 The Commonwealth Charter, *Sustainable Development*. Available at: <https://thecommonwealth.org/commonwealth-charter-section/sustainable-development>

51 UN Sustainable Development Goals. Available at: <https://www.un.org/sustainabledevelopment/sustainable-development-goals/>

52 Amnesty International Report 2019 -Eswatini. Available at <https://www.amnesty.org/en/countries/africa/eSwatini/report-eSwatini/>

53 Interview with Bheki Mamba, President of the Swaziland Democratic Nurses Union

54 UNICEF Health Budget Brief 2018/2019 Kingdom of Eswatini. Available at <https://www.unicef.org/esa/media/2481/file/UNICEF-Eswatini-2018-Health-Budget-Brief.pdf>

55 Times of Swaziland (6 January 2021), "Mbabane OPD Closure: Patients Flock to RFM" Available at <http://www.times.co.sz/news/131369-mbabane-opd-closure-patients-flock-to-rfm.html>

56 Pavan Kulkarni (26 June 2019), Peoples Dispatch, "Nurses in Swaziland seek urgent solution to drug and food shortage in hospitals". Available at: <https://peoplesdispatch.org/2019/06/26/nurses-in-swaziland-seek-urgent-solution-to-drug-and-food-shortage-in-hospitals/>

A number of examples from the health sector indicate institutional failure to remove inequality within the country. Insufficient medical supplies have led to protest marches by the Swaziland Democratic Nurses Union. According to the union, there is a lack of plaster for broken bones and a shortfall of blood infusion tubes – leading to patients being unable to get blood transfusions in hospitals. Staff shortages in the country's hospitals often force nurses to monitor more than one ward, while others are made to do unpaid overtime due to the increased workload.<sup>53</sup>

eSwatini continues to lack behind the African Union's Abuja declaration target of allocating 15% of the national budget to health. As of 2018/19, eSwatini's budget for health was at 10.1%.<sup>54</sup> With the advent of COVID-19, the health system was overwhelmed<sup>55</sup> with health workers failing to cope with the workload in addition to lag of decent pay and personal protective equipment. The majority of people felt the brunt of the weak health system while government officials had access to state of the art medical facilities in South Africa.

Further examples of the dire health situation in the country and the government's failure to meet the basic needs of the people include a severe shortage of polio and tuberculosis medication and of anti-retroviral drugs, used to treat HIV positive patients. In mid-2018 there were only 12 ambulances in working condition, to cater for the country's population of 1.4 million. A shortage of medicines used to calm psychotic patients in the National Psychiatric Centre has led to increased violence in the wards, resulting in injuries to patients and nurses. Furthermore, Swazipharm, the largest pharmaceutical distributor in the country, announced that it was cutting the supply of medicines and medical equipment to hospitals due to unpaid bills by the health ministry. The bill of USD 18 million, owed to drug companies in mid-2017, has continued to increase.<sup>56</sup>



Poverty levels have remained high. According to the World Bank, 58.9% of Swazis lived below the national poverty line in 2017. This could be attributed to “slow economic growth, adverse weather patterns, high prevalence of HIV/AIDS, high unemployment, and high inequality.”<sup>57</sup>

Meanwhile, commitment to the Charter’s provision for sustainable development and inclusive growth is further undermined by the government’s treatment of farm dwellers, who have had their property demolished with no compensation. An Amnesty International report catalogued multiple examples of forced evictions, including in Nokwane, where at least 180 residents were forcibly evicted from their homesteads to make way for a Taiwanese-funded project, as part of King Mswati’s economic growth strategy *VISION 2022*. Hundreds more people around the country are facing imminent eviction, from land that they depend on for their livelihoods.<sup>58</sup>

### **Thabo Masuku – Director, Foundation for Socio-Economic Justice (FSEJ)**

We are an organisation formed by various social movements that organise in the informal economy, such as students, workers and rural woman. The organisation deals mainly with socio-economic justice issues, in particular, forced evictions and the right of people to shelter. Through collaborative work with the European Union office in Swaziland we have been trying to expand the rights contained in the constitution, in particular the right to freedom of association and to promote good governance in the country.

