

STOP THE
EVICTIONS

“THEY DON'T SEE US AS PEOPLE”
SECURITY OF TENURE AND FORCED EVICTIONS
IN ESWATINI

SNAPSHOTS



AMNESTY
INTERNATIONAL



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Our vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights standards.

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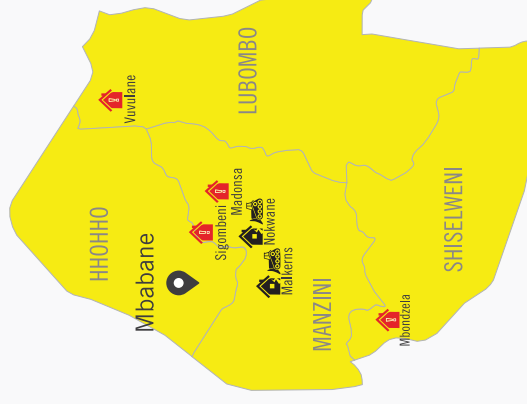
Cover photo:
Abandoned building in Madonsa in Manzini region of Eswatini. Photo taken in April 2018. © Amnesty International



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↑
Late Thoko Goodness Dlamini, forcibly evicted from the
Makerns, October 2016. © Amnesty International



When Amnesty International arrived in the Emphetseni farming area in the Malkerns town in Eswatini (formerly known as Swaziland) one week after the homestead demolitions of 9 April 2018, children's shoes, school books, wires from mattresses, shattered glass and window frames were strewn about. Some of the affected families were still rummaging through the rubble, uncovering the doors to the homes they once knew. At least 61 people, including 30 children, became homeless after these demolitions. Many of them also lost their possessions and access to the land which they cultivated for subsistence.

This document provides a brief overview of Amnesty International's report titled *"They don't see us as people"*; *Security of tenure and forced evictions in Eswatini*, published in August 2018, its main highlights, facts and figures and an update on the situation in the country following the publication. It explains how the human rights violation of forced evictions is rooted in Eswatini's land governance system, leaving hundreds of people without a minimum degree of security of tenure. It also highlights the failure of the Eswatini government to abide by its international, regional and national legal obligations, especially the obligation to guarantee the right to adequate housing. Finally, it provides a list of key recommendations to the Eswatini government.



Gavin Khumalo,
standing in the rubble
remains of his home. ©
Amnesty International

forced eviction

- is the removal of people against their will from the homes or land they occupy without legal protections and other safeguards

March 2017
November 2017
April 2018

Amnesty International's research missions to Eswatini

80

Number of people interviewed by Amnesty that were affected by forced evictions or were living under threat of eviction

20 years

Time the Eswatini government has been working on a National Land Policy. It is yet to be finalised

at least

240

Number of people rendered homeless in Malkerns and Nokwane as a result of forced evictions in 2014 and 2018

kukhonta

- is a traditional process of acquiring land through paying allegiance to a chief

more than

1/2

of those forcibly evicted in the Emphetseni farming area in the Malkerns town on 9 April 2018 were CHILDREN

homestead

- is a house and the surrounding area of land which is lived on and used for farming

*The people came and found us
unprepared [...] They didn't alert us
they were coming*

Sicelo Dlamini, who has since died, told Amnesty International that the demolition came as a shock

