REPORT
To The Joint Communication
From The UN Special Rapporteurs
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>INTRODUCTION</td>
<td>01</td>
</tr>
<tr>
<td>BACKGROUND TO THE CIVIL UNREST IN ESWATINI</td>
<td>02</td>
</tr>
<tr>
<td>Challenge on the constitutionality of Acting Prime Minister</td>
<td>02</td>
</tr>
<tr>
<td>Calls for the election of Prime Minister</td>
<td>03</td>
</tr>
<tr>
<td>Justice for Thabani Nkomonye</td>
<td>04</td>
</tr>
<tr>
<td>Delivery of petitions to Members of Parliament</td>
<td>05</td>
</tr>
<tr>
<td>Escalation of acts of violence</td>
<td>07</td>
</tr>
<tr>
<td>DEPLOYMENT OF THE ARMY</td>
<td>09</td>
</tr>
<tr>
<td>REGULATIONS AND PROCEDURES FOR LAW ENFORCEMENT</td>
<td>10</td>
</tr>
<tr>
<td>Training of law enforcement agencies on human rights</td>
<td>10</td>
</tr>
<tr>
<td>Use of force</td>
<td>10</td>
</tr>
<tr>
<td>Policing of assemblies and protest actions</td>
<td>11</td>
</tr>
<tr>
<td>AUTOPSY REPORTS</td>
<td>12</td>
</tr>
<tr>
<td>INFORMATION ON ARRESTS</td>
<td>13</td>
</tr>
<tr>
<td>SAFEGUARDS FOR JOURNALISTS</td>
<td>13</td>
</tr>
<tr>
<td>SAFEGUARDS FOR POLITICAL LEADERS AND CIVIL SOCIETY ORGANISATIONS</td>
<td>14</td>
</tr>
<tr>
<td>Position on 1973 Proclamation</td>
<td>15</td>
</tr>
<tr>
<td>Proscribed entities</td>
<td>15</td>
</tr>
<tr>
<td>RESTRICTION OF INTERNET ACCESS</td>
<td>16</td>
</tr>
<tr>
<td>INVESTIGATIONS AND OTHER INQUIRIES</td>
<td>17</td>
</tr>
<tr>
<td>THE GOVERNMENT PLAN TO ADDRESS THIS SITUATION</td>
<td>18</td>
</tr>
<tr>
<td>CONCLUSION</td>
<td>18</td>
</tr>
</tbody>
</table>
INTRODUCTION

The Government of the Kingdom of Eswatini received a joint communication from the Human Rights Council, Special Procedures regarding information concerning alleged severe restrictions to fundamental freedoms in the context of the “Pro-Democracy Protests” in the country.

Whilst the joint communication refers to “Pro-Democracy Protests”, the Kingdom of Eswatini states that the events happened within the context of civil unrest, hence the response shall be in respect of civil unrest. The joint communication further makes reference to allegations of summary executions during the protests; excessive use of force by Police officers; arrests and criminal prosecutions of protestors; attacks on activists and journalists to mention a few.

Before responding to the issues raised in the joint communication, it is worth mentioning that Eswatini, in line with International Covenant on the Civil and Political Rights (ICCPR) and accepted international human rights standards, recognizes the fundamental freedoms of assembly, association, expression and opinion as provided by the Constitution of the Kingdom of Eswatini Act. 001 of 2005.¹

The Public Order Act No. 12 of 2017 gives effect to the fundamental rights of freedom of peaceful assembly, association and freedom of expression embodied in the Constitution of the Kingdom of Eswatini at the same time it promotes and protects public order, public health, public safety and public morals. The Act further contains a Code of Good Practice on gathering Notice 2017 which regulates the conduct of people in a gathering to ensure public order and safety for all.

Prior to the civil unrest, there were delivery of petitions at different Tinkhundla Centres, which the Police monitored to ensure law and order even though there were no notifications served to the local authorities and Regional Administrator in terms of the Public Order Act. However, the excitement grew rapidly and crowds swelled posing a threat to the already endemic situation of COVID 19. After petitions were delivered in 51 Tinkhundla Centers, Government suspended the physical delivery of petitions due to the violations of the COVID 19 Regulations. The Government provided an alternative online platform for the delivery of the petitions.

The suspension of physical delivery of petitions was not received well, setting in motion a chain of events that perpetrated anarchy where vandalism and arson mainly prevailed at night in various places of Eswatini.

While the Constitution and Public Order Act recognise the freedom of peaceful assembly and association, such right is not absolute and has to be exercised within limitations as set out by the law. To this end, Government acted promptly to ensure that order was restored in the interests of defence, public safety, public order, public morality or public health as well as the requirement to protect the rights or freedoms of other persons in accordance Section 25 (3) of the Constitution.

