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U.S. Department of State

Swaziland Country Report on Human Rights Practices for 1998

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SWAZILAND

Swaziland is governed as a modified traditional monarchy with executive, legislative, and (with limitations) judicial powers ultimately vested in the King (Mswati III). The King rules according to unwritten law and custom, in conjunction with a partially elected parliament and an accompanying structure of published laws and implementing agencies. Parliamentary elections in 1993 and municipal elections in 1995 and 1997 introduced increased representative government. New municipal elections took place in August, and parliamentary elections were held in October. However, political power continues to rest largely with the King and his circle of traditional advisers. The 1968 Constitution was suspended by the present King's father in 1973. Based upon the 1973 decree, the King has the authority to issue decrees that carry the force of law, although he has not exercised this authority in recent years. The 1973 decree also bans political parties, meetings, and processions except in local "Tinkhundla" administrative centers or as authorized by the police. There are public demands that the 1973 decree be lifted. That question is among the issues on which a Constitutional Review Commission (CRC), appointed by the King in 1996, is expected to make recommendations after carrying out a nationwide program of civic education and receiving submissions from individual citizens. The CRC has compiled and disseminated the constitutional framework, but civic education has been slow to get underway. Four progressive CRC members who resigned in 1997 to protest the Commission's terms of reference and slow progress have not rejoined the CRC, although their seats have been held open for them. The judiciary is independent.

Both the Umbutfo Swaziland Defense Force and the Royal Swaziland Police operate under civilian control and are responsible for external and internal security. Some communities, questioning the ability

of National Police to deal with enforcement at the community level, formed community police. There were reports of conflicts between national and community police. Members of both the National Police and the community police committed some human rights abuses.

Swaziland has a free market economy, with relatively little government intervention. The majority of citizens are engaged in subsistence agriculture, although a relatively diversified industrial sector now accounts for the largest component of the formal economy. The economy relies heavily on the export sector, especially on the soft drink concentrate, wood pulp, and sugar industries, which are composed primarily of large firms with mostly foreign ownership. A quasi-parastatal organization established by royal charter maintains large investments in major sectors of the economy, including industry, agriculture, and services, normally in partnership with other investors and international development agencies.

There continued to be serious human rights problems, although there was some marginal improvement in a few areas. Citizens still are not able to change their government. Police continued to torture and beat some suspects. Police forcibly dispersed demonstrators who sought to disrupt voting activity, and the authorities searched homes of trade union leaders and opposition political figures during security crackdowns associated with the election process and a subsequent bombing attack on the Deputy Prime Minister's office. Although there were allegations of political harassment, police exercised restraint in the conduct of these searches, which did not involve the arrest of any labor or political leaders. The Government generally failed to prosecute or otherwise discipline officers who committed abuses. Prison conditions improved with the opening of new facilities, but the Government continued to use a nonbailable offense provision. The Government infringed on citizen's privacy rights. The Government continued to limit freedom of speech and of the press, restraints continued on news coverage by government-owned broadcast houses, and all media practiced some self-censorship, although journalists spoke out on key issues. Parliament deferred a measure that would have further limited freedom of the press by establishing a government media council, in response to media and public criticism. The Government restricted freedom of assembly and association and retained prohibitions on political activity, although numerous political groupings operated openly and voiced opinions critical of the Government, which received prominent press coverage. However, the police on occasion harassed political activists. There are some limits on freedom of movement. Legal and cultural discrimination and violence against women, as well as abuse of children, remained problems. Some societal discrimination against mixed race and white citizens persists. The Government restricts worker rights. Although final parliamentary enactment was delayed, in July the Cabinet approved the draft of a comprehensive new industrial relations act designed to bring the labor law into full conformity with international labor conventions.

RESPECT FOR HUMAN RIGHTS

Section 1 Respect for the Integrity of the Person, Including Freedom From:

a. Political and Other Extrajudicial Killing

There were no reports of political or other extrajudicial killings by government agents.

Three bombings took place between August and November, apparently timed to coincide with major state events. Targets included the base of a Swaziland Electricity Board (SEB) power line, an abandoned bridge over the Lusushwana river, and at the offices of the Deputy Prime Minister. The final bombing killed one person. Although a previously unknown group claimed responsibility for the bombings, the existence of the group was unconfirmed and the perpetrators remained unidentified and their motives

unknown.

b. Disappearance

There were no reports of politically motivated disappearances.

c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

There were credible reports by criminal defendants of the use of torture during interrogation. Police sometimes beat criminal suspects and occasionally used the "tube" style of interrogation, in which police suffocate suspects through the use of a rubber tube around the face and mouth. The Government generally failed to prosecute or otherwise discipline police officers for such abuses. An internal complaints and discipline unit investigates reports of human rights abuses by the police, but no independent body has the authority to investigate police abuses. However, courts have invalidated confessions induced through physical abuse. In September the High Court awarded a former prisoner approximately \$7,000 (42,000 emalangeni) in damages for cruel and unusual punishment suffered while incarcerated in 1992-94.