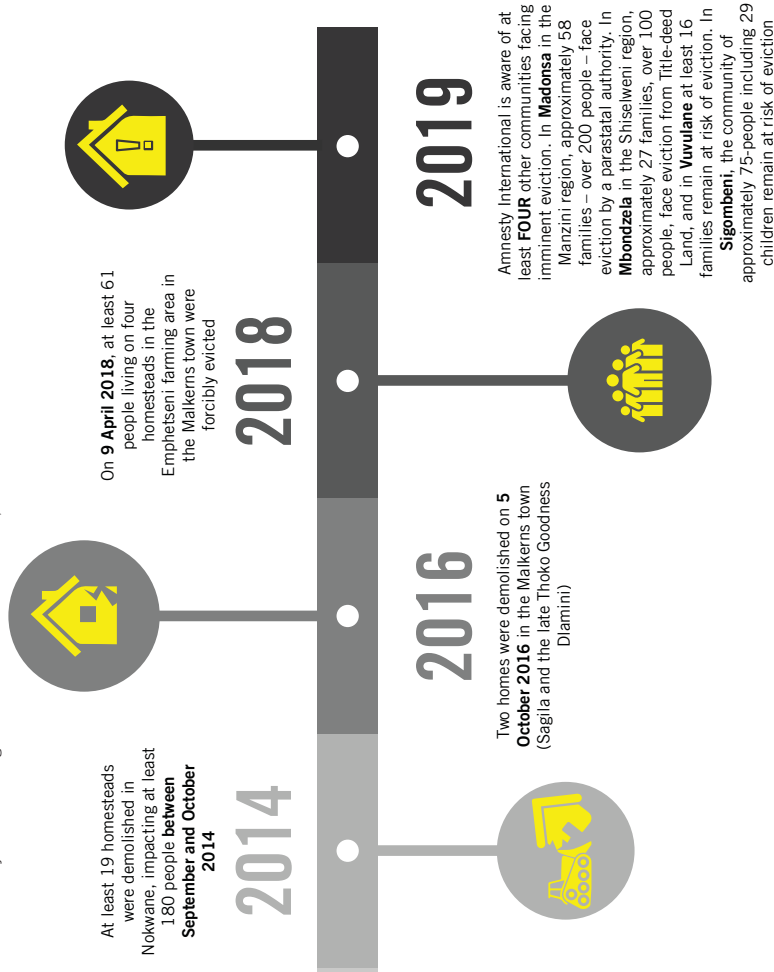
LAND GOVERNANCE

Eswatini has a complex land governance system, tied to the history and political economy of the country. Towards the end of the 19th century, Eswatini's fertile land and mineral wealth made it an attractive and lucrative destination for investors. The high influx of migrants into Eswatini, and the granting of concessions to them, was a source of tension between the migrants and the local population. The legacy of this conflict persists in Eswatini today with protracted disputes over ownership of land throughout the country.

The Constitution of 2006 formally recognizes a dual land tenure system. The King holds more than half of the land,

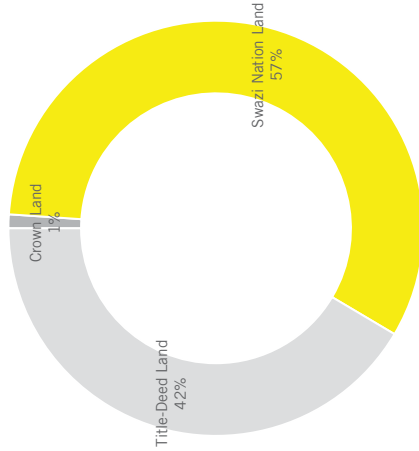
called Swazi Nation Land (SNL), "in trust" for the Swazi people. The remainder is privately owned Title-deed Land (TDL).

Eswatini began developing a National Land Policy in 1999, which has not yet been finalized. The 2006 Constitution stipulates that the state shall "endeavour to settle the land issue and the issue of land concessions expeditiously so as to enhance economic development and the unity of the Swazi people." However, many land policy issues remain unresolved.



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LAND TENURE IN ESWATINI



AREA IN HECTARES:	
CROWN LAND	18656.6473
SWAZI NATION LAND	997348.1496
TITLE-DEED LAND	720230.4332
TOTAL	1736235.2301

Source: Surinjezi General Office, May 2018

Following the adoption of the Constitution, a new draft Land Policy was introduced in 2009. In this document, the Eswatini government acknowledges the insecurity of all tenure types as an issue to be addressed.

In 2013 a Draft Land Bill was introduced which expressly repeals 19 archaic pieces of legislation, the oldest of which dates back to 1904. To date neither the Draft Land Policy and the Draft Land Bill have been passed.

Delays in legal and policy reform has meant that the Eswatini government is yet to take the necessary steps to ensure security of tenure and protection of right to adequate housing, thus leaving hundreds of people vulnerable to forced evictions.

My life is dependent on this land

Sugarcane farmer in Vuvulane facing imminent eviction

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The Royal Science and Technology Park construction site, a government development project in Nkwane, from where families were forcibly evicted. © Amnesty International



Sagila Dlamini in front of her home which was demolished in October 2016. © Amnesty International



Thoko Goodness Dlamini (late) forcibly evicted from her home in the Malkerns in October 2016. © Amnesty International

EVICTIIONS IN THE MALKERNS AND NOKWANE

This report documents two emblematic cases of forced evictions in Eswatini. In both the Malkerns and Nkwane, the affected residents were largely subsistence farmers and casual labourers who claimed to have been living on the land for several years, if not decades. Family members were buried there.