¹Section 25
The “protests” came under spotlight when protestors infringed on the enjoyment of other people’s rights, for example, the right of children to access education where schools were abruptly closed because of the chaos that ensued in order to ensure their safety. What was initially deemed as a protest action escalated into a full blown civil unrest where acts of hooliganism and blatant criminality became the order of the day.

The Government of Eswatini wishes to respond to the issues raised in the Joint Communication as follows;

BACKGROUND TO THE CIVIL UNREST IN ESWATINI

Members of Parliament inside the house.

Challenge on the constitutionality of Acting Prime Minister

Since May 2021, protests and wide spread civil disobedience took the Kingdom of Eswatini by complete surprise. Prior to these protests, Member of Parliament (MP) Mduduzi “Bacede” Mabuza, raised a motion in Parliament challenging the appointment of the Acting Prime Minister as unconstitutional based on Section 67(1) of the Constitution. This section outlines the procedure of appointing a Prime Minister who must be from among members of the House of Assembly on recommendation of the King’s Advisory Council. The then Acting Prime Minister was from the Senate. The MP further raised that the Acting Prime Minister had exceeded the prescribed acting period of 3 months.
The issue was clarified in the House, that Section 67 refers to the appointment of a substantive Prime Minister and that the then Acting Prime Minister was acting on the basis of Section 71 where in his capacity as the Deputy Prime Minister he automatically assumes the functions of a Prime Minister. In respect of the acting period, there is no prescribed period, where the Deputy Prime Minister assumes the functions of the Prime Minister. The prescription of the three-month period is in respect of a Minister performing the function of the Prime Minister, where the Deputy Prime Minister is for some reason unable to perform such functions.

After clarity was provided, MP Bacede Mabuza embarked on a crusade advocating for the election of the Prime Minister which was raised at different platforms of the media including, social media. Joining the call by MP Mduduzi Bacede Mabuza was MP Mthandeni Dube and [Redacted] who advocated for a new political dispensation that would be a result of wholesome political reforms. The three MPs through social media platforms lobbied the youth, who remain susceptible to the message.

Calls For The Election Of Prime Minister

The specific matter of election of Prime Minister arose as a result of the demise of Rt. Hon. H.E. Ambrose Mandvulo Dlamini which left a vacancy. The merit of the call to elect rather than appoint a Prime Minister is premised on accountability measures that the three Members of Parliament felt were not adequate for the incumbent position to serve the people and that the Constitution needs amendment. The three MPs used every opportunity to interrupt House of Assembly sittings, diverting normal business and direct attention towards their strong belief for the election of a Prime Minister without introducing any formal request for its discussion.

Realising, that they were unable to garner the requisite support from other Parliamentarians, they changed tact and started mobilizing communities around the country to deliver petitions at the various Tinkhundla Centres instead of following the laid down procedures as provided by Sections 245, 247 and 248 of the Constitution. These discussions continued even outside Parliament in social media platforms and press conferences which, to a degree, violate Parliamentary codes.

The three MPs call was in disregard of the due process under the Constitution.

The Constitution prescribes the conditions of elections and appointments, and also lays down all conditions of Constitutional reform. In essence, the Constitution provides a clear procedure for engagement on this matter. The Parliamentary procedures relating to the amendment of the Constitution include the following;

(i) Introduction of a Bill expressly providing that the Constitution shall be amended as proposed by the Bill;

(ii) Introduction of the Bill only at a joint sitting of the Senate and the House summoned for the purpose in accordance with the provisions of the First Schedule;

(iii) Bill shall not be introduced unless that Bill has been published in the Gazette not less than thirty days before the introduction at the joint sitting;
(iv) After the Bill has been introduced in the joint sitting, no further proceedings shall be taken on the Bill in Parliament until the prescribed period has elapsed;

(v) Section 247 outlines the procedure for amending entrenched provisions of the Constitution that is, the Bill shall not be passed at the joint sitting unless it is supported on its final reading by the votes of at least two-thirds of all the members of the two chambers; and

(vi) If after the prescribed period, the Bill is passed at the joint sitting and/or at a referendum with the requisite majority, the Bill shall be submitted to the King for assent accompanied by a certificate of compliance as provided by Section 248.

As the fundamental law of the land stipulates, the Government is committed to following the Constitution in undertaking these processes, provided all the steps are followed to the latter. In a clear distribution and equitable share of political influence, the people of Eswatini elect 59 MPs, 10 are elected by the newly elected MPs into Senate, and 4 women are elected by the elected MPs to ensure that women are at least represented at regional level where women do not constitute at 30% of Parliament. Only 20 Senators and 10 MPs are appointed by the Head of State. If and when an amendment of the Constitution is required, this process cannot be stalled by the appointing authority who only has a leeway of 30 (29%) against 73 (71%). A clear 2/3 (66%) majority can be attained easily even amongst the elected members.

This matter became a common feature in the occasional public opinion spaces and was consistently included in the list of issues on petitions delivered to the Tinkhundla Centres across Eswatini. It has continued to saturate all addresses attributable to the three MPs who remain adamant on this resolve. Despite all the protests that have happened, it remains an unchanged fact that this can only be achieved through the due processes of Parliament.

