



Swaziland – Researched and compiled by the Refugee Documentation Centre of Ireland on 11 August 2014

Any recent information on what the law says and what cultural attitudes are towards homosexuality in Swaziland. Are Swazis engaging in same-sex relationships arrested and jailed?

An entry for Swaziland in a report published by the International Lesbian, Gay, Bisexual, Trans and Intersex Association states:

“Sodomy - sexual intercourse per anus between two human males - is prohibited as a common law offence. In 2005, the Government planned to include prohibitions of all male homosexual acts and lesbian acts in its revision of the Sexual Offences laws. The proposed penalties were imprisonment for a minimum period of two years, or a minimum fine of E5 000. The proposal has, however, not been adopted as of publication of this report.” (International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA) (30 May 2014) *State-Sponsored Homophobia 2014: Swaziland*)

See also Swaziland excerpt from a report published by Human Rights First (USA) which states:

“Male homosexuality is a common law offense punishable by up to two years in prison in Swaziland. LGBT people in Swaziland face social stigma and exclusion. Swaziland's prime minister called homosexuality ‘an abnormality and a sickness,’ and the king called it ‘satanic.’ Nonetheless, Swaziland has at least one LGBT organization and in 2012, the government launched the first HIV initiative to include same-sex couples.” (Human Rights First (USA) (29 July 2014) *Report: The State of Human Rights for LGBT People in Africa – Swaziland excerpt*)

A report published by the UK-based charity Kaleidoscope Trust states:

“The Constitution of the Kingdom of Swaziland states that, ‘the principles and rules of the Roman Dutch Common Law as applicable in Swaziland since 22nd February 1907 are confirmed and shall be applied and enforced as the common law of Swaziland.’ Sodomy, as a crime under the 1907 common law, remains punishable by death or a lesser punishment at the discretion of the court. All male same sex sexual acts are illegal in Swaziland. There are no specific provisions regarding sexual conduct between females. There is no legal protection against discrimination based on sexual orientation in Swaziland. Many of those who reveal themselves as LGBTI face censure and exclusion from their chiefs, pastors and members of Government who have criticised same sex conduct as neither Swazi nor Christian. LGBTI advocacy organisations face difficulty registering with the government.” (Kaleidoscope Trust (10 November 2013) *Speaking Out: The rights of LGBTI citizens from across the Commonwealth – Swaziland*)

In a paragraph headed “Recent Developments” this report states:

“Although the government rejected recommendations calling for decriminalisation in its 2011 UN Human Rights Council Universal Periodic review, it accepted recommendations to implement measures to prevent violence against LGBTI people and to improve their access to health services. In November of 2011, the then Minister of Justice & Constitutional Affairs Chief Mgwangwa Gamedze, said Swaziland would not give human rights to LGBTI people, claiming that they do not exist in the kingdom. Gamedze reportedly told the *Times of Swaziland* that there was no LGBTI group asking for recognition. In August 2013, two gay men were banished from their Swazi communities because of their sexual orientation. The two aged 18 & 21 were living with an aunt when the neighbours raised suspicions over the nature of their relationship. When confronted they admitted to being gay. A member of the community police noted that there was an increasing concern about the growing ‘bad tendencies’ and they, together with responsible residents, were on a mission of getting rid of all bad elements.” (ibid)

The US Department of State country report on Swaziland for 2013, in a section titled “Societal Abuses, Discrimination, and Acts of Violence Based on Sexual Orientation and Gender Identity”, states:

