



**“THEY DON'T SEE US AS PEOPLE”**

SECURITY OF TENURE AND FORCED EVICTIONS IN ESWATINI

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*Cover photo: Rubble is all that remains of Sicelo Dlamini's homestead, which was demolished on 9 April 2018 in Emphetseni, a farming area in the Malkerns, Eswatini. Sicelo Dlamini died the following month.*  
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# EXECUTIVE SUMMARY

When Amnesty International arrived in the Emphetseni farming area in the Malkerns town in Eswatini (formerly known as Swaziland) one week after the homestead demolitions of 9 April 2018, children's shoes, school books, wires from mattresses, shattered glass and window frames were strewn about. Some of the affected families were still rummaging through the rubble, uncovering the doors to the homes they once knew. At least 61 people, including 30 children, became homeless after these demolitions. Many of them also lost their possessions and access to the land which they cultivated for subsistence.

Discussing two emblematic cases, this report reveals how the human rights violation of forced evictions is rooted in Eswatini's land governance system which fails to provide at least hundreds of people with a minimum degree of security of tenure. The report also highlights the failure of the Eswatini government to abide by its international, regional and national legal obligations, especially the obligation to guarantee the right to adequate housing.

## METHODOLOGY

Amnesty International conducted research in Eswatini in March 2017, November 2017 and April 2018. The latter visit followed demolitions which had taken place a week earlier. Amnesty International interviewed a diverse range of stakeholders, including 80 people who have been affected by forced evictions, and people living under threat of eviction.

This report focuses on Nokwane and the Malkerns because recent evictions have taken place in these areas. Amnesty International interviewed 15 people from at least 19 homesteads who had been forcibly evicted from their homes in Nokwane in 2014, following a government initiative to develop a Royal Science and Technology Park. In the Malkerns, Amnesty International interviewed a further 15 people following their forced evictions on 9 April 2018, as well as three whose homes were demolished in November 2016.

In addition, we met the Commission on Human Rights, as well as government representatives who included the Ministry of Economic Planning and Development, the Ministry of Natural Resources and Energy, and the Attorney General.

## LAND GOVERNANCE

Eswatini has a complex land governance system, inextricably tied to the history and political economy of the country. Towards the end of the 19<sup>th</sup> century, Eswatini's fertile land and mineral wealth made it an attractive and lucrative destination for investors. An influx of European and South African migrants meant there was a high demand for land. As a result, the then King Mbandzeni granted concessions - initially understood by Swazis as temporary land grants - to migrants. In exchange, the holders of what is described as "concession land" paid rent, which eventually became the country's primary source of revenue between 1886 and 1894. The high influx of migrants into Eswatini, and the granting of concessions to them, was a source of tension between the migrants and the local population. The legacy of this conflict persists in Eswatini today with protracted disputes over ownership of land throughout the country.

The Constitution of 2006 formally recognizes a dual land tenure system. The King holds more than half of the land, called Swazi Nation Land (SNL), "in trust" for the Swazi people. The remainder is privately owned Title-deed Land (TDL).

The system of trust with regard to SNL operates as a patronage relationship, whereby the King allocates SNL to the Swazi people indirectly through local chiefs. Through a process known as “*kukhonta*” in Siswati, the national language, residents may access SNL which then leads to a tributary relationship between the person to whom the land is allotted and the chief. In exchange for access to the SNL, the resident pays customary fees in the form of livestock, and must pledge allegiance to the chief; this may require tribute labour, or other communal activities. There are no official written records of this land allocation – size and to whom it is allocated – and nor is there any other form of formal security of tenure in this arrangement. Under customary law, chiefs have the power to allocate as well as to banish people from land.

Title-deed Land (TDL) is privately held land that was previously given to private parties in concession. While TDL holders have security of tenure, much of that land is occupied by subsistence farmers whose tenure status is unclear.

Following evictions of these farm dwellers in the 1950s and 60s, the government in 1967 introduced the Farm Dwellers Act to regulate relations between farm owners and occupants. The Act, however, only protects those who have a formal written agreement with the farm owner and officially recognizes them as “farm dwellers”. The Act excludes protection for everyone else who finds themselves living on privately-owned land with a verbal agreement, as was the tradition with a current or previous land owner, and authorities consider these occupants as “squatters” who lack any minimum degree of security of tenure.

Eswatini began developing a National Land Policy in 1999, which has not yet been finalized. The 2006 Constitution stipulates that the state shall “endeavour to settle the land issue and the issue of land concessions expeditiously so as to enhance economic development and the unity of the Swazi people.” However, many land policy issues remain unresolved. Following the adoption of the Constitution, a new draft Land Policy was introduced in 2009. In this document, the Eswatini government acknowledges the insecurity of all tenure types as an issue to be addressed.

In 2013 a Draft Land Bill was introduced which expressly repeals 19 archaic pieces of legislation, the oldest of which dates back to 1904. While steps had been taken to finalize both the Draft Land Policy and the Draft Land Bill, neither had been passed by the time Parliament was dissolved in June 2018 for the national elections scheduled for September 2018.

Delays in legal and policy reform has meant that the Eswatini government is yet to take the necessary steps to ensure security of tenure and protection of right to adequate housing, thus leaving hundreds of people vulnerable to forced evictions.

## **EVICCTIONS WITHOUT DUE PROCESS IN THE MALKERNS AND NOKWANE**

This report documents two emblematic cases of forced evictions in Eswatini. In both the Malkerns and Nokwane, the affected residents were largely subsistence farmers and casual labourers who claimed to have been living on the land for several years, if not decades. Family members were buried there. In both cases, some of the families claimed to have been allocated the land by a chief through the process of *kukhonta*, and others said that they had a verbal agreement with a previous owner of the land to live there. In both cases, the residents went through a protracted court process, which ultimately ended in their evictions and the demolition of their homes as they were unable to provide any formal proof of security of tenure. At least 60 people in the Malkerns and at least 180 people in Nokwane were rendered homeless as a result.

International human rights standards are unequivocal: protection from forced evictions is available to all, even to those without a legally recognized right to the house or land that they occupy. Further, the UN Committee on Economic, Social and Cultural Rights in its General Comment 7 stresses that even when an eviction is considered justified, “it should be carried out in strict compliance with the relevant provisions of international human rights law and in accordance with the general principles of reasonableness and proportionality”. According to international human rights law as outlined in General Comment 7, the threshold for lawful evictions includes seven elements: genuine consultation; adequate and reasonable notice; information on the proposed eviction; government officials to be present during evictions; evictions not to take place in bad weather or during the night; provision of legal remedies; and provision of legal aid. The Committee also emphasizes in General Comment 7 that no one should be rendered homeless or vulnerable to other human rights violations as a result of an eviction.

The responsibility for ensuring that forced evictions do not take place lies with the state. Where forced evictions are carried out by actors other than the state, for example private individuals or companies, the authorities have a duty to protect the affected people and intervene to prevent forced evictions. The duty of the Eswatini state to protect people from forced evictions also includes ensuring that human rights safeguards are in place regardless of whether the evictions have been ordered by a public or private body.

The duty to engage in genuine consultations, provide adequate notice and ensure that no one is left homeless as a result of an eviction also lies with the Eswatini state.

Based on Amnesty International's findings, the Eswatini government failed to ensure genuine consultation with affected people on alternatives to eviction and adequate and reasonable notice for affected people prior to the evictions. It also failed to provide alternative accommodation and compensation. The authorities failed to follow due process in carrying out the evictions in both the Malkerns and Nokwane. The resulting homelessness impacted not only the right to adequate housing, but a wide range of interrelated rights including the right to education, access to livelihoods and food security. The government therefore failed to meet the threshold of lawful evictions.

## THE MALKERNS

On 9 April 2018, at least 61 people in the Emphetseni farming area in the Malkerns town were forcibly evicted by the Deputy Sheriff of the Mbabane High Court along with 20 armed police and bulldozers and in the presence of members of private company Umbane Limited. Those removed from their land included 33 children and comprised three generations living in four homesteads. Their homes were then demolished. Each homestead consisted of a single mother, some of whom had short-term seasonal contract jobs. The families were subsistence farmers. People in each homestead said that they had been living on the land since 1956. According to the affected families, at least 40 graves of family members are situated on the homesteads.

In 1997, private agricultural company Umbane Limited bought the title-deed to the land in question from another private company, Usuthu Pulp Limited. Four homesteads comprising 15 families were living on the land at the time of the purchase and contestation over rights began then. The new owners and the occupants of the land approached the courts to resolve the issue.

The company alleges that the families were "squatters". However, the affected residents dispute that they were living on the land illegally, claiming that their forefathers had acquired it from the chief through the traditional *kukhonta* process decades previously. Consequently, in 2011 the company initiated a lawsuit for the residents' eviction. However, in a judgment delivered on 13 February 2013 the High Court denied the eviction order on the basis that the occupants had settled on the land in 1957 and were therefore entitled to the common law principle of acquisitive prescription which states that continuous habitation may result in a statutory claim to land through title. However, unsatisfied with this outcome, the company appealed the judgment at the Supreme Court. Umbane Limited thereby secured an eviction order against the 15 families living in the four homesteads.

Since the Supreme Court's ruling, the community said they had been seeking remedy through traditional dispute resolution structures, including by presenting their case to the King's Advisory Council. The families told Amnesty International they believed the matter was still pending at the Royal Council at the time the demolitions and evictions took place. Although the families had been living under the threat of evictions for almost two decades, the demolitions happened without warning. This lack of adequate notice violates the Eswatini government's regional and international human rights obligations.

Sicelo Dlamini, who has since died, told Amnesty International that the demolition was a shock. "The people came and found us unprepared," he said, "They didn't alert us they were coming." Without any alternative land or housing, the affected families were left homeless. In the words of Lungile Khumalo who lost her home in the Malkerns: "The problem is we have nowhere to go. We are leaving our grandparents there in the graves. Now we are just scattered. Our children, our brothers. We don't have land now." As with all the affected families, Lungile's extended family were not offered alternative accommodation and have been separated following the forced eviction from their one homestead. Lungile now lives in a rented flat. Her cousin, with whom she shared a home in the Malkerns, now lives in a hostel and is separated from her children.

Another resident, Gavin Khumalo, also rendered homeless after the eviction, showed Amnesty International the chicken shed he was living in, approximately 2km from his previous home.

The April 2018 forced eviction is not the first. On 5 October 2016, one homestead in the Malkerns was demolished by a private company after the residents were forcibly evicted. Following the court order for the eviction, the authorities failed to ensure that due process requirements were followed in carrying it out, resulting in residents made homeless. Amnesty International is aware of at least three other neighbouring homesteads in the Malkerns region who live in constant fear of imminent eviction by a private company.

## NOKWANE

Nokwane is situated some 15km east of Manzini town, in the Manzini region in the centre-west of Eswatini. Once known for its pineapple plantations, Nokwane is today a 159 hectares construction site of the Royal Science and Technology Park (RSTP), a government-led development initiative, inaugurated in April 2018. The Ministry of Information, Communication and Technology (MICT) secured a court order for eviction, and the area's residents were then forcibly evicted by a delegation including MICT government officials and the police. At least 19 homesteads were demolished, impacting at least 180 people between September and October 2014.

At the root of the matter was a dispute between the occupants of the land and the Eswatini government, which resulted in a protracted legal process. In December 2014 the High Court ruled that the land was SNL: the King owns the property in trust for the Swazi nation and allocated it to the government through the MICT for the construction of the RSTP. According to the MICT, in correspondence with Amnesty International in 2017, the Ministry of Housing owned the land before 2006 and embarked on a township development programme; apportioned plots were sold to owners who built temporary structures. However, the government later decided to instead use the land for the construction of the Royal Science and Technology Park, and claim to have provided alternative accommodation and full compensation to the owners of the plots, who the MICT said "unintentionally created an opportunistic appetite for squatters in their vacant plots". The government referred to the 19 affected families in Nokwane as "illegal squatters". This account did not match the affected families' version. At least five people interviewed told Amnesty International they were born on the land, which their parents acquired through the traditional *kukhonta* process under which they were allocated the land by their chief. The government's version, that the affected families only arrived after 2006 when the temporary structures were allegedly built by the owners of the subdivided plots, is not only inconsistent with the account of the affected families but is also in contrast to satellite imagery sourced by Amnesty International.

This imagery reveals that over 100 structures were present in the area designated as the RSTP between 20 October 2002 and 14 July 2015. From February 2015, the structures are missing. The imagery also shows excavators and bulldozers demolishing structures in 2014.

International human rights standards are very clear: protection from forced evictions and the application of safeguards against forced evictions apply to everyone, regardless of whether their occupation of the land or the house in question is legally recognized.

In addition, the MICT claims in correspondence with Amnesty International in 2017 to have offered alternative land to the "illegal squatters" which they say was refused. Once again, this was disputed by the families, who told Amnesty International that they attended meetings where government representatives gave them inconsistent information about who would be affected by the construction. Five of the affected residents said they were promised alternative land on which to *khukhonta*, which they did not receive. Although the government representatives did meet with the community on at least two instances, all the affected families interviewed said that inconsistent information on the number of affected people and compensation had been provided to them regarding their forced eviction. As such, they did not receive full, accurate and timely information in order to facilitate their meaningful participation. Some people told Amnesty International that in the meetings between government representatives and affected families they were simply provided with information stating that their houses were to be demolished – there was no opportunity given to raise concerns and comments. The meetings therefore did not meet the threshold of genuine consultation, in line with Eswatini's international human rights law obligations. Amnesty International wrote to the government asking for details of the number of meetings and information shared, but to date no information has been provided.

Affected families told Amnesty International that at least 19 homesteads were located on the disputed land. Of those, they said that five were situated within the RSTP boundaries and 14 outside. Initially, affected families said only those living within the boundaries of the RSTP were told they would be affected by the development. In the end, however, all 19 homesteads - at least 180 people - located within and outside the boundaries were forcibly evicted. The authorities did not provide the affected families with alternative accommodation and their eviction left them homeless, in violation of Eswatini's international and regional human rights obligations.

The Attorney General gave the residents two days' notification of the upcoming evictions and demolitions. They appealed to the court, which ruled within two days that the evictions and demolitions could go ahead. The evictions took place on the following day. This falls short of what is considered adequate notice for evictions under international human rights law.

Nomathemba was working as a cleaner when her mother called around 11am telling her to come home. She told Amnesty International that by the time she arrived, the house had been demolished:

**“When our home was demolished, I didn’t feel like I have human rights. They don’t see us as people, [they] left us out in the open like we were animals or something to be thrown away.”**

Nomathemba’s elderly mother was alone when the bulldozers arrived and was not able to remove all the family’s belongings from the house. Nomathemba tried to salvage what remained in the rubble but the children’s school uniforms, clothes, dishes and documents were destroyed. Nomathemba recalled that there was a light drizzle that night as she, her mother and five children slept outside.

The forced evictions in Nokwane had a deep and lasting impact on the residents. A woman who was forcibly evicted in October 2014 along with her four children and grandson and left to find her own alternative accommodation, told Amnesty International that she has been waiting for a chief to allocate them land for more than three years. After she obtained financial assistance from a local church group in order to offer a cow to the chief, and also after visiting the chief on numerous occasions and cooking for the chief’s council, she is still waiting to be allocated land.

Another woman who was forcibly evicted from Nokwane in October 2014 shared a similar view. She told Amnesty International there were not many alternatives available to the family after their home was demolished:

**“It’s very difficult as a woman to *kukhonta* [the traditional process of acquiring land through paying allegiance to a chief]. You need a male. Otherwise you won’t be able to get land, or be heard.”**

## LEGAL FRAMEWORK

Although the Eswatini Constitution does not explicitly include a provision for the right to adequate housing, Section 19(2) of the Constitution prohibits arbitrary deprivation of property and eviction from land without fair and adequate compensation. Despite this provision, however, Amnesty International found that people’s experiences reveal that they are not being protected, indicating a disconnect between policy and practice.

The Eswatini government is obligated under a range of international and regional human rights laws to respect, protect and fulfil the right to adequate housing. While the Constitution does not contain provision for the right to adequate housing, the state is still bound by this obligation, which arises from its ratification of a number of treaties. These include the African Charter on Human and People’s Rights, the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Convention on the Rights of the Child (CRC); the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the International Covenant on Civil and Political Rights (ICCPR).

Article 11 of the ICESCR guarantees the right to adequate housing.

The Committee on Economic, Social and Cultural Rights (the monitoring body set up under the ICESCR) advocates a broad interpretation of the right to adequate housing “as the right to live somewhere in security, peace and dignity.” The concept of adequacy of housing is given critical importance and the Committee has outlined certain key factors to determine adequacy: legal security of tenure; availability of services, materials, facilities and infrastructure; affordability; habitability; accessibility; location; and cultural adequacy.

As a State party to the ICESCR, Eswatini is bound by a duty to ensure that forced evictions do not occur. The protection guaranteed in international human rights law is accorded to all, regardless of whether they own or occupy the land from which they are being evicted.

Under international human rights law, evictions may only be carried out as a last resort, once all other feasible alternatives to eviction have been explored and appropriate procedural protections are in place. Governments must also ensure that no one is rendered homeless or vulnerable to the violation of other human rights as a consequence of eviction. Adequate alternative housing and compensation for all losses - pecuniary and non-pecuniary - must be made available to those affected prior to eviction. The duty to ensure all these safeguards against forced evictions rests with the Eswatini state.

## CONCLUSION AND RECOMMENDATIONS

By failing to put in place adequate safeguards against forced evictions as required by Eswatini's international legal obligations, the government has violated the human rights of all those affected in the Malkerns and Nokwane evictions.

The underlying structural causes identified in this report which generate insecurity of tenure, including the opaque land governance and tenure systems, and the disconnect between policy and practice, must be addressed to put an end to forced evictions. Until then, people living in Eswatini continue to live at risk of forced evictions.

The report concludes with recommendations to the Prime Minister, the Attorney General and the Minister of Justice, as well as to the Ministry of Natural Resources and Energy, and the Ministry of Information, Communications and Technology.

### KEY RECOMMENDATIONS INCLUDE:

- The Prime Minister to declare a nationwide moratorium on all evictions until adequate legal and procedural safeguards are in place to ensure that all evictions comply with international and regional human rights standards. This should include a public announcement and immediate measures that the government should take to ensure that those under threat of eviction are protected.
- The Prime Minister to immediately provide reparations for forcibly evicted families in the Malkerns and Nokwane. Such reparation should include adequate alternative housing for those rendered homeless, rehabilitation, compensation for all losses and guarantees of non-repetition.
- Immediately after national elections the Attorney General to begin the process of drafting legislation which explicitly prohibits forced evictions in all circumstances and sets out safeguards that must be strictly followed before any eviction is carried out. This law should be in strict compliance with Eswatini's Constitution and international and regional human rights law and standards, including in respect of the provision of effective remedies. Linked to this process, the Attorney General should expedite the finalization of the land policy and bill and ensure they are compatible with international human rights obligations arising from the right to adequate housing.

# GLOSSARY

WORD	DESCRIPTION
ACHPR	African Commission on Human and People's Rights
CESCR	Committee on Economic, Social and Cultural Rights
GDP	Gross Domestic Product
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
LMB	Land Management Board
MEPD	Ministry of Economic Planning and Development
MHUD	Ministry of Housing and Urban Development
MICT	Ministry of Information, Communications and Technology
MNRE	Ministry of Natural Resources and Energy
PS	Principal Secretary
RSTP	Royal Science and Technology Park
SCA	Supreme Court of Appeal
SNL	Swazi Nation Land
TDL	Title-deed Land
UN	United Nations
UDHR	Universal Declaration of Human Rights

WORD	DESCRIPTION
UNFAO	United Nations Food and Agricultural Organisation
USD	United States Dollar
ZAR	South African Rand

# METHODOLOGY

This report is based on desktop and field research conducted between February 2017 and July 2018. Amnesty International visited Eswatini (formerly Swaziland) in March and November 2017 and April 2018. The latter visit followed demolitions which had taken place a week earlier.

Amnesty International visited all four regions of the country: Hhoho in the north, Shiselweni in the south, Gege in the south-west, and Lubamba, the eastern part of the country. Amnesty International has previously documented forced evictions carried out in Macetjeni and Kamwhkeli<sup>1</sup>; however, this report focuses on Nokwane and the Malkerns in the Manzini region because recent evictions have taken place in these areas.

Amnesty International interviewed a diverse range of stakeholders, including 80 people who have been affected by forced evictions, and people living under threat of eviction. In Nokwane Amnesty International interviewed 15 people from at least 19 homesteads who had been forcibly evicted from their homes in Nokwane in 2014, following a government initiative to develop a Royal Science and Technology Park. Amnesty International visited the town of the Malkerns in close proximity to the capital, Mbabane, where Amnesty International interviewed 15 people following their forced evictions on 9 April 2018, as well as three whose homes were demolished in November 2016. Amnesty International interviewed two communities facing imminent eviction in Madonsa in the Manzini region and Mbondzela near Gege in the Shiselweni region. We met the community leader of at least 50 families in Madonsa facing imminent eviction by a parastatal authority. In Mbondzela we interviewed a community of over 20 families, who face eviction from TDL.

In addition, Amnesty International interviewed civil society activists, human rights lawyers, church groups, journalists, a member of the judiciary, a professor of Political Science at the University of Swaziland, and the chairperson and members of the Commission on Human Rights and Public Administration/Integrity. Amnesty International met with government representatives, including the Ministry of Economic Planning and Development, and the Ministry of Natural Resources and Energy, the Deeds Registrar, the Surveyor General and the Attorney General and an MP, the Regional Farm Dwellers Tribunal, the Swazi National Provident Fund, the Swaziland Water and Agricultural Development Enterprise (SWADE), the Swazi Sugarcane Association (SSA), the Royal Swaziland Sugarcane Corporation (RSSC), the Law Society and a member of the royal family who was leading the development of the Constitution. Amnesty International also met with the United Nations Food and Agricultural Organisation (FAO), and members of the diplomatic community including the European Union delegation and the US embassy.

