

SALO Workshop The Rule of Law in Swaziland

16th April 2014, Burgers Park Hotel, Pretoria



SALO hosted this workshop to look the rule of law in Swaziland. There were mounting concerns about the deterioration of the Rule of Law and the human rights situation in Swaziland. An example of this was the arrest of human rights lawyers; Thulani Maseko and the Editor-in-Chief of The Nation Magazine; Bheki Makhubu for publishing opinion pieces that were critical of the Swazi government. The pair were released following the reversal of their warrant of arrest by the High Court, only to be rearrested immediately. SALO was hoping to include Mr Maseko and Mr Makhubu in its panel, but they couldn't they were re-arrested. This notwithstanding, SALO was able to secure a number of well-informed speakers, among them seasoned Swazi activists. The meeting brought together a diverse spectrum of relevant stakeholders from civil society, Swaziland activists, SA decision-makers and members of the diplomatic community inter alia.

Muzi Masuku: OSISA

Muzi gave a historical rundown of the situation in Swaziland. He expressed his belief that the issues around the rule of law in Swaziland are a continuation of the governance crisis. He stated that in Section 65 the Swazi Constitutions affords the King the liberty to disregard any advice and render his decision final. The King also appoints pretty much every position that exists, at every level including:

- Members of the Judicial Services Commission
- Judges
- Any office that is anticipated in terms of the Swazi constitution is slated to be appointed by the King

And this compromises the notion of the separation of powers.

He expressed that Chief Justice Michael Ramodibedi is credited for the current crisis around the judiciary; stating that Justice Ramodibedi came to the helm of the Swaziland Judiciary around 2009 and immediately after he took over the government recorded an unprecedented one hundred percent victory in all litigation cases and since then government has never lost a matter in court.



He stated that Justice Ramodibedi issued what became known as 'practice directives', which ruled that no court process would be accepted, which even remotely insinuated a suit against the King. There are institutions that work for the King, the King is a businessman and the King's Office employs over 300 people, so does that mean one can't even institute actions for labour disputes?

He concluded by stating that having people like Arnold Tsunga; the member of Zimbabwe's Parliament, H.E. Mikaela James; the Ambassador of the United States of America in Swaziland and H.E. Nicole Bellomo, the Ambassador of the EU, coming into court has helped a lot.

Lomcebo Dlamini: Coalition of Concerned Civic Organisations (SCCO)



Lomcebo focused her presentation on where the Swazis are now. She stated that Swaziland hardly gets any attention, because it is viewed as a non-strategic country, as it has no necessarily important resources and the population is only one million; but the Swazis believe that an injustice done to even just one person should be unacceptable in any country including Swaziland.

She indicated that civil society is grappling with issues of trying to advocate for a democratic transition in Swaziland, which has been under the current dictatorship since 1973 and the people of Swaziland are really beginning to become impatient and angry. Civil society sees the judicial issue in Swaziland as a manifestation of the problems of governance. She indicated her belief that if the Swazi governance was democratic, had respect for the rule of law, had separation of powers and Swazis held true to all of the tenants and principles of good governance; the abuses seen now would not exist.

She then acknowledged Thulani and Bheki for being human rights defenders; they have been charged because they wrote articles expressing concern about the judiciary, which is supposed to be the last bastion that all run to for protection and to get justice; that has instead become the very structure that is violating people's rights.

She indicated that there are other concerns in Swaziland, which include the issue of African Growth and Opportunity Act (AGOA). Swaziland's economy is very dependent on the manufacturing sector and since 2000 there are thousands of people employed in the manufacturing industry that benefits from AGOA. AGOA has asked Swaziland to fulfil certain conditions by May fifteenth, which include:

- Issues relating to freedom of association and assembly
- Amendment of the Suppression of Terrorism Act of 2008
- Amendment to the Public Order Act.
- That the Industrial Regulations Act; according to which government stated TUCOSWA, the Trade Union Congress of Swaziland, could not be registered; be amended to enable the registration of TUCOSWA.
- Repeal of the 1973 Proclamation to the Nation that repealed the Independence Constitution - that took away the Bill of Rights

If these conditions are not met, AGOA benefits will be revoked in Swaziland. The International Labour Organisation (ILO) is also expecting certain actions from the government.

