

**Freedom of expression under siege: An investigation
into the state of freedom of expression in Swaziland**

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Contents

Introduction	3
Background	Error! Bookmark not defined.
Field trip objectives	4
Methodology.....	4
Limitations.....	5
Research Findings	5
Significance of the study	5
Research Interviews	6
Harassment, fear, intimidation and censorship: The state of freedom of expression in Swaziland .	6
Safeguarding constitutional provisions: Effectiveness of judicial and non-judicial institutions in protecting freedom of expression	9
Swaziland National Union of Journalists.....	10
Key research findings	11
Conclusion and Recommendations	11
Bibliography.....	13
Schedule of Interviews.....	Error! Bookmark not defined.

Introduction

Freedom of expression has suffered yet another severe blow in Swaziland after the arrest of The Nation magazine editor, Bekithemba Makhubu and Thulani Maseko, a human rights lawyer and the magazine's columnist on contempt of court charges. The two were arrested after publishing articles questioning the detention without trial of a government vehicle inspector. They labelled this as abuse of power and authority.¹ The situation has been exacerbated by the continuing incarceration of the two, as their trial has been dragging on for more than two months.

The arrest of the two is not an isolated incident but rather a highlight of the repressive regime's concerted efforts to suppress freedom of expression. To understand Swaziland's yawning freedom of expression it is important to look into the country's media landscape. The government has maintained a tight grip on the media so as to control the information being disseminated while the few 'independent' media outlets has been constantly attacked leading to unprecedented levels of self-censorship. The country has two television stations, Swazi TV and Channel Swazi, which are both owned by the government. The government also controls the sole radio broadcaster- the Swaziland Broadcasting and Information Services. There are two newspapers, the Times of Swaziland (Swazi News on Saturday and Times Sunday) which is privately owned and the Swazi Observer- owned by the royal family. Additionally, there is the Nation magazine which continues to publish despite a mounting resistance from the government.²

The suppression of freedom of expression has not only been limited to the state's control of the media but has also included intimidation, arrest and harassment of journalists and those who often criticise the government and/or the monarchy. The Nation magazine has been

¹ 'Judge orders re-arrest of Swaziland editor, lawyer' *Mail & Guardian* 10 April 2014.

² R Rooney 'The existence of censorship newsrooms in Swaziland: A report for the Media Institute of Southern Africa – Swaziland chapter' 2007.

the most affected as it continuously questions government policies and decisions. The magazine has been dragged to court on numerous occasions on libel charges by government officials.

Reporting about the monarchy is also highly censored. In some instances stories have to be approved by the King before being published. The King has personally warned media houses such as the Nation magazine about their coverage of the monarchy.³

Field trip objectives

1. To assess the state of freedom of expression in Swaziland.
2. To investigate factors that hinder freedom of expression.
3. To understand the relationship between the government, the monarchy and the media and how it impacts on freedom of expression
4. To find out mechanisms which are in place to protect the freedom of expression

Methodology

The research approach was entirely qualitative based on face-to-face interviews that were conducted during the field trip visit to Africa's last absolute monarchy, Swaziland. All the interviews were unstructured and informal as a way of enabling respondents to freely express their views. This approach was also very imperative because it gave the researcher the opportunity to further interrogate the interviewees when the need arose. The researcher managed to meet with journalists, the founder of the Nation magazine, trade unionists, politicians, lawyers and ordinary citizens so as to get various perspectives on the state of freedom of expression in the country. Face to face interviews were also necessitated by the fact that the subject is politically sensitive in Swaziland hence these gave the respondents the assurance that their views and identity will not be concealed to any member of the monarchy or government.

More information was also collected through observation. The reporter had the privilege of attending a court trial of Makhubu and Maseko in Mbabane. This was very insightful and enhanced the researcher's understanding of the role of courts in defending constitutional provisions.

³ n 1 above.

All this was complimented by the desktop research which was conducted prior to embarking on the field trip. This was very important because it helped the researcher understand the operational environment and it was also useful in the process of identifying respondents.

Limitations

Notwithstanding the fifteen interviews that were conducted, it is important to note that the one week period within which the research was conducted was limited the number of respondents who were accessed. Due to time constraints some interviews were arranged on short notice hence some respondents were not available within that week.

