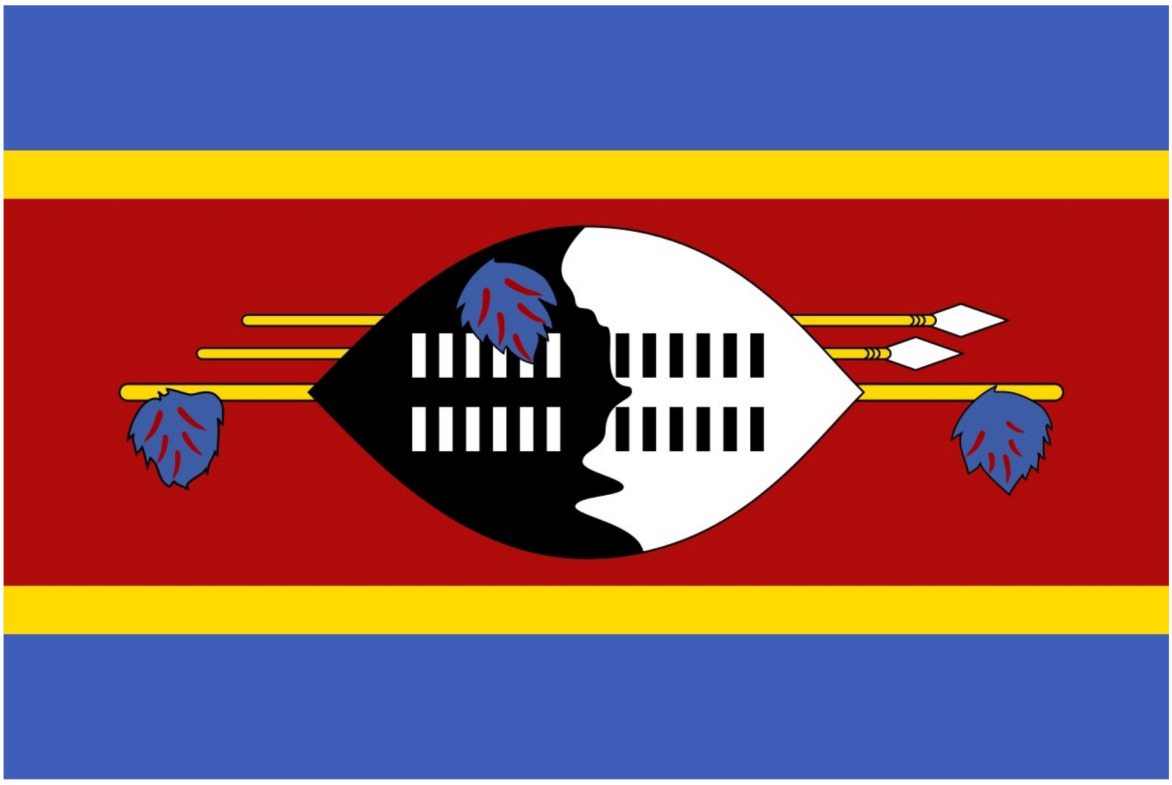
COMBINED 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, 8th AND 9th PERIODIC REPORT ON THE AFRICAN CHARTER ON HUMAN AND PEOPLES RIGHTS AND INITIAL REPORT TO THE PROTOCOL TO THE AFRICAN CHARTER ON THE RIGHTS OF WOMEN IN AFRICA



COUNTRY: KINGDOM OF ESWATINI FORMERLY KNOWN AS THE "KINGDOM OF SWAZILAND"

ABBREVIATIONS

ACHPR	African Charter on Human and Peoples' Rights
CANGO	Co-ordinating Assembly of Non-Governmental Organizations

CEACR	Committee of Experts on Application of Conventions and Recommendations
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CPWA	Children's Protection and Welfare Act
CHRPA	Commission on Human Rights and Public Administration
CIEAS	Coalition of Informal Economy Associations of Swaziland
CMAC	Conciliation, Mediation and Arbitration Commission
CP&E	Criminal Procedure and Evidence Act
CRC	Constitutional Review Commission
CSOs	Civil Society Organisations
DPP	Director of Public Prosecution
EBC	Elections and Boundaries Commission
FPE	Free Primary Education
GBV	Gender-Based Violence
GoE	Government of the Kingdom of Eswatini
HIV/AIDS (AIDS)	Human immunodeficiency virus (HIV)/ Acquired immunodeficiency syndrome
HMCS	His Majesty Correctional Services
ICT	Information, Communication and Technology
ILO	International Labour Organisation
LGBTI	Lesbian, Gay, Bisexual, Transgender & Intersex
MICS	Multiple Indicator Cluster Survey
MMR	Maternal Mortality Rate
MoH	Ministry of Heath
NDS	National Development Strategy
OVC	Orphan and Vulnerable Children
PMTCT	Prevention of Mother-to-Child Transmission
REPS	Royal Eswatini Police Service
SADC	Southern Africa Development Community
EEA	Eswatini Environment Authority
SLAM	Sustainable Land Administration and Management
SMME	Small, Micro and Medium Enterprise
SNAT	Swaziland National Association of Teachers
ESNL	Eswatini Nation Land
SODVA	Sexual Offences and Domestic Violence Act
SRH&R	Sexual Reproduction Health and Rights
STA	Suppression of Terrorism Act
SWABCHA	Swaziland Business Coalition on Health and HIV/AIDS
TRC	Tinkhundla Review Commission
TUCOSWA	Trade Union Congress of Swaziland

