

# Criminalisation of Homosexuality

Updated 25 October 2015

Swaziland	
	
<p><b>National Law:</b></p> <p><i>Common law offence of:</i></p> <ul style="list-style-type: none"> <li>- Sodomy<sup>1</sup></li> </ul>	<p><b>Maximum Penalties:</b></p> <ul style="list-style-type: none"> <li>- Imprisonment or a fine</li> </ul>
<p style="text-align: center;"><u>Treaty Ratification</u></p> <p style="text-align: center;">AFRICAN CHARTER</p> <p style="text-align: center;">CAT</p> <p style="text-align: center;">CEDAW</p> <p style="text-align: center;">CRC</p> <p style="text-align: center;">ICCPR</p> <p style="text-align: center;">ICESCR</p>	
<p>The Law is applicable to men. The status of the law in relation to women is uncertain.</p>	
<p>Enforcement</p>	<ul style="list-style-type: none"> <li>- <b>2014:</b> The 2014 US Human Rights Report suggests that the law has not been used to prosecute individuals.<sup>2</sup></li> <li>- <b>18 August 2013:</b> Two men aged 18 and 21 were banished from their community after their aunt reported them to the police. Speaking on the incident the Aunt told news reporters: <i>"I was afraid of being labelled all sorts of names in the area and be accused of harbouring gay people in my house. My other problem was that local men would have ended up quarrelling with their wives and resorted to being gay because of the boys living under my roof."</i><sup>3</sup></li> </ul>
<p>Statements by Public Figures</p>	<ul style="list-style-type: none"> <li>- <b>July 2015:</b> The United States and EU Ambassadors to Swaziland both made public comments calling for recognition of LGBT rights.<sup>4</sup></li> <li>- <b>July 2015:</b> Asked to comment on whether female same-sex relationships are legal in Swaziland, Principal Secretary in the Ministry of Home Affairs Anthony Masilela said <i>"this is the first I hear of such; we probably need to investigate this matter further."</i><sup>5</sup></li> <li>- <b>2 March 2014:</b> The prime minister of Swaziland shared his views on a number of issues pertaining to homosexuality. Speaking on the question of gay relationships, the Prime Minister was quoted as saying: <i>'Church clergy say this is not biblically acceptable. It is just now that some countries and communities allow it. It is still scary here in Swaziland when we see it happen. The country's laws do not allow this.'</i> According to the Prime Minister (on the question of gay marriage): <i>'People of the same sex cannot even go to regional offices to get married. It will take time before we allow this to happen and include it in the country's laws. We are not even</i></li> </ul>

	<p><i>ready to consider it.</i><sup>6</sup> He has also been recorded describing homosexuality as <i>'an abnormality and a sickness'</i>. <b>(27 November 2013)</b><sup>7</sup></p> <ul style="list-style-type: none"> <li>- <b>11 December 2013:</b> The Swaziland Ministry of Education and Training called for teachers and administrators to be more understanding and supportive of LGBTI people in schools and the community: <i>'Teachers and school administrators must be supportive to gays and lesbians because some of them also belong to the category but they are afraid to declare their status because they fear that their colleagues or headmasters were lacking confidentiality.'</i><sup>8</sup></li> <li>- <b>2012:</b> At an editors' breakfast meeting, Prime Minister Sibusiso Dlamini reportedly said both gay and lesbian relationships were not allowed in Swaziland.<sup>9</sup></li> <li>- <b>14 February 2012:</b> Simon Zwane, Deputy Director of Health, encouraged HIV couples to get tested and <i>'trust promises of confidentiality'</i>: <i>'Couples need to be consistently aware of their HIV status. This will result in them making joint decisions on risk reduction in their relationships.'</i><sup>10</sup></li> </ul>
<p>Persecution and Discrimination</p>	<ul style="list-style-type: none"> <li>- Many reports suggest high levels of discrimination in Swaziland against LGBTI people; however, statistics are difficult to come by. The US Country report on Human Rights Practices in Swaziland suggests that this is a consequence of social attitudes, and the risks presented in coming out which include eviction and exclusion from one's home and community.<sup>11</sup></li> <li>- <b>15 March 2015:</b> A woman was reportedly murdered by a man in a bar in the southern town of Nhlngano after being identified as a lesbian.<sup>12</sup></li> <li>- <b>27 November 2013:</b> One report claimed that less than 10% of the LGBTI community who responded to a survey, had talked about their sexual orientation with a person from outside of their immediate family.<sup>13</sup></li> <li>- <b>9 September 2013:</b> A gay man was attacked after being discovered having sex in a toilet. The man was 'inspected' to determine his gender, while the other man managed to flee. Speaking on the inspection, one witness commented: <i>'We discovered that he is a man and nothing strange from him.'</i><sup>14</sup></li> <li>- <b>August 2013:</b> Two young men, aged 18 and 21, were forced to leave a community in Swaziland after a relative reported them to the police for being gay.<sup>15</sup></li> </ul>
<p>Legislative News</p>	<ul style="list-style-type: none"> <li>- <b>2012:</b> (UPR) Swaziland rejected recommendations to decriminalise consensual same-sex sexual relations, actively prevent discrimination against such couples and to prevent discrimination based on marital status.<sup>16</sup> In response to calls to decriminalise in its Universal Period Review, Minister of Justice and Constitutional Affairs, Magwagwa Gamedze said: <i>'It was difficult for government to formulate a</i></li> </ul>