In the case of evictions there is no law or guidelines. We have said that evictions should be the last resort, but in many cases evictions happen without proper recourse. In the cases of Nokwane and Malkers, for example, the evictees have not been compensated at all.

After the publication of the Amnesty International report on forced evictions in the country, my organisation met with the Prime Minister’s office to raise objections to the manner in which evictions take place in the country. We are encouraged that the government is open to the idea of stopping these evictions, and to possibly compensating those who have already been evicted.

<sup>57</sup> World Bank in ESwatini 2020, available at <https://www.worldbank.org/en/country/eSwatini/overview>

<sup>58</sup> Amnesty International (2018), “*They don’t see us as people’: Security of Tenure and Forced Evictions in ESwatini*”. Available at: <https://www.amnesty.org/download/Documents/AFR5587852018ENGLISH.PDF>

# Gender equality (section 12 of the Commonwealth Charter)

*We recognise that gender equality and women's empowerment are essential components of human development and basic human rights. The advancement of women's rights and the education of girls are critical preconditions for effective and sustainable development.*<sup>59</sup>

In addition to the Commonwealth Charter, eSwatini is committed to a number of regional and international instruments to promote gender equality, including the UN Convention for the Elimination of All Forms of Discrimination Against Women (CEDAW), and the Southern African Development Community (SADC) Declaration on Gender and Development. eSwatini has also ratified a number of ILO Conventions that form a package of resolutions to further the cause of gender equality. These Conventions include the Workers with Family Responsibilities Convention, 1981 (No. 156), the Maternity Protection Convention, 2000 (No. 183), the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).<sup>60</sup>

Thus far, efforts to achieve gender equality in eSwatini have not met expectations. The 2010 National Gender Policy (NGP) acknowledged that society is characterised by inequality between men and women, and that this was mainly a result of cultural practices. But the NGP fails to address the underlying cultural and socio-economic causes of such inequality and to take concrete action. The lack of progress has led the ILO to call on eSwatini to take proactive measures *“to improve equality of opportunity and treatment between men and women in employment and occupation.”*<sup>61</sup>

The country's Employment Act stipulates that no employer may discriminate on the basis of sex, and that employers must ensure equal pay for equal work. However, despite the law, average work rates for men by skill category usually exceed those of women.

Also, the Employment Act includes some provisions that could be seen as actively discriminatory against women. For example, it stipulates that women cannot work between 10pm and 6am without permission of the Labour Commissioner.<sup>62</sup>

Gender inequality is still prevalent in the country. According to the UN Human Development report of 2020, “31.3% of adult women have reached at least a secondary level of education compared to 33.9% of their male counterparts. For every 100,000 live births, 437 women die from pregnancy related causes; and the adolescent birth rate is 76.7 births per 1,000 women of ages 15-19. Female participation in the labour market is 48.5% compared to 56.8% for men.”<sup>63</sup>

The 2020 World Report by Human Rights Watch highlighted a number of concerns regarding women's and girls' rights in eSwatini. Since 2005, women are unable to confer citizenship on their children, as this right can only be acquired through the father. There is a continued under-representation of women in leadership and decision-making positions. Furthermore, conflict between common law and customary law is still resulting in violations of women's rights in the country.<sup>64</sup>

One example of customary law curtailing women's rights are the restriction on widows in mourning. In 2018, Senate President Gelane Zwane was banned from attending parliament for up to two years because she was a widow in mourning. The Minister of Labour and Social Security was also stopped from attending the 2018 opening of parliament because her husband (from whom she separated in 1994) had died the previous year.<sup>65</sup>

Sexual and gender-based violence is a substantial problem in eSwatini. A national survey in 2018 found that one in three girls had experienced

59 The Commonwealth Charter, *Gender Equality*. Available at: <https://thecommonwealth.org/commonwealth-charter-section/gender-equality>

60 ILO, *Gender Equality and Decent Work Selected ILO Conventions and Recommendations that promote Gender Equality as of 2012*. Available at: [https://www.ilo.org/wcmsp5/groups/public/--ed\\_norm/--normes/documents/publication/wcms\\_088023.pdf](https://www.ilo.org/wcmsp5/groups/public/--ed_norm/--normes/documents/publication/wcms_088023.pdf)