UNHCR	United Nations Agency called United Nations HighCommissioner for Refugees
UNICEF	United Nations International Children's Emergency Fund
WHO	World Health Organisation
WLSA	Women and Law Southern Africa- Eswatini

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DEFINITIONS

Bucopho:	Consists of persons elected from the chiefdoms or polling divisions within an inkhundla and shall have the same qualifications as a Member of Parliament.
Emaswati:	People of Eswatini.
INgwenyama:	Is the hereditary traditional head of the Eswatini.
Inkhundla:	A constituency into which Eswatini is divided in terms of section 80 of the Constitution.
Khonta or kukhonta:	The traditional method of acquisition of Eswatini nation land.
Kuteka:	Is the process of marrying a woman through Eswatini law and custom. This process is marked with smearing with red ochre.
Kuzila:	The custom of mourning which is signified by the wearing of black gowns by women for a certain period depending on the community or clan.
Liswati:	Is a citizen of Eswatini.
Sibaya:	Is the highest policy and advisory council which consists of Emaswati chaired by iNgwenyama. It functions as the annual general meeting of the nation and maybe convened at any time to present the views of the nation on pressing and controversial national issues.
Tinkhundla system:	is a democratic, participatory, tinkhundla-based system which emphasises devolution of state power from central Government to tinkhundla areas and individual merit as a basis for election or appointment to public office.
Umphakatsi:	Is a local area which is headed by a Chief, appointed by iNgwenyama.

PART A: THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS

EXECUTIVE SUMMARY

1. Since the last report, the Kingdom has officially changed its name from Swaziland to Eswatini as of April 2018.[1]

2. The Kingdom of Eswatini ratified the African Charter on Human and Peoples' Rights (herein called the ACHPR) on the 15 September 1995 and deposited the instrument of ratification on 09 October 1995. In compliance with article 62 of the ACHPR, the country submitted its initial report in May 2000.

3. The abovementioned report was submitted and reviewed on the 27thOrdinary session of the African Commission on Human and Peoples Rights (hereinafter referred to as the African Commission) (27 April – 11 May 2000) in Algiers, Algeria.

4. The current report is the first periodic report which combines the second, third, fourth, fifth, sixth, seventh, eighth and ninth reports. It covers the developments made by the Kingdom of Eswatini in the realisation of the rights contained in the Treaty since the submission of the country's initial report.

5. Part B of this report is the initial report on the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (hereinafter referred to as the Maputo Protocol) which Eswatini ratified on 5 October 2012.

6. The current report was prepared in accordance with the reporting guidelines developed by the African Commission. In the development of this report, several consultations were made with a diverse range of stakeholders to obtain input on efforts made by the country to realise these rights. Contributions were made by non- governmental

[1] On 19 April 2018, the King of Swaziland changed the name of the country from the Kingdom of Swaziland to Kingdom of Eswatini through Legal Notice 80 of 2018. The Notice stipulates in section 3 that 'reference in any written law or international agreement or legal document to Swaziland should be read and construed as reference to Eswatini.

organisations, trade unions, government representatives and community members.

METHODOLOGY

7. The Kingdom of Eswatini realized that one of the impediments to timely reporting was the absence of a national mechanism that will systematically prepare Eswatini Reports on International and Regional Human Rights instruments, hence the National Mechanism for Reporting and Follow up (NMRF) was established in early 2019 which comprises of all the government Ministries, academia, Judiciary and Parliament to facilitate this process. The Chairperson and Deputies of this body are the Ministry of Justice and Constitutional Affairs, the Deputy Prime Minister's Office and Ministry of Foreign Affairs as the custodians of the Human Rights instruments regionally and internationally respectively. The body works with a Secretariat that comprises of seven members from the Deputy Prime Minister's Office, Ministry of Justice and Ministry of Foreign Affairs.

8. The National Mechanism on Reporting and Follow up prioritized the report on the African Charter and Maputo protocol. To this end, the Ministry of Justice in collaboration with the office of the Deputy Prime Minister - Department of Gender and Family Issues convened the key stakeholders to facilitate this process. The stakeholders ranged from all government ministries, Academia (University of Eswatini) and Civil Society Organisations such as WLSA, CANGO, COSPE, League of Churches, Umhluma Womens Foundation, Lutsango Labomake, Law Society of Eswatini, Family Life Association of Eswatini amongst others.

9. The process of compiling this report involved a desk review of national reports to various Human Rights Treaty Bodies, legislation, policies as well as administrative measures to produce a zero draft. The zero draft document was used as a springboard document for the national multisectoral consultations which were undertaken to inform the report. Below is a detailed account of the events that culminated to the development of this report.

10. On 15th to 17th of April 2019, a workshop was held at Ezulwini, Eswatini to provide technical advice on preparation of a combined 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, 8th and 9th Periodic Report for the Kingdom of Eswatini on the ACHPR and Initial Report under the Maputo Protocol. The workshop was facilitated by the Centre for Human Rights, University of Pretoria. This workshop provided an opportunity for stakeholders to reflect on the common understanding of the ACHPR reporting process.

11. On 27 to 30 May 2019, the Government led by the Ministry of Justice and Constitutional Affairs, the Department of Gender and Family Issues and the Centre for Human Rights conducted a 3-day consultative meeting with all the relevant stakeholders. In this meeting, the draft report was presented and then discussed with a view of collecting inputs from stakeholders. The relevant inputs were subsequently incorporated in this report.

12. All the stakeholders approved the report through a validation meeting convened on 09 to 11 September 2019 before it was submitted to Cabinet for endorsement and thereafter submitted to the African Commission.

