



ESWATINI SHADOW
REPORT TO THE AFRICAN
COMMISSION ON HUMAN
AND PEOPLES RIGHTS

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1. The Foundation for Socio-Economic Justice in Swaziland (FSEJ) was formed in 2004.¹ It was conceived of specifically as a resource-builder and mobiliser, to coordinate and catalyse the class-based struggles and organizations pursuing democracy and socio-economic justice in Eswatini. From its inception, the FSEJ has aimed at operating outside the mould of a traditional NGO and conceived as a centre that would serve as a support base to the growing movements and calls for people's participation in decision-making and benefit from the economy in Eswatini.
2. To circumvent the limitations imposed on the democratic movement in Eswatini, the FSEJ operates as an independent coordinating centre, not a political party. The FSEJ promotes and supports values, ideals and beliefs of a democratic society premised on reversing patriarchy, promoting equity and equality for all inhabitants of Eswatini and the realization of human rights without discrimination of any kind.
3. The FSEJ's offices are located in Manzini, Eswatini and can be followed on Facebook² and Twitter.³ For more information contact Thabo Masuku at director.fsejswaziland@gmail.com or +268 2505 5516.

¹ For more information, see: <https://fsej.org/>.

² <https://www.facebook.com/Foundation-For-Socio-Economic-Justice-FSEJ-Swaziland-143672865790366/>

³ <https://twitter.com/FSEJ1>

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A. INTRODUCTION

1. This submission is presented in accordance with Rule 74 and 75 of the African Commission on Human and Peoples Rights (ACHPR)'s Rules of Procedure⁴ to assist the Commission's review of the Kingdom of Eswatini's 1st to 9th periodic reports on the implementation of the African Charter on Human and Peoples Rights ("Charter") and the Protocol on the Rights of Women in Africa ("Protocol").
2. The submission focuses on specific areas of human rights concerns within the context of the ongoing political and social unrest, including threats to:
 - a. the right to life, including through extra-judicial executions;
 - b. the right to freedom of assembly and the freedom of expression as a result of suppression of pro-democracy protests;
 - c. the right to access to information as a result of internet shutdowns; and
 - d. attacks on journalists.
3. After a brief analysis, the FSEJ proposes specific questions which the ACHPR may put forward to the State Party and further suggests specific recommendations for consideration during the review process.

B. EXTRAJUDICIAL KILLINGS BY SECURITY FORCES

4. The African Charter protects the rights to life (Article 4);⁵ prohibits cruel, inhuman and degrading treatment (Article 5);⁶ and protects the right to liberty and security of person

⁴Rules of Procedure of the African Commission on Human and Peoples Rights;
https://www.achpr.org/public/Document/file/English/Rules_of_Procedure_of_the_African_Commission_on_Human_and_PeoplesRightsof2010_%20Legal%20Instruments%20_%20ACHPR.pdf

⁵ Article 4 reads: "Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right."

⁶ Article 5 reads: "Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited."

(Article 6).⁷ In addition the Charter guards the right to a fair trial (Article 7)⁸ a right which has been authoritatively interpreted by the ACHPR in its *Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa*.⁹

5. Human rights violations by armed forces have been rife in Eswatini since 2004. FSEJ has observed increasing deaths at the hands of security personnel dating back to 2004. The state has not secured prompt and independent investigations into the deaths particularly those relating to the recent June 2021 unrest. Whilst the report highlights some cases where deaths and excessive use of force have been investigated, impunity remains a concern. For instance, despite reports suggesting that security officers killed and injured dozens of civilians during the June unrest, the state has denied the reports without providing any supporting evidence.¹⁰
6. Following the death of Mandla Mathousand Ngubeni in police custody in May 2004 an inquest released an inconclusive report which however noted that the deceased was subjected to 'torture of sorts, possible suffocation' but did not assign responsibility.¹¹
7. In May 2010, Siphon Jele, who was arrested for wearing a t-shirt from the banned political opposition, the Peoples United Democratic Movement (PUDEMO) died in custody at Sidwashini.¹² A report by a state appointed coroner found that the deceased died from suicide, though the veracity of this finding has been questioned.¹³
8. In March 2014, members of the Royal Eswatini Police shot and killed Thokozani Mngometulu while he was exiting his car in his residence at Dlakadla.¹⁴ Whilst the deceased was unarmed

⁷ Article 6 reads: "Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained".