Amnesty International sent a letter to the Ministry of Natural Resources and Energy (MNRE) and the Ministry of Information, Communications and Technology (MICT) outlining our allegations and raising questions on 5 July 2018. On 12 July, the MICT responded in writing, a copy of which is included in Annex 1. At the time of publication, Amnesty International had received no response from the MNRE. Amnesty International sent a letter on 4 July 2018 to the Managing Director of *Tibiyo Taka Ngwane* regarding its involvement in mediation in the Malkerns case, and while receipt was acknowledged on 11 July 2018, Amnesty International had received no response to questions raised by time of publication. Amnesty International sent a letter to private company Umbane Limited on 29 June 2018 with questions. A response was received on 30 June 2018 which did not address the questions. Previously, Amnesty International met with Umbane Limited in Eswatini on 18 April 2018, and via telephone on 21 May 2018. Amnesty International sent a letter to Diesel Services

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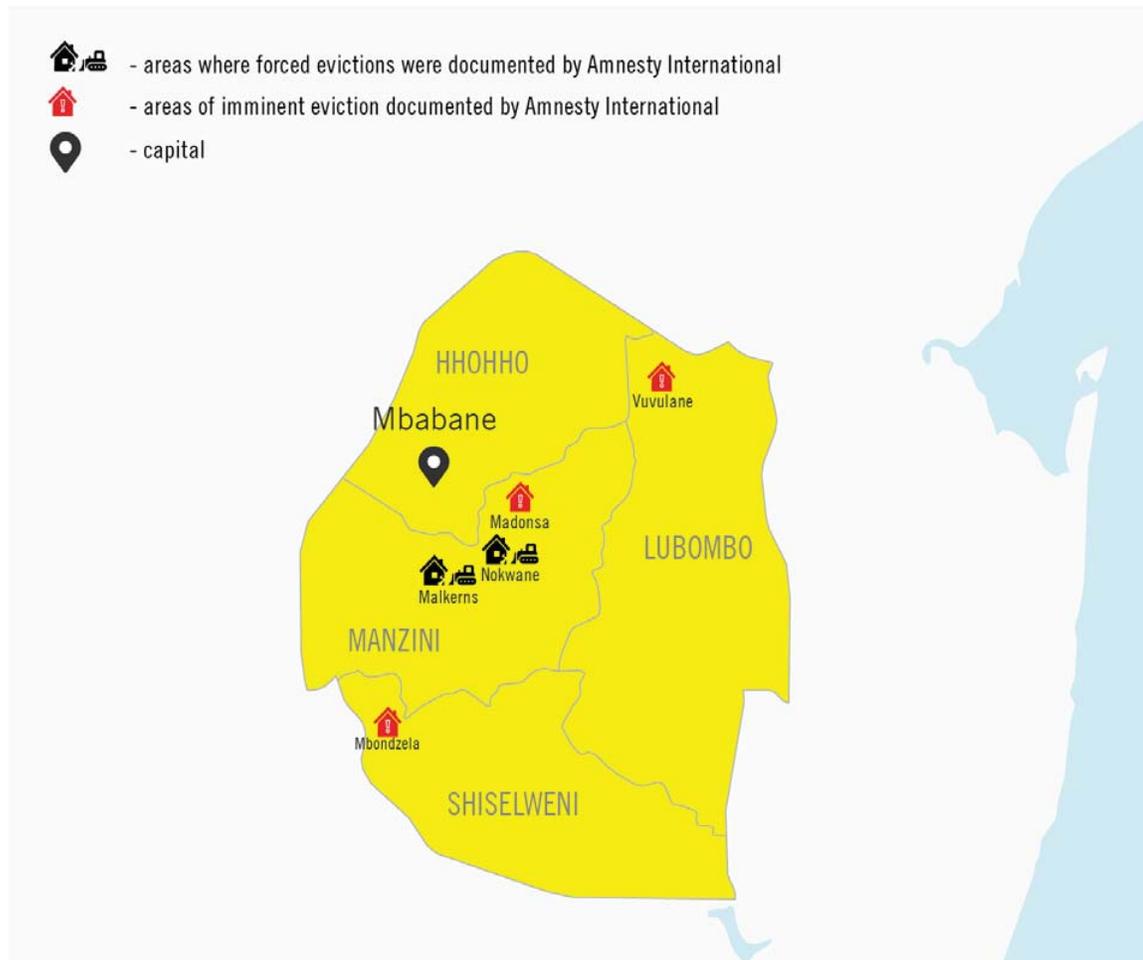
<sup>1</sup> In 2004, Amnesty International published a report *Swaziland: Human rights at risk in a climate of political and legal uncertainty* (AFR 55/004/2004)

Limited on 4 July, and Diesel Services Limited provided a response on 5 July in writing which is dealt with at page 48 of the report.

Amnesty International had extensive correspondence and engagement with the Eswatini government. See Annex 2 for a detailed list of letters sent, as well as government responses and meetings held.

Amnesty International thanks local civil society who enabled us to carry out this research, and the rights holders who took the time to courageously share with us their lived experiences. Without them, this report would not be possible.

\* In April 2018 the Kingdom of Swaziland was renamed the Kingdom of Eswatini by King Mswati III via a legal notice signed on 19 April 2018.



# CONTEXT

This chapter sets the scene for the Kingdom of Eswatini, formerly known as Swaziland. It provides a snapshot of the transition the country is currently undergoing. There is a dual system of rule in Eswatini. While maintaining its traditional customary rule, the government of Eswatini promulgated a Constitution in 2006. The government also has a vision to develop Eswatini into a first world country by 2022. This development drive has led to forced evictions both by the public and private sectors. This chapter explains what constitutes forced evictions and introduces two emblematic cases Amnesty International documented.

Eswatini, the last absolute monarchy in southern Africa, is formally described as a constitutional monarchy. King Mswati III is Head of State and Prime Minister Barnabas Sibusiso Dlamini is Head of Government. Eswatini has experienced a tumultuous political history of colonial rule. While political parties are proscribed by decree, on 29 June 2018, King Mswati dissolved parliament, and national elections are planned for September 2018.

Eswatini covers an area of 17,364 kilometres and is landlocked, surrounded by South Africa to the north, west and south, and Mozambique to the east. The country's population of 1.9 million people<sup>2</sup> is predominantly rural<sup>3</sup>.

Today, Eswatini is in transition. Its aspirations to be recognized by the international community combined with internal pressure from civil society and trade unions led to the establishment of a Constitution in 2006<sup>4</sup> – the supreme law of the land.<sup>5</sup> The Constitution also formally recognizes Swazi customary law as part of the country's legal system.<sup>6</sup>

Toward the end of the 19<sup>th</sup> century, Eswatini's fertile land and mineral wealth made it an attractive and lucrative destination for investors.<sup>7</sup> An influx of European and South African migrants meant there was a high demand for land. As a result, the then King Mbandzeni granted concessions - initially understood by Swazi people as temporary land grants - to migrants.<sup>8</sup> In exchange, the holders of what is described as "concession land" paid rent, which eventually became the country's primary source of revenue between 1886 and 1894.<sup>9</sup> The high influx of migrants into Eswatini, and the granting of concessions to these settlers, created a source of tension between the migrants and the local population.<sup>10</sup> The legacy of this conflict persists in Eswatini today; it is the source of land disputes and is reflected in the current land challenges the country faces.

Attempts to address what is acknowledged in the 2006 Constitution as "the land question" which began more than a century ago remains unresolved. While the Eswatini monarchy unsuccessfully attempted to raise its grievances at the international level with the British during visits to England and South Africa, at the

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2 The 2017 Population and Housing Census Preliminary Results. Central Statistical Office, September 2017. United Nations Population Fund, p.10

3 Food and Agriculture Organization of the United Nations. World Food Programme. Special Report. Crop and Food Security Assessment Mission to Swaziland, 24 July 2015. (hereafter FAO Special Report) p.7, available at: <http://www.fao.org/3/a-i4797e.pdf>

4 Amnesty International interview Mary de Silva, human rights lawyer and activist. 22 March 2018, Johannesburg, South Africa

5 Constitution of Swaziland. Act 001 of 2005. Section 2(1)

6 Constitution of Swaziland. Section 252(2)

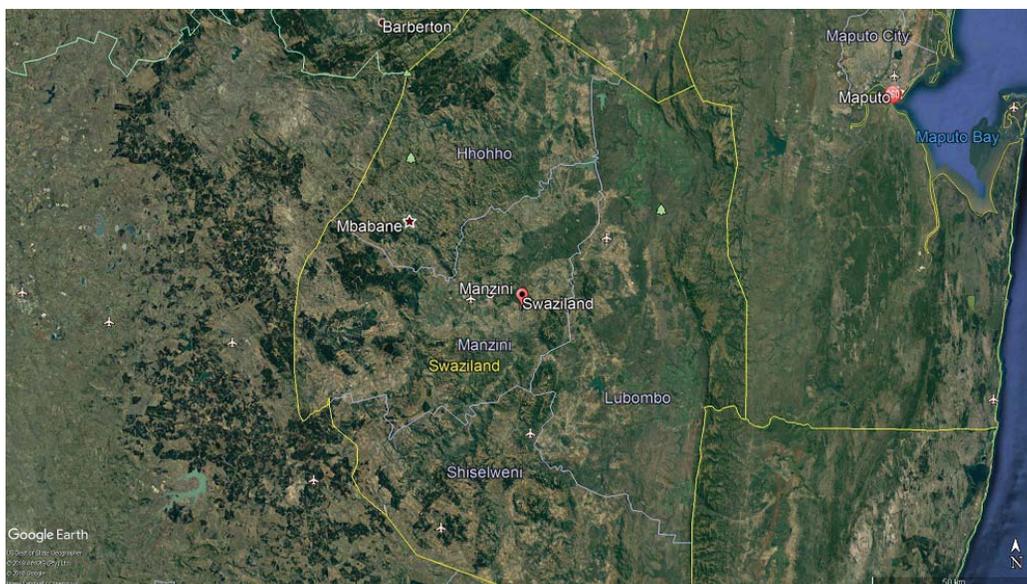
7 The mineral wealth was in the form of gold deposits. Levin, Richard (1990). Is this the Swazi way? State, Democracy and the Land Question. Journal Article. Transformation 13, p. 47

8 Mushala, Kanduza, Simelane, Rwelamira and Dlamini. Dual tenure systems and multiple livelihoods: a comparison of communal and private land tenure in Eswatini, (hereafter Mushala), p. 3-4

9 Matsebula, J.S.M (1988). A History of Swaziland. Maskew Miller Longman, (hereafter Matsebula) p. 181

10 Magagula, Petros Qambukusa (1988) Swaziland's relations with Britain and South Africa since 1968, Durham theses, Durham University, p.13, available at: <http://etheses.dur.ac.uk/6640/>

domestic level the monarchy devised a scheme to “buy back the land”. During her reign between 1899 and 1921, Queen Labotsibeni introduced a tax to Swazis in order to buy back land from concession holders.<sup>11</sup> King Sobhuza II, whose reign lasted 82 years from 1899 to 1982, continued a similar initiative named the Lifa Fund, which enabled Swazis to buy back more than 260,000 hectares of land by the 1960s.<sup>12</sup> At independence in 1968, 49% of the country’s land had reverted to the Eswatini government and was classified as Swazi Nation Land (SNL). A member of the royal family told Amnesty International that following independence there was no sensitization of people regarding the different types of land tenure and its implications.<sup>13</sup> The need for sensitization at that point was critical, so that people could understand the processes involved in conversion of previous concession land into either title-deed land (TDL) or reversion to Swazi Nation Land (SNL). The overall confusion that resulted from the authorities’ failure to provide information to the public about the land governance system left people vulnerable to evictions. This view was echoed by members of the regional Farm Dwellers Tribunal, a body set up to decide the rights of farm dwellers to the land they occupied.<sup>14</sup>



*Location of Eswatini, a landlocked country surrounded by South Africa and Mozambique © Google images*

## ESWATINI’S DEVELOPMENT DREAM

In 1999 the Eswatini government adopted a National Development Strategy known as “Vision 2022” which aimed to “improve the standard of living of all people through improved access to quality services, wealth creation and employment opportunities.”<sup>15</sup> The vision for Eswatini to become a “first world country” by 2022 consists of the Swaziland Development Index, a framework of key indicators which tracks progress in eight focal areas: economic prosperity, agriculture and environmental sustainability, education, health, service delivery, infrastructure, governance and corruption.<sup>16</sup> Several countries of the region have taken this long term vision as part of their economic planning.

However, while the Eswatini government recognizes that these targets can only be met by substantial economic growth,<sup>17</sup> the country’s economy is shrinking, with economic growth estimated to have decreased

11 Mushala et al, p.5

12 The Lifa Fund was dissolved due to maladministration and corruption. Kuper, 1978:204 in: Levin, Richard. Is this the Swazi Way? State, Democracy and the Land Question. Journal Article. Transformation 13 (1990), p.50

13 Amnesty International interview with a member of the Swazi royal family. 21 March 2017

14 Amnesty International interview. Regional Farm Dwellers Tribunal, Manzini, 4 December 2017

15 King Mswati at the Commonwealth Heads of Government meeting, Trinidad and Tobago, 2009, available at: <http://thekingofEswatini.com/his-majestt-vision/>

16 His Majesty’s Government. Programme of Action: 2013-2018. Development Unusual: the route to the first world kingdom. (hereafter His Majesty’s Government. Programme of Action) Available at: <http://www.gov.sz/images/programme%20of%20action%202013%20-%202018.pdf>

17 His Majesty’s Government. Programme of Action, p.2

from 1.7% in 2015 to -0.6% in 2016. Eswatini's major sectors in terms of Gross Domestic Product (GDP) consists of the tertiary sector (51%); industrial sector (42%) while agriculture only contributes 6% to GDP.<sup>18</sup> Inflation in Eswatini rose to 8.7% in December 2016, as a result of increases in water, electricity and food prices, tied to drought.<sup>19</sup> In January 2015 Eswatini lost its African Growth and Opportunity Act (AGOA) status - a US Trade Act which enhanced US market access.<sup>20</sup> This led to a decreased external demand for textiles, Eswatini's traditional export.<sup>21</sup> Agricultural output decreased in 2015-2016 as a result of drought, with a high impact on rain-fed crops including maize and cotton, as well as irrigated crops, in particular sugar cane, because of low dam water levels.<sup>22</sup>

Since Swazi society is predominantly rural, with the majority of the population working as subsistence farmers and reliant on the land for their livelihood, the cumulative effects of the recent shrinking of the economy, the prolonged drought and the loss of AGOA has had adverse impacts on people living in poverty, including food insecurity.<sup>23</sup> Subsistence farmers living in rural areas who experience poverty are therefore more vulnerable to being adversely affected if their land is taken away from them. Given this context, forced evictions have direct implications on their human rights, including the right to housing, water, sanitation and food, as well as their access to livelihoods and necessities of daily life.

## FORCED EVICTIONS

### WHAT IS A FORCED EVICTION?

A forced eviction is the removal of people against their will from the homes or land they occupy without legal protections and other safeguards. The Commission on Human Rights has said that forced evictions constitute a gross violation of human rights, in particular the right to adequate housing.<sup>24</sup>

Under international human rights law, evictions may only be carried out as a last resort, once all other feasible alternatives to eviction have been explored and appropriate procedural protections are in place. Such safeguards include:

- an opportunity for genuine consultation with those affected;
- adequate and reasonable notice for affected people prior to the eviction;
- information on the proposed evictions and, where applicable, on the alternative purpose for which the land or housing is to be used, to be made available in reasonable time to all those affected;
- government officials or their representatives to be present during the evictions; - Anyone carrying out the eviction to be properly identified;
- evictions not to take place in particularly bad weather or at night unless the affected people consent;
- provision of legal remedies;
- provision, where possible, of legal aid to people who are in need of it to seek redress from the courts.
- Governments must also ensure that no one is rendered homeless or vulnerable to the violation of other human rights as a consequence of eviction.

Adequate alternative housing and compensation for all losses must be made available to those affected prior to eviction.

<sup>18</sup> African Economic Outlook. Swaziland, 2017. Produced jointly by the African Development Bank (AfDB), the Organization for Economic Development (OECD) and the United Nations Development Programme (UNDP), (hereafter African Economic Outlook) p.2

<sup>19</sup> African Economic Outlook, p.2-6

<sup>20</sup> Eswatini lost its AGOA status due to the country not sufficiently progressing on amending legislation that prohibited human rights, including workers' rights and the rights to freedom of assembly and association. In particular, the US government requested amendments on the Industrial Relations Act, the Suppression of Terrorism Act, and the Public Order Act. Online article: Teetee Zwane. Swaziland: Did Government Underestimate the importance of AGOA loss? 9 November 2014. Swazi Observer, available at: <https://agoa.info/news/article/5556-Eswatini-did-government-underestimate-impact-of-agoa-loss.html>

<sup>21</sup> Fakudz, Churchill. Food and Agricultural Organisation of the United Nations and the Malkerns Town Board. Malkerns Town Planning Scheme, 2015-20, October 2016 (hereafter Fakudz and FAO) p. 74

<sup>22</sup> African Economic Outlook. Swaziland, p.2

<sup>23</sup> FAO Special Report, p.7

<sup>24</sup> Commission on Human Rights Resolution 1993/77

## INTRODUCTION

On 9 April 2018, the Deputy Sheriff of the Mbabane High Court, along with 20 armed police and bulldozers and in the presence of members of private agricultural company Umbane Limited, forcibly evicted at least 61 people, including 33 children covering three generations living in four homesteads in the Emphetseni farming area in the town of the Malkerns. They then demolished their homes.<sup>25</sup> Since each homestead consisted of a plot of land with multiple structures where extended families lived, their destruction resulted in the displacement of 15 families. Each homestead consisted of single mothers, some of whom had short-term seasonal contract jobs, and most of whom were unemployed. The families were subsistence farmers. People in each homestead said that they had been living on the land since 1956. According to the affected families, at least 40 graves of their family members are situated on the homesteads from which they were forcibly evicted. Although the families had been living under the threat of evictions for almost two decades, they were not given any formal notice of the demolitions.

Sicelo Dlamini, who has since passed away, told Amnesty International that the demolition was a shock. “The people came and found us unprepared,” he said, “They didn’t alert us they were coming.”<sup>26</sup>



*Demolitions in the Malkerns on 9 April 2018 © Thamsanqa Khumalo*

Nokwane, the second case highlighted in the report, is today the site of the Royal Science and Technology Park (RSTP), a government-led development initiative inaugurated in April 2018. At least 19 homesteads consisting of at least 180 people were forcibly evicted and their homes demolished between September and October 2014 to make way for this development.

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<sup>25</sup> <https://www.amnesty.org/en/latest/news/2018/04/Eswatini-housing-demolitions-leave-dozens-homeless/>  
<sup>26</sup> Amnesty International interview 16 April 2018, Emphetseni, Malkerns



*Demolitions in Nokwane, following the families' forced evictions in September 2014. © Lomcebo Dlamini*

One of the women forcibly evicted from Nokwane told Amnesty International:

**“When our home was demolished, I didn’t feel like I have human rights. They don’t see us as people, [they] left us out in the open like we were animals or something to be thrown away.”<sup>27</sup>**

Both the Malkerns and Nokwane cases were the result of protracted legal processes. Amnesty International found that even though the evictions had been ordered by the courts, the Eswatini authorities failed to put in place the safeguards required by international human rights law. In both cases, due process was not followed in carrying out the evictions. The resulting homelessness impacted not only the right to adequate housing but a wide range of interrelated rights, including the right to education, access to livelihoods, and food security. Therefore, the Eswatini government failed to meet the threshold of lawful evictions.

Amnesty International is aware of at least three other communities facing imminent eviction later in 2018. In Madonsa in the Manzini region, approximately 58 families – over 200 people – face eviction by a parastatal authority. In Mbonzela in the Shiselweni region, approximately 27 families, over 100 people, face eviction from Title-deed Land, and in Vuvulane at least 16 families remain at risk of eviction. In this report, Amnesty International documents cases of forced evictions over the past five years in the Malkerns and Nokwane and highlights the structural causes that provide fertile ground for forced evictions.

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<sup>27</sup> Amnesty International interview. 19 April 2018

# LAND GOVERNANCE: LAND AS LIFE AND AS A SOURCE OF POWER



*Avocado trees and maize plantations which provide subsistence for families. © Amnesty International*

**“My life is dependent on this land.”**

Sehlepi Nxumalo, sugarcane farmer in Vuvulane facing imminent eviction.

In Eswatini, land is life. It is the source of livelihood for the majority of the population who rely on subsistence farming.<sup>28</sup> Traditionally and historically, Swazi people's livelihoods have depended on land. When access to land is curtailed, it has direct implications for people's housing, food and livelihood requirements. This chapter outlines Eswatini's land governance system which provides fertile ground for forced evictions which not only violate the right to adequate housing but several other human rights. Land in Eswatini can be broadly divided into Swazi Nation Land (SNL), and privately owned Title-deed Land (TDL). The current land governance system is inextricably linked to the country's complex history and political economy. While the Constitution highlighted the need to address what's described as the "land issue", and established a Land Management Board, there is no legislation operationalising the body. Eswatini has not finalized the land governance policy and women face barriers to acquiring land for housing. The combined effect of these factors provide fertile ground for forced evictions.

## LAND AS A SOURCE OF POWER

In Eswatini, the Constitution of 2006 formally recognizes a dual land tenure system, consisting of Swazi Nation Land (SNL), held in trust by the King,<sup>29</sup> and privately-owned Title-Deed Land (TDL):

**"all land (including any existing concessions) in Swaziland, save privately held title-deed land, shall continue to vest in King in trust [emphasis added] for the Swazi Nation as it vested on the 12th April 1973."**<sup>30</sup>

Today, the majority of the land in Eswatini is SNL which includes, to a large extent, what was previously concession land. Concession land was land given (rented) to private companies and individuals for commercial purposes. The remaining land in the country is Title-Deed Land (TDL), comprising privately-owned land and Crown Land.<sup>31</sup> Crown Land is generally understood as land owned by government,<sup>32</sup> but registered as TDL in the name of the King.<sup>33</sup>

This system of land governance is tied to the history and political economy of the country. Eswatini which had become a South African protectorate in 1894, was relinquished to Britain in 1903 following the Anglo-Boer war. In 1907, the British administration passed the Concession Partition Act, which provided the initial legal basis for the current land tenure system in Eswatini.