The death of [name] a student of the University of Eswatini brought even more activity during the unrest. The Government met a situation of great hostility when unofficial reports and allegations fingered the Police brutality as the cause of death. Government instituted an inquest led by a Senior Magistrate to bring clarity on the death of [name].

Whilst the inquest was still underway, all gatherings that commemorated the death of the student turned into an outlet for venting other political frustrations such as the call for an elected PM accompanied by low level violence and looting of businesses. Marches were conducted without following the Public Order Act and other procedures, in a clear
attempt to bring disorder and mayhem. The death of [redacted] was regrettably used as a pawn by proscribed political groups who took advantage of the situation to advance their agenda. The recent civil unrest has thrown a predictable delay of the inquest.

The inquest is still ongoing and the Government is optimistic that it will provide clarity on the circumstances leading to the death of the [redacted] student. The report will reveal actions to be undertaken against any offenders, if there are any. Most importantly provide the family and all stakeholders affected with answers concerning the death of [redacted].

Delivery Of Petitions To Members Of Parliament

The 59 Members of Parliament were under pressure to receive petitions from local protesters. Their mobile numbers were shared on social media and most of them were subjected to social media bullying.

The delivery of petitions continued and were occasionally characterized with insults and threats of violence to MPs and other public officials which the Police monitored closely to ensure law and order. Worth noting is that notifications were not served to the local authorities and Regional Administrators in terms of the Public Order Act. The excitement grew rapidly and crowds swelled posing a threat to the already endemic situation of COVID 19. It was soon becoming chaotic where rowdy youth burnt tyres and traditional insignia such as emajobo², hurled derogatory insults to the recipient MPs and engaged in low level violence, including community factional squabbles in which security of petitioners, the public and Members of Parliament could not be guaranteed.

²Loinskins
In the context of COVID 19 epidemic with the third wave looming, the Acting Prime Minister exercising executive and administration powers\(^3\), suspended the physical delivery of petitions due to complete disregard of public safety, the rule of law and COVID 19 Regulations by the petitioners. In addition, a curfew between 6pm and 5am was announced to quell the spread of the virus by limiting the movement of people. The delivery of petitions was held in contravention of not only COVID 19 Regulations\(^4\) but also the Public Order Act, as well as other criminal laws. An alternative platform to submit petitions electronically was provided that is, an electronic mail address and later the Ministry of Tinkhundla offices were availed to receive petitions. However, no petition was delivered in both platforms.

The suspension of physical delivery of petitions was not well received due to social media insinuations that the statement was a Decree issued by His Majesty, resulting in other chain of events that perpetrated further anarchy where vandalism and arson ruled the roost in various places in Eswatini, more especially in the industrial areas of Manzini and Mbabane.

In a clear display of defiance, one of the three MPs announced and invited petitioners to his constituency\(\ldots\) to send a message that he will not comply with the order from Government to stop mass gatherings. This conduct from a law maker, set the motion for a clear disregard of the rule of law. What was different about this petition call for\(\ldots\) is that the invitation to gather and deliver the petition was extended nationally, much against the spirit of the delivery of petitions in the different constituencies. The Police were on guard to enforce the law and ensured that this mass mobilization did not happen, without applying brute force, even in the face of provocation and taunting. However, the delivery of the petition at\(\ldots\) resulted in unprecedented disregard of the rule of law, violence, arson, looting and other criminal acts.

\(^3\)See attached Acting PM statement issued on 29 June 2021 for ease of reference.
\(^4\)which stipulates that gathering attracting more than 100 people are super spreader events of the virulent disease.
Escalation of acts of violence

From 25th June, 2021 Eswatini started experiencing safety and security challenges underlined by destruction of both private and public properties, in particular businesses, through burning, vandalising and looting. Retail businesses such as bottle stores, supermarkets, wholesalers, furniture shops were among the hardest hit. Government offices and structures including Tinkhundla Centres were also not spared. Royal Kraals (Imiphakatsi) at communities, sugar cane fields and forestry plantations among others, were also affected by these acts of sabotage.

In addition to property destruction, public roads in urban and rural areas were blocked through a wide array of impediments such as burning logs, tyres and large stones. Motorists were made to pay in order to have passage to their destinations and in some instances threatened with violence and their vehicles vandalized or coerced to join the protests or risk being burnt in their houses.

NEW TACTICS ON HOW TO FIGHT THE MILITARY AND POLICE

1. OPERATE IN UNITS AND CELLS OF ONLY THREE

The army will be used to intimidate, torture and kill us. This means we must change our tactics. It is now a war situation. They have the guns we have the numbers. They have a few greedy royals to protect we have our freedom to secure. They have rigid strategies we have fluidity of tactics. We outsmart them. We must operate in cells of three. All operations must be known only by the unit of three.