⁸ Article 7 reads: "Every individual shall have the right to have his cause heard. This comprises: (a) the right to an appeal to competent national organs against acts of violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force; (b) the right to be presumed innocent until proved guilty by a competent court or tribunal; (c) the right to defense, including the right to be defended by counsel of his choice; (d) the right to be tried within a reasonable time by an impartial court or tribunal."

⁹ African Commission on Human and Peoples Rights Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa <https://www.achpr.org/legalinstruments/detail?id=38>

¹⁰ Eswatini: No justice for June protester killings *Africa News* 2 November 2021

<https://www.africanews.com/2021/11/02/eswatini-no-justice-for-june-protester-killings/>

¹¹ https://www.justice.gov/sites/default/files/eoir/legacy/2013/06/07/swaziland_0.pdf

¹² <https://mg.co.za/article/2010-05-14-international-outcry-over-swazi-activists-death-in-detention/>

¹³ <https://allafrica.com/stories/202005010057.html>

¹⁴ <https://www.refworld.org/docid/53284a685.html>

when he was shot twice at close range, police claimed that the deceased was a wanted suspect for possessing an unlicensed firearm and threatening to shoot a person.¹⁵

9. These examples illustrate that the ongoing civil unrest in Eswatini, which has resulted to the loss of life of over 80 civilians¹⁶ allegedly at the hands of the Royal Eswatini Police and the members of the Eswatini Defence Force, have¹⁷ some precedent in the years leading up to 2021.¹⁸ As in the cases of Mandla Mathousand Ngubeni, Siphon Jele and Thokozani Mngometulu, during this civil unrest, the authorities have failed to take adequate concrete steps to investigate these grave human rights violations and hold the perpetrators accountable. The FSEJ places it on record that even the ongoing political unrest in the country was sparked by the alleged killing of a university law student, Thabani Nkomonye, by the police in May 2021.¹⁹ While an inquest into this death was commissioned by the state and is still on-going, there is widespread belief that the police killed Nkomonye and tried to cover up the execution.²⁰ This conduct is in tandem with the entrenched brutal practices of the security forces which often go unpunished.²¹

10. The death of dozens of civilians during the civil unrest since 28 June 2021 and the continued extra-judicial killings by security forces remains a serious concern in the kingdom for pro-democracy protestors and human rights defenders alike.²² On October 29 the Eswatini Commission on Human Rights and Public Administration/Integrity issued a report titled

¹⁵ 'Shot and killed by police' *Times of Swaziland* 23 March 2013 <http://www.times.co.sz/News/85654.html>

¹⁶ 'Shameful complicity in the name of human rights' *New Frame* 15 November 2021

<https://www.newframe.com/shameful-complicity-in-the-name-of-human-rights/>; <https://www.newframe.com/sibaya-is-no-platform-for-a-dialogue-say-emaswati/>

¹⁷ The report is available here; <https://www.chrpa.org/wp-content/uploads/2021/10/Eswatini-Unrests-Report-fro-dissemination.pdf?fbclid=IwAR0Fp9PpuA1nCubegk5ZYBtieNP2XZ0NKulY1-TxfnH89UY0j1rD99L8nLg>. See also: <https://www.facebook.com/HumanRightsSZ/videos/1124155608116761>

¹⁸ 'Discussing roots of Eswatini protests with Pius Vilakati' SABC News

https://www.youtube.com/watch?v=QkS_0dzzSeU

¹⁹ 'Can Eswatini monarchy recover from the crisis' *Aljazeera Africa* 7 August 2021

<https://www.aljazeera.com/opinions/2021/8/7/can-eswatinis-monarchy-recover-from-the-crisis>

²⁰ 'Police report submitted to coroner tempered with' *Times of Eswatini* 12 August 2021 available at <http://www.times.co.sz/news/133330-%E2%80%99police-report-submitted-to-coroner-tempered-with%E2%80%99.html> ; 'Exposed: Police killed missing Thabani Nkomoye dumped his body at Nhlambeni'

