



Refugee Documentation Centre (Ireland)  
LEGAL AID BOARD

## **Swaziland - Researched and compiled by the Refugee Documentation Centre of Ireland on Monday 26 November 2012**

### **Treatment of homosexuals including:**

#### **Legality;**

**Did the government issue a statement around Feb 2012, stating that there were no homosexuals in the country;**

#### **Any organisations to help homosexuals**

In February 2012 *IRIN News* states:

“If caught, any Swazi engaged in a same-sex relationship will be arrested and jailed” (IRIN News (14 February 2012) *Swaziland: Reaching out to gays for the first time*).

This report also points out that:

“The constitution does not safeguard the rights of homosexuals, and sodomy laws dating from the early 20th century are still on the books” (ibid).

It is also stated in this document that:

“Human rights groups regularly criticize Swaziland for its anti-gay laws, and note that discrimination against gays is routine and acceptable in the conservative society of this small country” (ibid).

This document also states:

“The Gays and Lesbians Association of Swaziland (GALESWA), formed in the 1990s, has only one known member” (ibid).

A report issued in May 2012 by the *United States Department of State* commenting on events of the preceding year notes:

“Societal discrimination against the LGBT community was prevalent, and LGBT persons generally concealed their sexual orientation and gender identity. Colonial-era legislation against sodomy remains on the books; however, it has not been used to arrest gay men. 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. Societal discrimination exists against gay men and lesbians, and LGBT advocacy organizations had trouble registering with the government. One such organization, House of Pride, was affiliated with another organization dealing with HIV/AIDS. It is difficult to know the extent of employment discrimination based on sexual orientation because victims are not likely to come forward, and most gay men and lesbians are not open about their sexual orientation” (United States Department of State (24 May 2012) *Country Reports on Human Rights Practices for 2011*, Section 6. Discrimination, Societal Abuses, and Trafficking in Persons/Societal Abuses, Discrimination, and Acts of Violence Based on Sexual Orientation and Gender Identity).

In May 2012 a publication by the *International Lesbian, Gay, Bisexual, Trans and Intersex Association* notes:

““Sodomy - it is 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 are imprisonment for a minimum period of two years, or a minimum fine of E5 000. It has, however, not been adopted as of publication of this report” (International Lesbian, Gay, Bisexual, Trans and Intersex Association (May 2012) *State-sponsored Homophobia : A world survey of laws criminalising same-sex sexual acts between consenting adults*).

This report commenting on punishments for homosexuality states that it is:

“Imprisonment of less than 10 years” (ibid).

In May 2012 *Amnesty International* commenting on events of 2011 states:

“At the October Universal Periodic Review hearing, the government rejected recommendations that it decriminalize same-sex relations and prevent discrimination based on sexual orientation” (Amnesty International (24 May 2012) *Amnesty International Annual Report 2012 - Swaziland*).

A compendium document published in July 2011 by the *Office of the United Nations High Commissioner for Human Rights/OHCHR* states:

“SCHRPA and JS5 indicated that sexual contact between male persons was still criminalized under the common law as sodomy...JS5 indicated that Swaziland planned to include prohibitions of all male homosexual acts and lesbian acts in its revision of the Sexual Offences laws...JS2 reported that there was no legislation recognising lesbian, gay, bi-sexual, transgendered and inter-sexed people (LGBTIs) or protecting the right to sexual orientation and that LGBTIs were discriminated and condemned openly. Homosexual people could not marry under the Marriage Act and homosexual partners could not adopt children...The House of our Hope (HOOP) provided examples of discrimination against LGBTIs occurring in various settings...(Office of the United Nations High Commissioner for Human Rights/OHCHR (22 July 2011) *Universal Periodic Review - Swaziland: Summary of stakeholders' information*, point 42).

JSF is an acronym for JS5 Joint Submission 5: ARC International (ARC-I); International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA); ILGA-Europe\*; Brussels, Belgium; SCHRPA is an acronym for The Swaziland Commission on Human Rights and Public Administration, Swaziland.

In November 2012 *Swazi Media Commentary* states:

“Gays and lesbians are routinely victimised in Swaziland. In November 2011, Chief Mgwagwa Gamedze, the Minister of Justice and Constitutional Affairs, said Swaziland would not give human rights to gay people, because they did not exist in the kingdom. He was responding to criticism of Swaziland by a United Nations (UN) working group on human rights that said the kingdom should enact equality laws for

LGBT (lesbian, gay, bisexual and transgender) people. A group called HOOP (House of Our Pride), a support group for Gay, Lesbian, Bisexual, Transgender and Inter-sex (GLBTI) people, reported to the UN, 'It is a common scene for GLBTI to be verbally insulted by by-passers in public places. [There is] defamatory name calling and people yelling out to see a GLBTI person's reproductive part are some of the issues facing GLBTI in Swaziland.' " (Swazi Media Commentary (5 November 2012) *Swaziland: Call for Law to Ban Hate Speech*).

This report also states:

"In one of the first reports of its kind detailing sexual orientation discrimination in Swaziland, HOOP revealed, 'GLBTI are hugely discriminated against in the community, as they are not recognized at community meetings and their points are often not minuted at these meetings nor are they allowed to take part in community services.' " (ibid).

In November 2011 *The Times of Swaziland* notes:

"Government will not recognise and legalise same-sex marriages because homosexuals either do not exist or form a minority in the country. The government has told the world that homosexuals are not exactly visible in the kingdom" (The Times of Swaziland (13 November 2011) *No homosexuals in Swaziland?*).

This article also states:

"In an interview, Chief Mgwagwa Gamedze, the Minister of Justice and Constitutional Affairs, said 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" (Ibid).

A publication issued in June 2012 by *The Times of Swaziland* points out that:

"Gay and lesbian relationships are not allowed in Swaziland, Premier Sibusiso Barnabas Dlamini affirmed yesterday" (The Times of Swaziland (15 June 2012) *Gay relationships not allowed in SD*).

No further information on these issues could be found among sources available to the RDC.

## References

Amnesty International (24 May 2012) *Amnesty International Annual Report 2012 - Swaziland*

<http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=printdoc&docid=4fbe390c3a>

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This response was prepared after researching publicly accessible information currently available to the Refugee Documentation Centre 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.

#### Sources Consulted

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Freedom House  
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Human Rights Watch  
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The Independent

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