2. SURVUllANCE DURING THE DAY AND ATTACK AT NIGHT

During the day we study the army and police. We look for cameras in buildings that may identify us. We monitor the army’s routine. We must know what time do they operate. When do they change shifts. What are their habits. When are they casual and relaxed. Who is the ring leader and boss. Where do their parents and children stay. All operations must be informed by clear knowledge so that when we attack we do so with information.

Screenshot of online incitement of violence and call to burn and loot.

The attacks and destruction of property took place both during the day and in the still of the night and were orchestrated in such a manner that during the day, the vandalising would occur almost simultaneously in various places throughout the country. These attacks intensified at night under the theme of kungahlwa kwenile (danger looms at night).  

\( ^{5} \)Night of anarchy

Eswatini Civil Unrest Report 2021 07
ultimately, the looting, destruction of property and general chaos cost the economy of Eswatini an estimated E3 Billion, including loss of employment for people employed in areas where businesses were destroyed, as well as the unfortunate loss of lives.

among the suspects arrested, are those who were found manufacturing molotov cocktails and had a batch of the incendiary materials with them when they were nabbed. The petrol bombs found were to be deployed for escapades of destruction in areas around the country. This was viewed by country’s security advisors and law enforcement agents as acts of terrorism.

the country’s security surveillance and intelligence suggest that the unrest is likely to continue as instigations and mobilizations are still continuing through social media platforms. In addition, continuing to be propagated through social media are death threats and threats relating to destruction of property directed to members of the Security Services/Forces and other senior Government officials.

the mobilization happening in social media platforms means that there are no convenors to perform the responsibilities of organisers and convenors as envisaged in Section 12 of the Public Order Act. These responsibilities include to co-operate fully with the local authorities (Municipalities and Regional Administrators) and the Police regarding the planning of measures for the maintenance of order at gatherings as well as to co-operate with the Police to ensure that the participants in a gathering comply with the law, and with the terms of any notice, as may have been amended by a local authority, and with any condition attached to the holding of a gathering. This poses threats to public order and safety since there is no observance of the codes of conduct for gatherings.

investigations are still ongoing in this regard.

as the turmoil persisted, episodes of violence and lawlessness grew, so were the filtering of acts of terrorism, as the so-called protestors began using molotov cocktails (petrol bombs) to destroy the various infrastructure detailed in the foregoing paragraphs.
During the unrest, the country was under siege from insurgents and criminals who burnt, vandalised, and looted many business establishments. Civilians and civilian property were also robbed, blown up with explosives, burnt down, vandalized and looted by the insurgents something that caused traumatic experience to the Eswatini population. The insurgents manned illegal roads or toll gates where they robbed civilians of their hard earned cash with the threat of stoning and other violence. Further, citizens were unable to access basic services and necessities, such as hospitals, shops, and other hosts of rights were restricted by the insurgents armed with assortment of weapons to instill fear amongst the citizens.

The Police faced with a difficult situation exercised restraint to prevent any loss of life or further escalation of criminal acts. However, the situation intensified and members of the Police force could not contain it any longer thus sought assistance from the Eswatini Defence Force (EDF) and Correctional Services.

Acting in accordance with the Police Service Act No. 22 of 2018, where circumstances require, the National Commissioner of Police after consultation with the Prime Minister may request the assistance of the Umbutfo Eswatini Defence Force (the Army), His Majesty’s Correctional Services and the Eswatini National Fire and Emergency Service or other related Services to assist in the execution of the Royal Eswatini Police Service (REPS) mandate.

“15.1 For the performance of duties under this Act, where circumstances so require, the National Commissioner after consultation with the Minister may request the assistance of the Umbutfo Eswatini Defence Force, His Majesty’s Correctional Services and the Eswatini National Fire and Emergency Service or other related Services.”

The enlisting of the Army in exceptional circumstance such as was obtained during the civil unrest was further mandated by section 191 (2) of the Constitution which states that the primary object of the defense force is to defend and protect the sovereignty and integrity of the people of Eswatini in accordance with the Constitution and the principles of international law. During this unrest the sovereignty and integrity of the nation and safety of people were at risk of extinction.

In addition, section 3(2) Defence Order 10/1977 provides that the Defence Force is charged with the defence of the Kingdom of Eswatini and the support of the civil powers in the maintenance of order.

The deployment of the Army was not to Police perpetrators of the civil unrest but to guard key installations. The Army also helped in removing materials that were used to barricade the country’s roads by criminal elements who took advantage of the situation. They robbed motorists of their money by barricading roads and demanding money from every motorist, thereby restricting the freedom of movement. The Army was deployed to operate within the ambit of human rights to support the maintenance of order.