In both cases, some of the families claimed to have been allocated the land by a chief through the process of kukhonta, and others said that they had a verbal agreement with a previous owner of the land to live there. In both cases, the residents went through a protracted court process, which ultimately ended in their evictions and the demolition of their homes as they were unable to provide any formal proof of security of tenure.

At least 60 people in the Malkerns and at least 180 people in Nkwane were rendered homeless as a result.

They came and told me I should take my things out of the house because it was going to be demolished. It happened at 10am. It was done immediately

Thoko Goodness Dlamini (late), forcibly evicted from her home in the Malkerns in October 2016

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THOKO'S FAMILY

In October 2016 the Messenger of Court for the Manzini district, accompanied by members of the Royal Eswatini Police, evicted the family of Sagila Dlamini and his 71-year-old sister, Thoko Goodness Dlamini.

The homes of both Sagila and Thoko were demolished on 5 October 2016 and they spent that night in a makeshift shelter in the open.

Thoko had built her house on the homestead in 2008 while she worked at the fruit cannery in the Malkerns. She was a single mother, her child died and is buried on the land where she lived. Thoko lived on this plot along with her brothers, Sagila and Fanase. When Amnesty International visited the site, the remains of their demolished homes were still visible.

Sagila consulted a lawyer but Thoko said she was not able to: "There was nothing I could try. At the time, I was extremely sick."

She said that she was alone at home when the lawyer and security guards of the private company which claimed to have ownership over the land, accompanied by police officers from the Malkerns police station, arrived and informed her that they had come to demolish the house.

I slept outside in that shack. The rain came and found me

Thoko Goodness Dlamini (late), forcibly evicted from her home in the Malkerns in October 2016

ALICE FIKILE MBUYISA

Amnesty International met Alice, the community leader of approximately 58 families over 200 people – in Madorisa, in the Manzini region, who face imminent eviction by a parasatal authority.

PETROS NDULU

Amnesty International interviewed a community of over 20 families, who face eviction from titled-deed land in Mhondzela near Gqeke in the Shiselweni region. Some of the elderly community members told Amnesty International they sowed the seeds of the tall trees that formed the forest in which we met. Approximately 27 families, over 100 people, face eviction from Title-deed Land.

THOKO GOODNESS DLAMINI

Thoko Goodness Dlamini (late) told Amnesty International that she was born in the Malkerns in 1946. Her parents had seven children and in 1964 they moved to land she said they were given by the previous owner. It was from there that she was forcibly evicted. She died in 2019.

*The right to live.
The right to a
home. If you don't
have the right
to a home, the
right to live is
affected, because
you cannot live
properly if you
don't have a home*

What human rights mean to 18-year-old Abdul Jubilee, who was forcibly evicted from Nokwane



Alice Fikile Mbuyisa,
chair of the Madorisa
Residents Association
© Amnesty
International



Petros Ndulu,
Mhondzela,
Gqeke. © Amnesty
International



Thoko Goodness
Dlamini (late) forcibly
evicted from her home
in the Malkerns in
October 2016

International human rights standards are unequivocal: protection from forced evictions is available to all, even to those without a legally recognized right to the house or land that they occupy. Further, the UN Committee on Economic, Social and Cultural Rights in its General Comment 7 stresses that even when an eviction is considered justified, “it should be carried out in strict compliance with the relevant provisions of international human rights law and in accordance with the general principles of reasonableness and proportionality”.

According to international human rights law as outlined in General Comment 7, the threshold for lawful evictions includes seven elements: genuine consultation; adequate and reasonable notice; information on the proposed eviction; government officials to be present during evictions; evictions not to take place in bad weather or during the night; provision of legal remedies; and provision of legal aid. The Committee also emphasizes in General Comment 7 that no one should be rendered homeless or vulnerable to other human rights violations as a result of an eviction.

The responsibility for ensuring that forced evictions do not take place lies with the state. Where forced evictions are carried out by actors other than the state, for example private individuals or companies, the authorities have a duty to protect the

affected people and intervene to prevent forced evictions.