BACKGROUND AND THE GENERAL FRAMEWORK OF HUMAN RIGHTS

Geography and population

13. The Kingdom of Eswatini is a landlocked country in Southern Africa measuring approximately 17349.98 Square kilometres.[2] It is bordered by the Republic South Africa on the north, west and south; and by the Republic of Mozambique on the east.

14. Emaswati are predominantly a homogenous ethnic group, which speaks two official languages namely siSwati and English. The country perceives itself as predominantly Christian even though there is freedom of religion. For a detailed discussion on this information, see article 19 on the right to peace.

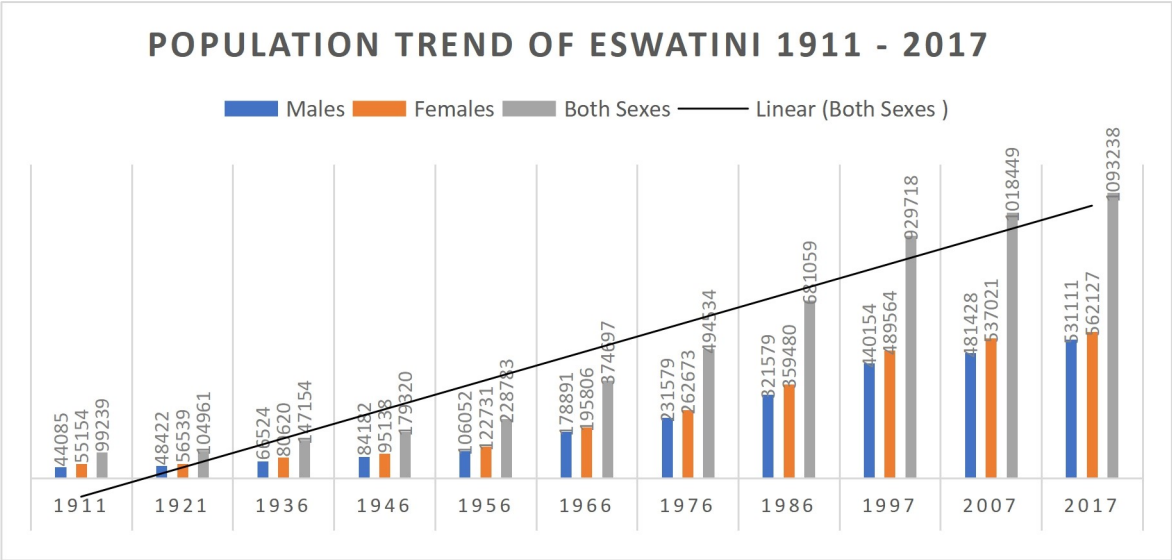
[2] Central Statistical Office (CSO), The 2017 population and housing census preliminary results (2017) 22.

15. Despite its small size, Eswatini comprises of four distinct agro-climatic zones namely the Highveld, Lowveld, Middleveld and Lubombo Plateau. For administrative purposes, there are four regions, namely Hhohho, Manzini, Shiselweni, and Lubombo.

    The country is further divided into Tinkhundla (administrative constituencies) which over the years were 55, however as of 2018, four new Tinkhundla centers were added raising their number to 59.[3][4] The 59 Tinkhundla have political and developmental functions.

16. The latest Eswatini National Census for 2017 Preliminary Findings Report estimates that there are approximately 1.1 million (1,093,238) Emaswati. In terms of gender disaggregation, males are estimated to be 531,111 (48.6 per cent) and females to be 562,127 (51.4 per cent).[4] See figure 1 below on Eswatini population trends.

Figure 1: The population trend of Eswatini 1911 – 2017



17. The report projects an increase in the population by 74,789 persons for the period of 2007-2017. The country's population is regarded as youthful with the median age

[3] The Elections and Boundaries Commission (EBC) announced five new Tinkhundla Centres, the merging of *Hlane* and *Dvokodvweni Tinkhundla*, and a clarification that there will now be 59 Tinkhundla Centres in the country. By T Mavimbela, 4 New *Tinkhundla* to cost E2M yearly, 29/01/2018- Times of Eswatini. Accessed [4] .08.2019. http://www.times.co.sz/news/116836-4-new-tinkhundla-to-cost-e2m-yearly.html [4] CSO (note 2 above) 10.

being 21.7 years an indication that Eswatini is a country with a very young population.[5] It is reported in the 2017 census report that 56 per cent of the population is below 25 years of age.

The economic and political system

18. The Kingdom of Eswatini has a small export-oriented economy, the growth of which is highly dependent on the world and regional markets and trends. The World Bank classifies Eswatini as a lower-middle-income country.[6] Eswatini's GDP per capita was US $4139.9 in 2018.[7] Table A below reveals the State Party's GDP from year 2002 to 2018. The major economic sectors are manufacturing, agriculture, public enterprise and tourism.

Table A: Eswatini's GDP per capita from 2002 to 2018[8]

Year	USD
2002	1,432
2004	2,77
2006	3,291
2008	3,294
2010	4,439
2012	4,824
2014	4,377
2016	3,817
2017	4,434
2018	4,704

The legal system

19. Eswatini has a dual legal system which consists of two distinct sets of legal norms, though separate yet co-existing.

[5] CSO (note 2 above) 19.
[6] https://data.worldbank.org/country/eswatini accessed 04.09.2019.
[7] As above.
[8] As above.

20. The Constitution recognises rules and principles of law drawn from the traditional and customary practices of Emaswati which are known as Eswatini law and custom on one hand and Roman-Dutch common law on the other.