The political sensitiveness of the subject made it difficult for many respondents to divulge more information especially on issues concerning the government and the monarchy. This also made it difficult to get responses from government officials. Notably, the Director in the Ministry of Information promised the researcher that he will set up a date for an interview but this never happened despite numerous efforts to get hold of him. However, this limitation was mitigated by interviewing respondents from diverse fields.

During face-to-face interviews respondents tend to be more subjective than objective when responding to questions especially when they have been victims like in the case of Swaziland. To deal with this challenge, the researcher attempted to ask more follow-up questions.

Research Findings

Significance of the study

The findings of this research highlight the importance the state of freedom of expression in Swaziland in particular and its significance as a hallmark of democracy. In a democratic society freedom of expression goes beyond being a fundamental right. The sphere of freedom of expression goes beyond the realms of individuals' right to have a say as it is also an important tool for citizens and other institutions like the media to keep the government in check and hold it accountable for its actions and omissions. In a country where political parties are banned and dissenting voices are closely controlled by the state, freedom of expression offers the citizenry the opportunity to act as the watchdog over the government and hold it accountable.

Research Interviews

Harassment, fear, intimidation and censorship: The state of freedom of expression in Swaziland

Swaziland's Constitution of 2005 clearly provides for freedom of expression in section 24.⁴ However, the Constitution has been rendered useless by the machinations of the monarchy; its provisions are used when it suits the monarchy.⁵ The country seems to be slowly descending into anarchy because of the failure by those in power to uphold and defend the Constitution. Any attempt to exploit the constitutional provisions like freedom of expression often comes with a heavy price.⁶

Intimidation and harassment of journalists dates back to the turn of the millennium, when many in Swaziland became dissatisfied with the system of governance leading to the establishment of Swazi Independent Publishers in 1997, which owns the Nation magazine.⁷ With the motto- *Speaking truth to power*- the magazine became increasingly critically of the government and the monarchy. In 2001 the government responded by dragging it to court on libel charges with the aim of shutting it down but the decision went in favour of the magazine, much to the dismay of the government. This resulted in the targeting of journalists and commentators who publish who criticise the monarchy and/or the government.⁸

One of the draconian laws that have been passed by the government known as the Sedition and Subversive Act provides for the imprisonment of anyone found guilty without the option of a fine. The act has been used by the state to curtail freedom of expression by targeting all those who criticise the government. It also provides for searching of suspects' homes and offices without a search warrant.⁹

The absence of political parties, which were banned under the 1973 decree, has meant that the media and trade unions are perceived as the opposition to the monarchy. The state

⁴ Sec 24(1) reads: 'A person has a right of freedom of expression and opinion'.

⁵ Interview with the Swaziland Lawyers for Human Rights Secretary Advocate Siphon Gumede, Manzini Swaziland, 9 April 2014.

⁶ Interview with the Nation magazine co-founder Vuyisile Hlatshwayo, Mababane, Swaziland, 10 April 2014.

⁷ Hlatshwayo (n 6 above).

⁸ Hlatshwayo (n 6 above).

⁹ Human Rights Watch Report 2012 <http://www.hrw.org/world-report-2012/world-report-2012-swaziland> (Accessed 23 May 2014).

views the media, especially the Nation magazine, as being part of banned political parties like People's United Democratic Movement (PUDEMO).¹⁰ This has been used to justify the crackdown on journalists that criticise the monarchy or any organ of the government like Makhubu and Maseko.

Journalists associated with or who write about banned political parties risking being arrested under the Suppression of Terrorism Act of 2008. The act defines terrorism in broad manner that makes nonsense of any organisation that challenges the status quo. The Sedition Act of 1936- inherited from the colonial regime- continues to be used against media organisations and journalists that are critical of the King.¹¹ These laws are a clear violation of Swazis' constitutional right to freedom of expression. Their continued use serves to shield the government and the monarchy from scrutiny and criticism. Aligning journalists to 'terrorist' groups makes them enemies of the state and hinders them from carrying out their duties as the all-important fourth estate in any democratic system.

The crackdown on journalists has led to alarming levels of self-censorship. Journalists in Swaziland, especially the young ones, have accepted that they operate in a repressive environment, which does not allow them to freely express themselves. Issues concerning the monarchy cannot be reported on unless prior permission was granted by the King.¹² Stories about political groups criticising the government cannot be published and if they are editors have to filter a lot of information so as to please the authorities. The fear of detention has also contributed to self-censorship. Some journalists escape to the neighbouring South Africa, where they are able to freely express themselves.¹³

Media censorship and lack of critical stories in the media has led to many readers snubbing mainstream newspapers for social media and other online news sources.¹⁴ It has also affected the credibility of the media organisations. Some feel that the papers are owned by rich people who are connected to the government hence they tend to be less critical of the

¹⁰ Hlatshwayo (n 6 above).