Through this Act, one third of each land concession that was given to private companies or individuals was reserved for the sole and exclusive use of Swazis. This demarcated land, previously termed "Swazi Areas", is what is today referred to as Swazi Nation Land (SNL).<sup>34</sup> The remaining two-thirds of each concession land was shared between the concession holder and the Crown (government).<sup>35</sup>

However, after Eswatini gained independence from British rule, King Sobhuza passed the Land Concession Order in 1973, by which the ownership of any concession land was transferred to the King.<sup>36</sup> Alongside this Order, the King also passed the Vesting of Land in King's Order, through which any land vested in the Crown or government was transferred to the King, but also registered as a title-deed in the name of "Crown" land, in the Deeds Registry Office.<sup>37</sup> This law also reinforced the King's continued hold over SNL, which he held "in trust" for the Swazi nation.<sup>38</sup>

As experts explained to Amnesty International, the intention of these laws was to benefit the Swazi people to ensure equality of access to land and adequate housing. Contrary to the colonial system, where Swazis were

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28 FAO Special Report, p.7

29 The King is also referred to as the *iNgwenyama* when performing traditional duties. For purposes of this report we will refer to the King as the authority, regardless of which role he is playing

30 Section 211 (1) "From the date of commencement of this Constitution, all land (including any existing concessions) in Eswatini, save privately held title-deed land, shall continue to vest in King in trust for the Swazi Nation as it vested on the 12th April 1973"

31 These figures of proportion of land division are according to the Ministry of Economic Planning and Development's communication with Amnesty International, received on 8 August 2017

32 Mushala, 1992 and Levin, 1987 in: Mushala et al

33 Vesting-of-Land-in-King's-Order, Section Three. This accompanied the 1973 King's Proclamation

34 Armstrong, Alice K. Legal Aspects of Land Tenure in Swaziland. Paper prepared as part of the Ministry of Agriculture and Cooperative's research on Changes in Agricultural Land Use: Institutional Constraints and Opportunities, 1986, (hereafter Armstrong) p. 4

35 Matsebula, A History of Swaziland, p.184 and Rose, 1992 in: Mushala et al, p.3-4

36 Land Concession Order, 1973, Section 3: The Concession land is to be held at the will and pleasure of the King: Notwithstanding anything in any other law any land held in Swaziland by a concessionaire, whose concession title or lease is still in force, shall be so held at the will and pleasure of the King on such terms as he may determine

37 Vesting of Land in King's Order. 1973, Section 3

38 Vesting of Land in King's Order, 1973, Section 6

confined to a limited piece of land as part of concession land, Swazis could under the King's Order now have access to more land in order to enable their right to an adequate standard of living.

Amnesty International has found through its research that the Eswatini government has failed to respect and protect the right to adequate housing.

## SWAZI NATION LAND (SNL)

There are two types of SNL - registered and unregistered.<sup>39</sup> Registered SNL refers to previous or repurchased TDL bought by the Swazi monarchy and leased out to private companies to attract income, and administered by the Swazi government through a parastatal entity called *Tibiyo Taka Ngwane* (Wealth of the Nation). This is an entity set up by royal family, initially with the purpose of controlling funds to buy back previous concession land to revert to Swazi Nation Land.

Unregistered SNL is held under customary land tenure and is allocated to individuals or families by chiefs.<sup>40</sup> Tenure over unregistered SNL is not regulated by legislation, but rather by tradition, from which a number of issues arise. Tenure on unregistered SNL can also be acquired through inheritance.<sup>41</sup>

Both registered and unregistered SNL can be expropriated by the government under the Acquisition of Land Act<sup>42</sup>, or by the King under the Swazi Administration Act.<sup>43</sup> The Constitution, however, provides protection against arbitrary deprivation of property, stating that the compulsory acquisition of land can only be made under certain conditions, which includes "prompt payment of fair and adequate compensation; and a right of access to a court of law by any person who has an interest in or right over the property."<sup>44</sup>

Key to the concept of Swazi Nation Land is that it is communal land held by the King "in trust for the Swazi Nation."<sup>45</sup> This system, reinforced by the Constitution, is based on "trust" - a patronage relationship, whereby the King holds land "in trust" for the Swazi nation and accordingly allocates SNL to the people indirectly through chiefs. The Constitution explains the critical role of chiefs as the "footstools" of the King who rules indirectly through them.<sup>46</sup> The SNL allocations ensure the right to enjoy the use of the land, but which cannot be bought, sold or used as collateral. In exchange, the recipients pay allegiance to their chief, usually in the form of tribute labour or unpaid labour, when requested. There is no formal legal security of tenure in this arrangement. There is no uniform official written records of these allocations. Under customary law, chiefs have the power to allocate as well as to banish people from land.<sup>47</sup>

In accordance with Swazi Law and Custom, while SNL is purportedly communally owned, the King controls it all and rules indirectly through local chiefs, who in turn allocate land to families.<sup>48</sup> Through a process known as "*kukhonta*"<sup>49</sup> in Siswati, the national language, residents may access SNL and "a tributary relationship is thus established between the resident and the local traditional leadership, normally comprising a chief."<sup>50</sup> In exchange for access to the SNL, the resident pays customary fees in the form of livestock and have to pledge allegiance to the chief - which may require tribute labour or other communal activities.<sup>51</sup> This tributary relationship is problematic because failure to adhere to the chief's communal requirements could lead to

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39 Armstrong, p.8

40 Mushala et al and Armstrong, 1986, p.8

41 Mushala et al, p.3

42 Acquisition of Property Act 10 of 1961

43 Armstrong, p.9 and United Nations Habitat. IFAD. Global Land Tool Network. Land and Natural Resources Tenure Security Learning Initiative for East and Southern Africa. Country Report Eswatini. Securing Land and Prosperity Rights for All. p.5, Available at: [http://www.glttn.net/downloads/GLTN%20Documents/Eswatini\\_country\\_report\\_final\\_draft\\_sm.pdf](http://www.glttn.net/downloads/GLTN%20Documents/Eswatini_country_report_final_draft_sm.pdf)

44 Constitution of Swaziland. 2006. Section 19

45 Constitution of Swaziland. 2006. Chapter 12, Section 211(1)

46 Constitution of Swaziland. Section 233(1): Chiefs are the footstool of King and King rules through the Chiefs

47 Mushala et al, p.9

48 While Swazi National Land is not owned, a person with a house built on SNL has lawful possession of the land on which the house is constructed, and a commercial farmer has no ownership over the land, only owning the produce from it. Gumede, p.6 and 8

49 The Siswati word *ukukhonta* refers to the allocation of land by a chief under Swazi law and custom

50 Swaziland National Report, prepared by the Swazi government for the City Summit, United Nations Conference on Human Settlements in 1996, available at: <http://habitat3.org/wp-content/uploads/Habitat-II-NR-1996-Eswatini.pdf>

51 Dube, Buhle Angelo. 2008. Forced Evictions and Disability Rights in Africa. Hauser Global Law School Program. University of New York. Updated by Sibusiso Nhlabatsi, August 2016, available at:

[http://www.nyulawglobal.org/globalex/Forced\\_Evictions\\_Disability\\_Rights\\_Africa1.html](http://www.nyulawglobal.org/globalex/Forced_Evictions_Disability_Rights_Africa1.html)

eviction from the land. While banishment is not common, the chief's power over subjects creates a threat that can lead to insecurity and fear of homelessness.<sup>52,53</sup>

## LACK OF CLARITY: TRUST RELATIONSHIP

While the 2006 Constitution formally recognized a dual land tenure system, one of its weaknesses is that it does not clarify various key terms. The Constitution outlines a "trust" relationship regarding land.<sup>54</sup>

However, the Constitution provides no clarification about what holding land "in trust" means, and the nature of the trust relationship between the King and the Swazi nation is therefore shrouded in uncertainty. The Constitution does not elaborate on the obligations or entitlements regarding land allocation and acquisition that flow from this "trust" relationship.

When Amnesty International asked a judge of the Eswatini High Court what the Constitutional provision "in trust for the Swazi Nation" means, the judge was uncertain: "It has not been interpreted. I do not know."<sup>55</sup>

The lack of clarity in the Constitution regarding the interpretation of the "trust" relationship contributes to overall confusion and controversy on land ownership and tenure. In a context where there is much historical complexity on the transfer of land (from concession to SNL and TDL) and given that there are multiple archaic laws that govern land issues in Eswatini, combined with the lack of clarity in the Constitution, the failure of the Eswatini government to finalize a land policy contributes to the overall confusion, debate and controversy on land ownerships and tenure.

## TITLE-DEED LAND: LACK OF PROTECTION

While Swazi Nation Land constitutes the majority of the land in Eswatini today, the rest of the land is privately-held Title-Deed Land (TDL), also commonly referred to as "farms".

A legacy of the mass granting of land concessions at the end of the 19<sup>th</sup> century was the creation of a system of farm dwelling, whereby Swazis continued living on concession lands converted into TDL<sup>56</sup> and were considered "farm dwellers" or were commonly referred to as "squatters" on these farms.<sup>57</sup> Farm dwellers lived on TDL though oral agreements with new owners, requiring the tenants to provide certain services to the farm owner.

Following evictions of these farm dwellers in the 1950s and 60s, the King eventually set up a Committee of Inquiry in 1967 which recommended the abolition of the farm dwellers system "by forbidding the creation of new farm dwellers and gradually evicting the old ones."<sup>58</sup> This meant that the tradition of agreement between farm owners and dwellers was formally abolished, and the little security of tenure that farm dwellers had, was eroded. However, since there was not enough SNL where farm dwellers could be resettled, the Committee of Inquiry proposed the purchase of farm land for resettlement and for limitations to be set on farm owners' ability to evict existing farm dwellers. In response to the Committee's report, the first Farm Dwellers Act 21 of 1967 was promulgated.<sup>59</sup> However, the Act didn't resolve the "farm dweller problem", as land available for resettlement was scarce and farm dwellers resisted resettlement.<sup>60</sup>

The current Farm Dwellers Act was introduced in 1982 and aims to regulate relations between farm owners and others living on farms.<sup>61</sup> According to this Act, a "farm" does not include SNL or Crown Land.<sup>62</sup> The Act

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52 Mushala et al, p.9

53 See for example: Jabulisa Dlamini. Get out of my land! 22.11.2010. *Times of Swaziland*, available at: <http://www.times.co.sz/news/21951-get-out-of-my-land.html> and Joseph Zulu. Don't bury dead at homesteads. 23.11.2010. *Times of Swaziland*. Available at: <http://www.times.co.sz/news/21976-don-t-bury-dead-at-homesteads.html>

54 Section 211 (1) "From the date of commencement of this Constitution, all land (including any existing concessions) in Swaziland, save privately held title-deed land, shall continue to vest in King in trust for the Swazi Nation as it vested on the 12th April 1973."

55 Amnesty International Interview, Mbabane, 28 November 2017

56 Including some of which transferred to privately owned TDL prior enactment of the King's Land Concession Order in 1973, which prevented any concession land from being converted into title-deed land

57 Armstrong, p. 23

58 Armstrong, p.23

59 Armstrong, p.23

60 Armstrong, p.23

61 Farm Dwellers Act of 1982

62 Farm Dwellers Act of 1982, Section 2

recognizes “farm dwellers”<sup>63</sup> as those who are afforded rights on privately owned TDL, through official written agreements signed with farm owners. This agreement provides a right to the *umnumzane* (head of household) and his dependants to reside on the farm for a period agreed upon between the farm owner and farm dweller.<sup>64</sup> This Act does not allow the farm owner to evict farm dwellers unless a Tribunal is satisfied that conditions have been met, that alternative accommodation is provided to the farm dweller (without specifying who is responsible for providing this), that compensation is provided for disruption and transport, and that the eviction cannot take place during the harvesting period.<sup>65</sup>

The Act further established quasi-judicial bodies: a District Tribunal responsible for officiating the agreements as well as with first instance jurisdiction on disputes and a Central Tribunal which serves as an appellate body, to hear any appeals of decisions made by the District Tribunal.<sup>66</sup> The Central Tribunal is also mandated to “advise the Minister of Home Affairs as to measures to be taken for the gradual elimination of the existing system of farm dwelling.”<sup>67</sup>

Analysts have for the past two decades argued that “the Farm Dwellers Act has done little to deal with ongoing struggles between ‘squatters’ and landowners. The problem is often exacerbated when there is a change in ownership...”.<sup>68</sup> The Act, however, only protects those who have a formal written agreement with the farm owner and officially recognizes them as “farm dwellers”. The Act excludes protection for everyone else who finds themselves living on privately-owned land with a verbal agreement, as was the tradition with a current or previous land owner, and authorities consider these occupants as “squatters” who lack any minimum degree of security of tenure.

For example, one of the two cases this report documents is that of forced evictions in the Malkerns, where occupants of land were considered “squatters” and therefore lacking a legally recognized claim to occupy the land as they claim to have had verbal agreements with the previous farm owner to settle on the privately held farm land.

In most cases, the informal arrangement continued for a number of years, and in some cases even decades.<sup>69</sup> However, with a change in ownership of the land, many were left with no protection. Since they are not considered formal “farm dwellers” because of a lack of a written agreement with the previous farm owner, there is no legal protection afforded to them. These individuals are therefore vulnerable to forced evictions and other related human rights violations.

A human rights advocate within the Eswatini government told Amnesty International “it’s tricky” when asked what protection is available to those being evicted by a private owner, and further acknowledged that:

**“Most people don’t have formal agreements. They fall through the cracks.”<sup>70</sup>**

Similarly, an Eswatini MP told Amnesty International:

**“The number of evictions are showing a sign we are not able to defend those who don’t have title-deeds. There’s never a year without evictions. One is too much...The law on land is weak against the victim, they are at the mercy of the land owner.”<sup>71</sup>**

These views are consistent with that of a member of the royal family, who told Amnesty International that he has seen several evictions from private TDL in which no compensation was given and where people are left with nothing. When asked what protection is in place for these people, he responded, “nothing. It is a failure on the part of the government. They are not being assertive.”<sup>72</sup>

The requirement of a written agreement which deprived many farm dwellers from the necessary protections, including from forced evictions led to the introduction of a proposed new Bill to the Eswatini Parliament on 21 April 2017. The Farm Dwellers Control Amendment Bill had not been passed by the time the Eswatini Parliament was dissolved. Although objectives of this Amendment Bill included to extend security of tenure for farm dwellers, Amnesty International does not believe the amended version substantially improves the situation. In addition, the Bill does not recognize those who are **not** formally considered “farm dwellers” thus

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63 According to the Farm Dwellers Act, a “farm-dweller” means a person who resides on a farm other than the owner thereof; or a usufruct or fiduciary; or a lessee under a written agreement of lease; or the holder of a registered servitude which gives the right of occupation; or the manager or agent of a person referred to in the above, or a member of the family or a guest of a person mentioned in the above

64 Farm Dwellers Act of 1982, Section 4(c)

65 See Farm Dwellers Act of 1982, Section 10: Limitation as to ejection of farm dweller

66 Farm Dwellers Act of 1982, Section 6

67 Farm Dwellers Act of 1982, Section 6(a)

68 Levin, Richard. *When the Sleeping Grass Awakens*, University of the Witwatersrand, p. 141-142

69 Case of Mbondzela Gege

70 Amnesty International interview. 28 November 2017. Mbabane

71 Amnesty International interview with MP. 17 April 2018

72 Amnesty International interview with a member of the Swazi royal family, 21 March 2017

leaving the existing legal protection gap for those who are considered “illegal occupants” by the Eswatini government. Effectively, those not considered official farm dwellers, but who find themselves living on previous concession land now converted to private TDL are without any guarantee of security of tenure. If these critical issues are not addressed, this protection gap contravenes Eswatini’s international and regional obligations vis-vis the right to adequate housing.

## LAND MANAGEMENT BOARD

The Constitution established a Land Management Board, which is responsible for “the overall management, and for the regulation of **any right or interest in land** whether urban or rural or vesting in the King in trust for the Swazi nation”.<sup>73</sup> The Land Management Board members are appointed by, and accountable to, the King.<sup>74</sup> Since the Board, which theoretically plays a critical role in both managing and regulating any right or interest in land, is both appointed by and only accountable to the King, this raises serious questions surrounding its independence.

Apart from the establishment of this Board through the Constitution, there is no subsidiary legislation outlining details of the Board’s mandate. The combined effects of the limited accountability and transparency of the Board’s functioning undermine both the legitimacy of and public trust in the Board to fulfil its constitutional mandate.

Amnesty International was unsuccessful in its attempts to meet with the Land Management Board (LMB) during the November 2017 meeting with the Ministry of Natural Resources and Energy (MNRE), the Ministry in which the LMB is housed. Subsequent attempts to meet the LMB in December 2017 were declined, despite their demand that a written list of questions be submitted ahead of the requested meeting. After Amnesty International sent its detailed list, the response from the LMB, conveyed via the MNRE, was that “the answers to all your questions are in the Constitution.”<sup>75</sup>

## ABSENCE OF LAND POLICY

Despite the Constitution’s acknowledgement that what is described as the “land issue” has implications for both the economic development and unity of Swazi people, it has been almost two decades since Eswatini began developing a National Land Policy in 1999, which has not yet concluded. As a result, there are many land policy issues which remain unanswered.<sup>76</sup> Following the enactment of the Constitution in 2005, a draft Land Policy was introduced in 2009. In this policy document, the Eswatini government itself acknowledges that:

**“the economic, social and environmental pressures on Swaziland land resources are severe. It was for this reason that government saw the need to formulate a land policy.”<sup>77</sup>**

One of the key issues to be addressed, as highlighted by the government in this 2009 draft, was “the insecurity of all tenure types” and the “lack of transparency and accountability” of land allocation rights and procedures.<sup>78</sup>

The Deeds Office, that registers title deeds, also acknowledges on its website that “the absence of a National Land Policy hinders development on land generally for the whole country specifically where issues of access to land, land use and security of tenure are concerned.”<sup>79</sup>

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73 Constitution of Swaziland, Section 212(4)

74 Constitution of Swaziland, Sections 212(1 and 5)

75 This response was conveyed to Amnesty International by telephone on 6 December 2017 by the MNRE, after the Ministry’s numerous attempts to facilitate a meeting between Amnesty International and the Land Management Board failed

76 United Nations Habitat. IFAD. Global Land Tool Network. Land and Natural Resources Tenure Security Learning Initiative for East and Southern Africa. Country Report Swaziland. Securing Land and Prosperity Rights for All, p.6 Available at:

[http://www.glt.n.net/downloads/GLTN%20Documents/swaziland\\_country\\_report\\_final\\_draft\\_sm.pdf](http://www.glt.n.net/downloads/GLTN%20Documents/swaziland_country_report_final_draft_sm.pdf)

77 Draft Land Policy, December 2009. Swaziland government. (hereafter Draft Land Policy) p.1

78 Draft Land Policy, p.5-6

79 Government of Swaziland Deeds Registry website, available at:

[http://www.gov.sz/index.php?option=com\\_content&view=article&id=288&Itemid=386](http://www.gov.sz/index.php?option=com_content&view=article&id=288&Itemid=386)

Following the draft Land Policy, a Draft Land Bill was introduced in 2013 which repeals 19 archaic pieces of legislation, the oldest of which dates back to 1904.<sup>80</sup> Although steps had been taken to finalize both the Draft Land Policy and the Draft Land Bill, neither had been passed by the time Parliament was dissolved in June 2018 in preparation for the national elections scheduled for September 2018. In the absence of a draft land policy and land bill, the challenges identified by the Eswatini government, including the lack of guarantee of security of tenure, remains unresolved.

Despite these commitments and steps by the Eswatini government, delays in legal, policy and institutional reform combined with the lack of transparency surrounding these processes has meant that the Eswatini government is yet to take the necessary steps to guarantee security of tenure and the right to adequate housing.

## DISCRIMINATION AGAINST WOMEN

The Eswatini Constitution guarantees that all citizens have equal access to land, regardless of gender.<sup>81</sup> In addition, the equality clause in the Constitution is non-derogable.<sup>82</sup> However, in practice women in Eswatini have access to land mainly through their husbands. The traditional system of land allocation, or “*kukhonta*” through chiefs, often disadvantages women-headed households. Chiefs allocate land traditionally to men, which means that women can only access land traditionally through the *kukhonta* process, via their husbands or sons. Women who are unmarried, widowed or don’t have sons are therefore unable to access land easily. The Swaziland Rural Women’s Assembly activists told Amnesty International: “*In Eswatini, the land belongs to the King. Although in the Constitution women can access land, when it goes down to traditional structures, that doesn’t happen, although you talk about the Constitution (to them).*”<sup>83</sup> This is because not all chiefs are familiar with the Constitution and instead follow traditional practices, a system under which land is allocated through men.

Recognizing the gap between constitutional guarantees of gender equality and the traditional view of women and their place in Swazi society, some chiefs in close proximity to urban areas are more aware of the Constitutional protection of equal rights for women, in particular women’s right to *kukhonta*. Local rural activists also told Amnesty International that chiefs’ proximity to urban centres was linked to their openness to allowing women to access land through *kukhonta*. However, as the majority of the population still live in rural locations, women-headed households, due to inherent discrimination in the *kukhonta* system, are at greater risk of prolonged homelessness after a forced eviction than those headed by men.

A woman who was forcibly evicted from Nokwane in October 2014 along with her four children and grandson, and left to find her own alternative accommodation, has been waiting for a chief to allocate them land for more than three years. Although she obtained financial assistance from a local church group in order to offer a cow to the chief, and also visited the chief on numerous occasions and cooked for the chief’s council, she is still waiting to be allocated land. She told Amnesty International:

**“I know that in the Constitution, we all have equal rights. I don’t think we have equal rights based on my experience.”<sup>84</sup>**

Another woman who was forcibly evicted from Nokwane in October 2014 shared a similar view. Nomathemba (not her real name) told Amnesty International there were not many alternatives available to the family after their home was demolished. Nomathemba had never known her father and was a single mother:

**“It’s very difficult as a woman to *kukhonta* [the traditional process of acquiring land through paying allegiance to a chief]. You need a male. Otherwise you won’t be able to get land, or be heard.”<sup>85</sup>**

Women whose homes were demolished on 9 April in the Malkerns expressed similar challenges, saying that acquiring Swazi Nation Land is not an easy alternative. It costs a minimum of USD400 - money that many of

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<sup>80</sup> Draft Land Policy, Second Schedule, p. 58

<sup>81</sup> Section 211 (2) “Save as may be required by the exigencies of any particular situation, a citizen of Swaziland, without regard to gender, shall have equal access to land for normal domestic purposes.”