Police forcibly dispersed demonstrators who sought to disrupt voting activity, and the authorities searched homes of trade union leaders and opposition political figures during security crackdowns associated with the election process and a subsequent bombing attack on the Deputy Prime Minister's office (see

Section 3).

Overcrowding and generally poor prison conditions were alleviated markedly through the opening of new institutions including a modern correctional facility for women. Foreign diplomats and representatives of international agencies toured the prisons, including maximum-security institutions, and reported favorably on improved medical care, nutrition, sanitation, and vocational training. While these facilities meet minimum international standards, the use of nonbailable provisions led to less favorable conditions, including continued overcrowding in government remand centers, where suspects are held during pretrial detention (see Section 1.d.). Women and juveniles are held in separate prison facilities.

The Government has routinely permitted prison visits by diplomats, journalists, human rights monitors, and representatives of international organizations.

d. Arbitrary Arrest, Detention, or Exile

The law requires warrants for arrests in most circumstances, except when police observe a crime being committed or have reason to believe that a suspect may flee. Detainees may consult with a lawyer of their choice and must be charged with violation of a statute within a reasonable time, usually 48 hours, or, in remote areas, as soon as the judicial officer appears. The authorities generally respect these rights in practice.

The Government continued to limit provisions for bail for crimes appearing in the Nonbailable Offenses Order, which became effective in 1993 and was strengthened by Parliament in 1994. The Order currently lists 11 offenses. The mere charge of the underlying offense, without any evidentiary showing that the suspect is involved, is sufficient to employ the nonbailable provision. The Minister of Justice may amend the list by his own executive act.

In November, following the bombing of a Lusushwana bridge, the police detained the president of the People's United Democratic Movement (PUDEMO), Mario Masuku, and the Secretary General of the Swaziland Federation of Trade Unions (SFTU), Jan Sithole, for a full day of questioning. Neither was charged with a crime or arrested.

The Government does not use forced exile. There are no barriers to prevent the return of dissidents.

e. Denial of Fair Public Trial

The judiciary is independent; however, the King has certain judicial powers.

Judicial powers are vested in a dual system, one independent and based on Western law, the other based on a system of national courts that follows unwritten traditional law and custom. In treason and sedition cases, the King can circumvent the regular judiciary by appointing a special tribunal, which may adopt rules, and procedures different from those applied in the High Court. However, this power was used last in 1987.

The Western judiciary consists of the Court of Appeals (composed entirely of expatriate, usually South African, judges), the High Court, and magistrate courts, all of which are independent of executive and military control and free from intimidation from outside forces. The expatriate judges, often distinguished members of their respective bars, serve on the basis of 2-year, renewable contracts. Local judges serve indefinitely on good behavior. In magistrate courts, the defendant is entitled to counsel at his or her own expense. Court-appointed counsel is provided in capital cases or when difficult points of law are at issue. There are well-defined appeal procedures up to the Court of Appeals, the highest judicial body.

Most citizens who encounter the legal system do so through the traditional courts. The authorities may bring ethnic Swazis to these courts for relatively minor offenses and violations of traditional law and custom. In traditional courts, defendants are not permitted formal legal counsel but may speak on their own behalf and be assisted by informal advisers. Sentences are subject to review by traditional authorities and to appeal to the High Court and the Court of Appeals. Legally, the public prosecutor has the authority to determine which court should hear a case, but in practice the police usually make the determination. Accused persons have the right to transfer their cases from the traditional courts. Delays in trials are common.

In November, the King issued an administrative order that strengthened the judicial powers of traditional chiefs appointed by the King. The order provides for chiefs' courts with limited civil and criminal jurisdiction and authorizes the imposition of fines up to approximately \$50 (300 emalangeni), and prison sentences of up to 3 months. Accused persons are required to appear in person without representation by a legal practitioner or advocate. However, chiefs' courts only are empowered to administer customary law "insofar as it is not repugnant to natural justice or morality," or is inconsistent with the provisions of any law in force. The order provides that defendants' may appeals decisions of the chief's court to regional appeal courts, and to the higher courts of appeal. Appeals in criminal matters can be taken up to the Judicial Commissioner as a last resort, and the High Court is the court of last resort for civil matters. Human rights organizations and the press expressed serious concern over issuance of the order.