The duty to engage in genuine consultations, provide adequate notice and ensure that no one is left homeless as a result of an eviction also lies with the Eswatini state.

Based on Amnesty International’s findings, the Eswatini government failed to ensure genuine consultation with affected people on alternatives to eviction and adequate and reasonable notice for affected people prior to the evictions. It also failed to provide alternative accommodation and compensation. The authorities failed to follow due process in carrying out the evictions in both the Malkerns and Nokwane.

The resulting homelessness impacted not only the right to adequate housing, but a wide range of interrelated rights including the right to education, access to livelihoods and food security. The government therefore failed to meet the threshold of lawful evictions.



GENUINE CONSULTATION



ADEQUATE AND REASONABLE NOTICE



INFORMATION ON THE PROPOSED EVICTION



GOVERNMENT OFFICIALS TO BE PRESENT DURING EVICTIONS



EVICTIONS NOT TO TAKE PLACE IN BAD WEATHER OR DURING THE NIGHT



PROVISION OF LEGAL REMEDIES



PROVISION OF LEGAL AID

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Anele and Shile's (not their real names) one-bedroom rented accommodation, where they live after being forcibly evicted from Nokwane in 2014.

© Amnesty International

As a woman, the challenges are so much greater. No one thinks about you but you have to think of others. As a mother you look after the entire family, their plans for the future. But you are unable to save for the children's future because whatever income you have is being used by having to pay rent now

Lungile Khumalo, forcibly evicted from the Malkerns on 9 April 2018

SHILE AND ANELE'S STORY

In October 2014, a 32-year-old woman, Shile, (not her real name) told Amnesty International that she was selling fruit at the Royal Science and Technology Park construction site adjacent to their home in Nokwane when a security guard pointed out to her what was happening at the park's entrance. She saw the uniformed police, armed with guns and batons, not far from her homestead. Shile ran home, but within a few minutes, she said, a bulldozer demolished her house. The family lost most of their belongings during their home's demolition.

The night after they were forcibly evicted, the family – Shile, her mother Anele, Anele's other children and her grandson – slept outside in the cold and rain in a borrowed tent.

The family spent two years in tents at the Lutheran Church before they moved to the rented room where they now live. They found it very difficult to earn a living after their eviction, a similar experience to most of the other families.

Anele and Shile live with Shile's son in rented accommodation now. The rent is \$30 per month, an expense they did not have when living in Nokwane.

“Even if death is to visit us, where will our bodies be laid to rest?” Anele asks.

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THE MALKERNS

On 9 April 2018, at least 61 people in the Emphetseni farming area in the Malkerns town were forcibly evicted by the Deputy Sheriff of the Mbabane High Court along with 20 armed police and bulldozers and in the presence of members of private company Umbane Limited. Those removed from their land included 33 children and comprised three generations living in four homesteads. Their homes were then demolished. Each homestead consisted of a single mother, some of whom had short-term seasonal contract jobs. The families were subsistence farmers. According to the affected families, at least 40 graves of family members are situated on the homesteads.

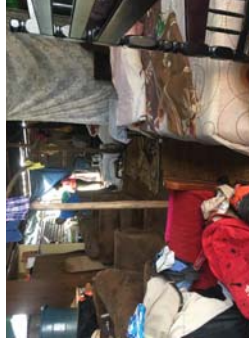
Sicelo Dlamini, who has since died, told Amnesty International that the demolition was a shock. "The people came and found us unprepared," he said, "They didn't alert us they were coming." Without any alternative land or housing, the affected families were left homeless. In the words of Lungile Khumalo who lost her home in the Malkerns: "The problem is we have nowhere to go. We are leaving our grandparents there in the graves. Now we are just scattered. Our children, our brothers. We don't have land now."