21. The Constitution was adopted by the country post the submission of the Initial Report. The Constitution of the Kingdom of Eswatini 001 of 2005 came into effect on February 2006. The new constitution asserts its supremacy and reflects, as stated in the preamble - the aspirations of the people of Eswatini on the kind of democratic governance system they sought to realise including the rights that ought to be protected by this law.

22. Prior to the adoption of the new Constitution, the Kingdom was governed by the King following the repeal of the country's independence constitution through a Proclamation to the Nation No.12 of 1973. Through this Proclamation, the King assumed all legislative, executive and judicial powers up until the new constitution was adopted. A brief background on the development of the current constitution is provided below.

23. In 1973, the Parliament of Eswatini repealed the 1968 Constitution through a Proclamation made by King Sobhuza II to the Nation on 12 April 1973. The basis for its repeal was that the Constitution had "failed to provide an environment for good governance and maintenance of peace and order, therefore, served as an impediment to progressive development in the country."[9] A further weakness identified by Parliament was that the independence constitution "did not reflect the aspirations of the people of Eswatini and neither did it articulate a preferred system of governance as defined by Emaswati - the people of Eswatini.[10]

24. The Kingdom of Eswatini was governed by the King through the Proclamation up until the Tinkhundla Review Commission (TRC) was established. The Commission was tasked with the process of defining a democratic system of governance for the Kingdom of Eswatini.

[9] Section 1 & 2 of the Proclamation to the Nation of 12 April 1973

[10] Retrieved from the Final Report on the submissions and progress report on the project for recording the codification of Eswatini Law and Custom

Guided by a Terms of Reference, the TRC was mandated to focus its attention on key issues that could sustain a democratic process in Eswatini; this included defining the legislative nature of a preferred system of governance. The TRC was also established following a previous Commission, led by Prince Masitsela, which solicited views of the Eswatini people through a consultation process on the political direction they sought for the Kingdom.

25. The TRC mandate was however limited in its nature, in that it solely focused on the legislative arm of government. One of its key findings was the recognition that "A written Constitution for Eswatini entrenching the monarchy, rule of law and Independent Judiciary, the sovereignty of the King in parliament, Kings Advisory Council are of fundamental importance in the promotion of good governance, democracy national unity, peace and stability in Eswatini."

26. On recommendation by this Commission, King Mswati III, in terms of the Constitutional Review Decree of 1996, established a Constitutional Review Commission (CRC) whose mandate was to draft the Constitution of Eswatini. This meant that the CRC, through consultation with the people of Eswatini, would guide the shaping of the political, executive and legislative arm of government. This would also include determining the various rights that needed to be upheld by a Constitution - Bill of Rights. This Constitution was to be the Supreme Law of the Country and would foster constitutionalism.

27. In drafting the Constitution of Eswatini, the Constitution Drafting Committee (CDC) conducted consultations with various stakeholders in the country in a bid to obtain input from the people of Eswatini on what they wanted the Constitution to encapsulate. Stakeholders included Institutions of higher learning, Chiefdoms, industrial areas, etc. The process of consultation culminated in the enactment of the Kingdom of Eswatini Constitution 001 of 2005.

28. The System of government for the Kingdom of Eswatini is a democratic, participatory, *tinkhundla* based system which emphasises devolution of state power from central government to *tinkhundla* areas and individual merit as a basis for election or appointment to public office as envisaged by Section 79 of the Constitution Act 1/2005.

29. In terms of Section 80. (1) of the Constitution, for purposes of political organisation and popular representation of the people in Parliament, Eswatini is divided into several areas called *tinkhundla*.

30. Subsection (3) further expands by stating that "The *tinkhundla* units or areas, inspired by a policy of decentralisation of state power, are the engines of development and the central pillars underpinning the political organisation and economic infrastructure of the country through which social services to the different parts of the Swazi community are facilitated and delivered".

31. To further articulate on the devolution of power in terms of Section 81 of the Constitution, An *inkhundla,* as a local authority area, is under the general administration of an executive committee called *Bucopho*. (2) *Bucopho* consists of persons elected from the chiefdoms or polling divisions within an *inkhundla* and shall have same qualifications as a Member of Parliament. (3) *Bucopho* operates under the chairmanship of the Indvuna YeNkhundla who supervises the activities of the *inkhundla* and also convenes and presides over meetings of the *inkhundla.*

32. In terms of Section 232. (1) of the Constitution, the people through *Sibaya* constitute the highest policy and advisory council (*Libandla*) of the nation. Subsection (2) provides that the *Sibaya* is the Swazi National Council constituted by *Bantfwabenkhosi,* the tikhulu of the realm and all adult citizens gathered at the official residence of the *Ndlovukazi* under the chairmanship of *iNgwenyama* who may delegate this function to any official. Whilst Subsection(3) provides that *Sibaya* functions as the annual general meeting of the nation but may be convened at anytime to present the views of the nation on pressing and controversial national issues. It is important to state that Sibaya provides a platform for all Emaswati to express their views on issues of national interest. Be that as it may, there are dissenting voices who would rather express themselves in a different forum, however the Kingdom remains a peaceful country.

33. Concluding Observations raised by the Commission to the initial report of the state party on the implementation of the ACHPR, unfortunately, could not be addressed in this periodic report as the Concluding Observation document could not be located within

government departments and the search for the document is still continuing.