61 ILO, Direct Request (CEACR) - adopted 2019, published 109th ILC session (2021). Available at: [https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100\\_COMMENT\\_ID,P11110\\_COUNTRY\\_ID,P11110\\_COUNTRY\\_NAME,P11110\\_COMMENT\\_YEAR:4002138,103336,ESwatini,2019](https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNTRY_NAME,P11110_COMMENT_YEAR:4002138,103336,ESwatini,2019)

62 The Solidarity Centre (2006) *Justice for All – The Struggle for Worker Rights in Swaziland*. Available at: <https://www.solidaritycenter.org/wp-content/uploads/2015/01/Swaziland-JFA.2006.pdf>

63 UN Human development Report 2020. Available at [http://hdr.undp.org/sites/all/themes/hdr\\_theme/country-notes/SWZ.pdf](http://hdr.undp.org/sites/all/themes/hdr_theme/country-notes/SWZ.pdf)

64 Human Rights Watch, *World Report 2020: eSwatini*. Available at: <https://www.hrw.org/world-report/2020/country-chapters/eSwatini-formerly-swaziland>

65 Sunday Observer (18 February 2018)

sexual violence by the age of 18.<sup>66</sup> eSwatini has the highest HIV prevalence in the world, and women have been shown to be disproportionately affected by the epidemic. This vulnerability is said to be the direct result of “*gender inequality within eSwatini’s society*”.<sup>67</sup>

The Freedom in the World 2019 report on eSwatini found that women were “*politically marginalised*” and that the authorities had not adhered to the constitutional requirement for women to account for 30% of parliamentary representatives.<sup>68</sup>

Attempts by civil society to compel parliament to follow the constitutional requirement on women’s representation have been unsuccessful – the Swaziland Rural Women’s Assembly was bluntly informed that there were no chairs for extra women in parliament.<sup>69</sup>

The ILO has urged the government of eSwatini to take measures to improve equality of opportunity and treatment between men and women in employment. The organisation has reiterated the need for eSwatini to improve women’s economic empowerment and access to decision-making positions, to encourage women to choose non-traditional fields of study and professions, and to reduce early school dropout by girls.<sup>70</sup>

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66 Centers for Disease Control and Prevention (2018) *Violence Against Children Survey*. Available at: <https://www.cdc.gov/violenceprevention/childabuseandneglect/vacs/in3girls-swaziland.html>

67 Avert (2019) *HIV and Aids in eSwatini*. Available at: <https://www.avert.org/professionals/hiv-around-world/sub-saharan-africa/swaziland>

68 Freedom in the World 2019. Available at: <https://freedomhouse.org/country/eSwatini/freedom-world/2020>

69 Interview with Zakithi Sibandze, Coordinator for Swaziland Rural Women’s Assembly

70 ILO, Direct Request (CEACR) - adopted 2019, published 109th ILC session (2021). Available at: [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEX-PUB:13100:0::NO::P13100\\_COMMENT\\_ID:4002138](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEX-PUB:13100:0::NO::P13100_COMMENT_ID:4002138)

# The role of civil society (section 16 of the Commonwealth Charter)

*We recognise the important role that civil society plays in our communities and countries as partners in promoting and supporting Commonwealth values and principles, including the freedom of association and peaceful assembly, and in achieving development goals.<sup>71</sup>*

Trade unions and civil society are routinely denied the right to recognition and the space to operate in the country. The Swaziland Union of Students (SNUS), established in 2006, remains unrecognised despite repeated attempts by the union to become registered.<sup>72</sup> Meanwhile, the country's biggest labour federation, TUCOSWA, was forced to operate illegally after being deregistered by the government in April 2012.<sup>73</sup>