The charges against three labor leaders arrested in 1996 for violating the Industrial Relations Act and 49 political activists arrested in 1994 are no longer pending.

There were no reports of political prisoners.

f. Arbitrary Interference with Privacy, Family, Home, or Correspondence

The law requires a warrant from a magistrate before police may search homes or other premises, and police generally respect this requirement in practice. However, police officers with the rank of subinspector or higher have the right to conduct a search without a warrant if they believe that evidence might be lost through the delay in obtaining a warrant. Searches without warrants occur occasionally.

Police searched dozens of homes, including those of trade union leaders and opposition political figures during security crackdowns associated with the October election process and a subsequent bombing attack on the Deputy Prime Minister's office (see Sections 1.a. and 3).

Section 2 Respect for Civil Liberties, Including:

a. Freedom of Speech and Press

The Government limits freedom of speech and of the press through a continuing formal ban on political parties and occasional harassment of journalists. The Government also has discouraged critical news coverage of the royal family, and journalists practice self-censorship in regard to the immediate royal family and national security policy.

Both government-owned and independent newspapers covered a wide variety of sensitive topics and criticized government corruption, inefficiency, and waste, frequently using harsh invectives. With some exceptions, the Government continued to withhold its advertising from the country's only independently-owned daily newspaper. However, the King granted an extensive exclusive interview to the same independent newspaper. A new provincial community newsletter was launched, and the Prime Minister's office distributes a free weekly circular reporting on government policy and activities. The government-owned television and radio stations--the most influential media in reaching the public--generally followed official policy positions. Government broadcast facilities retransmit Voice of America and British Broadcasting Corporation news programs in their entirety.

The Parliament in May deferred a government proposal to establish a media council with powers to punish journalists and publishers who did not comply with strict licensing requirements, thereby limiting press freedom, and recommended instead joint government-media discussions to review media policy. However, the new Minister of Public Service indicated publicly that the Government intends to reintroduce a media council bill in the new Parliament, but that journalists would be consulted beforehand.

Private companies and church groups own several newsletters, magazines, and one radio station that broadcasts throughout the region, but these generally avoid political controversy.

The practice of self-censorship and the prohibition of political gatherings limit academic freedom.

b. Freedom of Peaceful Assembly and Association

The Government restricts freedom of assembly. King Sobhuza's 1973 decree prohibits meetings of a political nature, processions, or demonstrations in any public place without the consent of the Commissioner of Police. The authorities did not routinely grant permission to hold such meetings but did not rigidly enforce the 1973 decree. Political organizations, including PUDEMO and the Swaziland Youth Congress (SWAYOCO), often met without the required permission and without repercussions. However, the threat of police intervention pursuant to terms of the 1973 decree remains. Police forcibly

dispersed demonstrators who allegedly were disrupting voting activities on election day in October (see Section 3).

Several traditional forums exist for the expression of opinion, including community meetings, national councils, and direct dialog with village chiefs, but they often depend on the whims of leaders and are not consistently effective channels for expressing political dissent.

The Government restricts freedom of association. King Sobhuza's 1973 decree prohibits political parties. The 1996 Industrial Relations Act (IRA) restricts the ability of trade union organizations to participate in the social and political affairs of the nation (see section 6.a.).

c. Freedom of Religion

Followers of all religious faiths are free to worship without government interference or restriction.

d. Freedom of Movement Within the Country, Foreign Travel, Emigration, and Repatriation

Citizens may travel and work freely within the country. However, under traditional law a married woman requires her husband's permission to apply for a passport, and unmarried women require the permission of a close male relative. A citizenship law passed in 1992 removed several ambiguities relating to citizenship and nominally enabled nonethnic Swazis to obtain passports and citizenship documents. However, individuals seeking these documents sometimes experience lengthy processing delays, in part due to occasional prejudice that mixed race and white Swazis are not real Swazis.

The Government treats several thousand ethnic Swazis living across the border with South Africa as virtually indistinguishable from local Swazis and routinely grants them travel and citizenship documents.

The law include provisions for the granting of refugee or asylee status in accordance with the 1951 U.N. Convention Relating to the Status of Refugees and its 1967 Protocol. The Government cooperates fully with the United Nations High Commissioner for Refugees (UNHCR), as well as the various nongovernmental organizations (NGO's) involved in the care of refugees. The UNHCR officially recognizes several hundred refugees in the country, the majority coming from east and central Africa. The issue of provision of first asylum has not arisen in recent years.