¹¹ Interview with MISA Swaziland Researcher Bill Snaddon, Mbabane, Swaziland, 10 April 2014.

¹² Interview with the Nation magazine Reporter Nkosingiphile Myeni, Mbabane, Swaziland, 10 April 2014.

¹³ Interview with Times of Swaziland Manzini Bureau Chief Linda Jele, Manzini, Swaziland, 9 April 2014.

¹⁴ Jele (n 12 above).

government.¹⁵ This is further worsened by the fact that ordinary citizens feel powerless and afraid to challenge the monarchy. The fear is so entrenched that they prefer to die in silence than challenge the powers that be.¹⁶

Suppression of freedom of expression exists even in parliament. Members of Parliament are not allowed to talk to the media on what happens during their sessions. In most instances, debates about controversial issues that affect ordinary people never find their way to the media. Some parliamentarians have been threatened for commenting on issues relating to the monarchy.¹⁷ As representatives of the people, parliamentarians should be allowed to freely express their constituencies' grievances and to give feed using all available channels, including the media. Denying MPs access to the media does not only infringe on their right to free expression but also on the rights of those they represent.

Trade unions and civil society organisations (CSOs) also operate under a difficult environment in which they cannot criticise the government and the monarchy. The Trade Union Congress of Swaziland (TUCOSWA) was banned in 2012 for criticising government policies. The ban was lifted this year. Demonstrations organised by TUCOSWA are often blocked by the police and at times disrupted under the guise of maintaining public order.¹⁸ The hostile relationship that exists between the government and labour movements makes it impossible for unions to express workers' interests. Trade unionists have not been spared from intimidation and arrest.¹⁹

Organisations campaigning for women's rights have also found it difficult to carry out their duties and to engage the government because Swaziland remains a conservative society. CSOs cannot speak openly about the challenges they face or those faced by the communities they represent. They have to package their messages in such a way that they do not offend the government. Their closed door meetings are usually attended by members of the police

¹⁵ Interview with airtime vendor Ayanda Dlamini, Manzini, Swaziland, 8 April 2014.

¹⁶ Dlamini (n 14 above).

¹⁷ Interview with former Member of Parliament Nonhlanhla Dlamini, Manzini, Swaziland, 9 April 2014.

¹⁸ Interview with TUCOSWA Secretary General Vincent Ncongwane, Manzini, Mbabane, 9 April 2014.

¹⁹ On 11 April 2014, the day the researcher left Swaziland, Ncongwane and his deputy Mduduzi Gima were picked up by police officers at their offices in morning on suspicion that they were organizing an illegal gathering. They were briefly detained at a police station in Manzini and released later in the day.

force and as result controversial issues such as women rights are not adequately discussed.²⁰ The presence of police officers in CSOs' meeting is a means of intimidating them and restricting their deliberations so that they do not discuss political issues that may affect the government and the monarchy.

The government's malevolent desire to maintain a tight grip on the media and silence those who criticise the government has limited the citizenry's participation in government activities. Lack of media diversity combined with self-censorship practiced in all the newsrooms has resulted in systematic disinformation of citizens rendering them incapable of holding the government accountable.²¹

Freedom of expression in Swaziland has been undermined by factors such as harassment, torture and intimidation of journalists and many others who criticise the government. This culture of instilling fear has also been channelled down to ordinary citizens who cannot challenge the government or the monarchy; or simply express their views on government activities and policies. Arrest and detention of journalists has resulted in self-censorship and has increasingly led the dearth of critical journalism.

Safeguarding constitutional provisions: Effectiveness of judicial and non-judicial institutions in protecting freedom of expression

The judiciary

The continuing suppression of freedom of expression in Swaziland has been aided by lack of independent institutions that protect rights guaranteed by the Constitution. A country can have good constitutional provisions but this is not a guarantee that the constitution will be respected. There is need for political will which will enable independent institutions tasked with protecting the Constitution to function without any interference.²²

In a functional democracy, courts are supposed to ensure the protection of human rights. Swaziland's judicial system has been highly compromised as it often defends the interests of those in power instead of operating independently. The close ties that exist between the

²⁰ Interview with Swaziland Action Group Against Abuse (SWAGA) Executive Director Cebile Henwood, Manzini, Swaziland, 9 April 2014.