GENERAL FRAMEWORK WITHIN WHICH CIVIL AND POLITICAL RIGHTS ARE PROTECTED IN ESWATINI

34. The Eswatini Constitutional framework on the respect for, promotion, protection and fulfilment of civil and political rights is provided for under Chapter 3 (Bill of Rights) of the Act[11] ("the Constitution"). The underlying principle of the Bill of Rights chapter is equality and non- discrimination captured in section 20.

35. Section 2 of the Constitution provides that the constitution is the supreme law of the land and that any law that is inconsistent with it is void to the extent of its inconsistency. That is, Parliament may not pass a law which is inconsistent with or violates the human rights contained in Chapter 3 of the Constitution.

36. The Constitution[12] enjoins the High Court of Eswatini as the Court of first instance (original jurisdiction) to enforce the rights contained in the Bill of Rights as informed by the Charter. Importantly, redress is available for a violation that has been or is being or likely to occur.

37. The Constitution is the supreme law of the land and is legally binding to all. For instance:

    Section 2. (1) This Constitution is the supreme law of Eswatini and if any other law is inconsistent with this Constitution that other law shall, to the extent of the inconsistency, be void.

    (2) The King and iNgwenyama and all the citizens of Eswatini have the right and duty at all times to uphold and defend this Constitution.

    (3) Any person who –

    (a) by himself or in concert with others by any violent or other unlawful means suspends or overthrows or abrogates this Constitution or any part of it, or attempts to do any such act, or

    (b) aids and abets in any manner any person referred to in paragraph (a); commits the offence of treason

[11] No. 01 of 2005

[12] Section 35

38. Eswatini uses a dualist system, which requires the domestication of International Instruments before they can be invoked in domestic courts. Section 238 of the Constitution provides that an international agreement executed by the State Party shall be subject to ratification and accession, to become binding on the Government by either an Act of Parliament or a resolution of at least two-thirds of the members at a joint sitting of the two chambers of Parliament. A number of legislations and policies have been passed and adopted in an effort to promote and protect Human Rights enshrined in the Charter as more will show in the report.

Table AA: International Human Rights Instruments Ratified by Eswatini

Year ratified	International Convention/ Protocol
2012	Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (CRC-OP-AC) 2002
2012	UN Convention against Transnational Organized Crime 2000
2012	Optional Protocol to the Convention on the Rights of the Child on the sale of children child prostitution and child pornography (CRC -OP- SC) 2005
2012	Convention on the Rights of Persons with Disabilities (CRPD) 2006
2012	Optional Protocol to the Convention on the Rights of Persons with Disabilities 2008
2012	Protocol Against the Smuggling of immigrants by Land, Sea and Air Supplementing the UN Convention against Transnational Organized Crime 2000
2012	UN Convention Against Corruption – UNCAC 2005
2004	International Covenant on Economic Social and Cultural Rights (ICESCR) 1966
2004	International Covenant on Civil and Political Rights (ICCPR) 1966
2004	International Covenant on the Elimination of All Forms of Discrimination Against Women (CEDAW) 1981
2004	Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT) 1984
2002	Convention Concerning the prohibition and immediate Action for the Elimination of the Worst Forms of Child Labour 1999
2002	Refugee Convention of 1951
2002	Minimum Age Convention, 1973 (No. 138)
1995	Convention on the Rights of the Child (CRC) 1990
1981	Equal Remuneration Convention 1951
1981	Discrimination (Employment and Occupation) Convention 1958

1979	Abolition of Forced Labour Convention 1957
1978	Freedom of association and protection of the right to organize Convention 1948
1978	Forced Labour Convention 1930
1978	Right to Organise and Collective Bargaining Convention 1949
1969	International Convention on the Elimination of All Forms of Racial Discrimination (CERD) 1966

ARTICLES 2 AND 3: FREEDOM FROM DISCRIMINATION AND RIGHT TO EQUALITY

Constitutional measures

39. Section 20 of the Constitution provides as follows:

20. (1) All persons are equal before and under the law in all spheres of political, economic, social and cultural life and in every other respect and shall enjoy equal protection of the law.

(2) For the avoidance of any doubt, a person shall not be discriminated against on the grounds of gender, race, colour, ethnic origin, tribe, birth, creed or religion, or social or economic standing, political opinion, age or disability.

(3) For the purposes of this section, "discriminate" means to give different treatment to different persons attributable only or mainly to their respective descriptions by gender, race, colour, ethnic origin, birth, tribe, creed or religion, or social or economic standing, political opinion, age or disability.

(4) Subject to the provisions of subsection (5) Parliament shall not be competent to enact a law that is discriminatory either of itself or in its effect.

(5) Nothing in this section shall prevent Parliament from enacting laws that are necessary for implementing policies and programmes aimed at redressing social, economic or educational or other imbalances in society.

Section 94 (2) Ten Senators, at least half of whom shall be female, shall be elected by the members of the House in such manner as may be prescribed by or under any law at their first meeting so as to represent a cross-section of the Eswatini society.

Legislative measures

40. Discussed below are the legislative measures adopted by the country to promote, protect and fulfil the above rights:

- **The Employment Act of 1980** (as amended) prohibits discrimination in the workplace as follows:

Section 29. No employer shall, in any contract of employment between himself and an employee discriminate against any person or between employees on grounds of race,

colour, religion, marital status, sex, national origin, tribal or clan extraction, political affiliation or social status.[13]

- **The Industrial Relations Act 1 of 2000** (as amended) provides for the collective negotiation of terms and conditions of employment and for the provision of dispute resolution mechanisms. The purpose and objectives of this Act are to promote harmonious industrial relations; promote fairness and equity in labour relations; promote freedom of association and expression in labour relations; provide mechanisms and procedures for the speedy resolution of conflicts in labour relations amongst others.