Swaziland News 13 May 2021 available at <https://www.swazilandnews.co.za/fundza.php?nguyiphi=1161>

²¹ US Department of State '2020 'Country reports on human rights practices: Eswatini' (2020) 3 available at <https://www.state.gov/wp-content/uploads/2021/10/ESWATINI-2020-HUMAN-RIGHTS-REPORT.pdf>

²² 'Eswatini Crisis: Time to rethink the governance and allow multi-party democracy' *Southern Africa Human Rights Defenders Network* <https://www.southernafricadefenders.africa/eswatini-crisis-time-to-rethink-the-governance-and-allow-multi-party-democracy/>

*Preliminary Assessment Report On Civil Unrest In The Kingdom Of Eswatini – June 2021.*²³ The report records and verifies at least 46 deaths as a result of the June 2021 unrest including 2 children, 7 women, 7 young people, 2 elderly people and 30 men.²⁴ The report also confirmed the arrest and detainment of at least 337 people and gunshot injuries were sustained by at least 245 people.²⁵

11. FSEJ has documented and continues to document these and other widespread patterns of gross human rights violations by members of the security forces during the civil unrest and can confirm that the Human Rights Commission's report, given its limited scope and time-bound focus, undercounts the number of injuries, arrests and deaths, which continue to date. The Commission itself accepts this.²⁶ For example, and beyond the scope of the Human Rights Commission's analysis, in July 2021 a police officer based at Lomahasha police station shot and killed two men Mcolisi Nyoni and Mpostoli Masilela for allegedly criticizing the King.²⁷ In August members of the Royal Eswatini Police allegedly shot and killed Nhlanhla Kunene at Siteki for allegedly failing to stop at a police road block enforcing COVID-19 curfew regulations.²⁸
12. The FSEJ suggests that the ACHPR recommend that, in order to comply with its obligations in terms of Articles 4-7 of the Charter, the Eswatini authorities take the following measures:²⁹
 - Provide a report to the Commission giving a full account of the state's version of the events in the June 2021 unrest and its impact on human rights.

²³ <https://www.chrpa.org/wp-content/uploads/2021/10/Eswatini-Unrests-Report-frodissemination.pdf>

²⁴ *Id.*, p 4.

²⁵ It is unclear at this stage whether these injuries were sustained as a result of the use of live ammunition or the use of rubber bullets.

²⁶ <https://www.facebook.com/HumanRightsSZ/videos/1124155608116761>

²⁷ 'Chaos after men shot death at funeral' Times of Eswatini July 19 2021

<http://www.times.co.sz/news/133137-chaos-after-2-men-shot-dead-at-funeral.html>;

<https://www.swazilandnews.co.za/fundza.php?nguyiphi=1377>.

²⁸ 'Remove cops responsible for Nhlanhla's death – residents' Times of Eswatini 14 October 2021

<http://www.times.co.sz/news/133882-remove-cops-responsible-for-nhlanhla%E2%80%99s-death-residents.html>;

<http://new.observer.org.sz/details.php?id=16967> 'APM announces curfew'

<https://twitter.com/EswatiniGovern1/status/1412056202926858245/t=pjkEBhzA4ZNxGHnQm7bujA&s=08> ;

The Coronavirus (COVID-19) Regulations 2020 available at

https://www.ilo.org/dyn/natlex4.detail?p_lang=en&p_isn=110049&p_count=96182&p_classification=01&p_clascount=12516

²⁹ These measures are consistent with measures recommended by the ACHPR itself in July 2021: African Commission on Human & Peoples Rights 'Press statement on human rights situation in the Kingdom of Eswatini' 17 July 2021 <https://www.achpr.org/pressrelease/detail?id=591> and reiterated by the ACHPR in October 2021: <https://www.achpr.org/pressrelease/detail?id=608>.