If the Swazi King cared, something would have been done by now. Because as our houses have been demolished, it's not like the King doesn't know. My mother did go to the Sibaya [consultation between King and people] when it was called and did state the case of Nokwane. Even at this stage, nothing has been done. Even our court case is not going forward

Shile (not her real name), forcibly evicted with her family from Nokwane in October 2014



↑
The remains of homes demolished in the Malkerns on 9 April 2018. © Amnesty International



NOKWANE



Fikile Jubilee, forcibly evicted from Nokwane with her family. © Amnesty International

When our home was demolished, I didn't feel like I have human rights. They don't see us as people, [they] left us out in the open like we were animals or something to be thrown away

Nomathemba (not her real name), forcibly evicted with her family from Nokwane in September 2014

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Demolitions at Nokwane community, September 2014. © Lomcebo Dlamini

Nokwane is today a 159 hectares construction site of the Royal Science and Technology Park (RSTP), a government-led development initiative, inaugurated in April 2018. The Ministry of Information, Communication and Technology (MICT) secured a court order for eviction, and the area's residents were then forcibly evicted by a delegation including MICT government officials and the police. At least 19 homesteads were demolished, impacting at least 180 people between September and October 2014.

Nomathemba was working as a cleaner when her mother called around 11am telling her to come home. She told Amnesty International that by the time she arrived, the house had been demolished:

"When our home was demolished, I didn't feel like I have human rights. They don't see us as people, [they] left us out in the open like we were animals or something to be thrown away."

The forced evictions in Nokwane had a deep and lasting impact on the residents. A woman who was forcibly evicted

in October 2014 along with her four children and grandson and left to find her own alternative accommodation, told Amnesty International that she has been waiting for a chief to allocate them land for more than three years. After she obtained financial assistance from a local church group in order to offer a cow to the chief, and also after visiting the chief on numerous occasions and cooking for the chief's council, she is still waiting to be allocated land. [This woman is still waiting for land from the chief: update May 2019].

Another woman who was forcibly evicted from Nokwane in October 2014 shared a similar view. She told Amnesty International there were not many alternatives available to the family after their home was demolished:

"It's very difficult as a woman to kukhonta [the traditional process of acquiring land through paying allegiance to a chief]. You need a male. Otherwise you won't be able to get land or be heard."

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Sonto Dlamini (right)
and the late Chrisina
Mabuza, both forcibly
evicted from Nokwane
in 2014. © Amnesty
International

**Life is really difficult here.
Especially food**

Gogo Sonto, forcibly evicted from
Nokwane in September 2014

UPDATES

By failing to put in place adequate safeguards against forced evictions as required by Eswatini's international legal obligations, the government has violated the human rights of all those affected in the Malkerns and Nkwane evictions.

The underlying structural causes which generate insecurity of tenure, including the opaque land governance and tenure systems, and the disconnect between policy and practice, must be addressed to put an end to forced evictions.

Until then, people living in Eswatini continue to live at risk of forced evictions.

ONE YEAR SINCE THE REPORT WAS LAUNCHED

NKWANE

CASE:

On 26 February 2019, the High Court of Swaziland ordered that the Ministry of Information, Communications and Technology to pay compensation for damages that two sisters Thoko and Longchelo Dlamini suffered as a result of their eviction from ancestral homes in Nkwane that were subsequently demolished.

MALKERNS

CASE:

Sagila Dlamini, brother of the late Thoko Goodness Dlamini: On 9 May 2019, the Supreme Court of Appeal upheld a ruling by the High Court of 14 July 2017 that the eviction of Sagila Dlamini's family was unlawful and that he was entitled to compensation from the private company.

LITIGATION

DOMESTIC MOBILISATION

FOLLOW UP AND ADVOCACY INITIATIVES

MAY 2019:

Amnesty International delegation met with and handed over the report to the Prime Minister Ambrose Dlamini, and the Commission on Human Rights.

MARCH 2019:

Amnesty International delegation met with and handed over the report to the Minister of Justice, Minister Pholile Dlamini and the Deputy Prime Minister Themba Masuku.

ON 15 SEPTEMBER 1995
ESWATINI RATIFIED THE
AFRICAN CHARTER
ON HUMAN AND PEOPLES'
RIGHTS

ACHPR:

In October 2018, Amnesty International shared the report titled *'They Don't See Us as People: Security of Tenure and Forced Evictions in Eswatini'* with the African Commission on Human and Peoples' Rights (ACHPR). Following this, Commissioner Jamesina King, Chairperson of the ACHPR Working Group on Economic, Social and Cultural Rights, and Rapporteur of the Kingdom of Eswatini sent communication to the Eswatini authorities, requesting government response on the allegations of forced evictions. The Eswatini Attorney-General relented allegations of forced evictions.

