



I G L H R C

INTERNATIONAL GAY AND LESBIAN HUMAN RIGHTS COMMISSION

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• CURRENT UPDATE PACKET •

SUPPORTING DOCUMENTATION FOR ASYLUM CLAIMS

SWAZILAND

STATUS OF SEXUAL MINORITIES

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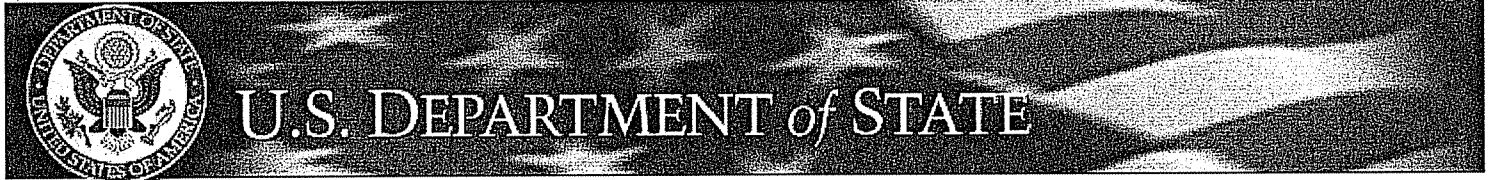
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Double sided pages:

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Swaziland

Country Reports on Human Rights Practices - 2004 Released by the Bureau of Democracy, Human Rights, and Labor February 28, 2005

Swaziland is a modified traditional monarchy with executive, legislative, and limited judicial powers ultimately vested in the King (Mswati III). The King ruled according to unwritten law and custom, in conjunction with a partially elected parliament and an accompanying structure of published laws and implementing agencies. Municipal elections during the year and 2003 parliamentary elections increased representative government; however, political power continued to rest largely with the King and his circle of traditional advisors, including the Queen Mother. The judiciary was generally independent; however, the King and other government officials infringed on the judiciary's independence by attempting to influence or reverse court decisions.

Both the Umbutfo Swaziland Defense Force and the Royal Swaziland Police are responsible for external and internal security. The police are under the authority of the Prime Minister, while the Defense Force reports to the Ministry of Foreign Affairs. Some communities questioned the ability of the police to operate effectively at the community level and have formed community police. Civilian authorities maintained effective control of the security forces. Some members of the security forces and the community police committed numerous human rights abuses.

The country had a free market economy, with relatively little government intervention; its population was approximately 1.1 million. The majority of citizens were engaged in subsistence agriculture and the informal marketing of agricultural goods, although a relatively diversified industrial sector accounted for the largest component of the formal economy. Unemployment continued to grow and over 40 percent of the working age population was unemployed or underemployed. The 2003 gross domestic product growth rate was 2.2 percent. A 3-year drought and HIV/AIDS rate of approximately 40 percent had a severe negative impact on economic conditions.

The Government's human rights record was poor, and the Government continued to commit serious abuses. Citizens were not able to change their government peacefully. There were a few instances of arbitrary killings by security forces. Police used excessive force on some occasions, and police tortured and beat some suspects. Lengthy pretrial detention and police impunity were problems. The Government infringed on citizen's privacy rights. The Government continued to limit freedom of speech and of the press. The Government restricted freedom of assembly and association and prohibited political activity. The police on several occasions harassed political activists. There were some limits on freedom of movement. Legal and cultural discrimination, violence against women, and abuse of children remained problems. Trafficking in persons occurred. Some societal discrimination against mixed race and white citizens persisted. Worker rights remained limited.

RESPECT FOR HUMAN RIGHTS

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

a. Arbitrary or Unlawful Deprivation of Life

There were no politically motivated killings by the Government or its agents; however, there were a few reports of arbitrary killings by security forces.

For example, on May 21, Mandla Mathousand Ngubeni, who was in police custody in Matsapha on suspicion of stealing money from his workplace, died after police allegedly tortured and suffocated him. Following complaints from Ngubeni's family, the Prime Minister appointed a senior magistrate to conduct an inquest into the death. The Magistrate passed her findings to the Prime Minister's Office, but they had not been made public by year's end.

sexual abuse. There is no government agency specifically responsible for combating trafficking.