There are numerous examples of eSwatini violating civil society organisations' right to freedom of association and peaceful assembly, in contravention of the Commonwealth Charter. On 1 May 2013, the government detained a number of trade union leaders who were celebrating Workers' Day at a sports ground in Manzini. Meanwhile, marches by civil society, demanding a cost of living adjustment for workers, were brutally put down by the government in September 2019.<sup>74</sup> A debate on the country's elections organised by the Swazi diaspora in May 2013 was violently stopped by the police at the Tums George Hotel in Manzini. And in 2020, a march organised by the Political Party Assembly in protest at the King's customised Rolls Royce was suppressed by the Manzini Magistrate Court, on the grounds that it would disturb the Incwala ceremony (an event celebrating kingship).<sup>75</sup>

## **Sikelela Dlamini – Secretary General, Swaziland National Association of Teachers (SNAT)**

I have been with the union for over 10 years. We face a continual struggle to organise and work because of the hostility we face from the government. Our President, Mbongwa Dlamini, remains on suspension from work in what we see as a clear case of victimisation, and a violation of the right to freedom of assembly and association, as stated in the Commonwealth Charter.

Mbongwa was suspended for being absenting from work, despite the fact that he was attending a union activity sanctioned by the collective agreement his union has with the government. The case was then made to look like professional misconduct, after charges were revised to include work issues that ordinarily would not have merited a suspension.

What is clear is that the case is meant to instil fear in the rest of the membership. The strategy is to amplify a trivial case so that the general membership can be intimidated. Ordinary members will think 'if the government can do this to the senior leader of our union what would stop them from doing it to the general members?' Mbongwa's case has dragged-on for months without any conclusion. He was also harassed by police while crossing the border to South Africa, they refused to stamp his passport because he wore a cap in front of the picture of the King. The police claimed this was culturally inappropriate.

<sup>71</sup> The Commonwealth Charter, *The Role of Civil Society*, Available at: <https://thecommonwealth.org/commonwealth-charter-section/role-civil-society>

<sup>72</sup> Interview with Mlamuli Dlamini, President of SNUS (January 2020)

<sup>73</sup> Zwelakhe Moahloli (14 April 2012), Times of eSwatini, "TUCOSWA reports government to ILO"

<sup>74</sup> The Citizen (25 September 2019), "Chaos in eSwatini as anti monarchy protest turn violent". Available at: <https://citizen.co.za/news/news-africa/2183523/chaos-in-eSwatini-as-anti-monarchy-protests-turn-violent/>

<sup>75</sup> Interview with Lucky Dlamini, Treasurer of the Swaziland United Democratic Front

# Conclusion

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The voices of eSwatini's workers and civil society members are unequivocal: eSwatini is failing to comply with its Commonwealth Charter commitments. Thus far the Commonwealth has not held eSwatini to account for its violations, and the situation in the country is not improving.

eSwatini's failure to adhere to the basic principle of democracy, by allowing political parties to operate in the country, remains unaddressed. The brutal suppression of the right to association and assembly in eSwatini highlights the lack of tolerance and respect facing individuals, trade unions and civil society within the country.

Trade unions that attempted to exercise their rights to freedom of association and peaceful assembly have had their protests disrupted while other protestors were brutalised by the security forces. Although eSwatini has been improving its legislation in this respect, that is not matched by practice. Workers' fundamental rights should be enjoyed both in law and in practice and in line with the ILO Conventions on Freedom of Association and Protection of the Right to Organise, 1948 (No.87) and the Right to Organise and Collective Bargaining, 1949 (No.98). The failure to respect these rights was observed by the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR), most recently in its 2020 report.<sup>76</sup>

The government's active discrimination against individuals based on their sexual orientation and gender identity is a clear breach of the Charter's human rights principle which decries "*all forms of discrimination*". The rights of women and girls in eSwatini lag far behind their male counterparts, with numerous examples of discrimination and marginalisation.

In eSwatini there is a systematic undermining of the rule of law and judicial independence by the government, and a failure to root out corruption. Freedom of expression is severely curtailed, with the media firmly under the control of the King.

Overall, it is clear that the principles and values laid out in the Commonwealth Charter are not being reflected in the lived experiences of the people of eSwatini.

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<sup>76</sup> ILO- CEACR Report Committee of Experts 2020 report. Available at [https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_771042.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_771042.pdf)

Publisher responsible in law:  
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