On 28 April 2019, the Times of Swaziland published an article, 'Stop Forced Evictions, AU body asks King' which is a comprehensive overview of the correspondence between the ACHPR and Eswatini. The article also references Amnesty's 2018 report, including our key recommendations.

Eswatini's Prime Minister Ambrose Dlamini invited Amnesty International to a meeting on 16th May 2019. The Prime Minister agreed to one of our key calls. He pledged to put in place a moratorium on all evictions, until adequate legal and procedural safeguards are implemented.

DOMESTIC MOBILISATION:

On Saturday, 18 May, communities facing imminent eviction from around the country converged in the Malkerns where they marched in solidarity with the families who were forcibly evicted from the Malkerns and Nkwane in 2018 and 2014 respectively. This is the first march calling for an end to forced evictions to ever take place in the country. It was a historic event of solidarity which contributed to raising awareness around the right to adequate housing.

ACERWC:

In March 2019, Amnesty International made a submission to the African Committee of Experts on the Rights and Welfare of the Child, focusing on the impact of forced evictions on children in Eswatini.



Sagila and Duduzile Dlamini in front of their demolished home in the Malkerns. On 9 May 2019, the Supreme Court of Appeal upheld a ruling by the High Court of 14 July 2017 that the eviction of Sagila Dlamini's family was unlawful and that he was entitled to compensation from the private company. © Amnesty International



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Communities at risk of imminent eviction march in solidarity with those who were forcibly evicted in Nkwenkweni, 18 May 2019. © Mary de Silva



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KEY RECOMMENDATIONS

- The Prime Minister to declare a nationwide moratorium on all evictions until adequate legal and procedural safeguards are in place to ensure that all evictions comply with international and regional human rights standards. This should include a public announcement and immediate measures that the government should take to ensure that those under threat of eviction are protected.
- The Prime Minister to immediately provide access to effective remedy and reparation for forcibly evicted families in the Malkerns and Nkwenkweni. Such reparation should include adequate alternative housing for those rendered homeless, rehabilitation, compensation for all losses and guarantees of non-repetition.
- The Attorney General to begin the process of drafting legislation which explicitly prohibits forced evictions in all circumstances and sets out safeguards that must be strictly followed before any eviction is carried out. This law should be in strict compliance with Eswatini's Constitution and international and regional human rights law and standards, including in respect of the provision of effective remedies. Linked to this process, the Attorney General should expedite the finalization of the land policy and bill and ensure they are compatible with international human rights obligations arising from the right to adequate housing.

The government should recognize and protect the rights of people. Before evictions take place, the government should speak to the people and consult them and make plans for people who will be affected. The government needs to recognize that evictions kill the spirit of those who are forcibly evicted

Lungile Khumalo, forcibly evicted from the Malkerns on 9 April 2018

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A woman living in fear of imminent eviction in Mondzale, Gage, in the Shiselweni region. She built her stick and mud home with her own hands. © Amnesty International

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FOR HUMAN RIGHTS.
WHEN INJUSTICE HAPPENS
TO ONE PERSON, IT
MATTERS TO US ALL.**

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“THEY DON'T SEE US AS PEOPLE”: SECURITY OF TENURE AND FORCED EVICTIONS IN ESWATINI

In April 2018 at least 60 people, more than half of them children, were forcibly evicted and their homesteads demolished by armed police and bulldozers in a farming area in the Malkerns town. This came after at least 180 people were forcibly evicted from Nokwane in 2014 to make way for a government-led development initiative.

The Eswatini Constitution establishes a dual land tenure system, consisting of Swazi Nation Land, held in trust by the King, and privately-owned Title-Deed Land. The existing legal framework fails to provide at least hundreds of people with a minimum degree of security of tenure. Amnesty International found that the families in the Malkerns and Nokwane were forcibly evicted and made homeless primarily because they lacked security of tenure.

Under international human rights law, evictions may only be carried out as a last resort, once all other feasible alternatives have been explored and appropriate procedural protections are in place. Amnesty International found that even if the evictions had been legally justified, the authorities failed to put in place the safeguards required by international law.

The threat of forced evictions continues today in Eswatini.

Amnesty International is calling for a nationwide moratorium on mass evictions until adequate legal and procedural safeguards are in place to ensure that all evictions comply with international and regional human rights standards, and that reparations are provided to all forcibly evicted families.