She concluded by expressing that Swazis' appreciate that any democratic transformation, any change in the country have to be driven by Swazis; but external support is needed, because the Swazi government is more concerned about its image outside of the country.

Doo Aphane: Women for Women Development Consultancy

Doo contextualised on how the issue of the rule of law in Swaziland affects and impacts on women in Swaziland. She stated that as per the National Census; over fifty-two percent of the population in Swaziland are women. She indicated that for a woman in Swaziland it doesn't matter who you are, because overnight Justice Musuku, was taken into a closed disciplinary hearing and she ceased to be a Judge, then women ask themselves; 'Who am I? What can I do?'



She indicated that Swaziland is a very patriarchal and parochial country and women are still lagging behind in linking what is happening in their lives on a daily basis with the issues of rule of law, with politics; giving an example that overwhelmingly it is women and young women who are employed in the textile industries, but the majority of them don't even know what this AGOA is.

She stated that there's also the issue of abuse, which happens from family to public level and this has compounded the fear that women have, resulting in less political participation in public spaces. She gave a note that in SADC, Swaziland has the highest homicides and globally Swaziland is something like number three and she expressed that Swaziland cannot democratise without the majority that is women being on board. He stated that the crafting of the Sexual offences and Domestic Violence Act has run for about ten years.

She also indicated that women who are married to foreigners are not able to pass on their citizenship to their spouses or children and they are refused passports and their ID's come out with numbers that denote them as foreigners. She also indicated that in June 2012 an order was granted and the law was changed for women to be able to register for title deeds, but women still struggle with the issue of marital power.

She stated that in the ninth parliament from 2008 to 2013 there were four women missing and that it is alleged that this is because women mobilised and questioned how the King's many wives could go abroad for shopping when women with HIV and Aids were suffering and could not get ARVs.

She then emphasised the need to attend to practical and strategic needs of women, giving an example of the spouses of Thulani and Bheki, who need practical support. She stated that if no practical support is provided, the battle may be lost because spouses may crumble and give in. The strategic needs also need to be addressed, by capacitation and providing resources for political parties. She concluded by stating that Swaziland will democratise only when there is full participation of men and women at all the levels.

Nicole Fritz: Southern African Litigation Centre (SALC)

Nicole stated that the Southern African Litigation Centre, the SADC Lawyers Association and the International Commission of Jurists have been mounting an observation of the proceedings against Thulani Maseko and Bheki Makhubu. They have also been involved in previous proceedings relating to the rule of law in Swaziland, particularly relating to the complaint that was made against Judge Thomas Masuku.

She indicated that whilst we do think of the individuals and the nature of their experiences, it is also important for us to consider the systematic nature of persecution of those who seek to speak freely in Swaziland, expressing that the persecution of Bheki and Thulani is very much emblematic of a deeper systematic crisis that is facing Swaziland. She then presented the timeline of case of Thulani and Bheki.



She stated that the brazen contempt for the rule of law, the tenants of the judicial system and judicial office exhibited by both Chief Justice Ramodibedi and Judge Simelane will hardly come as a surprise to long-term observers of Swaziland. Citing that Ramodibedi enjoys untrammelled impunity in Swaziland as he fights off impeachment in his native country Lesotho where he sat as President of Court of Appeal. Among the allegations levelled against him are abuse of state resources and engaging in fraud.

Zwelethu Madasa: Pan African Parliament



Zwelethu explained the role of the Pan-African Parliament, which includes promoting good governance, human rights and democracy and this is done by sending fact-finding missions. He then invited the activists to see and decide on how to engage the Pan-African Parliament. He indicated that Swaziland is a member of the Pan-African Parliament and they have ratified the protocol, but since the last elections they have not designated their members to the Pan-African Parliament.

He encouraged for Pan-African Peoples' Movement to articulate the concerns of African citizens, and that the movement should be a multi-layered movement including; academics, youth, civil servants, civil society organisations and anyone who is in a strategic position in order to transform the AU to become people-centred.