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*Section 15 (1) of the Police Service Act. See also Section 10 of the Correctional Services Act No. 13 of 2017.*
REGULATIONS AND PROCEDURES FOR LAW ENFORCEMENT

As already alluded above, law enforcement agencies are deployed to operate within the ambit of human rights, hence their conduct during assemblies and use of force and firearms is compatible with international standards. In this regard, their training, use of force as well as policing of assembly and protect actions are elaborated as follows:

Use of force

With the law-and-order situation continuing to deteriorate rapidly, and properties being damaged willy-nilly, as well as life of innocent citizens endangered, Law Enforcement Agencies on the ground were charged with the responsibility to contain the situation using minimum force that was proportionate to the circumstances. This had to be done to diffuse what had become a volatile situation, restore law and order as well as protect life and property.

Training of law enforcement agencies on human rights

Generally, the Army conducts a detailed training to its personnel on Internal Security Operations as well as training on human rights standard including International humanitarian Law or Law of Armed Conflicts. In addition, the Police and Correctional Officers are also trained and examined on a module for human rights at their respective Academies or Colleges. Further, officers occupying strategic positions attend refresher courses on human rights and the knowledge acquired is shared to the rest of the officers in various duty stations. In 2018 the Commission on Human Rights and Public Administration trained Law enforcement Officers holding management and supervisory offices on the subject on human rights.

On enlisting the joint operations of Law Enforcement Agencies ensuring that the right to freedom of assembly is exercised with due regard to the interests of public order and public safety, debriefing sessions are convened for officers to be deployed to manage the assemblies, demonstrations and protests. During the debriefing sessions a refresher training is administered to sensitize all officers on policing of assemblies and relevant human rights standards to be observed.

In relation to the rules of engagement, the use of force should be proportionate to the threat on the ground. Whilst the right to life is protected in terms of Section 15 (1) of the Constitution, it is not absolute and there are circumstances compounded in Section 15 (4) (a) – (d) which may not be regarded as having deprived the right to life of a person. This provision states that:
(4) “Without prejudice to any liability for a contravention of any other law with respect to the use of force in such cases as are mentioned in this subsection, a person shall not be regarded as having been deprived of life in contravention of this section if death results from use of force to such extent as is reasonably justifiable and proportionate in the circumstances of the case –

(a) for the defence of any person from violence or for the defence of property;

(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(c) for the purpose of suppressing a riot, insurrection or mutiny; or

(d) in order to prevent the commission by that person of a serious criminal offence.”

In relation to the allegations on the summary executions during the protests; the Government of Eswatini is not aware of any persons that were deprived of life as a tactic to terrorize the population or enforce compliance with public order. Further, the Government is not aware of the eight human rights defenders and activists that were killed.

POLICING OF ASSEMBLIES AND PROTEST ACTIONS

The directive principles of state policy and duties of the citizen, serve as a guide to all organs and agencies of the State, citizens, organisations and other bodies and persons in applying or interpreting this Constitution or any other law and in taking and implementing any policy decisions, for the establishment of a just, free and democratic society.\(^7\)

When law enforcement officials go about their respective mandates they are obligated\(^8\) to serve the nation with the “high degree of responsibility required by their profession” and must “respect and protect human dignity and maintain and uphold the human rights of all persons.” Law enforcement officials are prohibited from torturing or inflicting “inhuman or degrading treatment or punishment,” and may not “invoke superior orders or exceptional circumstances as a justification” for torture or other forms of degrading punishment.

The legal instruments that governs and regulate the right to peaceful assembly and association are the Public Order Act No.12 of 2017, supplemented by the Code of Practice for Industrial and Protest Actions Legal Notice No. 202 of 2015 and the Code of Practice on Gatherings Legal Notice No. 201 of 2017.

The convener of a gathering is required to give notice in writing of an intended gathering four days in advance to convene a gathering that constitute more than 50 people.\(^9\) If, however, it is "not reasonably possible" for the convener to do so, he or she "shall give a 48 hour notice with justifications for non-compliance with the required time limit.

Section 11 of the Public Order Act empowers the Police to manage and order the dispersal of an assembly if there is a reasonable apprehension that there is an immediate

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\(^1\)Chapter V of the Constitution of the Kingdom of Eswatini
\(^2\)Section 56 (1) of the Constitution.
\(^3\)Section 57 of the Constitution. See also Section 10 of the Police Service Act No. 22 of 2018 and Section 6 of the Correctional Services Act No. 13 of 2017.
\(^4\)Section 6 of the Public Order Act.
danger to the maintenance of public order or safety. Further, the Police are empowered to use reasonable force to disperse a gathering and the force use shall not be greater than is necessary to secure the dispersal of the gathering and shall be proportionate to the circumstances of the case and the object to be attained.

Police officers and law enforcement agents are permitted to use reasonable force or other reasonable means to make people comply with their instructions or to maintain peace and order.11

Suffice to state from the outset that the rules of engagement for gatherings and protests depends on how protestors behave. The Royal Eswatini Police Services (REPS) supports the rights of Eswatini citizens to peacefully protest as the Constitution and the Public Order Act provides. However, 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.