- Take immediate steps to implement the Commission on Human Rights and Public Administrations recommendations by initiating prompt, independent, impartial and transparent investigations into allegations of the death of civilians at the hands of the security agents during the unrest of June, 2021 with the object of bringing those responsible to account and providing reparations to families of victims.
- The above-mentioned inquiry should be chaired by an independent, impartial and objective organ such as the Special Rapporteur on Human Rights Defenders and Focal Point on Reprisals in Africa or a similar body.
- Take all necessary legal measures to ensure the protection of the right to life for protesters by ensuring that the use of force comply with international human rights standards of proportionality, legality, accountability and necessity.
- Ensure that COVID-19 lockdown measures and any other emergency responses comply with the Siracusa Principles.³⁰ The state should ensure that limitation of rights in emergency situations are directed towards a legitimate objective, strictly necessary, least restrictive, non-arbitrary, non-discriminatory and necessary.
- Take immediate and concrete steps to set up an independent police oversight mechanism/body to investigate and punish human rights violations by the police.

C. SUPPRESSION OF THE RIGHT TO PROTEST

13. The African Charter protects the rights to freedom of expression and information (Article 9);³¹ freedom of association (Article 10);³² and freedom of assembly (Article 11).³³ Eswatini's 1st to 9th report does not mention the arbitrary arrest and clampdown of peaceful protests over many years and continuing during the civil unrest in 2021. Whilst the report states that the

³⁰ UN Commission on Human Rights, *The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights*, 28 September 1984, E/CN.4/1985/4, available at: <https://www.refworld.org/docid/4672bc122.html> [accessed 13 November 2021].

³¹ Article 9 reads: "1. Every individual shall have the right to receive information. 2. Every individual shall have the right to express and disseminate his opinions within the law."

³² Article 10 reads: "1. Every individual shall have the right to free association provided that he abides by the law. 2. Subject to the obligation of solidarity provided for in Article 29, no one may be compelled to join an association."

³³ Article 11 reads: "Every individual shall have the right to assemble freely with others. The exercise of this right shall be subject only to necessary restrictions provided for by law, in particular those enacted in the interest of national security, the safety, health, ethics and rights and freedoms of others."

right to freedom of expression, association and assembly is guaranteed by the Eswatini Constitution, political parties have been banned in the country since 1973.³⁴

14. The FSEJ has documented the continued clamp down on peaceful protests and the use of brutal force by security officers, especially the army and members of the paramilitary wing of the police service, the Operational Support Services Unit (OSSU). While section 25 of the Constitution guarantees the right to freedom of association and assembly, the state has used repressive laws such as the Public Order Act,³⁵ Suppression of Terrorism Act,³⁶ and the Sedition and Subversive Activities Act³⁷ to restrict civic space and target pro-democracy activists.
15. The tactic of harassing dissidents, including human rights defenders and journalists, is one with a long history in Eswatini. For example, on 20 December 2019 five pro-democracy leaders were arrested, detained and interrogated following early morning raids and their documents and party regalia were allegedly confiscated by the police.³⁸ Amnesty International and the Human Rights Institute of the International Bar Association have documented various abuses of such laws which are, in a variety of ways, in conflict with international human rights law.³⁹
16. In its July 2021 statement, the ACHPR reminded the Kingdom of Eswatini of its obligations in terms of “the right of peaceful protests as integral part of the right to freedom of assembly, freedom of association and freedom of expression”.⁴⁰ Despite this the security forces in Eswatini continue to routinely arrest and torture pro-democracy activists and have used violent means to repress opposition in the form of peaceful assembly and protest.

³⁴ Sec 79 of the Constitution of 2005 provides for the Tinkhundla system of governance which utilizes individual criterion as a basis for election or appointment into public office. This provision has been interpreted by the domestic courts in *Sithole NO and Others v The Prime Minister and others (35/2007)[2008] SZSC 22 (23 May 2008* to preclude political party participation in elections.

³⁵ Act 12 of 2017:

https://www.rightofassembly.info/assets/downloads/2017_Public_Order_Act_of_Eswatini.pdf.

³⁶ Act 3 of 2008. See also: <https://www.amnesty.org/en/wp-content/uploads/2021/07/afr550012009en.pdf>.
<https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/107528/132399/F233261805/SWZ107528%20BILL.pdf>

³⁷ Act 46 of 1938. See also: <https://globalfreedomofexpression.columbia.edu/cases/maseko-v-prime-minister-swaziland/>.