<sup>82</sup> Constitution of Swaziland, Section 38

<sup>83</sup> Amnesty International interview. Swaziland Rural Women’s Assembly. 4 December 2017. Mbabane

<sup>84</sup> Amnesty International interview. 6 December 2017

<sup>85</sup> Amnesty International interview. 19 April 2018

the affected women do not have.<sup>86</sup> Lungile Mbuyisa, a 41-year-old widow whose home was also demolished, told Amnesty International that it is difficult for her to find another home because she can't afford *kukhonta*<sup>87</sup> fees. Without that money, as a woman, there are not many options to choose from: "You can do nothing. You just wander around. I feel worthless. I think I have to go and look for a job so that life continues."<sup>88</sup>

In a progressive development, a High Court Judge denied an eviction application in June 2017, citing Eswatini's international obligations to protect the right to shelter, the rights of women and children, and access to justice. In particular, the judge cited Sustainable Development Goal (SDG) 5 regarding the protection of the rights of women and children, as well as SDG 16 regarding communities' access to justice. The judge issued a practice directive ordering that the Land Management Board and the Human Rights Commission be joined to court cases involving evictions in future.<sup>89</sup>

## CULTURE OF SECRECY

There is a general lack of public access to information and proactive dissemination of it by authorities in Eswatini. There is no national legislation promoting access to information. A human rights lawyer told Amnesty International that members of the public reported that they could not easily access information regarding the status of plots of land, unless they were title-deed holders and had it in their possession. While conveyancing lawyers could access information regarding title-deeds, it comes at a cost. Based on what lawyers told us, and as evidenced in the two case studies, this compounds uncertainty about whether a particular piece of land is in fact categorized as SNL or TDL. This causes friction between parties that manifests itself when a landowner (by virtue of a title-deed) wants to evict families who believe they had been living on SNL. When these cases reach court, judgments appear to favour title-deed holders who can prove land ownership. Those without title-deed are therefore often rendered homeless. The Malkerns case described in the report exemplifies this situation.

The existence of Swazi customary rules in parallel with the Constitution complicates matters further since the rules of Swazi tradition and custom are defined by those in power. A Swazi civil society activist told Amnesty International:

**"A word [from the elders or *Labadzala* who say this] becomes a court order. The duality [of legal and traditional systems] becomes a problem. It cannot be taken to court. It is a Swazi traditional matter."**

This opacity therefore works in the interests of those in power and those who have access to power, both of whom gain from a system of land governance where the type of land tenure is unknown to the people who are intended to benefit from the land.

The lack of clarity on land allocation and distribution also extends to parts of the government. Amnesty International requested information regarding the divisions of SNL, TDL, Crown and Concession Land and received varying figures from two different ministries. The Ministry of Economic Planning and Development (MEPD) told Amnesty International in 2017 that the division was 75% Swazi Nation Land, and 25% Title-Deed Land. However, in May 2018 the Surveyor General told Amnesty International that 57% was Swazi Nation Land, while 42% was Title-deed Land and 1% Crown Land, which is inconsistent with the figures that the MEPD provided. The Surveyor General's office also provided Amnesty International with a map showing divisions of land types, which was compiled specifically in response to the request from Amnesty International. The Surveyor General's office told Amnesty International that this map did not previously exist.

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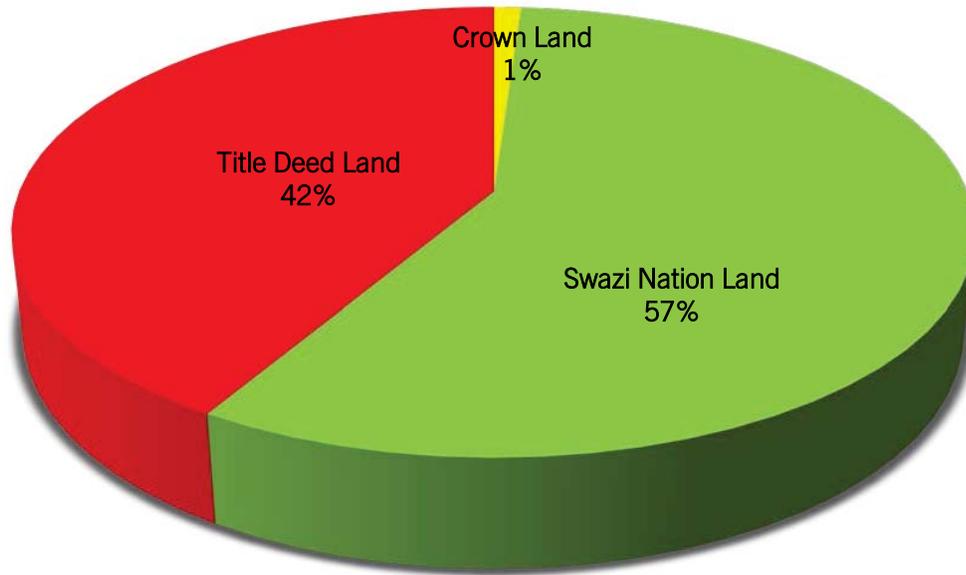
<sup>86</sup> South African Rand ZAR 5000 for a cow. Currency conversation correct on 24 April 2018

<sup>87</sup> This refers to the traditional means of acquiring land, through a chief, on Swazi Nation Land. A cow is usually exchanged for land

<sup>88</sup> Amnesty International interview with Lungile Mbuyisa. 17 April 2018. Emphetseni, Malkerns

<sup>89</sup> The Times of Swaziland. Why I did not grant eviction order – Judge Qinisile

## LAND TENURE IN ESWATINI

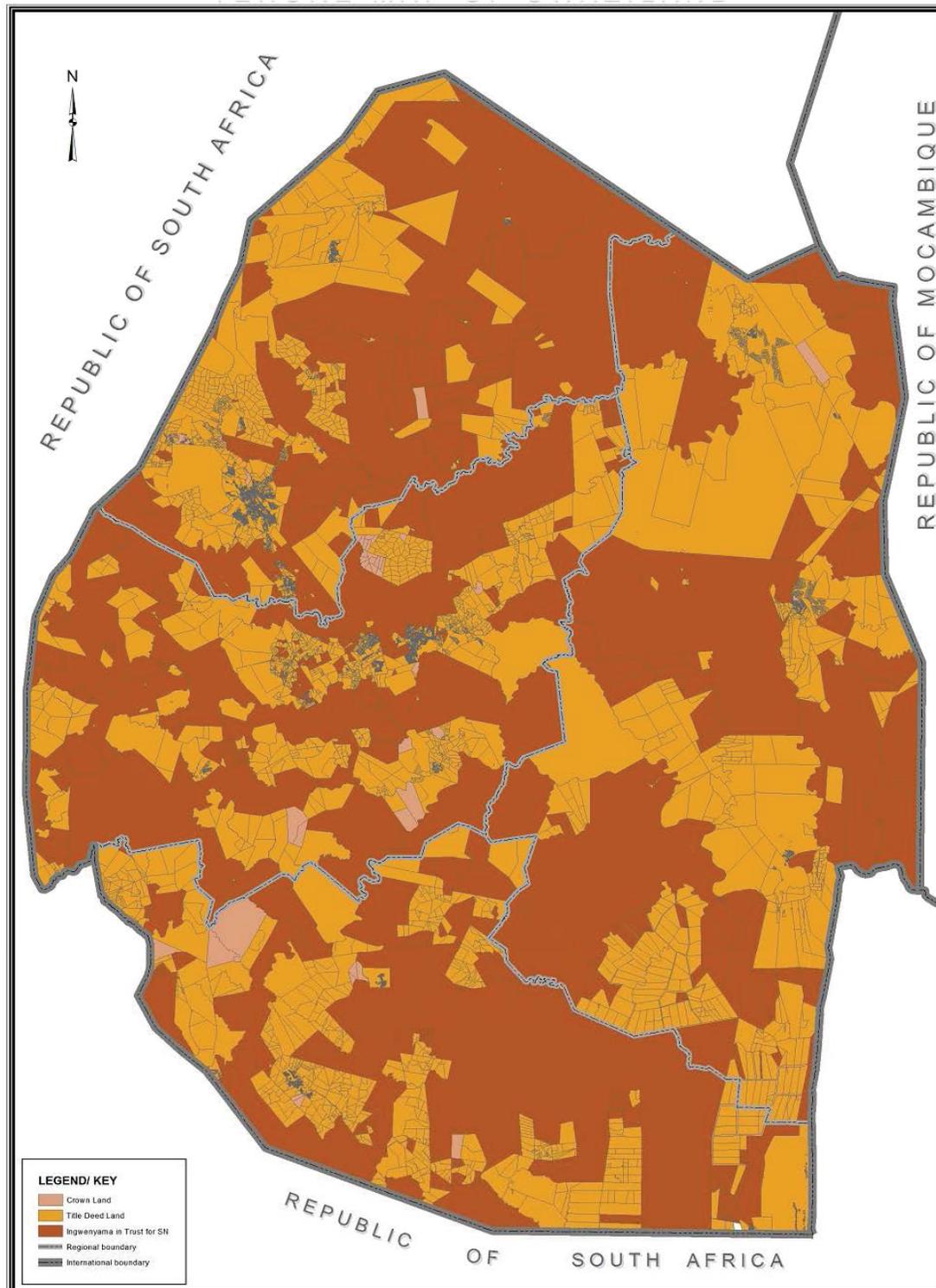


### AREA IN HECTARES:

<i>CROWN LAND</i>	18656,6473
<i>SWAZI NATION LAND</i>	997348,1496
<i>TITLE-DEED LAND</i>	720230,4332
<b>TOTAL</b>	<b>1736235,2301</b>

Source: Surveyor General Office, May 2018

# TENURE MAP OF ESWATINI



Source: Surveyor General's office, May 2018

# LEGAL FRAMEWORK

## THE RIGHT TO ADEQUATE HOUSING

This chapter outlines the legal framework, including Eswatini's international and regional human rights obligations as well as domestic law.

The government of Eswatini is obligated under a range of international human rights laws to respect, protect and fulfil the right to adequate housing. This obligation arises from Eswatini's ratification of a number of treaties. These include the International Covenant on Economic, Social and Cultural Rights (ICESCR),<sup>90</sup> the International Convention on the Rights of the Child (CRC),<sup>91</sup> the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),<sup>92</sup> and the International Covenant on Civil and Political Rights (ICCPR).<sup>93</sup>

The UN Committee on Economic, Social and Cultural Rights (CESCR), a body of experts that provides authoritative guidance on the implementation of the ICESCR, has clarified the obligations of states parties vis-à-vis the right to adequate housing.<sup>94</sup> The CESCR states that the government should respect the right to adequate housing, including by refraining from forced evictions, protecting people from interference with their rights by third parties such as landlords, and adopting appropriate legislative, administrative, budgetary, judicial, promotional and other measures to fully realize the right to adequate housing. Governments must prioritize the realization of minimum essential levels of housing for everyone whilst prioritizing the most disadvantaged groups in all programmes when allocating resources. The CESCR also calls upon states parties to guarantee the right of people to participate in and be consulted over decisions that will affect them, and to provide an effective remedy if any of these rights are violated.<sup>95</sup>

The CESCR advocates a broad interpretation of the right to adequate housing, "as the right to live somewhere in security, peace and dignity."<sup>96</sup> The concept of adequacy of housing is given critical importance and the Committee has outlined seven key factors to determine adequacy. These include: legal security of tenure; availability of services, materials, facilities and infrastructure; affordability; habitability; accessibility; location and cultural adequacy.<sup>97</sup>

The right to adequate housing is an intrinsic part of the right to an adequate standard of living, which includes the right to adequate food, clothing and housing and to the continuous improvement of living conditions.<sup>98</sup>

Eswatini is also party to the African Charter on Human and Peoples' Rights (African Charter). Although the right to adequate housing is not explicitly provided for under the African Charter, the African Commission on Human and Peoples' Rights (ACHPR) has held<sup>99</sup> that the right to housing is protected through the

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90 ICESCR was ratified by Eswatini on 26 March 2004

91 Articles 4 and 27 of the CRC, ratified by Eswatini on 7 September 1995

92 CEDAW was ratified by Eswatini on 26 March 2004

93 Article 17(1) of the ICCPR, ratified by Eswatini on 26 March 2004

94 UN Committee on Economic, Social and Cultural Rights, The right to adequate housing, General Comments No. 4 and 7

95 CESCR General Comment 4, paragraph 9 and General Comment 7, paragraph 13

96 United Nations Office of the High Commissioner for Human Rights. The right to adequate housing (Article 11.1): 13/12/91. Committee on Economic, Social and Cultural Rights. General Comment 4. Paragraph 7, (hereafter CESCR General Comment 4) p.2. Sixth Session, 1991

97 CESCR General Comment 4, paragraph 8

98 CESCR General Comment 4, paragraph 1

99 SERAC & CESR v Nigeria; and Resolution 231 on the right to adequate housing and protection from forced evictions <http://www.achpr.org/sessions/52nd/resolutions/231/>

combination of provisions protecting the right to property<sup>100</sup>, the right to enjoy the best attainable standard of mental and physical health<sup>101</sup>, and the protection accorded to the family.<sup>102</sup>

The ACHPR has urged all state parties to the African Charter to take appropriate steps to ensure respect, protection and realization of the right to adequate housing by: (i) putting an end to all forms of forced evictions, in particular evictions carried out for development purposes; (ii) ensuring that evictions are only carried out as a last resort after all alternatives to eviction have been provided and that all evictions comply with international and regional standards; (iii) adopting legislative and other measures to ensure that legal procedures are complied with prior to any eviction and making available remedies that are likely to result in the right to reparation either in the form of *restitutio in integrum* or monetary compensation; (iv) taking concrete measures to confer security of tenure to all people lacking such protection, with prior and informed consent of the affected people; and (v) ensuring that any alternative housing provided to people complies with international and regional standards on the right to adequate housing.<sup>103</sup>

This report focuses on two key aspects of the right to adequate housing: security of tenure and prohibition of forced evictions.

## SECURITY OF TENURE

CESCR lists security of tenure as one of the core components of the right to adequate housing. Tenure takes various forms, including rental (public and private) accommodation, cooperative housing, leasehold, owner-occupation, emergency housing and informal settlements.

### ACCORDING TO THE CESCR:

**“[N]otwithstanding the type of tenure all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats. States parties should consequently take immediate measures aimed at conferring legal security of tenure upon those persons and households currently lacking such protection, in genuine consultation with affected persons and groups.”**

The Basic Principles and Guidelines on Development-Based Evictions and Displacement developed by the Special Rapporteur on adequate housing reiterate this obligation on states to take immediate measures aimed at ensuring legal security of tenure for communities, households and persons lacking such protection, and those who lack formal titles to land and homes.<sup>104</sup>

At the regional level, Eswatini ratified the African Commission on Human and Peoples' Rights (ACHPR). The ACHPR reinforces international human rights obligations to ensure a degree of security of tenure. The Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights adopted by the ACHPR provide that the right to adequate housing imposes, among others, the obligation to **“[g]uarantee to all persons a degree of security of tenure which confers legal protection upon those persons, households and communities currently lacking such protection, including all those who do not have formal titles to home and land, against forced evictions, harassment and other threats.”**<sup>105</sup>

This obligation entails ensuring national plans, policies and systems to “[p]rotect the tenure of tenants including by the use of rent control and legal guarantees.”<sup>106</sup> The ACHPR further clarifies that States need to “[c]arry out comprehensive reviews of relevant national legislations and policies with a view to ensuring their conformity with international human rights provisions”, including ensuring that “existing legislation,

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100 Article 14 of the African Charter

101 Article 16 of the African Charter

102 Article 18(1) African Charter

103 Resolution 231 on the right to adequate housing and protection from forced evictions, at the ACHPR meeting at its 52nd Ordinary Session held from 9 to 22 October 2012 in Yamoussoukro, Côte d'Ivoire

104 UN Basic Principles and Guidelines on Development-Based Evictions and Displacement, paragraph 25

105 Principles and Guidelines on the implementation of economic, social and cultural rights in the African Charter on Human and Peoples' Rights, Paragraph 79 (b) (hereafter Principles and Guidelines on the implementation of economic, social and cultural rights in the African Charter on Human and Peoples' Rights) available at: [http://www.achpr.org/files/instruments/economic-social-cultural/achpr\\_instr\\_guide\\_draft\\_esc\\_rights\\_eng.pdf](http://www.achpr.org/files/instruments/economic-social-cultural/achpr_instr_guide_draft_esc_rights_eng.pdf)

106 Principles and Guidelines on the implementation of economic, social and cultural rights in the African Charter on Human and Peoples' Rights, paragraph 79 (g)

regulation and policy address the privatization of public services, inheritance and cultural practices, so as not to lead to, or facilitate, forced evictions.”<sup>107</sup>

## PROHIBITION OF FORCED EVICTIONS

A forced eviction is the removal of people against their will and without legal protections and other safeguards from the homes or land they occupy. The Commission on Human Rights has said that forced evictions constitute a gross violation of human rights, in particular the right to adequate housing.<sup>108</sup> See box on page 12.

Guaranteeing the right to adequate housing includes an obligation to refrain from and prevent forced evictions.

### **STATES THAT HAVE RATIFIED THE ICESCR MUST PASS LAWS THAT EXPLICITLY PROHIBIT FORCED EVICTION. CESCR CLARIFIES THAT:**

**“Such legislation should include measures which: (a) provide the greatest possible security of tenure to occupiers of houses and land; (b) conform to the Covenant; and (c) are designed to control strictly the circumstances under which evictions may be carried out. The legislation must also apply to all agents acting under the authority of the State or who are accountable to it.”**

As a consequence of this obligation, the CESCR highlights that “states parties should therefore review relevant legislation and policies to ensure that they are compatible with the obligations arising from the right to adequate housing and repeal or amend any legislation or policies that are inconsistent with the requirements of the Covenant.”<sup>109</sup>

The Basic Principles call on states to ensure that evictions occur only in exceptional circumstances. The Basic Principles acknowledge that “evictions require full justification given their adverse effect on a wide range of internationally recognized rights.”<sup>110</sup> Evictions may only be carried out as a last resort, once all feasible alternatives to eviction have been explored and when appropriate procedural protections are in place. Importantly, procedural protections apply to “all vulnerable persons and affected groups, irrespective of whether they hold title to home and property under domestic law.”<sup>111</sup>

Similarly, the African Commission on Human and Peoples’ Rights interprets forced evictions as “acts and/or omissions involving the coerced or involuntary displacement of individuals, groups and communities from homes and/or lands and common property resources that were occupied or depended upon, thus eliminating or limiting the ability of an individual, group or community to reside or work in a particular dwelling, residence or location, without the provision of, and access to, appropriate forms of legal or other protection.”<sup>112</sup>

The current land governance system in Eswatini, however, fails to guarantee the majority of its population security of tenure both through the traditional system of land allocation where occupation of land is at the pleasure of the chief or through the farm-dweller system where those without a formal agreement are left to fall through the cracks.

## ESWATINI’S CONSTITUTION

The Eswatini Constitution does not include a provision for the right to adequate housing, despite Eswatini being a signatory to numerous international conventions in which this right is enshrined. While the Constitution does not contain an express provision for the right to adequate housing, the Eswatini State is still

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107 Principles and Guidelines on the implementation of economic, social and cultural rights in the African Charter, paragraph 79 (d)

108 Commission on Human Rights Resolution 1993/77

109 United Nations Office of the High Commissioner for Human Rights. The right to adequate housing (Art.11.1) forced evictions.

20/05/97. CESCR. General Comment 7, (hereafter CESCR General Comment 7) paragraph 9

110 UN Basic Principles and Guidelines on Development-Based Evictions and Displacement, (hereafter UN Basic Principles) paragraph 21

111 UN Basic Principles, paragraph 21

112 Principles and Guidelines on the implementation of economic, social and cultural rights in the African Charter, paragraph 1(a)

bound by this obligation, which arises from Eswatini's ratification of a number of treaties including ICESCR,<sup>113</sup> the CRC,<sup>114</sup> CEDAW<sup>115</sup> and the ICCPR.<sup>116</sup>

Arbitrary eviction from land without compensation is expressly prohibited in the Constitution, which outlines protection from arbitrary deprivation of property as follows:

*A person shall not be compulsorily deprived of property or any interest in or right over property of any description except where the following conditions are satisfied -*

- (a) the taking of possession or acquisition is necessary for public use or in the interest of defence, public safety, public order, public morality or public health;*
- (b) the compulsory taking of possession or acquisition of the property is made under a law which makes provision for:*
  - (i) prompt payment of fair and adequate compensation; and (ii) a right of access to a court of law by any person who has an interest in or right over the property;*
  - (c) the taking of possession or the acquisition is made under a court order.<sup>117</sup>*

**SECTION 211(3) OF THE CONSTITUTION FURTHER PROVIDES FOR PROTECTION FROM ARBITRARY DEPRIVATION FROM LAND AND ENTITLEMENT TO ADEQUATE COMPENSATION:**

**“A person shall not be deprived of land without due process of law and where a person is deprived, that person shall be entitled to prompt and adequate compensation for any improvement on that land or loss consequent upon that deprivation unless otherwise provided by law.”<sup>118</sup>**

The above protections extend not only to “ownership” but also to “interest in” property; importantly, the provision for prompt and adequate compensation does not depend on the type of land tenure. While this Constitutional guarantee against evictions without due process and compensation appears to be aligned with Eswatini's international human rights law obligations, in practice both the judiciary and the state have interpreted the obligation narrowly.