Therefore, the circumstances highlighted above warranted the REPS to disperse crowds by using force that was proportionate to restore peace and order as the situation amounted to public emergency which threatened life and property. The restriction of the right to assembly and association was Constitutional as the circumstances highlighted above met the threshold requirements of necessity, proportionality and powers of derogation as contained in the Constitution.

AUTOPSY REPORTS

In respect of independent autopsy reports of alleged victims of “killings” and of the student, the Government states that autopsies are primarily conducted in terms of the Inquests Act No. 59 of 1954, as part of the investigation of deaths which may have been due to other causes, other than natural causes.

In terms of this statutory provision, unexpected or unexplained deaths should be investigated in conjunction with the Police. In cases where the attending physician is satisfied that the death had been due to natural causes, although the precise nature and/or extent of disease or complication may be obscure, a certificate of natural cause of death may be issued. This act outlines the duty of the Police upon receiving the report as well as the method of investigation.

On case, an autopsy was performed by the Government pathologist in accordance with Inquests Act No. 59 of 1954, the result of which were revealed during the Inquest. The family had the option of consulting with an independent pathologist for a second opinion, but they opted not to.

For other individuals who died during the civil unrest, the Government is aware that there were requests for licensing of independent Pathologists through Eswatini Medical and Dental Council. However, the Government does not have access to the independent autopsy reports nor have the reports been shared by the respective families.

11 See also sections 39, 41 and 42 of the Criminal Procedure and Evidence Act No. 67 of 1938.
INFORMATION ON ARRESTS

Following the civil unrest and the rampant criminal activities committed throughout its duration, the Police have to-date arrested 337 suspects/offenders for various criminal offences including terrorism, house breaking & theft, theft, arson and malicious damage to property, and offences under the Public Order Act. The number of arrests is envisaged to increase as investigations are still continuing including attendant operations to recover looted items.

Out of the 337 offenders that have been arrested, 263 are adult males, 67 adult females and 07 juveniles. A total of 187 have been released on bail (including 7 juveniles released to parents/guardians on recognition), a total of 146 have been convicted and a total of 34 are being remanded in custody despite being granted bail because they have not been able to pay the bail. All of the arrested individuals are afforded the safeguards enshrined in Section 21 of the Constitution in that they are:

- presumed to be innocent until that person is proved or has pleaded guilty;
- informed as soon as reasonably practicable, in a language which that person understands and in sufficient detail, of the nature of the offence or charge;
- entitled to legal representation at the expense of the Government in the case of any offence which carries a sentence of death or imprisonment for life;
- given adequate time and facilities for the preparation of the defence;
- permitted to present a defence before the court either directly or through a legal representative chosen by that person;
- while incarcerated, they are afforded the same treatment as other offenders in the correctional centres;
- they are, when incarcerated afforded the necessary medical attention as basic Eswatini citizens;
- afforded facilities to examine in person or by a legal representative the witnesses called by the prosecution and to obtain the attendance of witnesses to testify on behalf of that person on the same conditions as those applying to witnesses called by the prosecution; and
- permitted to have, without payment, the assistance of an interpreter if that person cannot understand the language used at the trial.

SAFEGUARDS FOR JOURNALISTS

The Media whether foreign or local, draws its mode of operation and strength from Section 24 (b and c) of the Constitution which declares that, “A person shall not except with the free consent of that person be hindered in the enjoyment of the freedom of expression, which includes the freedom of the press and other media, that is -

(b) freedom to receive ideas and information without interference;
(c) freedom to communicate ideas and information without interference”
The Kingdom of Eswatini respects and upholds media freedom and is committed to the protection of Journalists as demonstrated in the country’s supreme law. The media is free to do its work subject to observation of the laws, policies and guidelines issued by the Ministry of Information Communication and Technology (ICT). For foreign journalists, as is the norm with most countries of the world, they are required to observe the Kingdom’s immigration laws. This also includes complying with accreditation, recording of all equipment in possession, acquiring special permits to access restricted places as well as having a valid health clearance certificate (COVID-19 tests).

The process for accreditation of Journalists is only reserved for members of the Press who present valid press credentials as tabulated in the Government website under the Ministry of ICT. Applicants are expected to send a completed application form with documents attached four weeks before the event they intend to cover. This is done to allow time for background processes to be concluded. Of note, applications go through a number of departments and external agencies for approval, such as the immigration department. The Ministry of ICT only issues the final accreditation letter/card.

A special provision has also been put in place to cater for emergency or urgent applications, the Ministry of ICT does facilitate accreditation within 48 hours. This is done on case-by-case basis, wherein applicants have to state the urgency of their application and ensure that they meet immigration requirements. It is advisable that when Journalists arrive in the country, their embassies are notified as well as the office of the Director for Information and Media Development to ensure protection and assistance if needed.