He indicated that there is need for the Pan African Parliament to be seen as agents of change; to use the instruments that they been given by the member states to motivate and inspire the citizens and to give them a voice. In conclusion, he stated that the Pan African Parliament is a platform and it is available for African voices.

Contributions from the floor included the following:

- There is need to fund the Swazi comrades and this can be administered by the Litigation Centre.
- What is the update on the Pan-African human rights process that Advocate Pansy Tlakula was driving on the Swaziland issue?
- To Nicole; kindly give an update on the outstanding position regarding the SADC Tribunal?
- To SALO; are there any youth programmes or training offered to accommodate the South African and all African youth to build this international, regional and national consensus?
- How has the rule of law affected the youth of Swaziland in terms of opportunities for education and employment? Is the youth represented in civil society and various political parties?
- To Advocate Madasa; what is the definition of the Pan-African Parliament as regards democracy? Would it accommodate non-party states where the people go to vote in a situation where they are not represented by political parties?
- In your opinion; do you see a common position of both the AU and SADC regarding the Swazi elections?

Responses from the Panel

Nicole Fritz gave the following responses:

- Advocate Pansy Tlakula who is the African Union special rapporteur on freedom of expression has been spearheading a continent-wide campaign to secure decriminalisation of insult laws, of sedition, of criminal defamation and Swaziland has been a key jurisdiction in that campaign.
- Civil Society and SALC have done a lot to try and the SADC Tribunal. There is a new draft protocol being circulated for civil society to comment on and lobby governments to ensure that the new Tribunal allows individuals to bring complaints against States in order to realise SADC's mandate of human rights' protection and promotion

Lomcebo Dlamini gave the following responses:

- Through Advocate Pansy Tlakula's support and consistency, the African Commission adopted a robust resolution on Swaziland, urging the government to implement certain reforms.
- There will be a conversation with Advocate Madasa's about when the Swazi civil society can visit the Pan-African Parliament.

Advocate Madasa gave the following responses:

- Advocate Pansy Tlakula has been an active participant in the workshops organised by the Pan-African Parliament to promote media freedom across the Continent.

- It is probably good that the AU and SADC have different positions regarding the Swazi elections, because it means that there is a level of independence between the two.
- The Pan African Parliament does not have independent elections observer status; the election observation is managed by the AU Commissions.

Contribution by Wandile Dlodlu:

Wandile stated that in a country that is undemocratic, where human rights are not respected and the rule of law is not adhered the results is that:

- The vulnerable sectors of society such as women and the youth will be the most hard hit.
- The country will be unable to attract foreign direct investment.
- The country will be unable to create jobs.

He then expressed his concern about the tendency to use the King who takes a sixteen-year-old girl and make her a wife; as a symbol of Africa untempered by the West, stating that the King represents nothing Swazi. Women get butchered and are killed daily and some are used as sex symbols by the Monarch. He concluded by voicing concern about countries continuing to pump money to a man whose hands are continuously, despicably and undisputedly bad; mentioning the EU as an example.

Contribution by Ambassador Welile Nhlapo:

Ambassador Nhlapo posed a question on how to democratise an absolute monarchy and if it is possible. How to transform the current anger and impatience into forms of struggle to confront the source of the anger?

He stated that there were inconsistencies in the Treaty of SADC and the mandate of the Tribunal. The Tribunal was adopted without following the necessary procedures, because of the eagerness to have an instrument in place. In terms of abolishing the Tribunal the movers for that was the Swazi King, supported by the President of Botswana.



Contribution by Ambassador George Nene:

Ambassador Nene posed these two question:

- Considering the structure of the Swazi society; is the environment in Swaziland conducive for governance and the rule of law?
 - If not; what types of advocacy do groups like this, like PUDEMO advance?
- How do Swazis vent their anger and impatience?

He suggested that it would be important to have a meetings with an analytical approach.