## JUDICIARY'S INTERPRETATION OF THE CONSTITUTION

Most recently, in a judgment handed down in the case of *Sofi Dlamini vs. Umbane Ltd*, the High Court denied the applicant's claim to compensation on the following basis:

“In the Constitution, reference to payment of compensation is made in cases where the State expropriates property for public purposes. *In casu*, the second applicants are evicted from a privately-owned farm and are not entitled to payment of compensation.”<sup>119</sup>

Thus it is clear that according to the judiciary's interpretation in this case, the Constitutional compensation regime is only applicable to specific circumstances of evictions by the State for public purposes, and does not apply to (what the judiciary and Swazi government describe as “illegal”) occupants of previously concession or Title-Deed Land. The effect of this judgement is that there is no Constitutional legal protection for occupants of concession or Title-Deed Land who face forced eviction by a private landowner or company.

In replies from the Eswatini government to the list of issues raised by the review of the International Covenant on Civil and Political Rights at the UN Human Rights Council, the Eswatini State made reference to this judgment:

*“The decision of Umbane Limited v Sofi Dlamini and Three Others does not change the position, importantly, as the deprivation of land therein was made under a court order and the individuals so evicted did not occupy Swazi Nation Land (SNL), but they occupied privately owned title-deed land*

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113 ICESCR was ratified by Eswatini on 26 March 2004

114 Articles 4 and 27 of the CRC, ratified by Eswatini on 7 September 1995

115 CEDAW was ratified by Eswatini on 26 March 2004

116 Article 17(1) of the ICCPR, ratified by Eswatini on 26 March 2004

117 Swaziland Constitution, Section 19(2)

118 Swaziland Constitution, Section 211

119 Eswatini High Court. Judgement. Case No 902/2011, p.3

*belonging to Umbane Limited.*"<sup>120</sup>

By implication according to the government's reply, if those facing eviction were living on SNL, they should be entitled to compensation. By the state's own formal admission, the affected people were not entitled to compensation because they "occupied" TDL which is owned by a private company. The Swazi State's own interpretation of its obligation contradicts regional and international human rights law obligations, outlined by the ACHPR, the ICESCR and CESCR General Comments 4 and 7. According to international human rights law, it is the Eswatini government's duty to ensure that all people are protected against forced evictions and are not rendered homeless.

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120 UN Human Rights Council. ICCPR. 31 May 2017. 120th session. Replies of Swaziland to the list of issues. CCPR/C/SWZ/Q/1/Add.1. available at: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPrCAqhKb7yhsguV2ca8YRoL5RMKMpLAWTf6YSmwyOkY74PKkcHYE7NcoTdgTYBff8WjRxs95YRoZxhKU4K4i3MdvQXcn1Ktc61Si70g8P%2BanaZ2zngOhUhTR1A6fMvGyPpH0QcPJHCZ6A%3D%3D>

# EVICCTIONS WITHOUT DUE PROCESS

This chapter examines two emblematic cases. The first concerns a forced eviction from private land in the Malkerns, and the failure of the Eswatini state to protect the right to adequate housing. In this case, Amnesty International found that not all the due process safeguards as articulated in international human rights standards were followed, and that those evicted were rendered homeless. Due to this failure by the state the evictions constitute forced evictions.

The second case concerns forced evictions carried out by the Eswatini government to make way for a public development initiative. While the Eswatini government took some steps to meet with the affected community, the full due process requirements outlined in international human rights standards were not met. As in the case of the Malkerns, the affected people were left homeless after the eviction. As a result, these evictions constitute forced evictions.

Most recently in the Malkerns, the Deputy Sheriff of the Mbabane High Court executed a court order which resulted in the forced eviction of an entire community on 9 April 2018. The Malkerns has witnessed forced evictions previously in 2016 and some families are currently living under threat of imminent eviction. All the affected families in the Malkerns cases which Amnesty International documented lived on previous concession land, which was later converted to Title-deed Land and underwent change of owner. The affected families told Amnesty International they had a verbal agreement with previous farm owners to live on the land, yet when new farm owners bought the Title-deed Land (TDL), they decided to evict the families. Although the eviction orders were granted by the courts, due process requirements as outlined by Eswatini's regional and international human rights obligations were not followed. As such, the evictions constitute forced evictions. This case highlights how the Eswatini state has failed to protect the right to adequate housing, in particular to ensure security of tenure for people who find themselves living on what was once concession land, now converted to a privately-owned title-deed land, without being officially recognized as a "farm dweller".

As a State party to the ICESCR, Eswatini is bound by a duty to ensure that forced evictions do not occur. The protection from forced evictions guaranteed in international human rights law is accorded to all, regardless of whether they own or occupy the land from which they are being evicted. Where forced evictions are carried out by actors other than the state, for example private individuals or companies, Eswatini authorities have a duty to protect the affected people and intervene to prevent forced evictions. The duty of the Eswatini state to protect people from forced evictions also includes ensuring that the human rights safeguards are in place regardless of whether the evictions are ordered by a public or private body. The duty to engage in genuine consultations, provide adequate notice and ensure that no one is left homeless as a result of an eviction also lies with the Eswatini state. It also has the obligation to ensure that victims of forced evictions have access to an effective remedy which includes compensation, both pecuniary and non-pecuniary, for all losses.

In both the Malkerns and Nokwane case studies, the affected residents went through protracted court processes, which ultimately ended in their evictions. International human rights standards are unequivocal: the protection from forced evictions is available to all, including those without a legally recognized right to the house or land that they occupy. Further, the UN Committee on Economic Social and Cultural Rights in General Comment 7 stresses that even when an eviction is considered justified, "it should be carried out in strict compliance with the relevant provisions of international human rights law and in accordance with the

general principles of reasonableness and proportionality.”<sup>121</sup> According to international human rights law as outlined in General Comment 7, the threshold for lawful evictions include seven elements: genuine consultation; adequate and reasonable notice; information on the proposed eviction; government officials to be present during evictions; evictions not to take place in bad weather or during the night; provision of legal remedies; and provision of legal aid. The Committee also emphasizes in General Comment 7 that no one should be rendered homeless or vulnerable to other human rights violations as a result of an eviction. International law requires that States adhere to all of these elements without exception.

Based on Amnesty International’s findings, detailed below, the Eswatini government failed to ensure genuine consultation and adequate and reasonable notice for affected people prior to the evictions, as well as failing to provide alternative accommodation and compensation. In neither case was due process followed in carrying out the evictions. The resulting homelessness impacted not only the right to adequate housing, but a wide range of interrelated rights including the right to education, access to livelihoods and food security. Therefore, the government failed to meet the threshold of lawful evictions.

## THE MALKERNS

Manzini is the commercial capital of Eswatini. The expansion of cities and towns into what were previously rural areas has led to increased demand for housing near urban areas. The Malkerns town in the Manzini region is a microcosm of this trend. It was declared a town in 2012 and since then has been managed by the Malkerns Town Board.

The Malkerns is home to approximately 4,050 inhabitants.<sup>122</sup> Residents are mostly subsistence farmers and seasonal labourers in the fertile Malkerns valley, a predominantly agricultural district known historically for its fruit plantations, in particular pineapple cultivation and fruit cannery.<sup>123</sup> There is a growing demand by farm owners to subdivide the Malkerns land for housing estate development, combined with the need to protect the area’s prime agricultural land.<sup>124</sup>



*The Malkerns is known for its arable land and pineapple plantations. © Amnesty International*

When Amnesty International arrived in the Emphetseni farming area in the Malkerns town one week after the latest demolitions of 9 April 2018, children’s shoes, school books, wires from mattresses, shattered glass and

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121 CESCR General Comment 7, paragraph 14

122 Fakudza and FAO, Malkerns Town Planning Scheme, p.27

123 Fakudza and FAO, Malkerns Town Planning Scheme, p.27

124 As a result of these demands, the Ministries of Agriculture and of Housing and Urban Development jointly declared the Malkerns a “controlled area.” in: Fakudza and FAO, p. 20

window frames were strewn about. Some of the affected families were still rummaging through the rubble, uncovering the doors to the homes they once lived in.

All of the affected families that Amnesty International spoke to expressed shock at the loss of their homes and the forced separation from their roots and family members' graves. The evictions also resulted in the loss of means to livelihood from the land.

According to eyewitnesses, the Malkerns forced eviction was carried out by the Deputy Sheriff of the Mbabane High Court, accompanied by the police and executive members of private company Umbane Limited. The demolitions came after a protracted legal process.

In 1997, private agricultural company Umbane Limited bought the title-deed to the land in question from another private company, Usuthu Pulp Limited. Four homesteads comprising 15 families were living on the land at the time of the purchase and contestation over rights began then. The new owners and the occupants of the land approached the courts to resolve the issue.

The company's Operating Committee chairperson told Amnesty International: "We approached the seller after we realized there were squatters there. They (Usuthu Pulp) said the squatters had no right to be there."<sup>125</sup> However, the affected residents dispute that they were living on the land illegally, claiming that their forefathers had acquired the land from the chief through the traditional *kukhonta* process decades ago. Umbane Limited said they started engaging with the families living on the land as far back as 1999, when they visited each of the four homesteads and asked the families to move, which they refused.<sup>126</sup>

Consequently, in 2011 the company initiated a lawsuit for the residents' eviction. However, in a judgment delivered on 13 February 2013, the High Court denied the eviction order on the basis that the occupants had settled on the land in 1957 and were therefore entitled to the common law principle of acquisitive prescription.<sup>127</sup> In terms of acquisitive prescription, continuous habitation may result in a statutory claim to land through title.

However, unsatisfied with this outcome, the company appealed the judgment at the Supreme Court which ruled that acquisitive prescription cannot be held where there is occupation with the consent of the property owner. The Court found that the residents were in occupation of the farm with the permission of the previous farm owner, Usuthu Pulp, and on this basis ordered the residents' eviction without alternative accommodation or compensation in a judgment delivered on 31 May 2013.<sup>128</sup> Umbane Limited thereby secured an eviction order against the residents of the four homesteads, comprising fifteen families.<sup>129</sup>

In 2013, the UN Special Rapporteur on adequate housing wrote to the Eswatini authorities warning that approximately 150 people would be affected by this forced eviction, and reminding them of their domestic, regional and international human rights obligations to protect the right to adequate housing.<sup>130</sup>

Since the Supreme Court's ruling of 2013, the community said they have been seeking remedy through traditional dispute resolution structures, including by presenting their case to the King's Advisory Council.

The affected community and Umbane Limited agreed that at least two consultation meetings took place,<sup>131</sup> during which the affected communities said that Umbane Limited did not entertain the issue of compensation.

Consequently, the communities approached the Commission on Human Rights for assistance, who in 2016 took the matter back to the High Court in an attempt to seek alternative accommodation and compensation for the affected residents. In a judgment delivered on 4 April 2017, the High Court denied the applicants'

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125 Amnesty International telephonic interview. Manana. Chair, Umbane Limited. 21 May 2018

126 Since the purchase price had not been paid in full, Umbane limited offered the families to join their group in purchasing the farm. Their offer was not accepted however. This engagement took place between 1997-1999: Amnesty International telephonic interview. Manana. Chair, Umbane Limited. 21 May 2018. However, the affected families disputed this fact, and told Amnesty International that the new owners of the farm (Umbane Limited) did not give them the opportunity to purchase the farm since Umbane Limited only became aware of the families living on the land following the conclusion of the transaction from the previous owners, Usuthu Pulp. Amnesty International telephonic interview. Gavin Khumalo. 29 May 2018. In December 2011, Umbane Limited decided to sell the farm. A buyer was secured with the condition that the company must remove the "squatters" before the purchase.

127 Umbane Limited vs Sofi Dlamini and 3 others (899/11,900/11,901/11 and 902/11) [2013] SZHC19 (13th February 2013)

128 Umbane Limited vs Sofi Dlamini and Three Others (13/2013) [2013] SZSC 25 (31 May 2013)

129 Mantoe Phakathi. Kicking Swatis Onto the Streets. Open Society Institute of Southern Africa (OSISA). Blog. 24 July 2017.

130 This communication highlighted that "the Court did not take into account the rights recognized in the Constitution of the Kingdom of Swaziland, citing Section 211(3), as well as Swaziland's international obligations. United Nations Office of the High Commissioner for Human Rights. Mandate of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living and on the right to non-discrimination in this context. Reference: AL Housing (2000-9) SWZ 1/2013 available at: [https://spdb.ohchr.org/hrdb/24th/public\\_-\\_AL\\_Eswatini\\_29.07.13\\_\(1.2013\).pdf](https://spdb.ohchr.org/hrdb/24th/public_-_AL_Eswatini_29.07.13_(1.2013).pdf)

131 The affected communities recalled three consultation meetings, while the company said there were two

claim to compensation on the basis that “In the Constitution, reference to payment of compensation is made in cases where the State expropriates property for public purposes...” and held that the affected residents “are evicted from a privately-owned farm and are not entitled to payment of compensation.”<sup>132</sup>

On 12 December 2017, affected residents told Amnesty International that the Managing Director of the company *Tibiyo Taka Ngwane* (Wealth of the Nation) convened a meeting between the affected residents and Umbane Limited at Tibiyo’s headquarters. Umbane Limited offered USD800<sup>133</sup> per homestead plus a cow in the form of assistance. The company were clear that this was not compensation. The residents refused to accept this as this would amount to approximately USD 160-200 per family and was inadequate to find secure alternative housing. Affected residents told Amnesty International this amount would barely enable them to *kukhonta* for land in the Malkerns and would not enable them to build homes and other structures which they would lose. The company had given a deadline of 31 December 2017 for families to vacate the land. However, during this meeting, Umbane Limited agreed to postpone the demolition date to 31 March 2018. “When March 31<sup>st</sup> came and they had not moved, that’s when we planned to demolish,” said the Operating Chairperson of Umbane Limited.

Gavin Khumalo, the affected residents’ representative, said the group did not find the company’s offer of assistance acceptable, and instead requested the company to provide alternative accommodation. In his words:

**“Our experience has taught us to have land under a chief, it’s not a guarantee that you will stay there forever. The experience we had was that even our fathers had been allocated the land through the *khonta* system, through the chief. It turned out that suddenly it became a farm while we were inside the land. There’s no guarantee that land under a chief cannot be turned into a farm. Anyone who decides to make it a farm can make it a farm. If we have money, we would get Title-Deed Land and subdivide it for our farm. Then at least we would have a piece of paper- I am guaranteed that no one can move me from that piece of land, I’m entitled to it. It’s registered under deeds office.”**

The residents said they had asked the Managing Director of *Tibiyo Taka Ngwane* to convey this information back to the King and to appeal to him for assistance. They said they were awaiting a response when the evictions and demolitions took place on 9 April 2018.<sup>134</sup>

Adequate notice is a safeguard to prevent forced evictions. Some members of the affected community told Amnesty International that they were only informed verbally of the demolitions on 8 April – approximately 24 hours’ notice. The community leader said this verbal information was only conveyed by the Station Commander of the Malkerns police station, after the community requested a meeting because of rumours they had heard of their imminent eviction. All residents interviewed by Amnesty International said they had not received any formal notice with detailed information prior to the demolitions and evictions. The authorities therefore failed in their obligation to ensure that the community was given adequate notice. This is contrary to requirements under international law and standards.

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132 According to the judgment: “In the Constitution, reference to payment of compensation is made in cases where the State expropriates property for public purposes- *In casu*, the second applicants are evicted from a privately-owned farm and are not entitled to payment of compensation.” Eswatini High Court. Judgment. Case No 902/2011, p.3

<sup>133</sup> The total amount of assistance was South African Rand 10 000. At the time of the Malkerns eviction in April 2018, the exchange rate amounted to USD800. At the time of publication, on 20 August 2018, this amounts to USD683

<sup>134</sup> Amnesty International interview. Gavin Khumalo. 17 April 2018. Malkerns

## **LACK OF ADEQUATE AND REASONABLE NOTICE**

Once the consultation process is satisfactorily completed, local authorities must provide all affected people with **adequate and reasonable notice of the eviction**. Individual notices must be **provided in writing, in the local language or languages whenever possible**, or translations services must be made available. Written notices must be complemented by measures to provide information in an accessible format for anyone who is unable to read. This may require the use of public television and radio announcements and public and focus group meetings. The time between the notice and the date of the proposed eviction must be sufficient to enable people to legally challenge the decision. It must also allow enough time for people to be able to assess any potential losses, for which they would require compensation. It should enable discussions on resettlement to be finalized and for resettlement to be available and fully functional prior to the eviction. According to the UN Basic Principles and Guidelines on Development-Based Evictions and Displacement: "If, after a full and fair public hearing, it is found that there still exists a need to proceed with the resettlement, then the affected persons, groups and communities shall be given at least 90 days' notice prior to the date of the resettlement." (Para 56j) For situations involving mass evictions, 90 days would therefore normally be a minimum requirement. The notice must provide a clear date and time for the eviction and describe the various steps involved in the process. It must also contain detailed information and a rationale for the compensation and resettlement measures to be adopted, as well as guidance on raising questions and challenging decisions about the eviction, compensation or resettlement, both before the courts and administrative bodies.

On 9 April 2018, the day of the demolitions, the chief offered the affected families temporary alternative accommodation in his residence; two families accepted and the majority subsequently found alternative accommodation at their own expense. Following the demolitions, Umbane Limited had meetings with the residents in early May 2018. Having been left homeless, the families accepted the assistance of USD800. Since each homestead consisted of several families, the USD800 needed to be further divided between each family.

Amnesty International also found that even if the eviction had been legally justified, the authorities failed to put in place the safeguards required by international law and standards. In line with procedural safeguards as articulated in international human rights law and standards, even where evictions may be justified, states are required to carry them out in strict compliance with the relevant provisions of international human rights law and in accordance with general principles of reasonableness and proportionality.<sup>135</sup> In the case of the evictions in the Malkerns on 9 April 2018, the authorities failed to provide the affected people with adequate notice and failed to ensure that no one was left homeless and vulnerable to other human rights violations as a result of the eviction, among other safeguards.

Evictions must always respect human rights and due process. Due process involves the right to be treated fairly, efficiently and effectively by the administration of justice. Due process protections include an opportunity for genuine consultation with those affected; adequate and reasonable notice to all affected persons before the scheduled eviction date; information on the proposed evictions to be made available to all affected in reasonable time; government officials to be present during eviction; all persons carrying out the eviction to be properly identified; evictions not to take place at night or during bad weather; and provision of legal remedies and legal aid to people who need it.

### **ANNA'S FAMILY:**

Anna Dlamini's family told Amnesty International they heard rumours about their imminent eviction on 8 April, one day in advance. Anna Dlamini, a 61-year-old woman, told Amnesty International that the Deputy Sheriff of the Mbabane High Court arrived at around 11am on 9 April 2018 to begin demolishing her house. Anna's mother Sofi Dlamini had died in 2011 and is buried in her homestead. Anna said that her sister and two grandchildren are also buried here. Although Anna was unhappy about leaving the remains of her family members behind, she had no choice. "As a Swazi, I value my deceased. In November, I'd (usually) hold a big feast for our deceased ones."<sup>136</sup> Now Anna has no certainty where she will be in November.

**"It's very painful to leave my family's graves here. I wish that the day I get a piece of land, we dig their graves and go with them, to wherever we will be living."<sup>137</sup>**

<sup>135</sup> CESCR General Comment 7, paragraph 14

<sup>136</sup> Amnesty International interview. Anna Dlamini. 17 April 2018. Empketseni, Malkerns

<sup>137</sup> Amnesty International interview. Anna Dlamini. 17 April 2018. Empketseni, Malkerns..



*The remains of the late Sofi Dlamini's home which was demolished on 9 April 2018 © Amnesty International*

According to Swazi custom, burial sites are usually on the family homestead. This separation from the family's graves violates Article 15(1a) of the ICESCR. In particular, the Swazi government has failed to meet the "acceptability" threshold.

According to General Comment 21 of the CESCR:

*Acceptability* entails that the laws, policies, strategies, programmes and measures adopted by the State party for the enjoyment of cultural rights should be formulated and implemented in such a way as to be acceptable to the individuals and communities involved. In this regard, consultations should be held with the individuals and communities concerned in order to ensure that the measures to protect cultural diversity are acceptable to them.<sup>138</sup>

The Eswatini government therefore failed to meet its national and international human rights law obligations.

In the words of Anna's daughter, Lungile Khumalo, who also lost her home in the Malkerns:

**"The problem is we have nowhere to go. We are leaving our grandparents there in the graves. Now we are just scattered. Our children, our brothers. We don't have land now."**<sup>139</sup>

As with all the affected families, Lungile's extended family who had been living together on one homestead were not offered alternative accommodation, and have been separated following their forced eviction. Lungile now lives in a rented flat, while her cousin Hlopsile, with whom she shared a home in the Malkerns, now lives in a hostel, and is separated from her children.

Hlopsile told Amnesty International that on the night of the evictions, she and her aunt, Anna Dlamini, slept outside to safeguard their belongings:

**"We made some fire and slept beside it. We would wake up and patrol to see our things were still there."**<sup>140</sup>

#### **JANE'S FAMILY:**

Similar to Anna, Jane Mhlanga's family said their eviction caught them by surprise and they did not receive any prior written notice.

138 UN Committee on Economic, Social and Cultural Rights (CESCR), General comment no. 21, Right of everyone to take part in cultural life (art. 15, para. 1a of the Covenant on Economic, Social and Cultural Rights), 21 December 2009, E/C.12/GC/21, available at: <http://www.refworld.org/docid/4ed35bae2.html>

139 Amnesty International interview. Lungile Dlamini. 16 April 2018. Empfetseni, Malkerns

140 Amnesty International interview. Hlopsile Goodness Mhoni, 16 April 2018. Empfetseni, Malkerns

The Eswatini government has an obligation to ensure that no one is left homeless as a result of an eviction or vulnerable to other human rights violations as a consequence of an eviction. People must be compensated for all losses and governments must provide adequate alternative housing to those who cannot provide for themselves.<sup>141</sup>

Jane's family were among the several families left homeless following their eviction. The poverty in which the family were already living intensified after their eviction and they currently rent a one-bedroom in which at least 3 adults and 8 children now live.

When Amnesty International met Jane one week after the demolition of her home, she was hanging up washing at the remains of her homestead. She said they would return to their temporary accommodation once it had dried.