There were no reports of the forced return of persons to a country where they feared persecution.

Section 3 Respect for Political Rights: The Right of Citizens to Change Their Government

Citizens are not able to exercise this right. The King retains ultimate executive and legislative authority, and political parties are prohibited. Passage of legislation by Parliament requires the King's assent to become law, which he is not obliged to give. When Parliament is not in session, the King may legislate by decree under his residual emergency powers. The King chooses the Prime Minister and, in consultation with the Prime Minister, also chooses the Cabinet, many senior civil servants, and the heads of government offices.

Citizens elect most members of the lower house of parliament. Parliamentary elections were held by secret ballot in October for 53 of the 55 elected seats in the 65-seat Lower House (the King appoints the remaining 10 members), and a by-election was held in December for one of the two remaining constituencies. The final remaining constituency had not yet scheduled a by-election at year's end. The

continuing ban on political parties and restrictions on political activity prompted some political groupings and trade unions to call for a boycott of the elections by their members. Swaziland Federation of Trade Union members participating in the electoral process were threatened with disciplinary measures by the labor federation. Election officials reported that approximately 200,000 of the 400,000 eligible citizens registered for the parliamentary elections, and that approximately 120,000 citizens voted, although critics questioned that figure.

There was no formal international observer presence, but there was intensive coverage by local and foreign media, and resident diplomats were granted accreditation to observe the proceedings freely. Candidates or their representatives also were allowed to monitor the elections. Election procedures generally were carried out in an orderly fashion. However, the decision to open polling stations for further voting a week after the election because of torrential rains led to irregularities, including persons being found with multiple copies of registration certificates. Alleged irregularities led to legal challenges in four constituencies, and the High Court overturned the result in one constituency as a result. Opposition political groupings remained highly critical of the entire electoral process, due to the continuing formal ban on organized political party activity.

In the days leading up to the elections, the police searched dozens of homes, including those of trade union leaders and opposition political figures ostensibly in response to some of the bombing incidents that occurred between August and November (see Section 1.a.). No one was arrested or detained. On election day, the police forcibly dispersed nine political activists who were demonstrating against the elections outside of a polling place.

In August two members of SWAYOCO were charged with violating the Electoral Order Act, after they allegedly were observed destroying materials related to the general elections, assaulting citizens, and disrupting the electoral registration process. They were tried and in October were convicted and sentenced to either 1 year in jail or a fine of approximately \$167 (1000 emalangi). After paying the fine, both were released from custody.

As provided under law, the newly formed House of Assembly nominated 10 members from the public at large to serve in the upper house or Senate. The King appoints the additional 20 Senate members. The new Cabinet of Ministers, sworn in on November 20, included only three elected Members of Parliament, with the balance drawn from appointed members of the House or Senate.

Elections were held by secret ballot without major difficulties in August to select new municipal councils in nine cities and towns across the country. Approximately 70 percent of all eligible voters registered to vote, but only 22 percent of registered voters actually cast ballots. Citizens voted largely without interference or intimidation, except for scattered incidents in Mbabane where representatives of PUDEMO opposed to participation in the election attempted to deter voting activities.

Pressure has been building for several years to modernize the political system, and both the King and the Government recognize that there is a need for political reform, including the drafting of a new constitution and, specifically, a bill of rights. In 1996 the King appointed a 30-member, Constitutional Review Commission (CRC), with the stated purpose of examining the suspended 1968 Constitution, carrying out civic education, determining the citizen's wishes regarding a future system of government, and making appropriate recommendations on a new constitution. The CRC compiled a constitutional framework, including portions of the 1968 Constitution still in force, the 1973 decree as currently amended, and the 1992 Establishment of Parliament Order. The CRC distributed this framework nationwide as a starting point for discussion. However, only limited progress was made during the year on civic education, in part due to a slowdown in CRC activity to avoid confusion with the simultaneous civic education campaign carried out by the Electoral Commission prior to parliamentary elections, and

to relieve the burden on local chiefs charged with supporting both activities. Four progressive CRC members, who resigned in 1997 to protest the Commission's terms of reference and slow rate of progress, remained outside the CRC during the year, although their seats were held open for their possible return at a later date. The CRC sustained a further setback when a dispute between its chairman and deputy chairman resulted in the latter's removal from office and the elimination of his position.

Human rights organizations, church groups, labor unions, and other NGO's conducted their own active programs of constitutional and human rights civic education.