Persons with Disabilities

There was no discrimination against persons with disabilities in employment, education, access to health care, or in the provision of other state services. There are no laws that mandate accessibility for persons with disabilities to buildings, transportation, or government services; however, government buildings under construction included improvements for those with disabilities, including accessibility ramps.

National/Racial/Ethnic Minorities

Governmental and societal discrimination was practiced widely against nonethnic Swazis, namely white persons and persons of mixed race. Although there were no official statistics, an estimated 2 percent of the population were nonethnic Swazis. Nonethnic Swazis have experienced difficulty in obtaining official documents, including passports (see Section 2.d.). Nonethnic Swazis also suffered from other forms of governmental and societal discrimination such as needing special permits or stamps to buy a car or house, delays in receiving building permits for houses, and difficulties in applying for a bank loan.

Other Societal Abuses and Discrimination

Societal discrimination against homosexuals was strong, and homosexuals often concealed their sexual preferences.

The Government prohibits persons who are HIV positive from joining the military. There is a social stigma associated with being HIV positive, and this discouraged persons from being tested; however, education was slowly eroding the cultural prejudice.

Section 6 Worker Rights

a. The Right of Association

The law provides for the right to form associations, including trade unions, and workers exercised this right in practice; however, the Government continued to harass labor unions. Workers in "essential services" such as the police, may not form unions. Approximately 80 percent of the formal private sector was unionized.

In May, an International Confederation of Federal Trade Unions delegation visited the country to investigate reports that the police and the military could not form an association, violating the ILO convention; however, it had not reported any finding by year's end.

On May 1, at the Labor Day celebration, police and military used video cameras to record meetings of union members.

The law prohibits anti-union discrimination; however, anti-union discrimination continued to be prevalent, and manufacturers continued to refuse to recognize duly elected unions. In the case of unfair dismissal, the court can order reinstatement and compensation for the employee, as well as fine the employer. Union leaders made credible charges that management in various industries dismissed workers for union activity. The allegations of union discrimination were most common in the garment sector.

b. The Right to Organize and Bargain Collectively

The law provides for the right to organize and bargain collectively, and the Government generally respected this right in practice. Collective bargaining was widespread, and several collective bargaining agreements were reached during the year. There are no export processing zones.

The Industrial Relations Act (IRA) does not permit "strikes"; however, it provides that employees who are not engaged in "essential services" have the right to participate in peaceful protest action to promote their socioeconomic interests. The law details the steps to be followed when disputes arise and provides penalties for employers who conduct unauthorized lockouts; however, penalties were not imposed for the lockouts that occurred during the year. The IRA empowers the Government to mediate employment disputes and grievances through the Labor Advisory Board. When disputes arose, the Government often intervened to reduce the chances of a protest action, which may not be called legally until all avenues of negotiation have been exhausted, and a secret ballot of union members has been conducted. The IRA prohibits protest actions in "essential services," which included police and security forces, correctional services, fire fighting, health, and many civil service positions.

BEHIND THE MASK a website on gay and lesbian affairs in Africa

swaziland

swazi queen visits gay centre

June 5, 2001: Her Royal Highness Queen LaMagwaza of Swaziland and the nation's health minister visited the Los Angeles Gay and Lesbian Centre recently, Reuters press agency wrote.

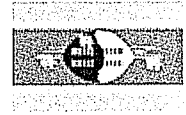
The visit was accredited to learning about the agency's extensive HIV prevention, testing and treatment programmes. As a result of the visit, the centre hopes to facilitate training of Swazi doctors at the University of Southern California's AIDS Treatment Centre.

'Working together here, we are already making a bridge from America to Africa', Queen LaMagwaza told the Los Angeles Times.

'It' gives us strength to know there are people interested in helping us'.

One third of Swaziland's population is believed to be HIV-positive and average life expectancy is expected to drop to age 30 by the year 2010. The nation has a particularly grave problem in the area of mother-to-child transmission, officials say.

Swaziland's first Gay and Lesbian organisation, Galeswa, was strongly condemned by swazi authorities and King Mswati after it's launch in 1998. After initial problems the organisation operates from Swaziland capital Mbabane.