*Jane Mhlanga's family's washing dries at the remains of their homestead which was demolished on 9 April 2018 in the Malkerns  
© Amnesty International*

Jane's 38-year-old daughter, Cinsile Dlamini, was also home on the morning their homes were demolished. She told Amnesty International she was caught by surprise:

**"We thought because the matter was still pending at the Royal Council, they wouldn't demolish. We feared, but then we had hope that maybe they won't demolish. We had hope that they would move us to another place. That's the hope we had."<sup>142</sup>**

She told Amnesty International that around 20 police officers armed with guns and batons were present and that she lost many of her household items during the demolitions.

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141 CESCR General Comment 7

142 Amnesty International interview. Cinsile Dlamini. 16 April 2018. Emphetseni. Malkerns



*The remains of Jane's family homestead after it was demolished. © Amnesty International*

Jane told Amnesty International she had moved with her family to this homestead in 1956, after King Sobhuza had given her family the land. Since their forced eviction, she said her children have become more quiet than usual. "I can see by the look in their eye, that things are not okay."<sup>143</sup>

This was not the first time the family had been threatened with eviction. In April 2016, the Sheriff of the High Court of Mbabane removed belongings from their home in an attempt to evict them.<sup>144</sup>

The crowded temporary accommodation Jane's family is now living in raises questions about the adequacy of housing standards.

### **ADEQUACY OF HOUSING STANDARDS**

The Committee on Economic Social and Cultural Rights gives critical importance to the concept of adequacy of housing. The Committee has outlined seven key factors to determine adequacy: **legal security of tenure; availability of services, materials, facilities and infrastructure; affordability**, which entails the capacity to meet housing-related costs; **habitability**, which refers to whether the housing provides adequate space, and protects them from adverse weather conditions; **accessibility to all**, which entails that disadvantaged and vulnerable groups such as the elderly, and those with chronic medical conditions should be given a degree of priority consideration; **location** which allows access to employment, health care and schools; and **cultural adequacy**.<sup>1</sup>

Cinsile said that she attended a meeting on 12 December 2017 with the Managing Director of Tibiyo, Umbane Limited and the affected families. There the families stated that the USD800 per homestead and a cow which had been offered as assistance was too little, and requested adequate alternative homes and land for farming. Cinsile told Amnesty International that the Managing Director of Tibiyo had said he needed time to consult the King.

<sup>143</sup> Amnesty International interview. Cinsile Dlamini. 16 April 2018. Emphetseni. Malkerns

<sup>144</sup> Amnesty International interview with Jane Mhlanga, 29 November 2017. This interview was inspired by article: Mabuza, Nimrod. Justice Miscarriage. October 2017. *The Nation*



*Jane's family in the one-bedroom where they now live following their forced eviction and their homestead's demolition in the Malkerns on 9 April 2018. © Amnesty International*

### **GAVIN'S FAMILY**

Amnesty International found that even if the eviction had been legally justified, the authorities failed to put in place the safeguards required by international law and standards. As with Anna's and Jane's families, Gavin Khumalo told Amnesty International that he heard rumours about their imminent eviction and had requested a meeting with the Malkerns police station commander. Gavin said that the police officer produced a copy of a past eviction order dated 14 December 2017 to him on 8 April, and informed Gavin of their community's imminent eviction, one day in advance. Since Gavin's family said they had not received any notice in writing in advance, the Eswatini authorities therefore failed in their obligation to ensure that the family was given adequate notice ahead of the evictions, in breach of international law and standards.

Gavin's family were also left homeless following their forced eviction. On that night, Gavin said he slept in a car and his family were taken in by his brother. When Amnesty International visited the Malkerns on 16 April 2018, Gavin showed delegates his new temporary home - a chicken shed, approximately 15m x 5m, on his brother's property. On this basis, the Eswatini government has failed to provide adequate alternative housing to Gavin's family, in breach of international human rights law.



*The chicken shed in which Gavin Khumalo is now living following his family's forced eviction and the demolition of their home in the Malkerns on 9 April 2018. © Amnesty International*

Gavin Khumalo told Amnesty International that like others he had hoped he could halt the process and was on his way to the chief's council to seek assistance when the bulldozers arrived. Once the demolitions began, there was nothing anyone could do.

Thamsanqa Khumalo, Gavin Khumalo's nephew, told Amnesty International he went to assist the family to remove their belongings from their home around 9am that morning. He was inside the house, trying to remove the window frames, when a policeman told him to come outside because they were going to demolish the house.

Describing the scene to Amnesty International, Thamsanqa said that he stood outside the house next to the items they had just removed. There were loud noises. Then the sound of corrugated iron crushing to the ground, and pieces of glass from the windows shattering. The air was filled with dust and he felt scared.

**“Most of the people there were crying. The children started crying when they saw the adults crying.”<sup>145</sup>**

When Amnesty International met Gavin Khumalo, some of his damaged furniture still stood in the middle of what was once his homestead.

All the affected families had roots in the land from which they were forcibly evicted. As well as the graves which signify their historical links to the land, they had also invested in developing the land and their homes.

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<sup>145</sup> Amnesty International interview. Thamsanqa Khumalo. 17 April 2018. Emphetseni, Malkerns



*The remains of Gavin Khumalo's demolished home. © Amnesty International*

### **NNDOMISO'S FAMILY:**

Nndomiso said that she was not aware of her family's eviction until the day it happened. She was at work when she was called to say the eviction had begun.

In the case of Nndomiso's family, the Eswatini authorities once again failed – among other safeguards – to provide adequate notice and to ensure that no one was left homeless and vulnerable to other human rights violations as a result of the eviction.

Nndomiso is a single mother of an eight-year-old son who is deaf. He was staying at his school in Sitheki, about 85km from the Malkerns, when the demolition happened. When Nndomiso fetched him from school for the holidays, there was no home to bring him back to. She tried to explain that their home had been demolished, but said that her son didn't take it well.<sup>146</sup> When she took him to see what remained of their home, Nndomiso said that he put his hands to his face in disbelief. Nndomiso's family were left homeless following their eviction. She is struggling to pay her son's school fees and transport costs and was only able to send him back to school in early June 2018. She worries about how she will transport her son back to school every new term and now has to travel a longer distance, incurring an additional daily cost of around USD4. Nndomiso earns approximately USD122 per month<sup>147</sup> for her contract job and now has the additional burden of the rent to find.<sup>148</sup> The family was already economically vulnerable before their forced eviction, which has plunged them deeper into poverty and anxiety.

The livelihoods of the affected families were tied to the land. Nndomiso told Amnesty International:

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<sup>146</sup> Amnesty International interview with Nndomiso Dlamini, 17 April 2018, Emphatseni, Malkerns

<sup>147</sup> She earns ZAR 750 per fortnight. Currency conversion correct on 24 April 2018

<sup>148</sup> Amnesty International telephone interview. Nndomiso Dlamini. 4 June 2018

**“I like farming; now that they’ve demolished, there’s no way I can earn a living. And where I am working it’s a piece job, I work three months, and after that I’m out of a job. Yet when I was doing my farming I would know I would harvest and sell and then be able to live.”<sup>149</sup>**

If she had the opportunity to speak to the King directly:

**“I will request for a place to stay, equivalent to what they destroyed, a place where I can be able to do my farming like I used to. Because there are no jobs. Here the soil was fertile, the land was good. I need a place like that.”<sup>150</sup>**

Her brother Sicelo Dlamini told Amnesty International that he was born at the homestead and that the demolition was a shock. He said he was given a “very short time” to remove his belongings.<sup>151</sup> During Amnesty International’s interview with his family members at the site of the demolitions, Sicelo was rummaging through the rubble, uncovering the doors and window frames of their former home. Sicelo Dlamini died on 15 May 2018 in mysterious circumstances.<sup>152</sup>



*The door to what was once Nondomiso’s house in the Malkerns © Amnesty International*

The forced evictions in the Malkerns represent a standard approach to evictions of those living on Title-Deed Land, those without formal contracts with land owners, and those without access to Title-Deed Land. This

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149 Amnesty International interview. Nondomiso Dlamini. 17 April 2018. Emphatseni. Malkerns

150 Amnesty International interview with Nondomiso Dlamini, 17 April 2018, Emphatseni, Malkerns

151 Amnesty International interview. Sicelo Dlamini. 16 April 2018. Emphatseni, Malkerns

152 Police were still investigating the matter at the time of publication

category of people constitutes the majority of the population in Eswatini and they are often vulnerable to violations of the right to adequate housing. As mentioned earlier, although protection against forced evictions in regional and international human rights law and standards, including those ratified by Eswatini, is afforded to all occupiers regardless of type of tenure, the reality is different.

Amnesty International found that the families in the Malkerns were forcibly evicted and rendered homeless primarily because they lacked any formal recognition that they lived on the land in question. Although the families did have a degree of access to legal remedies, the authorities failed to put in place other safeguards before demolishing their homes.

## **THE MALKERNS: PREVIOUS FORCED EVICTIONS AND THREATS OF EVICTION**

Forced evictions are not new in the Malkerns and some families constantly live under imminent threat. In the case of the evictions of 5 October 2016, the Swazi authorities failed to provide the affected families with adequate notice and failed to ensure that no one was left homeless and vulnerable to other human rights violations as a result of the eviction, among other safeguards.

### **THOKO'S FAMILY:**

In October 2016 the Messenger of Court for the Manzini district, accompanied by members of the Royal Eswatini Police, evicted the family of Sagila Dlamini and his 71-year-old sister, Thoko Goodness Dlamini. The homes of both Sagila and Thoko were demolished on 5 October 2016 and they spent that night in a makeshift shelter in the open.<sup>153</sup>

Thoko Goodness Dlamini said that she was not aware of her eviction until the day it happened. Since Thoko said she did not receive any advance notice in writing, the Eswatini authorities therefore failed in their obligation to ensure that she was given adequate notice ahead of the evictions, which is in breach of international law and standards.

The Eswatini government has an obligation to ensure that no one is left homeless as a result of an eviction or becomes vulnerable to other human rights violations as a consequence of an eviction. People must be compensated for all losses and governments must provide adequate alternative housing to those who cannot provide for themselves.<sup>154</sup>

In the case of Thoko's family, the Eswatini authorities failed to provide adequate notice and failed to ensure that no one was left homeless and vulnerable to other human rights violations as a result of the eviction, among other safeguards.

Thoko's family was left homeless following their eviction. She said that neither the company nor the government authorities offered her any compensation or alternative housing. Thoko told Amnesty International that her life today is difficult, with inadequate food and no permanent structure. The dark, one-bedroom makeshift structure where she now sleeps is on the same homestead where her house once stood, and was previously used by her brother Sagila's family as a kitchen. Sagila told Amnesty International that his family have no permanent home, moving from one relative to the next. The Eswatini government has therefore failed its obligation to provide alternative accommodation to Thoko's family, in breach of international human rights law and standards.

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<sup>153</sup> Founding affidavit of applicant Sagila Dlamini, paragraph 6.1 Case 1783/16

<sup>154</sup> CESCR General Comment 7



*Thoko Goodness Dlamini in the makeshift shelter where she has been living since October 2016 when she was forcibly evicted and her home demolished in the Malkerns. © Amnesty International*

Thoko Goodness Dlamini told Amnesty International that she was born in the Malkerns in 1946. Her parents had seven children and in 1964 they moved to land she said they were given by the previous owner. It was from there that she was forcibly evicted.

Thoko had built her house on the homestead in 2008 while she worked at the fruit cannery in the Malkerns. She was a single mother - her child died and is buried on the land where she lived. Thoko lived on this plot along with her brothers, Sagila and Fanase. When Amnesty International visited the site, the remains of their demolished homes were still visible.

The eviction was the result of an application brought by Diesel Services Ltd, a private company, against Putin Dlamini (brother of Sagila, Thoko and Fanase who did not live on the property). Diesel Services Ltd claimed ownership of the land on which the Dlamini family lived and therefore sought their eviction. Following the application, the court issued an eviction order directed at Putin Dlamini but also included “all those claiming title under her” to portion 61 of portion 48 of Farm 1270 to remove their belongings. The court order directed the Royal Eswatini Police (formerly the Royal Swazi Police) to assist in carrying out the order.

Sagila consulted a lawyer but Thoko said she was not able to: “There was nothing I could try. At the time, I was extremely sick.”<sup>155</sup>

She said that she was alone at home when the lawyer and security guards of the private company which claimed to have ownership over the land, accompanied by police officers from the Malkerns police station, arrived and informed her that they had come to demolish the house:

**“They came and told me I should take my things out of the house because it was going to be demolished. It happened at 10am. It was done immediately.”**

**“I told them I was sick. They told me not to worry, they have people to help me pack. But they did not remove everything.”<sup>156</sup>**

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155 Amnesty International interview. Thoko Goodness Dlamini. 29 November 2017

**During the demolition, Thoko said she lost some of her belongings: “They did not remove the doors or window panes. These are things I could have used.”**

She spent that night in a makeshift shelter in the open:

**“I slept outside in that shack. The rain came and found me.”<sup>157</sup>**

At the time of publication, Sagila Dlamini was still involved in a court process. The High Court confirmed on 14 July 2017 that the eviction and the demolition were unlawful, and that he was entitled to compensation from the private company. The company appealed the judgment in August 2017 and a court date is yet to be set.<sup>158</sup>

Prior to publication of this report, Amnesty International wrote to Diesel Services Ltd (DSL) setting out the key findings and questions for response. DSL confirmed the general facts, but objected to the implication that they had a related duty to provide alternative accommodation. As a corporate, DSL has duties under the Guiding Principles on Business and Human Rights, and Amnesty International objects to DSL’s assertion that evictions related to privately owned property are not included in the state’s obligations.



*The remains of Sagila Dlamini’s family home after it was demolished following their forced eviction on 5 October 2016.*  
© Amnesty International

While it is the Eswatini government’s primary duty to protect against forced evictions by private actors, and to ensure provision of adequate alternative accommodation, the Guiding Principles on Business and Human Rights also recognize the need for corporates to observe human rights standards.<sup>159</sup>

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<sup>157</sup> Amnesty International interview. March 2017

<sup>158</sup> Amnesty International interview. Siphon Gumedze. November 2017

<sup>159</sup> UN Human Rights Council, Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises (Addendum): State responsibilities to regulate and adjudicate corporate activities under the United Nations core human rights treaties: an overview of treaty body commentaries (13 February 2007) UN Doc A/HRC/4/35/Add.1, available at: [www.ohchr.org/EN/Issues/TransnationalCorporations/Pages/Reports.aspx](http://www.ohchr.org/EN/Issues/TransnationalCorporations/Pages/Reports.aspx)

Amnesty International is aware of at least three other neighbouring homesteads in the Malkerns region whose inhabitants live in constant fear of imminent eviction as private landholders seek to remove them from the land they occupy without written agreements.

## NOKWANE

Nokwane is situated some 15km east of Manzini town in the Manzini region in the centre-west of Eswatini. Once known for its pineapple plantations, Nokwane is today a 159-hectare construction site of the Royal Science and Technology Park, a government-led development initiative inaugurated in April 2018. The site is located on land where at least 19 homesteads once stood and from where at least 180 residents were forcibly evicted.



*The Royal Science and Technology Park construction site: a government development project in Nokwane from where families were forcibly evicted. © Amnesty International*

King Mswati III initiated the development of this project as part of the country's economic growth strategy, Vision 2022. Funded by the Taiwanese government, the project is now implemented through the Ministry of Information, Communications and Technology.<sup>160</sup> The Park was established through the Royal Science and Technology Park (RSTP) Act<sup>161</sup> and is officially classified as a public enterprise, or parastatal. It consists of two projects, the Bioscience and Technology Park in Nokwane, and the Innovation Park in Phocweni, a few kilometres from Nokwane.

At the heart of the dispute between the families and the Eswatini government is the tenure of the contested land - Farm 692 - and the accompanying rights. This dispute culminated in a protracted legal process. The court eventually ruled that the King owns the property in trust for the Swazi nation, and that the King allocated the land to the government through the Ministry of Information, Communications and Technology (MICT) via Title-deed 176/2005 for the construction of the RSTP.<sup>162</sup> However, the government and families still contest the facts.

According to the government's version, the Ministry of Housing owned the land, which was initially earmarked for a township development programme. In 2006 they sold apportioned plots to multiple owners,

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160 Swaziland Government v Jabulane Dlamini & 19 Others (1155/14) [2014] SZHC401 (5 December 2014)

161 Royal Science and Technology Park Act 5 of 2012

162 Swaziland Government v Jabulane Dlamini & 19 Others (1155/14) [2014] SZHC401 (5 December 2014)

who built temporary structures on the land.<sup>163</sup> The government later decided to instead use the land for the construction of the RSTP and wanted the land back. According to the Ministry of Information, Communications and Technology, the government provided alternative accommodation and fully compensated the owners of plots, who “unintentionally created an opportunistic appetite for squatters in their vacant plots.”<sup>164</sup>

This account did not match the affected families’ version. At least five people interviewed told Amnesty International they were born on the land, which their parents had acquired through the traditional *kukhonta* process. However, the Ministry of Information, Communications and Technology (MICT) referred to the affected families as “illegal squatters”.<sup>165</sup> The government’s version, that the affected families only arrived after 2006 when the temporary structures were allegedly built by the owners of the subdivided plots, is not only inconsistent with the account of the affected families, it is also in contrast to satellite imagery sourced by Amnesty International. (See Annex 1.)

This imagery reveals that structures were present in the area between 20 October 2002 and 14 July 2015 and that from February 2015 they are missing. The imagery also shows excavators and bulldozers demolishing structures in 2014.

At least 19 homesteads were located on the disputed land. Of those, affected families told Amnesty International that five were situated within the Royal Science and Technology Park (RSTP) boundaries, while 14 were outside. Initially, affected families said that government officials told them that only those families living within the boundaries of the RSTP would be affected by the development, but in the end all 19 homesteads - at least 180 people - located within and outside were forcibly evicted.



*Residents of Nokwane indicating where their now-demolished homes were located prior to their forced eviction in 2014.*  
© Amnesty International

One family told Amnesty International that they were the first to be evicted, on 11 July 2012, because their house was in the way of the RSTP boundary wall construction. After a break of almost two years, according to affected families, forced evictions resumed on 25 September 2014 when three structures were demolished. The families told Amnesty International that only one of the homesteads demolished that day was situated inside the boundary of the RSTP, and two were outside. Families and eyewitnesses said that the Principal Secretary of the MICT was leading the delegation undertaking the demolitions, in the presence of a state law advisor from the Attorney-General’s office in the Ministry of Justice. Residents told Amnesty

163 Memo from Principal Secretary, MICT, 12 August 2017. Reference ICT/10/1. Eviction order of squatters at Mbanana Farm 692 at Nokwane. (hereafter MICT Memo)

164 MICT Memo, 12 August 2017

165 MICT Memo, 12 August 2017

International that the demolitions lasted approximately two hours on that day. By December 2014, despite civil society's attempts to halt evictions from Nokwane, 19 homesteads - approximately 180 people – had been forcibly evicted and their homes demolished to make way for the construction of the RSTP.



*Civil society tried to prevent the Nokwane forced evictions. One of the homes in Nokwane before the demolitions, September 2014. © Lomcebo Dlamini*

Although the government held some consultations with the affected families, neither they nor the authorities have provided Amnesty International with dates of frequency of these meetings, or any details of what information was provided and discussed. Families were in agreement that although meetings took place, there were inconsistencies in the information shared in them by authorities regarding whose homesteads would be affected, as well as compensation. Amnesty International has sought additional information from the Eswatini government but none had been provided by time of publication.

### **GENUINE CONSULTATION**

The UN Committee on Economic, Social and Cultural Rights has identified “genuine consultation” with affected people as a fundamental safeguard against forced evictions. Genuine consultation includes the provision of full, accurate and timely information to those affected, in order to facilitate their meaningful participation in any consultation process. The information must be in a form and language that is accessible to all affected people. Genuine consultation also includes the opportunity for affected individuals and families to reflect upon, discuss, raise concerns and submit comments to the authorities about the eviction and any related plans, including on compensation and resettlement, and to receive responses from the authorities. Affected people should be able to participate collectively, through their elected representatives, if they have any, and in smaller groups and individually.

Genuine consultation is one of the safeguards against forced evictions. However, all the affected families interviewed said that inconsistent information had been provided to them regarding details of the forced eviction. As such, they did not receive full, accurate and timely information in order to facilitate their meaningful participation. Some people told Amnesty International that they were simply told that their houses were to be demolished and that no opportunity had been given for raising concerns and comments. The meetings between government representatives and the affected families did not meet the threshold of genuine consultation as set out in Eswatini's international human rights law obligations.

Initially, only those families located within the boundaries of the RSTP were told they would be affected by the development and compensated with alternative accommodation in nearby Bethany. Amnesty International spoke to one family who said they had even been shown where they would be resettled. However, all the families located within and outside the boundaries were ultimately evicted without any provision of alternative land or housing. According to the MICT, however, the government (MICT, Ministry of Housing and the traditional authority, the Lubamba *Umphakatsi*) held “numerous meetings with these squatters, and informed them of their illegal stay on the farm...”<sup>166</sup> The MICT said that “notwithstanding their trespassing, the government negotiated with the *Umphakatsi* (local traditional authority) which gave them a piece of land despite the fact that the *Umphakatsi* did not know them.”<sup>167</sup> They also said that while the families were then expected to follow the traditional process through the chief (*kukhonta*) before building on the newly allocated land, they “opted to be defiant and remained on the farm.”<sup>168</sup> One of the affected residents told Amnesty International that while they were offered to *kukhonta* for land at a nearby area, and that they were made to pay USD7 for demarcating the boundaries of the land, they later found out that the same land had been given to another organization. In effect, therefore, the Eswatini authorities did not provide the affected families with alternative accommodation and their eviction left them homeless. This constitutes a forced eviction, in violation of international human rights law and standards.