	<i>policy on homosexuals or enact a law to recognise them...Their numbers do not permit us to start processing a policy.’<sup>17</sup></i>
--	--

<sup>1</sup> See: UN Human Rights Council, *Summary prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15 (c) of the annex to Human Rights Council resolution 5/1* (22 July 2011), UN Doc A/HRC/WG.6/12/SWZ/3, para 42.

<sup>2</sup> Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices for 2014: Swaziland* (US Department of State 2014)

<<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dliid=236412>> accessed on 5 August 2015

<sup>3</sup> All Africa, *Swaziland: Community Police Banish Gay Men* (All Africa 18 August 2013)

<<http://allafrica.com/stories/201308190439.html>> accessed on 19 July 2014

<sup>4</sup> Teetee Zwane, *No legislation against lesbianism* (Swazi Observer 12 July 2015)

<<http://www.observer.org.sz/news/74449-%E2%80%98no-legislation-against-lesbianism%E2%80%99.html>> accessed on 24 September 2015

<sup>5</sup> Ibid

<sup>6</sup> Welcome Dlamini, *Govt to decide on gay relationships* (Swazi Observer 2 March 2014)

<<http://www.observer.org.sz/news/59355-govt-to-decide-on-gay-relationships.html>> accessed on 19 July 2014

<sup>7</sup> Peter Kenworthy, *We are not victims, says Swaziland's gay movement*, (Pambazuka 27 November 2013)

<<http://pambazuka.org/en/category/comment/89759>> accessed on 19 July 2014

<sup>8</sup> Sibusiso Zwane, *Teachers Urged to Support Gays, Lesbians* (Times of Swaziland 11 December 2013)

<<http://www.times.co.sz/news/94123-teachers-urged-to-support-gays-lesbians.html>> accessed on 19 July 2014

<sup>9</sup> Teetee Zwane, *No legislation against lesbianism* (Swazi Observer 12 July 2015)

<<http://www.observer.org.sz/news/74449-%E2%80%98no-legislation-against-lesbianism%E2%80%99.html>> accessed on 24 September 2015

<sup>10</sup> IRIN News, *SWAZILAND: Reaching out to gays for the first time* (12 February 2012)

<<http://www.irinnews.org/report/94857/swaziland-reaching-out-to-gays-for-the-first-time>> accessed on 19 July 2014

<sup>11</sup> Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices for 2013: Swaziland* (US Department of State 2013)

<<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2013&dliid=220167>> accessed on 19 July 2014

<sup>12</sup> Joe Morgan, *Gay woman axed to death in Swaziland* (Gay Star News 24 March 2015)

<<http://www.gaystarnews.com/article/gay-woman-axed-death-swaziland240315/>>

<sup>13</sup> Peter Kenworthy, *We are not victims, says Swaziland's gay movement* (Stiff Kitten 21 November 2013)

<<http://stiffkitten.wordpress.com/2013/11/21/we-are-not-victims-says-swazilands-gay-movement/>> accessed on 19 July 2014

<sup>14</sup> Sabelo Mazibuko, *Gay man assaulted for sodomy* (Times of Swaziland 9 September 2013)

<<http://www.times.co.sz/news/91173-gay-man-assaulted-for-sodomy.html>> accessed on 19 July 2014

<sup>15</sup> Sisho Magagula, *Evicted for being gay* (Times of Swaziland 17 August 2013)

<<http://www.times.co.sz/news/90485-evicted-for-being-gay.html>>

<sup>16</sup> UNHRC, *Report of the Working Group on the Universal Periodic Review* (12 December 2011) UN Doc A/HRC/19/6

<sup>17</sup> Welcome Dlamini, *Govt to decide on gay relationships* (Swazi Observer 2 March 2014)

<<http://www.observer.org.sz/news/59355-govt-to-decide-on-gay-relationships.html>> accessed on 19 July 2014