³⁸ Eswatini police arrest opposition leaders, activists parties' *Aljazeera News* 20 December 2019
<https://www.aljazeera.com/news/2019/12/20/eswatini-police-arrest-opposition-leaders-activists-parties>;
<https://www.justice.gov/eoir/page/file/1389036/download>.

³⁹ <https://www.amnesty.org/en/wp-content/uploads/2021/07/afr550012009en.pdf>;
<https://www.justice.gov/eoir/page/file/1389036/download>.

⁴⁰ African Commission on Human & Peoples Rights 'Press statement on human rights situation in the Kingdom of Eswatini' 17 July 2021 <https://www.achpr.org/pressrelease/detail?id=591>

17. In July 2021, Eswatini police arrested two members of Parliament, Mduduzi Mabuza and Mthandeni Mabuza, and charged under the Suppression of Terrorism Act of 2008 as Amended for elevating calls for democratic reforms in the Kingdom following the June 2021 civil unrest.⁴¹ A warrant of arrest on similar charges was issued against another Member of Parliament, Mduduzi Simelane, who remains in exile. Reports of arrests of children and students abound.⁴² The Commission on Human Rights and Public Administration also reports at least 337 persons including that 13 children (0-18 years), 31 young persons (19-24 years) and 60 women were detained.⁴³
18. During a labour protest on October 20 2021,⁴⁴ members of the police fired live ammunition and teargas into a bus full of protesters travelling to Mbabane killing Sandile Mabuza a student and injuring dozens in the process.⁴⁵ During this incident, occupants of the bus were shot using live ammunition as they tried to escape through the bus's windows resulting in many of them being heavily injured or maimed. Whilst the Commission on Human Rights and Public Administration has confirmed two people who have had amputations since the June unrest, reports suggest that dozens of people sustained such life changing injuries resulting in some form of disability.⁴⁶
19. The FSEJ suggests that the ACHPR recommend that, in order to comply with its obligations in terms of Articles 9-11 of the Charter, the Eswatini authorities take the following measures:⁴⁷

⁴¹Amnesty International press release 'Eswatini: Authorities must drop trumped-up charges against MP's and release them immediately and unconditionally' 29 July 2021

[https://www.amnesty.org/en/documents/afr55/4971/2021/en/;](https://www.amnesty.org/en/documents/afr55/4971/2021/en/)

https://twitter.com/ICJ_Africa/status/1423176434680479748.

⁴² International Commission of Jurists 'Eswatini children must be protected as authorities crackdown on protests 19 October 2021 <https://www.icj.org/eswatini-children-must-be-protected-as-authorities-crackdown-on-protests/>

⁴³ Commission on Human Rights and Public Administration 'Preliminary report on civil unrest in the kingdom of Eswatini June 2021' <https://www.chrpa.org/wp-content/uploads/2021/10/Eswatini-Unrests-Report-from-dissemination.pdf?fbclid=IwAR0Fp9PpuA1nCubegk5ZYBtieNP2XZONKuY1-TxfnH89UY0j1rD99L8nLg>

⁴⁴ 'Eswatini police hurled teargas as teachers on bus, victims' Business Day 26 October 2021

<https://www.businesslive.co.za/bd/national/2021-10-26-eswatini-police-hurled-teargas-as-teachers-on-bus-victim-says/>

⁴⁵'They are throwing teargas': Eswatini police 'brutalised teachers on bus' *Time Live* 26 October 2021

<https://www.timeslive.co.za/news/africa/2021-10-26-they-are-throwing-teargas-eswatini-police-teachers-on-bus/>

⁴⁶ Revealed: More Swazis forced into disability by Mswati's forces, DPM maintains silence *Swaziland News* 3 November 2021 <https://www.swazilandnews.co.za/fundza.php?nguyiphi=1698>

⁴⁷ These measures are consistent with measures recommended by the ACHPR itself in July 2021:

<https://www.achpr.org/pressrelease/detail?id=591> and reiterated by the ACHPR in October 2021:

<https://www.achpr.org/pressrelease/detail?id=608>.