The government added that it also offered to cover the cost of reburying deceased family members and allocating land for reburial - and that “at the time there were only 22 graves remaining on the site as some had already been moved for alternative burial.”<sup>169</sup>

Consequently, the Eswatini government approached the High Court to seek the eviction of the residents.<sup>170</sup> The High Court granted an interim order which allowed the eviction of 10 families in Nokwane on 20 August 2014. The interim order was finalized by the same court on 8 September 2014. In response, the residents immediately launched an appeal.<sup>171</sup> Despite the pending appeal which should have stayed the interim eviction order, on 22 September the Attorney General’s (AG) office wrote to residents informing them that their homes would be demolished on 24 September. The residents launched an urgent application at the Mbabane High Court to stay the execution of the eviction order or to seek an interdict against demolitions of their homes pending the appeal. This application was dismissed by the Mbabane High Court on 24 September and on the following day, 25 September, the forced evictions from Nokwane were initiated.<sup>172</sup> The AG’s office effectively gave the residents two days’ notice, which cannot be considered as adequate. Adequate notice is one of the safeguards against forced evictions. Based on the information from affected residents, the Eswatini authorities failed in their obligation to ensure that the residents were given adequate notice of the evictions. This is contrary to requirements under international law and standards and therefore constitutes a forced eviction.

Despite the fact that affected parties had submitted an appeal against their eviction, the evictions and demolitions continued.

A human rights activist who witnessed the Nokwane evictions in September 2014 told Amnesty International:

**“We use the law to try to protect people. When the law fails to protect them, what’s next?”<sup>173</sup>**

After the demolitions in September and October, the residents tried to appeal their forced evictions. In December 2014, the Eswatini High Court found that “the project is of national importance and the Court cannot allow a situation where the project would fail just because of illegal squatters.”<sup>174</sup> The High Court ordered the eviction of the remaining families at Nokwane on the basis of “overwhelming evidence” that the Eswatini government is the title-deed holder of the farm. The court ruled that the land was SNL - the King owns the property in trust for the Swazi nation, who allocated this land to the Ministry of Information Communications and Technology. The judge found that the residents failed to provide any evidence in the form of a legal agreement of how they managed to occupy the land.<sup>175</sup> Although the residents tried to appeal

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166 MICT Memo, paragraph 3

167 MICT Memo, paragraph 3

168 MICT Memo, paragraph 3

169 MICT Memo, paragraph 3

170 Case 1155/2014 Swazi Government (applicant) vs. 19 residents (respondents) and the Commissioner of Police (20th respondent). Mbabane High Court

171 James, Caroline. Southern Africa Litigation Centre. Unlawful Evictions in Swaziland Signal More Disrespect for the Rule of Law. 29 September 2014. (hereafter James, Unlawful evictions in Swaziland) available at:

<http://www.southernafricalitigationcentre.org/2014/09/29/unlawful-evictions-in-Eswatini-signal-more-disrespect-for-the-rule-of-law/>

172 James, Caroline

173 Amnesty International interview with Mary de Silva, December 2017

174 Swaziland Government vs. Jabulane Dlamini & 19 Others (1155/14) [2014] SZHC401 (5 December 2014)

175 Swaziland Government vs. Jabulane Dlamini & 19 Others (1155/14) [2014] SZHC401 (5 December 2014)

the eviction order, the Supreme Court of Appeal declined to pass judgment on the matter as demolitions had already taken place while the appeal was pending.<sup>176</sup>

Every family Amnesty International spoke to was left homeless immediately after the forced eviction. CESCR General Comment 7, stipulates that states must also ensure that no one is rendered homeless or vulnerable to the violation of other human rights as a consequence of eviction. Adequate alternative housing and compensation for all losses must be made available to those affected prior to eviction.<sup>177</sup> The Swazi government failed to prevent homelessness following the Nokwane eviction in violation of international human rights law and standards.

Families who were left homeless spent several nights in the open on the land where their homes once stood, before being assisted by a collective civil society initiative to access emergency shelter.<sup>178</sup> Some families lived in tents at the Lutheran Church in Manzini for over a year until they dispersed and found alternative housing at their own expense. Some received donor assistance to secure the fees to acquire land through traditional means (*kukhonta*). According to a news article, one of the female-headed affected families decided to leave after being attacked during the night while living at the Lutheran Church.<sup>179</sup> With the assistance of civil society, Amnesty International managed to locate 10 families who were forcibly evicted from Nokwane. The following is their account.

**“Today is the day for us to demolish everything. I’m giving you one hour to take everything out, because the bulldozers are coming to take everything down.” Ayesha Jubilee recalled these words of the Project Manager of the Royal Science and Technology Park (RSTP), on 11 July 2012.<sup>180</sup>**

“We were the first (home to be demolished). Where we were, is where the fence had to go. We were blocking everything.” Ayesha, then aged 25, was alone at home that day. She said nothing to the project manager. “He had power over us.”<sup>181</sup> Ayesha recalls the project manager verbally reminding her that he had informed the family of their pending eviction one month before the demolitions. She told Amnesty International the project manager offered her USD63 which Ayesha said was offered in sympathy and which she did not take. She told Amnesty International that he offered to transport some of the family’s belongings - corrugated iron roofing, window frames, poles and their front door - in a truck to the construction site. However, when the family went to recover these items from the RSTP construction site office, they were told that the project manager no longer worked there. The family said that they still do not know where their belongings are.

At the time, only Ayesha’s mother was working. Her father, a migrant from Malawi, was unemployed. Ayesha lived with her parents, two sisters and two brothers. “It was hard to believe. We grew up there. It was home,” she told Amnesty International.<sup>182</sup>

Her younger brother Abdul, who was on school holiday, was away working at a temporary job at the time. He was shocked by his home’s demolition that day: “Nobody told me. I just went home and everything was down. The houses were down, destroyed, and the trees, mangos, pawpaw [papaya]. We used to sell and eat some of them.”<sup>183</sup> His father, who sometimes had part-time work at a mosque, was not home that day. Since then, the family have been renting a house on a nearby farming estate.

Abdul, now aged 18, said that given an opportunity he would ask the King to build his family a house “to be safe.”<sup>184</sup> For Abdul, it’s important to have a home: “It’s where I belong. I know when I die, I’ll be buried there. If I don’t have a home, I don’t know where I’ll be buried.”<sup>185</sup>

For Abdul, human rights include:

**“The right to live. The right to a home. If you don’t have the right to a home, the right to live is affected, because you cannot live properly if you don’t have a home.”<sup>186</sup>**

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176 Jabulani Dlamini & 9 Others vs. Eswatini Government (51/2014) (2015) SZSC 07 (9 December 2015)

177 CESCR General Comment 7

178 This included efforts by the Lutheran Church of Swaziland, Swaziland Coalition of Concerned, Council of Swaziland Churches (CSC); Lawyers for Human Rights Swaziland (LHRS) and the Red Cross

179 Thembeke Dlamini. Families Evicted at Nokwane Attacked. Swazi Observer. 21 March 2016. Available online at: <https://www.pressreader.com/Eswatini/swati-observer/20160321/282772060691096>

180 Amnesty International interview. Ayesha Jubilee (telephonic). 19 April 2018

181 Amnesty International interview. Ayesha Jubilee (telephonic). 19 April 2018

182 Amnesty International interview. Ayesha Jubilee (telephonic). 19 April 2018

183 Amnesty International interview. Abdul Jubilee. 19 April 2018

184 Amnesty International interview. Abdul Jubilee. 19 April 2018

185 Amnesty International interview. Abdul Jubilee. 19 April 2018

186 Amnesty International interview. Abdul Jubilee. 19 April 2018

The Jubilee family's experience foreshadowed what was to come for the remaining residents at Nokwane.

On the morning of 29 September 2014, the next round of forced evictions from Nokwane took place and lasted approximately two hours. Eyewitnesses told Amnesty International that there was a heavy police presence on the road, with road blocks leading to the affected location.<sup>187</sup> At the site of the demolitions, there was also a heavily armed police presence, including the Operations Support Services Unit (OSSU) mandated to deal with riots, as well as *caspirs* - a four-wheel, armoured military vehicle used for transporting troops in South Africa during the apartheid period. One witness told Amnesty International that when he arrived, a demolition was taking place in front of a boutique hotel adjacent to the RSTP site.<sup>188</sup> This land was not part of the plot designated for the construction of the RSTP project. "When the truck/TLB had finished demolishing a home, it would go to the next home to inform the family that they were next in line," said an eyewitness.<sup>189</sup> Although one resident had in her possession a Notice of Appeal to the eviction order which she showed to the State Law Advisor and police who were present, they disregarded it. Even after the residents' lawyer arrived with the Notice of Appeal, the demolitions continued and only halted after a second State Law Advisor arrived saying that in view of the Notice of Appeal, by law the demolitions should be stopped. However, according to eyewitnesses, by then at least three homesteads had already been demolished.

Nomathemba (not her real name) was working as a cleaner near Nokwane where she lived, when her mother called around 11am urging her to come home. By the time she arrived, the house was demolished. She told Amnesty International: "I found them just standing there, the children were crying, they looked helpless."<sup>190</sup> Because her mother was alone, she had not been able to remove all their belongings. Nomathemba tried to salvage what remained in the rubble but the children's school uniforms, clothes, dishes and documents were destroyed. Nomathemba said there was a light drizzle that night as she, her mother and five children slept outside. "We had no alternative plan, no relatives to go to."<sup>191</sup> Her family spent the next three nights in the open before the Lutheran church provided temporary shelter in a tent for 10 months. As a result of the demolition, Nomathemba said that four of the children missed school for almost one month because they were living in the open, and lost their school books and uniforms. This loss of schooling violates the children's right to education.<sup>192</sup>

Similarly, Sonto Dlamini's home was demolished on 29 September 2014. She was the second Nokwane resident to be forcibly evicted that day. Sonto Dlamini told Amnesty International that she was so distressed that she tried to commit suicide on the day of the forced evictions:

**"I don't want to remember that day. I took a decision, maybe it's better to (commit) suicide than to face what I was undergoing."**<sup>193</sup>

According to media reports, she was heard screaming, "*Ngingamane ngife*: it's better to die."<sup>194</sup> Members of civil society and the police stopped her. To this day, Sonto says that when her grandchildren see a bulldozer, they ask her why she wanted to kill herself.

Sonto, a 65-year-old widow whose late husband was a soldier and is buried in Nokwane, lived in a stick-and-mud walled home with corrugated iron roofing along with her four children and 13 grandchildren. Sonto told Amnesty International that she first came to Nokwane in 1979 and that the family had lived there for nearly 40 years. All of Sonto's children were born there.<sup>195</sup>

Amnesty International met Sonto at the site where she had constructed alternative accommodation with her former neighbour from Nokwane. The remains of her house - corrugated sheets and window frames - lay in a pile outside her family's makeshift shelter.

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187. Amnesty International telephonic interview, Tanele Masuku, 4 April 2018

188 Amnesty International telephonic interview with Sibusiso Nhlabatsi. 4 April 2018

189 Amnesty International telephonic interview with Sibusiso Nhlabatsi. 4 April 2018

190 Amnesty International interview. 19 April 2018

191 Amnesty International interview. 19 April 2018

192 As a state party to the International Covenant on Economic, Social, Cultural Rights, Eswatini has an obligation to respect, protect and fulfill the right to education, enshrined in Article 13

193 Amnesty International interview with Sonto Dlamini, 16 March 2017. This is also verified by a media article by Zwelakhe Moahloli, "Evicted Nokwane Woman Attempts Suicide in Public" available at: <http://www.times.co.sz/news/99306-evicted-nokwane-woman-attempts-suicide-in-public.html>

194 Times of Swaziland. 30 September 2014. Evicted Nokwane Woman Attempts Suicide: <http://www.times.co.sz/news/99306-evicted-nokwane-woman-attempts-suicide-in-public.html>

195 Amnesty International interview with Sonto Dlamini, 16 March 2017



*The window frames and corrugated iron that Sonto's family salvaged from the rubble of their demolished home in Nokwane are valuable remains. © Amnesty International*

The family said their greatest challenge today is finding food; their food security has therefore been undermined following their forced eviction.

**“Life is really difficult here, especially food.... I can't grow anything here, as it is not fenced. I tried growing crops, but the cattle ate everything.”<sup>196</sup>**



*Sonto Dlamini (left) and the late Christina Mabuza, after returning from work harvesting a field in exchange for a barrel of maize. © Amnesty International*

While living in Nokwane, the family were subsistence farmers and said they were able to earn a decent living: “Where we were living, we had avocado trees and pawpaw [papaya] trees; occasionally a car would come to

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<sup>196</sup> Amnesty International interview with Sonto Dlamini, 16 March 2017

buy the avocados in bulk.”<sup>197</sup> Sonto also earned a living by cutting grass which was used to thatch houses and make grass mats.

The family lost most of their belongings during the eviction:

**“I don’t have property now. Most of my things and my property got destroyed in the demolition. I don’t even have [extra] clothes.”<sup>198</sup>**

At one of the meetings with government representatives, five of the affected residents said that government authorities promised some of them alternative land in the village of Bethany, which they did not receive. Sonto told Amnesty International:

**“At the meeting, we were promised heaven and earth. They promised we would be removed from there and given another place to stay.”<sup>199</sup>**

However, Sonto said that she did not receive the promised alternative land.

Amnesty International found that only one of the affected residents received alternative accommodation. The MICT said that it recognized only that person “as a legitimate farm dweller according to law who was compensated and given an alternative piece of land” and that “the rest were people who had no legal right or claim to the farm.”<sup>200</sup> However, the government’s approach of only compensating one person on the basis of recognition as a “farm dweller” is contrary to international human rights law which calls on governments to ensure that no one is left homeless as a result of an eviction.

According to accounts of affected residents, they were given contradictory information at different meetings.

Christina Mabuza, Sonto’s neighbour, told Amnesty International that at one meeting:

**“We were told, even if you’ve got an ID for the *umphakatsi* (chief), it doesn’t matter, you’re going to be evicted. You must go to wherever you came from. Some people fainted in response. I could not have said anything. I kept quiet. It was an instruction.”<sup>201</sup>**

Christina died in March 2018. After the forced eviction in Nokwane, both Sonto’s and Christina’s families were rendered homeless and lost their source of livelihood as well as their belongings. The government did not provide them with any compensation for their loss.

After the demolition, Sonto’s family tried to create makeshift shelters on the land where their home once stood, but were told by authorities they could not construct any temporary structures. For one week, Sonto’s family lived in the open. Thereafter, the Lutheran Church provided temporary shelter in Manzini,<sup>202</sup> after which the chief allocated the family land in Gebeni, approximately 35km from Nokwane. However, due to disputes over that land between existing residents and the resettled family, they had to leave and finally found their way to the nearby village of Ndinilembi<sup>203</sup> in January 2016. The chief allocated them Swazi Nation Land via a verbal agreement without any written legal documents, and the family constructed their home at their own cost.<sup>204</sup> Their home is a makeshift temporary shelter and they are in the process of constructing a brick home on the same land. However, the land allocated to them is based on a verbal agreement and is Swazi Nation Land; the family is concerned that they do not have security of tenure and could be forcibly evicted once again.

This was not the only family impacted by the Nokwane forced evictions. In October 2014, a 32-year-old woman Sihle (not her real name) told Amnesty International that she was selling fruit at the Royal Science and Technology Park construction site adjacent to their home in Nokwane when a security guard pointed out to her what was happening at the park’s entrance:

“As I looked, I saw the police vans and the people from the *umphakatsi* (chief’s) residence. And then I saw the police were not far off at my homestead. They were all over the place.” The uniformed police - too many for her to count - were armed with guns and batons.

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197 Amnesty International interview with Mxolisi Dlamini, 16 March 2017

198 Amnesty International interview with Sonto Dlamini, 16 March 2017

199 Amnesty International interview with Sonto Dlamini, 16 March 2017

200 MICT Memo, paragraph 7

201 Amnesty International interview with Christina Mabuza, 16 March 2017

202 Mxolisi Dlamini was transported by a lorry provided by the construction company to stay with a family in Luyengo, arranged by a pastor

203 Translated from Siswati means “ugly house.”

204 According to Mxolisi Dlamini, the family used some materials salvaged from their Nokwane home’s demolition. In addition, the family spent ZAR450 to hire a car and ZAR500 to transport logs to construct their new home

"I left everything and ran home. I went straight to my house. I got to my home and opened my house, started grabbing things because they had already started demolishing a house belonging to *Gogo* (in reference to grandmother *Siswati*) Matimba."

Even the children were forgotten on that day: "My [then five-year-old] son was outside. I didn't know where he was at that time. My mother looks after him while I'm at work but on that particular day she became busy and nobody thought about the children because of the chaos in that place."<sup>205</sup>

At the time, Sihle's mother Anele (not her real name) was travelling to meet the community's lawyer in the capital, Mbabane: "We did get an interdict from the courts that they should not demolish but they did not adhere to the court order. They (a government official) said they would stop demolishing if the King said so."<sup>206</sup>

Within a few minutes, she said a bulldozer demolished her home:

The family lost most of their belongings during their home's demolition. Another sister who also witnessed the demolitions told Amnesty International:

**"We didn't have time. They damaged everything. A big wardrobe with four doors got damaged. The whole unit of our bed, the head board and dressing table got damaged. We were not able to take any of the food, because they were so fast. We were left with no home, no shelter, no food."**<sup>207</sup>

The family told Amnesty International that the night after they were forcibly evicted, they - a grandmother, her five children and grandson - slept outside in the cold and light rain in a tent someone gave them.

The family felt abandoned: "According to my understanding the chief protects you at any time. [But at that time] The chief said he doesn't know us."<sup>208</sup>

The family spent two years in tents at the Lutheran Church before they moved to the rented room where they now live. They found it very difficult to earn a living after their eviction, a similar experience to most of the other families.

Describing their family's struggle to find alternative accommodation, Sihle told Amnesty International:

**"It's not government helping us. It's us trying to find a place."**<sup>209</sup>

Sihle has lost hope of the authorities providing remedy:

**"If the Swazi King cares, something would have been done by now. Because as our houses have been demolished, it's not like the King doesn't know. My mother did go to the *Sibaya* [consultation between King and people] when it was called and did state the case of Nokwane. Even at this stage, nothing has been done. Even our court case is not going forward."**<sup>210</sup>

Inside the one-roomed rented house, approximately 6km from their previous home, stands a deep freezer filled with books, used as a storage space. Anele and Sihle a single mother to a 7-year-old boy, and her youngest daughter live there. The rent is USD30 per month, an expense they did not have when living in Nokwane.

"Even if death is to visit us, where will our bodies be laid to rest?" Anele asks.

On 3 October 2014, the residents said the demolitions continued.

**"I was sitting outside my home. They came to move the buildings and roofing with big tractors. They started with our site. Destroying. Destroying. Destroying."**

Bheki (not his real name) aged 33, told Amnesty International that his family has been made homeless as a result of the forced evictions as the State provided alternative accommodation only to his uncle.

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205 Amnesty International interview. 6 December 2017

206 Amnesty International interview. 6 December 2017

207 Amnesty International telephonic interview. 24 July 2018

208 Amnesty International interview. 30 November 2017

209 Amnesty International interview. 19 April 2018

210 Amnesty International interview. 6 December 2017

Bheki suffers from tuberculosis as well as stomach ulcers. Born in Nkomazi, in Eswatini's northern Hhoho region, Bheki arrived in Nokwane, his maternal grandmother's homestead, after his parents' death left him and his seven younger siblings orphaned.

**“The government destroyed our home. They did all that with the *umphakatsi* (local traditional authority).”<sup>211</sup>**

Bheki told Amnesty International that when the family were first informed of the upcoming demolition, they were promised alternative land. “The government officials from the Ministry of Information, Communications and Technology said they would allocate us land. When they called us to the chief's residence (*umphakatsi*), all that story had changed.”<sup>212</sup>

He recalls a project manager from the Royal Science and Technology Park (RSTP) as being part of the initial delegation along with government officials:

**“They told us we should take everything we have. (They) went to the extent to say we should dig up our relatives' graves and leave the place.”<sup>213</sup>**

Bheki said the number of relatives buried there were countless. He recalled the *umphakatsi* hiring people to dig up the bodies, which were then taken to a nearby cemetery. “It was painful, very painful. It was saddening.”<sup>214</sup> The government claimed that it offered to cover the cost of reburial of the dead and allocating land for reburial - and that “at the time there were only 22 graves remaining on the site as some had already been moved for alternative burial.”<sup>215</sup> However, other affected families expressed similar grievances, telling Amnesty International that they were not consulted or given the right to perform the necessary rituals before authorities dug up the graves. According to Swazi culture, before removing graves, the families need to make the ancestors aware through a ritual. The Nokwane affected residents said they were not given this opportunity, which violates article 15(1a) of the ICESCR. In particular, the Eswatini government has failed to meet the ‘acceptability’ threshold in their actions to dig up the graves of the affected families.

According to General Comment 21 of the CESCR:

**Acceptability entails that the laws, policies, strategies, programmes and measures adopted by the State party for the enjoyment of cultural rights should be formulated and implemented in such a way as to be acceptable to the individuals and communities involved. In this regard, consultations should be held with the individuals and communities concerned in order to ensure that the measures to protect cultural diversity are acceptable to them.**<sup>216</sup>

The Eswatini government has therefore failed to meet its obligations under national and international human rights law.

While his younger siblings left Nokwane, for fear of being evicted, Bheki remained:

**“I was left behind. I knew the matter was with the attorneys. I wanted to see it to the end... We had great faith they (the attorneys) would help us.”<sup>217</sup>**

But no lawyer could prevent the demolition. Although the community's lawyer filed an appeal against their eviction, the court subsequently ordered the demolition to continue, and Bheki's home was demolished before the court order of December 2014.

“The police were there. They helped me take out some things. Some of the things were left and some were destroyed.”<sup>218</sup> That night:

**“we slept outside. We made a big fire and slept outside, because we had to look after our belongings. So we made a fire and slept outside next to it.”<sup>219</sup>**

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211 “Umphakatsi” in Siswati means “Chief's residence”. Constitution of Swaziland, Section 233(3).