During the period between 15 June and 13 July 2021, only one application for accreditation was received from the [REDACTED] Another was received on 14 July 2021 in respect of the [REDACTED]

With regards to the allegations that two foreign Journalists covering a funeral were detained, forced to delete footage, interview recordings and photographs by the Army Personnel; the Government was not aware of their presence in the country. This is because there are no records of their accreditation with the Ministry of ICT.

SAFEGUARDS FOR POLITICAL LEADERS AND CIVIL SOCIETY ORGANISATIONS

In terms of Section 58 (1) of the Constitution, Eswatini shall be a democratic country dedicated to principles which empower and encourage the active participation of all citizens at all levels in their own governance. To this end, political leaders and civil society organisations are able to carry out their legitimate work without fear of reprisal if they operate within the ambit of the law. Section 25 of the Constitution specifically provides for the freedom of assembly and association.

However, although Section 79 of the Constitution emphasizes 'individual merit' as a basis for election or appointment to public office, there is no restriction for political parties to field candidates in their own personal capacities.  

12

In this regard the concept of individuals as candidates is based on the anatomy that participatory democracy is possible even from the constituency (Tinkhundla12) level (in our context made up of imiphakatsi (Chiefdoms)

\[\text{Sithole NO and Others v The Prime Minister and others (35/2007) [2008] SZSC 22 (23 May 2008). In this case, the Supreme Court pronounced that political parties were not allowed to field candidates however, members of such parties can participate based on individual merit.}\]
or polling divisions as the case may be.

This essentially means that people choose their leaders directly using individual merit. Therefore a person is nominated to serve on the basis of him or her being known to that community. Hence canvassing for votes at primary level is prohibited in terms of Section 87(5) of the Constitution. To this end, candidates are elected according to their attributes such as integrity, ethical personality, ability to lead, and, above all, competence. In other words, no one is barred from offering themselves for leadership positions, except by their competencies. To facilitate the election, all nominations are open and supported by at least 10 people in that umphakatsi (chiefdom) or polling division.14

**Position on 1973 Proclamation**

The King’s Proclamation to the Nation of 12 April 1973 is no longer in force, as it was repealed by coming into force of the Constitution. However, as alluded above, Eswatini’s system of Government is based on individual merit who represent their constituencies/tinkhundla and not political parties. Election into Parliament is not by political party representation or affiliation because the Tinkhundla system is non-partisan as candidates contest for public office as individuals.

**Circumstances leading to proscribing certain entities**

In 2008 - 2010, there was a spate of bombings of Tinkhundla buildings as well as other public offices and properties which were orchestrated by the [Ensures name removed], which resulted in the party being classified as a specified/proscribed entity including its youth subsidiary [Ensures name removed], amongst others, in terms of Section 28 of the Suppression of Terrorism Act No 05 of 2008, which lays out the procedure to be followed when an entity is specified or proscribed. It is worth noting that the Suppression of Terrorism Act, was amended in 2017 to provide for the judicial review of orders declaring certain entities to be specified, which means that a Ministerial decision to declare certain entities to be specified is now reviewable by the Courts, thus placing under judicial review, the Minister’s powers to specify an entity.

Worth noting is that over and above the spate of bombings; there were other criminal acts committed by the two organisations members which are listed as follows –

- **[Ensures name removed]** case
  - No. [Ensures number removed] – Former President of [Ensures name removed] was charged with contravention of Suppression of Terrorism Act Sedition and Subversive Activities Act No. 46 of 1938 for alleged sedition and promoting the violent overthrow of the State by [Ensures name removed] - was released on bail by the Supreme Court (since he is now deceased, the charges have now fallen away).

- **[Ensures name removed]** case
  - No. [Ensures number removed] – Former [Ensures name removed] Leader of [Ensures name removed], the youth wing of [Ensures name removed] was charged with contravention of Suppression of Terrorism Act and the Sedition and Subversive Activities Act for alleged sedition and promoting the violent overthrow of the State by [Ensures name removed] Released on bail by the Supreme Court. His case is still pending as Government filed an appeal against judgment that struck off the sections under which he was charged).

- **[Ensures name removed]** – Convicted of Contravention of the Sedition and Subversive Activities Act. Bombed the private home of the [Ensures name removed] in 2010. The victim’s aged [Ensures name removed] was in the home at the time and passed away 8 days later. Bombed

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13 For further reference on the Tinkhundla system, refer to Annexure.

14 Section 31 (3) of the Elections Act No 06 of 20013.

15 an entity that was determined by the State to have been actively involved in a spate of bombings carried out as part of an ongoing campaign to cause the violent overthrow of the State, and proscribed as a terrorist organisation under the Suppression of Terrorism Act
the private home of a [redacted] in 2010.