- Put an end to arbitrary arrest and clampdown of peaceful protests and ensure enjoyment of the right to freedom of expression, assembly and association.
- Investigate and ensure that arbitrary or excessive use of force and firearms by law enforcement officials is punished as a criminal offence and clarify that superior orders may not serve as an acceptable defence.
- Lift the current ban on the issuance of permits for lawful public gatherings and protests in the cities, towns and rural areas of the country.
- Ensure that security forces deployed to protests with the purpose of protecting public order are trained to respect human rights during their operations and refrain from the excessive use of force.
- Ensure all charges against human rights defenders, including arrested MP Mduzuzi Mabuza and MP Mthandeni Dube, and exiled MP Mduzuzi Simelane are promptly dropped.
- Urgently hold a genuine and properly and meaningfully consultative dialogue with all stakeholders from a broad cross-section of Swazi society and carve a path towards democratisation of the country and constitutional reform.
- Unban political parties and undertake legal reforms to facilitate the participation of political parties in electoral processes.

D. INTERNET SHUTDOWNS

20. In the June and October 2021, Eswatini authorities disrupted access to internet and social media platforms including Facebook, WhatsApp and Twitter in response to the pro-democracy protests. The ACHPR has already called upon the Kingdom of Eswatini to ensure that access to the internet is not disrupted during public protests in its statements in July and October respectively.⁴⁸ These internet shutdowns greatly reduced the ability of protestors to exercise their democratic rights and slowed the flow of communication at a time when the effective and clear communication of health and other information is critical to combat the COVID-19 pandemic.⁴⁹

⁴⁸ <https://www.achpr.org/pressrelease/detail?id=591>; <https://www.achpr.org/pressrelease/detail?id=608>

⁴⁹ <https://www.icj.org/wp-content/uploads/2020/09/Universal-Global-Health-COVID-19-Publications-Reports-Thematic-Reports-2020-ENG.pdf>, p 104-117.

21. In its Resolution, *Right to Freedom of Information and Expression on the Internet in Africa*, the ACHPR called on States to “respect and take legislative and other measures to guarantee, respect and protect citizen’s right to freedom of information and expression through access to Internet services”.⁵⁰
22. The FSEJ suggests that the ACHPR recommend that, in order to comply with its obligations in terms of the Charter, the Eswatini authorities take the following measures:
- Immediately halt internet shutdowns and publicly commit to refrain from the use of internet shutdowns during protests.
 - Ensure that internet service providers refrain from executing unlawful instructions to shut down the internet in violation of their responsibility to respect human rights in international law.
 - Call for the urgent review of the legal licensing provisions that allow for the unilateral shut down of the internet with the view of ensuring that the internet is not unilaterally shutdown or interfered with by the state.

E. ATTACKS ON JOURNALISTS

23. Enjoyment of freedom of expression including press freedom have been severely restricted in Eswatini over many years. For example, in 2019, the editor of *Swaziland News*, Zweli Martin Dlamini was arrested and tortured by the police for publishing articles criticizing the king, causing him to flee to South Africa.⁵¹ In a similar incident, *Swati Newsweek* editor Eugene Dube fled the country after he was threatened with arrest by the police.⁵²
24. This pattern of harassment of journalists continued during the civil unrest in 2021. For example, in July 2021, South African based journalists, Cebelihle Mbuyisa and Magnificent

⁵⁰ African Commission on Human and Peoples Rights , Resolution on the Right to Freedom of Information and Expression on the Internet in Africa ACHPR/Res.362(LIX) 2016
<https://www.achpr.org/sessions/resolutions?id=374>

⁵¹ ‘Swazi editor flees to South Africa, wanted in false news investigation’ *Committee to Protect Journalists*
<https://cpj.org/2020/05/swazi-editor-flees-to-south-africa-wanted-in-false/>

⁵² ‘Swazi editor flees to safety’ *Mail Guardian* 21 May 2021 <https://mg.co.za/africa/2020-05-21-swati-editors-flee-to-safety-in-sa/>