“While colonial-era legislation against sodomy remains on the books, it has not been used to arrest gay men and lesbians. Societal discrimination against LGBT persons was prevalent, and LGBT persons generally concealed their sexual orientation and gender identity. Gay men and lesbians who were open about their sexual orientation and relationships faced censure and exclusion from the chieftdom-based patronage system, which could result in eviction from one’s home. Chiefs, pastors, and members of government criticized same-sex sexual conduct as neither Swazi nor Christian. LGBT advocacy organizations had trouble registering with the government. One such organization, House of Pride, is under the umbrella of another organization dealing with HIV/AIDS. It was difficult to determine the extent of employment discrimination based on sexual orientation because victims were not likely to come forward, and most gay men and lesbians were not open about their sexual orientation. On August 17, the *Times of Swaziland* reported community police forcibly evicted two gay boys from Ezulwini because of suspicions of their sexual orientation. The newspaper alleged that community members had seen them engaging in sexual acts.” (US Department of State (27 February 2014) *2013 Country Reports on Human Rights Practices*, pp.24-25)

The *Times of Swaziland* article referred to in the above USDOS report states:

“In a first of its kind in the country, two youthful boys have been evicted from Mvutshini for being gay. The boys, aged 18 and 21 years, have been evicted by the area’s community police after the ‘whistle was blown’ on them by a relative.” (*Times of Swaziland* (17 August 2013) *Evicted for being gay*)

This article also states:

“The two boys disguised their mission as an innocent one to a relative identified as Gugu Gadlela. Gadlela is an aunt to one of them and she lives in a rented one room flat at Mvutshini. After staying with the aunt for over two

weeks, their cover was blown by neighbours who reported to Gadlela that the boys were proposing love to a number of boys and men in the area. The aunt is said to have not taken kindly to the boys' lifestyle and immediately reported them to the area's community cops. A meeting was convened where the boys were called to explain their lifestyle. They confirmed that they were gay and that is when they were ordered to immediately leave the area. The reason for evicting them from the area, as confirmed to this publication by their aunt, was that they would perpetrate 'immoral behaviour' within the community." (ibid)

A Sunday Independent (South Africa) article states:

"In a country noted for homophobia throughout society and the media, the official endorsement of gay candidates came as a surprise to human rights groups. In his last public comment on the subject of homosexuality two years ago, King Mswati said gay people were sinners. 'They must be prayed for,' Mswati told a group of pastors at an Easter service. The US State Department's annual review of human rights in Swaziland, released last month, criticises the 'societal discrimination against members of the gay, lesbian, bisexual and transgender community'. The country's leading newspaper, The Times of Swaziland, temporarily suspended homophobic columnist Qakaliboli Dlamini [when human rights groups threatened to sue over his 'anti-gay hate speech'. The Times reinstated Dlamini after a month without addressing the hate speech issue." (Sunday Independent (South Africa) (12 May 2013) *Swaziland premier's blessing of gay rights 'window-dressing' for elections*)

A Swazi Observer article reports the views of Swaziland's Prime Minister as follows:

"If words uttered by on June 15, 2012 by Prime Minister Sibusiso Barnabas Dlamini are anything to go by, Swaziland is still far from legalising LGBTI relationships. The premier told editors during a breakfast meeting in Ezulwini that gay and lesbian relationships were not allowed in Swaziland. He said even the siSwati word for such acts, if it existed, had a pronunciation similar to an insult. '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,' the PM said. He also stated: '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 ready to consider it.' Also in 2012, former Justice and Constitutional Affairs Minister Mgwagwa Gamedze threw out the window a suggestion by a United Nations working group that Swaziland should put in place a law to protect gay members of society. 'It was difficult for government to formulate a policy on homosexuals or enact a law to recognise them because they actually formed a minority if ever they existed. Their numbers do not permit us to start processing a policy,' Gamedze, who is now Minister of Foreign Affairs and International Relations, said then. Although there is no law on LGBTI relations, it is common knowledge that there are a number of individuals who are either gay or lesbian." (Swazi Observer (2 March 2014) *Govt to decide on gay relationships*)

This response was prepared after researching publicly accessible information currently available to the Research and Information Unit within time constraints. This response is not and does not purport to be conclusive as to the merit of any particular claim to refugee status or asylum. Please read in full all documents referred to.

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