- Convicted of Contravention of Sedition and Subversive Activities Act, Immigration Act, Explosives Act and Murder (2 counts). Mr. [redacted] was injured on [redacted] when a bomb that he and three colleagues were preparing to place under a bridge 100m from the [redacted] Primary School and 600m from the [redacted] Palace, exploded in their vehicle killing two of his colleagues. The vehicle in which the bomb exploded had components to set another 13 bombs. Cell phones used by the four bombers had photographs of them holding bombs before the incident and SMS’s and cell phone calls to [redacted] operatives, and members of [redacted]. They also disclosed funding arrangements for Umbane, the military wing of [redacted].

- [redacted] is wanted by Police in connection with a case of explosives imported from [redacted] into Eswatini to disrupt the elections. Two suspects allegedly apprehended in possession of these explosives in 2014 are currently in custody while [redacted] escaped to the Republic [redacted] and remains wanted in connection with these activities.


It is on this premise that [redacted] and [redacted] remain specified/proscribed entities under the Suppression of Terrorism Act.

**RESTRICTION OF INTERNET ACCESS**

The Government of Eswatini has the right and obligation to provide certain guidelines, policies and directives for the electronic communication sector in terms of Sections 5 and 6 of the Eswatini Communications Commission Act of 2013.

The Government made an assessment and determined that social media platforms were being used irresponsibly to spread disinformation which was immensely contributing to the violent attacks and civil unrest that was prevalent throughout the country. It was categorized...
as being a matter of national state security which necessitated urgent interventions to arrest the situation.

Consequently, the Government issued a directive calling upon all licensed operators to immediately suspend any access and use, of all social media platforms and online messaging, applications over their networks until further notice. This was done on the strength that there was a threat of life and security of the people. The insurgents used social platforms to target certain shops, and business structures.

Worth noting is that the Constitution permits derogations from the provisions of the Bill of Rights in situations of public emergencies to put in place measures that are reasonably justifiable to deal with that particular existing situation.16

The derogation of right in certain circumstances, is necessary, proportionate and lawful as long as it does not conflict with the prohibition of derogations contained in Section 38 of the Constitution.

In addition, the restrictions on the internet at the time slowed down the destructive organization for arson attacks and other criminal acts. Further, in order to balance the restrictions with the right to access, the internet was restored as soon as the situation improved.

In this regard, the Government states that the restrictions on the internet were necessary and proportionate and consistent with obligations under international human rights.

INVESTIGATIONS AND OTHER INQUIRIES

The inquest in respect of the student is still ongoing

The Government is fully conversant of the importance to investigate the human rights issues which arose during the civil unrest, in line with country’s human rights obligations. There is an ongoing independent assessment being conducted by the Commission on Human Rights and Public Administration (CHRPA) which might shed light on some of the issues raised in the Joint Communication. The assessment has not been completed, and it is anticipated to be complete by October 2021.

Law enforcers continue to conduct investigation on criminal activities, alleged “police brutality” and “excessive use of force” associated with the unrest. Due to the magnitude of the civil disturbance which had the hallmark of a revolution and extreme criminality, the investigations are ongoing.

Investigations on the civil unrest are ongoing. Criminal elements of the unrest are investigated by the police including allegations of excessive use of force. Violators of human rights are being assessed by the CHRPA.

16 Sections 37 and 38
THE GOVERNMENT PLAN TO ADDRESS THIS SITUATION

The Government appreciates the importance of finding sustainable solutions after fully understanding the root causes of the unrest in order to pave a way forward within the confines of the law.

Currently, the Government is taking legal and political advice on the corrective measures to ensure that the victims of violations experienced during the civil unrest have access to effective remedy in line with the guidelines provided by General Comments 31 and 36 of the Human Rights Committee and Article 6 of the ICCPR.

Further, the Government notes that the country is still reeling from the effects of the 3rd wave of the COVID – 19 pandemic which has limited the efforts towards addressing the root causes of the civil unrest. However, the Government remains committed to taking the necessary steps to address the situation.

CONCLUSION

The Government wishes to reiterate the following:

(i) Eswatini recognizes and protects the freedom of expression in terms of Section 24 of the Constitution, demonstrated during the delivery of petitions in the Tinkhundla areas.

(ii) The restrictions on the freedom of peaceful assembly and association occasioned as a consequence of the civil disturbance meets the requirements of legality, were necessary and proportionate in relation to the interest of national security, public safety, public order, protection of public health and the protection of rights and freedom of others in terms of Article 21 of the International Covenant on Civil and Political Rights (ICCPR).

(iii) The provisions of the Constitution Act 1/2005 in so far as ensuring that the fundamental rights and freedoms of people are protected meets the threshold espoused in Articles 2, 6, 7, 9, 19,21 of the ICCPR. Hence the Government took all the necessary measures to ensure their protection with some permissible restrictions during the civil unrest.

(iv) The Public Order Act 2017 is very elaborate in terms of proper management of peaceful assemblies.
The Government of Eswatini wishes to assure the Special Rapporteurs that as the situation unfolds necessary steps shall be undertaken to holistically address the situation after the deliberations at different levels have been held to pave the most strategic way forward for Emaswati.