²¹ Interview with Human rights activist Doo Aphani, Mbabane, Swaziland, 7 April 2014.

²² Gumede (n 5 above).

King and the Chief Justice have severely affected the independence of the judiciary.²³ Just like the monarchy, the judiciary has started to clampdown on those who criticise the conduct of judges. It is impossible for victims of serious human rights violations perpetrated by the state to seek recourse from the courts. Victims of human rights abuses and those seeking to advance the protection of human rights through the courts have little or no access to effective legal remedies. The on-going trial of Makhubu and Maseko- who are both facing contempt of court charges- indicate the judiciary's intolerance to criticism.

Commission on Human Rights and Public Administration

Swaziland has a Commission on Human Rights and Public Administration (CHRPC) established in accordance with section 163 of the Constitution. The mandate of the CHRPC includes investigating complaints on alleged human rights violations. Since its establishment in 2009, the Commission has received more than fifty complaints but no action has been taken. It has been dogged by logistical and financial problems which have resulted in its failure to carry out its mandate.²⁴ The CHRPC operates without a budget.

It is also important to note that the CHRPC does not have offices. Currently it is located within the royal enclosure, which has made it inaccessible to many ordinary citizens. The situation has been further exacerbated by the fact that there are certain rules and guidelines that one has to follow when entering the royal enclosure. For instance, women are not allowed to enter wearing pants or jeans. This has limited a number of women who can access the Commission to submit their complaints.²⁵

Apart from the financial, structural and logistical problem bedeviling the Commission, its independence and ability to deal with sensitive political complaints remains questionable. Commissioners are appointed directly by the King hence judging from the conduct of judges it is highly unlikely that they will go against his will in any of their investigations.

Swaziland National Union of Journalists

The escalating intimidation and harassment of journalists has been aided by the chronic failures of the Swaziland National Union of Journalists (SNUJ). SNUJ is meant to

²³ Gumede (n 5 above).

²⁴ M Langwenya 'Swaziland: Justice Sector and the rule of law' 2013.

²⁵ Gumede (n 5 above).

champion the interests of journalists and protect them against any forms of harassment but it has failed to fulfil this role. The Union rarely meets and its membership is dwindling leading to some arguing that it is non-existent. Without a vibrant representative body it is difficult for journalists to speak against harassment and intimidation with one voice.²⁶

Key research findings

- 1) Freedom of expression is under attack in Swaziland. Journalists and others who express their views about the monarchy and government are often harassed, intimidated and incarcerated.
- 2) Draconian laws such as the Suppression of Terrorism Act and Sedition and Subversive Act have been used to curtail freedom of expression.
- 3) The judiciary and the CHRPA lack independence and they cannot be trusted to remedy complaints on human rights violations by the state.
- 4) There is no vibrant union to represent and protect the interests of journalists. SNUJ has failed to fulfil this role hence journalists lack the much needed common voice.

Conclusion and Recommendations

Although King Mswati III declared Swaziland as a ‘monarchical democracy’ in 2013,²⁷ the state of freedom of expression remains a major concern. Citizens cannot freely express themselves on issues involving the government and the monarchy because of fear of being harassed by the authorities. The situation has been worsened by the intimidation, arrest and detention of journalists and trade unionists who express their dissatisfaction with the status quo. The clampdown on the media is a clear indication authorities are unwilling to tolerate dissent. The crackdown on journalists has led to alarming levels of self-censorship in newsrooms and some journalists have even fled the country. Institutions such as courts and CHRPA, which are supposed to ensure protection of human rights are severely compromised because of their relationship with the monarchy and they lack independence.

²⁶ Snaddon (n 11 above)

²⁷ ‘Mswati declares Swaziland a monarchical democracy’ *Mail & Guardian* 03 September 2013.

Noting the above findings, the researcher recommends the following:

To the Government of Swaziland

- a) Amendment of all repressive legislations which curtail freedom of expression so as to allow citizens to exercise their constitutional right.
- b) Immediate end to the harassment, intimidation and incarceration of journalists and many others who express their views about government activities.
- c) Uphold the principle of separation of powers so as to allow the judiciary and the CHRPA to operate independently.

To journalists:

- a) Come together and establish a strong and vibrant representative body that will be responsible for lobby the government to halt the harassment and intimidation of journalists.

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