Mndebele of the *New Frame* were beaten by police and ordered to delete information from their memory cards whilst covering protests in Eswatini.⁵³

25. Media freedom has been perpetually under threat in the Kingdom of Eswatini over the years.⁵⁴

This was worsened by the introduction of the COVID-19 regulations with broad provisions criminalizing expression in the form of ‘fake news’ provisions.⁵⁵ In similar fashion, criminal defamation and contempt of court proceedings have been used to restrict media freedom and infuse a culture of self-censorship particularly on reporting about governance challenges and misuse of public funds by Eswatini authorities.⁵⁶

26. The FSEJ suggests that the ACHPR recommend that, in order to comply with its obligations in terms of the Charter, the Eswatini authorities take the following measures:

- Take concrete steps to put an end to attacks on journalists by security personnel.
- Investigate reports of attacks against journalists and punish the perpetrators.
- Build capacity of the police and security officials to observe the rights of journalists.
- Take immediate steps to withdraw restrictions on freedom of expression in the form of overly broad fake news prohibitions.
- Provide and secure an enabling environment for journalists to operate independently in the country.
- Open up all public media broadcasting stations for use by all inhabitants of Eswatini, especially civil society and community organizations advocating for the protection of human rights.

⁵³ ‘Oppression and resistance in Eswatini’ *New Frame* 6 July 2021 <https://www.newframe.com/oppression-and-resistance-in-eswatini/>; <https://cpj.org/2021/07/eswatini-police-detain-abuse-2-reporters-from-south-african-outlet-new-frame/>

⁵⁴ African Media Barometer *Eswatini 2018* <https://fesmedia.fes.de/media-and-publications/african3-media-barometer-publications/>

⁵⁵ Sec 29 of the Corona virus COVID-19 Regulations 2020 criminalises the publishing of articles with an intention to deceive, prohibit individuals and organisations from activities such as spreading unauthenticated COVID-19 related information and prohibits the use of electronic and print media for COVID-19 information without prior authorization of the minister of health.

⁵⁶ For example, in 2014 editor of the Nation Magazine Bheki Makhubu together with human rights lawyer Thulani Maseko spent 15 months in prison for contempt of court after publishing articles criticizing the chief justice; *Maseko and Others v Rex (18/14) [2015] SZSC 03 (29 July 2015)*.

F. CONCLUSION

27. Eswatini's report reflects some measures that have been undertaken ostensibly to implement the African Charter. Despite the comprehensiveness of the report, the state has failed to provide any meaningful detail on main source of the human rights challenges which has limited the country's progress over the years: the anti-democratic and non-human rights compliant system of governance currently in effect in Eswatini's monarchy. The failure to democratize Eswatini's politics is arguably the main source of the systemic human rights challenges in Eswatini, whether in relation to civil and political or social and economic rights. The state's failure to recognize and guarantee freedom of political participation through a pluralistic electoral process, coupled with the continued ban of political parties, has caused increased tensions over the years which has manifested itself in the societal discontent evident during the civil unrest in 2021.
28. FSEJ recognises that only genuine, good faith, fully inclusive dialogue can produce a solution to Eswatini's problems. This approach is consistent with the principles and values underpinning of the African Charter. The current challenges have been largely enabled by Eswatini's constitutional and legal framework which centralizes power, placing much of it the hands of the king and the royal family. The FSEJ holds a strong view that a national dialogue within the constitutional framework in the form of 'Sibaya' (a traditional form of consultation led by the king in his palace) cannot achieve a sustainable solution and has been rejected by pro-democracy actors.⁵⁷ In this regard, the FSEJ strongly believes that an all-inclusive, genuine and meaningful dialogue can be best achieved through a mediated process at a neutral venue where all parties will come as equal stakeholders. The FSEJ therefore urges the Commission to provide guidance and support toward ensuring a human rights compliant process of dialogue in the Kingdom of Eswatini.

⁵⁷ 'Eswatini pro-democracy groups reject king Mswati's call for mediation' IOL News Africa
<https://www.iol.co.za/news/africa/eswatini-pro-democracy-groups-reject-king-mswatis-call-for-mediation-047cb72f-e185-4c27-a62e>