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**THE INTERNATIONAL
LESBIAN AND GAY ASSOCIATION**

WORLD LEGAL SURVEY

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Country: Swaziland

Region: Africa

Background	Sexual Behaviour	Association/Expression	Anti-Discrimination
Employment	Partnership/Marriage	Parenting	Asylum
Transgender	Street Violence and Police Harassment		HIV/AIDS

Source/Verification:

***Background information, government attitudes, country situation**

7/93: At UN ECOSOC meeting in Geneva, voted against ILGA's application for consultative status (ILGA press release 30.7.93)

"Gays and lesbians in Swaziland have formed an association, GALESWA, defying abuse from traditionalists who say that homosexuality is " ungodly, unSwazi and unacceptable". The association has been formed by 21 year-old Mangosutho Dlamini, who recently went public on national television about his homosexuality. Apart from inciting the wrath of the majority of the nation, the announcement also cost him his job with an Mbabane security firm. At a press conference the Prime Minister, Dr Sibusiso Dlamini, called homosexuality an "abnormality and sickness". Former Prime Minister Prince Bhekimpi, who is also a chief, has threatened to the gays and lesbians from his area. "Homosexuality is regarded as Satanic in Swaziland. Therefore, I am forced to evict all gays and lesbians in my area". But he showed some tolerance by saying that if the practice is accepted and allowed by the constitution he would have no objections to his subjects joining GALESWA."(Africa Information Afrique - IB 2/97)

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***Laws covering sexual activity**

Same-sex male	Illegal	Same-sex female	Illegal
Description of discriminatory sexual offence laws and their application			
"The common law criminal offence of sodomy applies to both males and females and prohibits persons of the same sex engaging in a sexual relationship. The possible penalty is imprisonment or a fine. The last offence was tried in 1983". (IOC/1995)			
Age of consent			
Same-sex male		Same-sex female	
Heterosexual			
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*Denial of Freedom of Association and Expression			
Freedom of Association:			
Freedom of Expression/Censorship:			
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*Anti-Discrimination and Anti-Vilification Legislation			
Anti-discrimination laws and cases:			
Anti-vilification laws and cases:			
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*Employment			

Employment protection law and cases:**Access to military:**

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***Partnership Recognition** (other than parenting)**Is comprehensive legal recognition of partnerships available?**

A judge in the state of Swaziland has ruled that a marriage between two lesbians is valid there. According to Swazi tradition, two women can lawfully contract a marriage, and the woman who pays the "bride price" (lobola) can delegate a man to father children on her behalf. The judgement confirming the legality of this ancient practice was issued following a trial in which Thalita Mngomezulu had accused a man of defrauding her of four cows. Ms Mngomezulu gave evidence before the President of the Lubuli National Tribunal, Mbalekelwa Mngomezulu (no relation), that the cattle had been given as lobola for a woman she wished to marry. Her brother was to have the task of fathering children for the woman, whose name was not revealed during the hearing. Judge Mngomezulu, ruling in favour of the plaintiff, stated that such an arrangement was not new according to Swazi law and custom, and was valid so long as the parents of both women gave their consent. (IB 3/92)

Immigration rights:**Inheritance laws:****Domestic partnership employment benefits:****Social welfare:****Succession rights in housing:****Other areas of the law in which Domestic Partnerships recognised:**

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Custody of own children:
Adoption and fostering:
Parenting rights for non-biological partner
Access to reproductive technologies:
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*Asylum
Are LGBT refugees granted asylum by this country?
Are this country's LGBT citizens accepted for asylum by other countries?
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*Transgender Rights
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*Street Violence, "Social Cleansing", Police Harassment, etc

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*HIV/AIDS Human Rights Issues

05-Aug-95: The Swaziland Royal Insurance Corporation has begun mandatory HIV testing of applicants for life-insurance policies valued at more than \$6,868, reported the Reuter news service. "This is done to curb the high number of claims made to the corporation in which the cause of death is AIDS-related," a spokesman said. Ten percent of Swaziland's 900,000 citizens are thought to be HIV-positive (RW/1380)

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