Contributions from the floor included the following:

- The Advocate says the AU's and SADC's divergent views reflect the independence of one from the other, but shouldn't guidelines determining what constitutes democratic elections the same? In elections where political parties are banned, they are illegitimate according to the AU provisions and the guidelines of SADC.
- Is the crisis in Swaziland political or legal?
- It is important to link the civil rights and political rights in a context of oppressive and abusive system.
- The following questions were raised regarding the actions of the Law Society of Swaziland:
 - What guarantees us peace in the future?
 - Can the situation give birth to the division in the Kingdom of Swaziland?
 - Is this a sign of an uprising or disorder or another revolutionary struggle in Swaziland?
- There is need to ensure that the general public of Swaziland has the opportunity to structure civil organisations which promote their views.
- How can the house enhance the efforts of the Swazi activists?

Advocate Zwelethu Madasa gave the following responses:

- People at the Pan-African Parliament are in a struggle to transform it to have legislative powers, but the reason that process was delayed and negatively impacted by that issue of the Tribunal.
- He also indicated that he came across none public report that indicated that there is probably a need to look at what incentives to the Swaziland government to shift from an absolute monarchy to a democratic state and these included; the negotiations to extend the traditional rule or leadership jurisdiction or authority of the King to include all Swazis in Swaziland and around Swaziland, in exchange for the ceding or relinquishing of the civil authority to the people.

Muzi Masuku gave the following responses:

- It is possible to democratise an absolute monarchy and it is important to understand that the current Swazi authorities thrive in the aura of mysticism that has been created by the system, where everybody believes that for Swaziland to be Swaziland it has be like this.
- The current system was achieved through a coup, which has stifled plurality and is sustained through a significant investments in military ware.
 - Swaziland ranks number three in Africa in military expenditure per capita and that should be telling for a country that can never be at war with its principal neighbours, Mozambique or South Africa.

Doo Aphane gave the following responses:

- Due to lack of employment; the youth end up joining the army, police force and correctional services and in the media there are reports of deaths, sometimes during the training in the process of recruitment.
- Scholarships are used to control the youth, because if the certain youth challenges the system, the scholarships are taken away from them and majority of families cannot afford paying tuition.

Lomcebo Dlamini gave the following responses:

- Intergovernmental bodies such as the AU and SADC can play a role in holding Swaziland accountable, because Swaziland cares more about what is said by external partners.
- Swazi civil society had an opportunity to make a presentation to the Human Rights Committee of the Pan-African Parliament prior to the elections, to request them to come to do a fact-finding mission; and the parliamentarians that are part of the Pan-African Parliament to Swaziland and stood up in Parliament there to say there are a number of people who have just been out of the country to lie about the country.

She the expressed her concern about Swaziland getting a glove treatment, because institutions talk about human rights, values, good governance, while on the other they are pumping millions into and oppressive system.

Contribution by Aziz Pahad (from the rostrum):

Aziz stated that there has been a debate since he left government on what can be done to deal with the ridiculous situation that in the SADC there is an absolute and dictatorial monarchy. He indicated that Chissano and Mandela were mandated by SADC to help resolve and bring democratisation in Swaziland and the gave up, because the King would agree and then would come back with excuses that he can't do anything, because the Queen Mother and her Advisory Council are reflecting the will of the people.

He indicated that no government is going to take part in any activity that can be conceived as regime change, hence encouraging an understanding as to the limitations in government. He then encouraged solidarity and mobilisation of NGOs, the alliance partners; COSATU and the SACP, religious leaders and civil society in general.



He concluded by advising SALO to organise a meeting to discuss the way forward. He also called for an intervention by constitutional monarchs, who remain good friends with the Swazi monarchy. He ended his address by posing the following questions:

- How do we put pressure on the Commonwealth?
- How do we put pressure on the General Assembly?
- How do we as NGOs put pressure on governments including the South African government to support the Swazi cause?

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SALO would like to thank the Royal Norwegian Embassy, Pretoria; Irish Aid and the Embassy of Ireland, Pretoria; the Embassy of Denmark, Pretoria; and OSISA, among others, for their ongoing support of this Policy Dialogue Series.