Women generally have full legal rights to participate in the political process, but they are underrepresented in the Government and politics. There are only 4 women in the

65-member House of Assembly formed after the October elections, 4 women in the 30-seat Senate, and 2 women among the 16 ministers in the Cabinet. A woman serves as Secretary to the Cabinet and the head of the civil service. Four women serve as principal secretaries, the most senior civil service rank in the ministries. There are 3 women on the 30-person Constitutional Review Commission. However, in accordance with societal practice, widows in mourning (for periods that can vary from 6 months to 3 years) are prevented from appearing in certain public places and from being near the King and, as a result, can be excluded from voting or running for office.

Section 4 Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Violations of Human Rights

The Government permits domestic human rights groups to operate. During the year a local human rights group spoke out on a number of occasions, criticizing the lack of accountability and transparency in government circles. There were no visits by international human rights organizations, although foreign diplomats and local representatives of international agencies were invited to tour correctional facilities (see Section 1.c.). The Government solicited and obtained expert assistance from ILO in 1997 to form a tripartite committee charged with redrafting national industrial relations legislation.

Section 5 Discrimination Based on Race, Sex, Religion, Disability, Language, or Social Status

The Employment Act of 1980 forbids employers to discriminate on the basis of race, religion, sex, or political affiliation. Under the act employees may bring suit against employers for discrimination, and there are also provisions for criminal prosecutions. However, there is no record of any suits or prosecutions. Reportedly, the act has been used on occasion to bring moral suasion to bear against employers. Legal and cultural discrimination against women remains a problem. Mixed race citizens sometimes experience societal discrimination, although they serve in high positions throughout the government.

Women

Violence against women, particularly wife beating, is frequent, despite traditional strictures against this practice. Women have the right to charge their husbands with assault under both the Western and the traditional legal systems and urban women frequently do so, usually in extreme cases when intervention by extended family members fails to end such violence. Rural women often have no alternative but to suffer in silence if family intervention does not succeed, because the traditional courts can be unsympathetic to "unruly" or "disobedient" women and are less likely than the modern courts to convict men for wife beating. Rape is also common and is regarded by many men as a minor offense, while women are inhibited from reporting such crimes by a sense of shame and helplessness, especially where

incest is involved. Even in the modern courts, sentences frequently amount to no more than several months in jail, a fine, or both. The Legal Code provides some legal protection from sexual harassment but its provisions are vague and largely ineffective. Several NGO's provide support for victims of abuse or discrimination.

Women occupy a subordinate role in society. In both civil and traditional marriages, wives are treated as minors legally, although those who marry under civil law may be accorded the legal status of adults, if stipulated in a signed prenuptial agreement. A woman generally requires her husband's permission to borrow money, open a bank account, obtain a passport, leave the country, gain access to land, and, in some cases, take a job. Unmarried women require a male relative's permission to obtain a passport (see Section 2.d). Despite the 1980 Employment Act that required equal pay for equal work, men's average wage rates by skill category usually exceed those of women.

The dualistic nature of the legal system complicates the issue of women's rights. Since traditional marriage is governed by uncodified law and custom, women's rights are often unclear and change according to where and by whom they are interpreted. Couples often marry in both civil and traditional ceremonies, creating problems in determining which set of rules applies to the marriage and to subsequent questions of child custody and inheritance in the event of divorce or death. In traditional marriages, a man may take more than one wife. A man who marries a woman under civil law legally may not have more than one wife, although in practice this restriction sometimes is ignored. Traditional marriages consider children to belong to the father and to his family if the couple divorces. Children born out of wedlock are viewed as belonging to the mother. Under the 1992 Citizenship Act, a woman does not pass citizenship automatically to her children. Inheritances are passed through male children only.

Changing socioeconomic conditions, urbanization, and the increasing prominence of female leaders in government and civic organizations are breaking down barriers to equality. Women routinely execute contracts and enter into a variety of transactions in their own names. The Government has committed itself to various women's initiatives, and the Ministry of Home Affairs coordinates women's issues. For example, the Government established a task force to address domestic gender issues, and held workshops during the year for journalists on gender sensitivity, while the Ministry of Education launched an initiative to promote gender sensitization of school curriculums.

Children

The Government is concerned with the rights and welfare of children, and a number of laws directly address children's issues. The Government does not provide free, compulsory education for children. The Government pays teachers' salaries while student fees pay for books and the buildings' fund. Supplemental money must sometimes be raised for building upkeep, including teachers' housing. However, the country has a 99 percent primary school enrollment rate. A government task force educates the public on children's issues.

Child abuse is a problem. Children convicted of crimes sometimes are caned as punishment. Female children sometimes suffer sexual abuse, including by family members. There is a growing number of street children in