

AMNESTY INTERNATIONAL PRESS RELEASE

AI Index: AFR 55/006/2002 (Public)
News Service No: 224

Embargo Date: 4 December 2002 00:01 GMT

Swaziland: Subversion of the rule of law gravely endangers protection of human rights and jeopardizes the constitution reform process

Published

The Swazi government's deliberate and flagrant disregard for the rule of law and its attempts to undermine the independence of the judiciary jeopardize long term protection of human rights in Swaziland.

Amnesty International believes that judicial independence is the vital element in any accessible justice system.

"By refusing to abide by recent rulings of the Court of Appeal, the highest court in the land, the Swazi government is once again in breach of its legal obligations as party to the African Charter on Human and Peoples' Rights. It is undermining the right of access to an effective remedy which should be available to all Swazi citizens," Amnesty International said.

Prime Minister Sibusiso Dlamini's public statement on 27 November - that the government and its departments would not abide by two recent rulings of the Court of Appeal - had its most immediate affect on the applicants who had approached the courts originally to have their rights enforced.

The resignation in protest by all the judges of the Court of Appeal on 30 November and the growing alarm amongst other members of the judiciary, legal community and civil society organizations should alert the government to the dangerous long-term consequences of its actions for the integrity of the administration of justice.

The unfolding crisis is occurring at a time when the constitutional reform process has reached a critical stage. The Constitutional Drafting Committee, appointed by King Mswati III nearly a year ago, has completed a draft of a new constitution and is awaiting instructions for handing it to the King who is expected to make the draft public.

The recent actions of the government, which is headed by the King, are not consistent with the conduct of a government which is supposedly committed to developing a new and enduring constitution which will protect human rights. There is also a danger that public confidence in the constitutional reform process will be severely undermined, along with the credibility of that process.

The contempt for the rule of law exhibited by the government's stance over the Court of Appeal rulings has also been revealed by government pressures in the last two months on the operations of judges of the High Court and the Director of Public Prosecutions. Similarly indicative has been the refusal by the police authorities at the highest level to abide by the Court of Appeal rulings.

These actions of agents of the state have denied vulnerable individuals and communities access to effective remedies and enforcement of their internationally accepted human rights.

Recent cases in which the government has interfered with the judicial process or refused to accept judicial rulings have involved the rights to liberty and access to the legal process for arrested persons, the right to liberty and equality for women, and the right of access to economic and social rights for the evicted men, women and children of the Macetjeni area.

The government is obliged under the African Charter on Human and Peoples' Rights and as a member of the United Nations to promote and protect human rights. It should not contribute to a climate of impunity and lawlessness.

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