  Section 30(6) provides: *Without restricting the generality of subsection (4), no organization shall discriminate, in its constitution, against any person on the grounds of race, colour, creed, marital status, sex, pregnancy, tribal, ethnic or clan extraction, political opinion or affiliation, or social status.*

- **The Election of Women Members to the House of Assembly of Parliament Act 2018** is aimed at implementing the modalities of section 86 of the constitution which seeks to provide for the special election of women members to the house so as to give effect to section 95 and 86 of the Constitution of Eswatini. This Act provides for the process and mode of nominating and the election of women members to the house, the monitoring of the elections and incidental matters.
- **The Senate Elections Act 07 of 2013 -** seeks to provide for the manner of electing Senators in terms of section 94(2) of the Constitution.
- **The SODV Act 2018**, An Act to make provision concerning sexual offences and domestic violence, prevention and the protection of all persons from harm, from other sexual acts and acts of domestic violence and to provide for matters incidental thereto.
- **The Deeds Registry Act was amended in 2012** to align with the Constitution and to give effect to the rights of women married in community of property to own land and have it registered jointly which was previously not the case.

[13] Employment Act of 1980.

- **The Children's Protection and Welfare Act (CPWA) of 2012** ensures that all children, especially those made additionally vulnerable by their circumstances, enjoy equal protection of the law and are not, either in law or as a matter of practice, discriminated against. Section 4 of the CPWA.
- **The Persons with Disability Act 2018** provides that Persons with disability have a right to access to health, assistance, public facilities, amenities and services and buildings, education, transport facilities, employment, recreation etc. on an equal basis with others.

Judicial measures on equality and non-discrimination

41. In accordance with section 35 of the Constitution, which provides for redress in cases of human rights violations in the High Court, several cases challenging discriminatory laws have been brought to the Courts. These cases have abolished the minority status of women in many respects, thus, ensuring that women have equal standing in the eyes of the law, can institute legal proceedings in their own name and that they sue and be sued. These cases and the court's ruling in relation thereto are illustrated in Table A1 below.

Table A1: Cases on equality and non-discrimination

Case	Legal issue	Decision

The AttorneyGeneral v Mary Joyce Doo Aphane[14]	Constitutional challenge of the Deeds Registry Act, which prohibited women married in community of property from registering the property in their own names or in the joint names of themselves and their husbands; on the ground that the law violated the right to equality guaranteed by Section 20 of the Constitution.	In this case, the Court struck down legislation (the Deeds Registry Act), which prohibited women married in community of property from registering property in their own names or in the joint names of themselves and their husbands; on the ground that the law violated the right to equality guaranteed by Section 20 of the Constitution. The Court ordered Parliament to enact remedial legislation within 1 year from the date of its order. In compliance with the Court Order, Section 16 of the Deeds Registry Act was amended in alignement with section 20 of the Constitution and further made an obligation to require a spousal consent when one of the spouses wants to encumber or dispose of the property.
Sihlongonyane and others v	Constitutional challenge to the common law concept	The common law rule that married women had no capacity to litigate

[14] *The Attorney-General v Mary Joyce Doo Aphane* Appeal Case No. 12/2010.

[15] *Sihlongonyane and others v Sihlongonyane* [2013] SZHC 144

Sihlongonyane[15]	of marital power insofar as and to the extent that it barred a married woman from suing and being sued without the assistance of their husbands.	without the assistance of their husbands was declared inconsistent with the Constitutional right to equality by the High Court, thereby effectively abolishing the doctrine of marital power insofar as it barred married women to litigate unassisted. The Court declared the principle to be inconsistent with section 20 and 28 of the Constitution and that the invalidity was with effect from "25 March 2013 from which date all married women subject to the marital power of their husbands shall have the right to sue and to be sued in their own names."
Makhosazane Eunice Sacolo (nee Dlamini) and Another vs. Jukhi Justice Sacolo and 2 Others (1403/16) [2019] SZHC (166) 30th August 2019.	A constitutional challenge of the common law principle of marital power of the husband as to whether it infringes the right to equality and dignity for married (in community of property) women. Further, an order was sought to declare that sections 24 and 25 of the Marriage Act of 1964 to be unconstitutional and invalid in that they are inconsistent with sections 20 and 28 of the Constitution of Eswatini. The basis for seeking such order was that the word "African" in the two sections of the Marriage	The Court held that the common law doctrine of marital power is discriminatory against married women and offends against the constitutional right to equality before the law and the right to dignity, and therefore declared invalid. The Court further declared that spouses married in terms of the Marriage Act 1964 and in Community of Property have equal capacity and authority to administer marital property. Held, further: Section 24 of The Marriage Act is declared invalid, save for the first portion which reads as follows: - "The consequences flowing from a marriage in terms of this Act shall be in accordance with the common law as varied from time to time by any law".

[15] *Sihlongonyane and others v Sihlongonyane* [2013] SZHC 144

	Act was discriminatory on the basis of race in that it imposes upon African spouses the customary consequences of marriage while non-African spouses automatically have the benefit of common law consequences.	Held, further: Section 25 of The Marriage Act is declared invalid in its entirety. The Court in reaching its decision to invalidate part of section 24 and entire section 25 noted that that the word "African" is not defined in the Act. The Act defines only one word, "Minister". It takes no ingenuity to know that there are indigenous Africans and non-indigenous Africans on this continent. North Africa is dominated by indigenous Africans of Muslim culture and who, in all probability, have no inkling what is entailed in Eswatini customary practices. Unavoidably, we are bound to speculate that "African" was probably intended to mean "indigenous Swazi".