212 Amnesty International interview. 5 December 2017

213 Amnesty International interview. 5 December 2017

214 Amnesty International interview. 5 December 2017

215 MICT Memo, paragraph 4

216 UN Committee on Economic, Social and Cultural Rights (CESCR), General comment no. 21, Right of everyone to take part in cultural life (art. 15, para. 1a of the Covenant on Economic, Social and Cultural Rights), 21 December 2009, E/C.12/GC/21, available at: <http://www.refworld.org/docid/4ed35bae2.html> [accessed 11 July 2018]

217 Amnesty International interview. 5 December 2017

218 Amnesty International interview. 5 December 2017

219 Amnesty International interview. 5 December 2017

Before their eviction, “I was able to live even though things were difficult. I was able to take care of myself.”<sup>220</sup>

When Amnesty International met him in December 2017, he said: “I’m unable to go to hospital because I don’t have money to go to hospital.”<sup>221</sup> Doctors prescribed medication costing approximately USD8 per month for tuberculosis and ulcers, which he is unable to buy.<sup>222</sup> After the demolition of his home, the Lutheran church provided temporary shelter in tents for almost a year. When the Church told Bheki to leave, he found a job and rented a place to live. That’s when he said he fell ill. He was living with his younger sister and her husband at the time Amnesty International met him in December 2017, but has since moved to the Hhoho region to live with his brother.

Bheki’s seven younger siblings are scattered across Eswatini. He says they are:

**“All over the place. Nowhere exactly. They have no place to stay. They move from one place to another.”<sup>223</sup>**

The government failed to provide adequate and reasonable notice and also failed to ensure that the eviction did not lead to homelessness, and failed to provide alternative accommodation and compensation to the affected families. Based on this, all the Nokwane evictions highlighted in this chapter constitute forced evictions.

In response to questions sent by Amnesty International, the Ministry of Information, Communications and Technology (MICT) claimed that the 19 applicants in the court case were all “squatters” who had settled on Farm 692 after the government decided to use the land for development purposes, and after the government had requested the “owners of the plots” to accept compensation and alternative land to settle.<sup>224</sup> The government claims that only one person was recognized as a “legitimate farm dweller according to law” and was accordingly compensated and provided alternative land to settle.<sup>225</sup> There are a number of inconsistencies in the government’s response, including whether the affected residents were farm dwellers or “illegal squatters”, as well as disputes around when the affected residents arrived in Nokwane. Amnesty International sent correspondence to the government in April 2018 seeking clarification on outstanding issues, and had not received any response by the time of publication.

In their response to Amnesty International’s list of questions and allegations of 5 July 2018, the MICT maintained their original position outlined in this chapter. Their full response can be seen in Annex 1.

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220 Amnesty International interview. 5 December 2017

221 Amnesty International interview. 5 December 2017

222 South African Rand (ZAR) 93.50, cost in December 2017

223 Amnesty International interview. 5 December 2017

224 MICT Memo, Appendix One, paragraph 1

225 MICT Memo, paragraph 7

# CONCLUSION

The above cases of forced evictions are a symptom of a deeper, underlying problem. At the heart of the matter is that many of the Swazi people - regardless of whether they are living on Swazi Nation Land, on previous concession land that has now been converted to title-deed land TDL - are not guaranteed security of tenure.

The forced evictions, in violation of international and regional human rights law, have led to homelessness, alongside a loss of a source of livelihood and loss of or damage to belongings, as well as disruption to children's education. For those who have not been forcibly evicted but face imminent evictions in the Malkerns, Madonsa, Mbondzela and Vuvulane, the lack of adequate international safeguards against past forced evictions in Nokwane and the Malkerns has caused significant uncertainty and anxiety.

The cases documented demonstrate how the uncertainty over land ownership and tenure led to protracted legal battles which ultimately lead to forced evictions and homelessness.

In Nokwane, some residents believed they had settled on Swazi Nation Land, after paying allegiance to the area's chief. Others told Amnesty International they had been given permission by previous land owners, whom they understood to be the concession holders.

In the Malkerns, families who had been forcibly evicted and those facing imminent eviction were living on what they believed to be concession land, with the verbal permission of the previous landowner. While the concession land in some cases was legally converted to title-deed land, the residents said they were not aware of this arrangement, and were not provided with adequate alternative accommodation or compensation when the new title-deed holder decided they no longer wanted the occupants on their land.

The cases highlight the failure of the Eswatini government to ensure that no one is rendered homeless and vulnerable to other human rights violations as a result of evictions. In the case of Nokwane, the Eswatini government failed to provide essential services to those affected by the forced eviction: food, potable water and sanitation, basic shelter and housing, appropriate clothing or means of livelihood. A collective civil society initiative ensured that those less able to provide for themselves, in particular older people, women-headed households and orphans, had access to basic services and food.

Amnesty International's research demonstrates that the existing legal framework in Eswatini fails to provide sufficient clarity and certainty regarding land ownership and other forms of tenure, which amounts to the Eswatini state's failure to meet both its regional and international obligations to take measures aimed at ensuring residents' legal security of tenure.

The current domestic framework provides fertile ground for forced evictions to take place. Justice is effectively denied and people are falling through the cracks.

In the words of a civil society activist:

**"It's difficult to be a Swazi. There's no justice here. [You are] at risk of multiple displacements. Despite [providing] a cow [in exchange for land allocation], if Royalty or Business come, they will displace you. The chief is not on your side, despite what you give them."**

The underlying structural causes identified in this report which generate insecurity of tenure - including the opaque land governance and tenure systems and the disconnect between policy and practice - must be addressed. Until then, people living in Eswatini live at risk of forced evictions.



*A woman living in fear of an imminent eviction in Mbonzela, Gege, in the Shiselweni region. She built her stick and mud home with her own hands. © Amnesty International*

# RECOMMENDATIONS

## GENERAL

### TO THE PRIME MINISTER:

- Declare a nationwide moratorium on mass evictions until adequate legal and procedural safeguards are in place to ensure that all evictions comply with international and regional human rights standards. This should include a public announcement and immediate measures that the government should take to ensure that those under threat of eviction are protected.
- Immediately provide reparations for forcibly evicted families in the Malkerns and Nokwane. Such reparation should include adequate alternative housing for those rendered homeless, rehabilitation, compensation for all losses and guarantees of non-repetition.
- Publicly condemn the practice of forced evictions in Eswatini.

### TO THE ATTORNEY GENERAL:

- Immediately after national elections begin the process of drafting legislation, which explicitly prohibits forced evictions and sets out safeguards that must be strictly followed before any eviction is carried out. This law should be in strict compliance with Eswatini's Constitution and international and regional human rights law and standards, including in respect of the provision of effective remedies.
- Develop legislation to operationalize the Land Management Board (LMB), established by Section 212 of the Constitution. The legislation must clearly define the role and scope of the LMB, including the ways which it will collaborate and integrate with related bodies, including the Human Rights Commission and the Ministry of Natural Resources and Energy. The legislation should also stipulate to which government Ministry the LMB is accountable, that the financial reporting of the LMB be made transparent, and that the LMB must produce publicly available annual reports.

### TO THE MINISTRY OF JUSTICE:

- Ensure that in the development of the law which prohibits forced evictions that there are genuine and transparent consultations with all stakeholders, including those living on Swazi Nation Land, farm dwellers and those whom the government terms "squatters" and who live with a lack of security of tenure.
- Disseminate publicly information in Siswati regarding the proposed timeframes for consideration of this law and the Parliamentary processes envisioned, as well as opportunities for public input into the draft law.
- Review relevant legislation and policies to ensure they are compatible with the international human rights obligations arising from the right to adequate housing, including beginning the process of repealing or amending any legislation or policies that are inconsistent with Eswatini's international human rights obligations
- Expedite the finalization of the land policy and land bill and ensure they are compatible with international human rights obligations arising from the right to adequate housing.

- Ensure the dissemination of the Constitution in order to inform the Swazi people of their rights. Undertake education initiatives for traditional structures (chiefs and chiefs' advisory bodies), and civil society on the rights and accompanying obligations enshrined in the Constitution.

## **MALKERNS**

### **TO THE MINISTRY OF NATURAL RESOURCES AND ENERGY**

- Immediately provide all necessary support and assistance to all those who were forcibly evicted. Such assistance should include access to temporary adequate housing, water, sanitation, education and health care services, provision of food and clothing, and support in accessing sources of work.
- Take urgent steps to explore resettlement options in genuine consultation with the Malkerns affected community. Any resettlement must comply with international human rights standards on adequacy of housing, including with respect to security of tenure, access to essential services, location and habitability.
- Provide an effective remedy and reparation to all those forcibly evicted from the Emphetseni farming area on 9 April 2018. Such reparation should include adequate alternative housing for all those who cannot provide for themselves, compensation for all losses and guarantees of non-repetition.
- Ensure that court officials and police officers involved in evictions are adequately trained and equipped with the necessary knowledge on international safeguards and due process when carrying out evictions, including compliance with human rights standards.

## **NOKWANE**

### **TO THE MINISTRY OF INFORMATION, COMMUNICATIONS AND TECHNOLOGY**

- Immediately provide all necessary support and assistance to all those who were forcibly evicted from Nokwane. Such assistance should include access to adequate housing, water, sanitation, education and health care services, provision of food and clothing, and support in accessing sources of work.
- Take urgent steps to locate and then explore resettlement options in genuine consultation with the Nokwane affected community. Any resettlement must comply with international human rights standards on adequacy of housing, including with respect to security of tenure, access to services, location and habitability.
- Provide an effective remedy and reparation to all those forcibly evicted from Nokwane farm. Such reparation should include adequate alternative housing for all those who cannot provide for themselves, compensation for all losses and guarantees of non-repetition.
- Ensure that court officials and police officers involved in evictions are adequately trained with the necessary knowledge on international safeguards and due process when carrying out evictions, including compliance with human rights standards.

# ANNEX 1: RESPONSE FROM GOVERNMENT MICT



Telephone (+268) 4083000-999  
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[ps-mict@gov.sz](mailto:ps-mict@gov.sz)

Ministry of Information  
Communications & Technology  
P. O. Box 642  
MBABANE  
ESWATINI

## THE KINGDOM OF ESWATINI

**DATE:** 12 JULY 2018

**Ref:** ICT/16/6/5

Deputy Regional Director Research  
Southern African Regional Office  
Amnesty International  
97 Oxford Road, Saxonworld  
Johannesburg South Africa

Dear Sir,

**RE: NOKWANE EVICTIONS – REQUEST FOR CLARIFICATION FROM  
AMNESTY INTERNATIONAL**

We acknowledge receipt of your letter dated the 5<sup>th</sup> July, 2018, the contents of which were noted.

Without rehashing the issues which had already been covered in our earlier response undercover of the memo to the Ministry of Economic Planning dated 7<sup>th</sup> August, 2017, we would like to categorically state that the evictions were legally and procedurally correct and sanctioned by the courts of the land.

Please take note of the following:

- (a) The law only recognizes farm dwellers who are distinct from squatters. Even farm dwellers themselves have limited rights as occupants who have an agreement with the farm owner. The onus was on the squatters themselves to prove that they pay allegiance to the chiefdom of Lobamba Lomdzala. The onus was also on them to produce proof of authorization (letters) to occupy the farm from the previous owners of the land. We reiterate that an agreement is between a farm dweller (not a squatter) and the owner of the farm, according to the Farm Dwellers, Act.
- (b) Farm 692 is owned by government, and as earlier stated the law protects legitimate farm dwellers and not squatters. The original legitimate farm dwellers were given land to settle by the Umphakatsi when the Ministry

of Housing and Urban Development started the project of Township Development on that land, and they received compensation from Government through the Ministry of Housing and Urban Development.

- (c) The law recognizes the right to be compensated for legitimate farm dwellers and not squatters. As for the issue of reburying their dead, Government incurred the expense of reburying their dead and allocated land for such purposes.
- (d) The criteria of compensation or non-compensation depends on the legal status of the person on the private farm – you are either a farm dweller to be compensated or a squatter who cannot claim such. As earlier stated, this matter dates back to 2006 to the Ministry of Housing and Urban Development itself and the Lobamba Lomdzala Umphakatsi who can inform you that the real farm dwellers were long compensated and given alternative land to settle; but it is not known how the people you are talking about came to settle on the farm after the original farm dwellers were relocated.
- (e) But all the same notwithstanding their trespassing, Government negotiated with Umphakatsi which gave them a piece of land despite the fact that they did not belong to it. Surprisingly they did not take up the offer to follow the expected procedure in order to build on the new allocated land, but opted to remain illegally on the farm.
- (d) Thus the Ministry of ICT, through the Attorney-General's office applied for their eviction as the legal farm occupants had already been compensated.

Yours faithfully,



**G. S. SHABANGU**

**FOR: PRINCIPAL SECRETARY**



# ANNEX 2: PREVIOUS CORRESPONDENCE AND ENGAGEMENT WITH GOVERNMENT

Letter sent	Date	Response/outcome
Ministry of Economic Planning and Development (MEPD)	3 March 2017	Meeting on 23 March 2017
MEPD	17 May 2017	Response from MEPD of 12 July 2017 Response from Ministry of Information, Communications and Technology regarding Nokwane case of 7 August 2017
MEPD	14 July 2017	Response of 8 August 2017
Ministry of Natural Resources and Energy (MNRE)	3 November 2017	Meeting on 28 November 2017 regarding land governance system
MNRE	10 April 2018	In a response of 16 April 2018, the PS referred Amnesty International to the Cabinet Spokesperson as well as to the Commission on Human Rights. The Cabinet Spokesperson could not be reached, and the Chairperson of the Human Rights Commission told Amnesty International he was not aware of any information regarding the Malkerns case received from the MNRE. Specific questions sent to MNRE regarding the Malkerns case were unanswered
Ministry of Information, Communications and Technology	11 April 2018	No response to questions on Nokwane case
MNRE	13 April 2018	Request to meet was declined, on the basis that the MNRE was not in a position to respond to the questions sent ahead of meeting regarding Malkerns case.

# ANNEX 3: SATELLITE IMAGERY, NOKWANE

## SWAZILAND | Nokwane Community

An overview map of the Nokwane community shows the area designated as the Royal Bio-technology Park. Over 100 structures, documented in imagery as far back as 2002, are no longer present. Twelve structures are located outside of the park area.

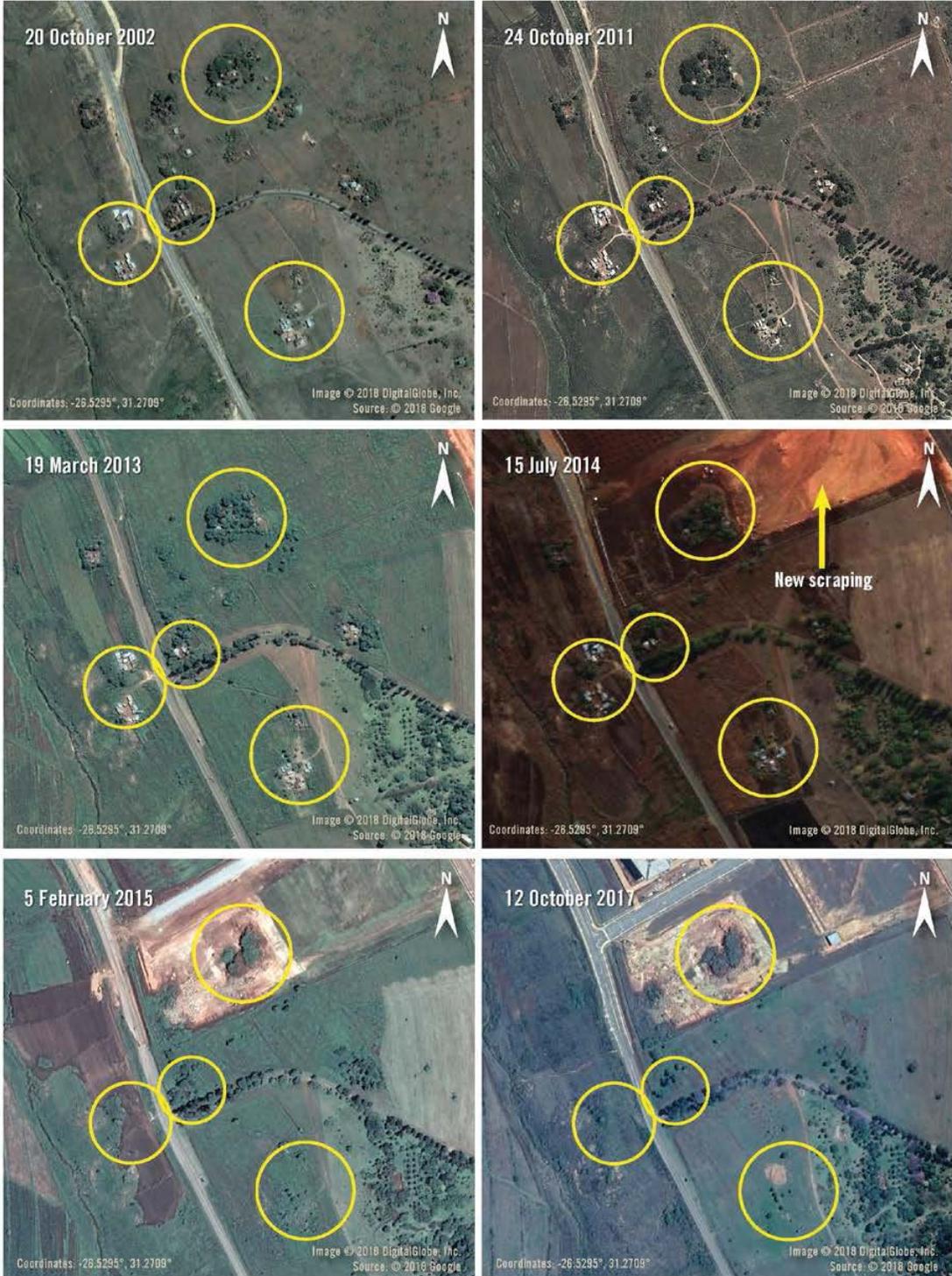


Imagery from 21 October 2002 shows the Nokwane community area. On 12 October 2017, major scraping and construction is visible.



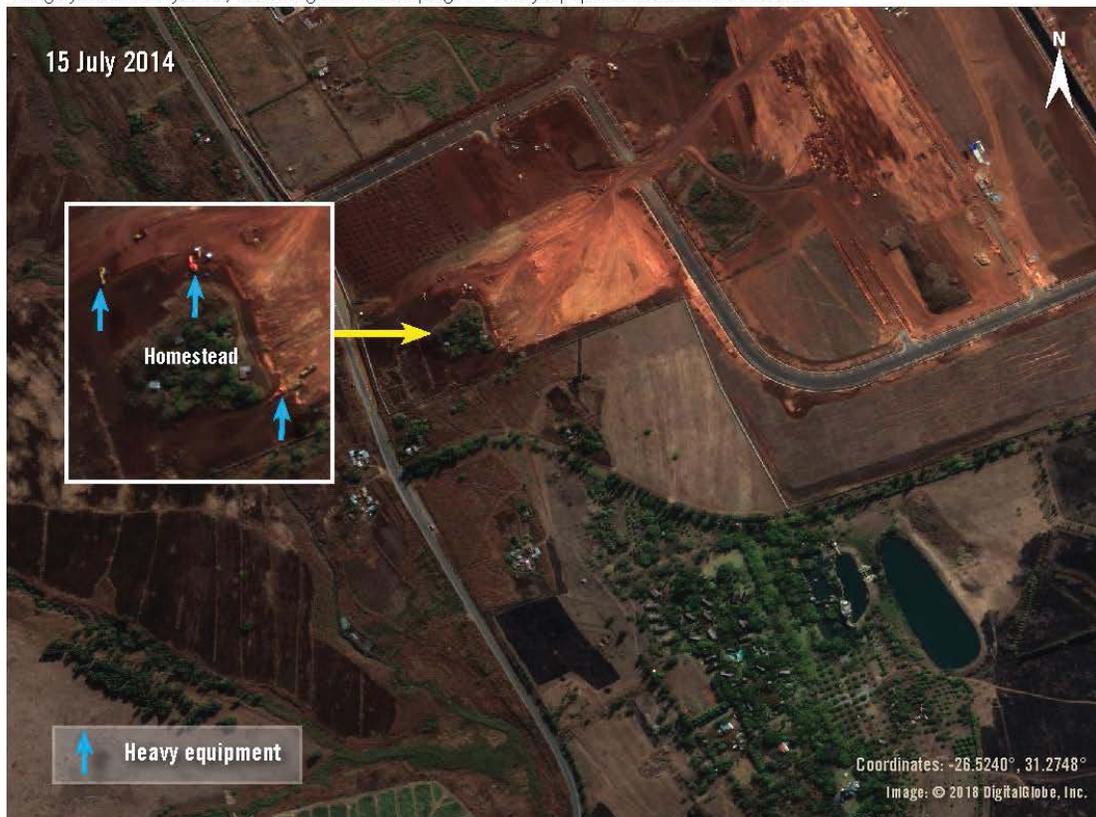
# SWAZILAND | Nokwane Community

Imagery from 20 October 2002 to 12 October 2017, shows four main homesteads in the area – highlighted in yellow circles. On 15 July 2014, new scraping is visible. By 5 February 2015, the homesteads are no longer apparent.



## SWAZILAND | Nokwane Community

Imagery from 15 July 2014, shows significant scraping and heavy equipment around a homestead.



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FOR HUMAN RIGHTS.  
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TO ONE PERSON, IT  
MATTERS TO US ALL.**

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# “THEY DON’T SEE US AS PEOPLE”

## SECURITY OF TENURE AND FORCED EVICTIONS IN ESWATINI

In April 2018 at least 60 people, more than half of them children, were forcibly evicted and their homesteads demolished by armed police and bulldozers in a farming area in the Malkerns town. This came after at least 180 people were forcibly evicted from Nokwane in 2014 to make way for a government- led development initiative.

The Eswatini Constitution establishes a dual land tenure system, consisting of Swazi Nation Land, held in trust by the King, and privately-owned Title-Deed Land. The existing legal framework fails to provide at least hundreds of people with a minimum degree of security of tenure. Amnesty International found that the families in the Malkerns and Nokwane were forcibly evicted and made homeless primarily because they lacked security of tenure.

Under international human rights law, evictions may only be carried out as a last resort, once all other feasible alternatives have been explored and appropriate procedural protections are in place. Amnesty International found that even if the evictions had been legally justified, the authorities failed to put in place the safeguards required by international law.

The threat of forced evictions continues today in Eswatini. Amnesty International is calling for a nationwide moratorium on mass evictions until adequate legal and procedural safeguards are in place to ensure that all evictions comply with international and regional human rights standards, and that reparations are provided to all forcibly evicted families.