Administrative measures

42. The state party has established a Department of Gender and Family Issues to mainstream gender and family issues into all areas of national development, including legislation, policies, programmes and projects. The department further provides capacity building on gender mainstreaming within government, civil society and private sector organisations. Main areas of focus by the Department include legal and human rights, politics and decision making, gender-based violence, education and training, poverty and economic empowerment and family and socialisation.

43. There are Civil Society organisations that embark on sensitization of communities on gender issues and women's rights.

44. The key objectives of the National Development Strategy (NDS) are to promote equality and empower women, to develop global partnership for development, to eradicate extreme poverty and hunger, to achieve universal primary education, reduce child

mortality Improve maternal health, combat HIV/AIDS malaria and other diseases and also ensure environmental sustainability.

Challenges and factors inhibiting full equality and non-discrimination

45. Whilst the State Party has made great efforts to provide for maternity benefits for pregnant women, paternity benefits, on the other hand, have not been catered for. The omission fails to foster the important role that needs to be played by fathers in the upbringing and development of their children. Moreover, it places an unequal burden on women to care for children and further perpetuates gendered divisions of labour.

46. It is notable that policies are incrementally dealing with discrimination and are further enforced by the Courts, however, inconsistencies in understanding and application of the constitutional provisions still exist. For instance, in some chiefdoms, women without a male relative could not *khonta post* Constitution however the country is progressily eliminating all forms of discrimination .

47. There is still the principle of primogeniture in some instances under Eswatini culture which precludes women and girls to hold a traditional position such as chief or chief runner *(umgijimi*) and also preclude females from holding a senior administrative position(inkhosana) after the demise of her father. A case challenging the principle of primogeniture was commenced by WLSA – Eswatini in the High Court but later withdrawn.

Efforts to mitigate these challenges

48. The Deputy Prime Ministers Office together with NGOs have put in place programs to address this issue through community leadership and traditional leaders' sensitisation meetings and workshops on gender equality and women's rights as postulated by the Constitution and the ACHPR.

49. In the 2018 elections, the Elections and Boundaries Commission in conjunction with the Department of Gender operated civic education programmes aimed at advocating for

the election of women. This drive did not yield optimum results; however, the foundation has been laid and the message is clear that women too are born leaders.

ARTICLE 4: RIGHT TO LIFE AND PERSONAL INTEGRITY

Constitutional measures

50. Since the initial report, the Kingdom of Eswatini enacted its Constitution in 2005, which protects the right not to be arbitrarily deprived life as follows:

Section 15(1) a person shall not be intentionally deprived life save in the execution of the sentence of a court in respect of criminal offence under the law of Eswatini of which that person has been convicted.

(2) The death penalty shall not be mandatory.

(3) A Sentence of life imprisonment shall not be less than twenty of five years.

(4) Without prejudice to any liability for a contravention of any other law with respect to the use of force in such cases as are mentioned in this subsection, a person shall not be regarded as having been deprived of life in contravention of this section if death results from use of force to such extent as is reasonably justifiably and proportionate in the circumstances of the case-

(a) for the defence of any person from violence or for the defence of property; (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(c) for the purpose of suppressing a riot, insurrection or mutiny; or (d) in order to prevent the commission by that person of a serious criminal offence.

(5) Abortion is unlawfully but may be allowed –

(a) in medical or therapeutic grounds including the life or constitute a serious threat to the physical health of the woman;

(i) continued pregnancy will constitute a serious threat to the mental health of the woman;

(ii) there is serious risk that the child will suffer from physical or mental defect of such a nature that the child will be irreparably seriously handicapped;

(b) where the pregnancy resulted from rape, incest or unlawful sexual intercourse with a mentally retarded female; or

(c) on such other grounds as Parliament may prescribe.

Section 18 (1) of the Constitution provides that *the dignity of every person is inviolable.*

51. The new Constitution of Eswatini has retained the death penalty in relation to murder and treason however it is not mandatory. The Constitution defines treason as acting by violent or unlawful means against the Constitution or aiding or abetting one who does so. However, there has not been any execution in the past years. The last execution was carried in 1983. In 2018, only one person remained on death row at the end of the year.[16]

Legislative measures

52. Discussed below are legislative measures adopted by the country to promote, protect and fulfil the above right:

- **CP&E Act 67 of 1938** in section 296 (1) provides as follows:
  Sentence of death by hanging shall be passed by the High Court upon an offender convicted before or by it of murder (without extenuating circumstances), and sentence of death by hanging may be passed by such court upon an offender convicted before or by it of treason.

  Section 298 provides that:

  (1) If a woman convicted of an offence punishable with death is found under this section to be pregnant, the sentence to be passed on her shall be a sentence of imprisonment with hard labour instead of a sentence of death.
  (2) If a woman convicted of an offence punishable with death alleges that she is pregnant, or if the court before which a woman who is so convicted thinks fit to order, the question whether or not she is pregnant shall, before sentence is passed on her, be determined by such court.
  (3) The question whether such woman is pregnant or not shall be determined on such evidence as may be led before the court either on the part of such woman or on the part of the Crown, and the court shall find that the woman is not pregnant unless it is proved affirmatively to its satisfaction that she is pregnant.
  (4) The rights conferred by this section on a woman convicted of an offence punishable with death shall be in substitution for the right of such woman to allege in stay of execution that she is quick with child.

- Further, a proviso of section 296 of the CP&E Act stipulates that those who had not attained the age of 18 at the time of the crime may not be sentenced to death. The

[16] HMCS Annual Report 2018.

Act precludes or limits criminal liability for a person proven to have been mentally ill

at the time of committing the offence. The accused can be given a mental evaluation at some point during the investigation to establish sanity.

- **Inquest Act of 1954** – provides for an automatic inquiry where a death has occurred in the custody of the state. In light of this Act, for all the deaths that have occurred, the state has commissioned independent inquiries to those deaths. Cases, where police officers and correctional officers are alleged to have killed prisoners or civilians an inquest is conducted in terms of the Inquest Act of 1954 and the findings are made public with those found guilty of committing the offence of torture are charged.

53. These cases include: Mandla Mathousand Ngubane's inquest , Mzwandile Jele's inquest, Luciano Reginaldo Zavale's inquest. Two police officers in relation to Luciano Zavele's inquest are currently out on bail pursuant to their arrest on the charge of culpable homicide.

Judicial measures

Case	Legal issue	Decision
Nhlanhla Magagula v Terence Everzard Reilly & Others (1211/2010) [2017] SZHC 211(02 November 2017	The plaintiff was shot by a game ranger; hence, he instituted an action for damages arising from the injury sustained. The defendants pleaded that they acted in terms of section 23 of the Game Act. The court considered whether the shooting was lawful/justified.	The Court held that the shooting of the plaintiff was justified under the common law - powers vested in a person in the protection of his property, and that game rangers are under a contractual duty to secure game on behalf of their employer.

54. The last death sentence by the court was in 2011 in the case of *David Thabo Simelane v Rex 13/2011 SZSC 54 [2012] (30 November 2012)*.

- **Facts:** The Appellant (David Thabo Simelane) was indicted to appear before the High Court on thirty-five counts of murder. He was convicted of twenty-eight counts. No extenuating circumstances were found, and the Appellant was sentenced to death in respect of each of the twenty-eight counts. The Supreme Court described the Appellants behaviour as being that of being "serial killer" which commenced in early January 2000 and culminated in late April 2001 when he was arrested. During January 2000 and April 2001 reports abounded in the media in Eswatini about women and in some instance children, who had accompanied their mothers were missing, and who had suddenly disappeared. In each instance the missing women and children were reported to have left their homes in good health, never to return, and never to be heard of again. Their disappearances sent shock waves within the community of Eswatini and led to a massive manhunt to be put in place, subsequently, the remains of human bodies began to be discovered from early in the year of 2001. The police eventually narrowed down their search to a specific person, the Appellant, whose description was widely circulated.
- Upon the arrest of the Appellant, he confessed before a Magistrate in terms of the provisions of the CP&E Act 1938 that he killed all the women and children either by strangulation with his hands on their neck or by stabbing to those who resisted. His victims in most cases were vulnerable looking for jobs and he would pose as a good Samaritan who would assist in their job hunt, the Appellant would take his victims to a destination unknown to them that would pass through secluded forest. When passing through the forest he would kill them.
- The Supreme Court dismissed the appeal in its entirety and confirmed the sentences imposed. Worth noting is that Mr David Thabo Simelane has not yet been executed.

55. There has been an instance whereby the Supreme Court overturned a sentence of the death penalty. For instance, in *Mciniseli Jomo Simelane v Rex* (03/2014) [2013] SZSC05 (30 May 2014):

- **Facts:** The appellant was convicted in the court *a quo* of Murder of a sevenmonth-old baby, Attempted Murder, Rape, Arson as well as assault with intent to cause grievous bodily harm. He was sentenced to death with regard to the conviction of murder, ten years imprisonment for Attempted Murder, twenty years imprisonment for Rape, five years imprisonment for Arson as well as two

years imprisonment for assault with intent to cause grievous bodily harm. The sentences were ordered to run concurrently from the date of the appellant's arrest.

- The Appellant appealed against the sentence on the death penalty, and he contended that the sentence was harsh and severe on the basis that the death of the child was not premeditated. In his grounds of appeal, he argued that he intended to kill the child's father who was not on the premises that night. The appellant was convicted together with a second accused of murder, attempted murder and arson on the basis of common purpose.
- In its judgment, the Supreme Court held that the disparity between the death sentence imposed on the appellant and the sentence of twenty years imposed on the second accused in circumstances where they were equally culpable for the murder of which they were jointly convicted does constitute a misdirection or irregularity resulting in a failure of justice. The disparity is so glaring when considering the facts of the case and in particular that they had acted jointly and in the furtherance of a common purpose. The court is justified to interfere with the death penalty to the benefit of the appellant, hence the death sentence imposed upon the appellant was set aside and is substituted with "twenty (20) years imprisonment."

Compensation for loss of life

56. *Nomsa Ntombizonke Mamba V the Commissioner of His Majesty's Correctional Services and another* (292/2015) [2019] SZHC 118(28 June 2019).

- **Facts:** on 29 August 2013, a Correctional Officer was detailed by the first defendant to escort inmates to Piggs Peak Magistrates Court. The officer used the Correctional Services rifle in his possession to kill the Plaintiff's daughter, whilst he was dressed in the first defendant's uniform and was on duty . Subsequent to the killing the Plaintiffs daughter, he then took his own life. As a result, Plaintiff instituted legal proceedings against the Commissioner of His Majesty's Correctional Services on the basis of emotional shock, grief and trauma.

- **The issue for determination:** whether the officer was acting within the course and scope of his employment.

- **Held:** there is no doubt that the officer would not have used the service rifle against the Plaintiff's daughter had his employer not issued him with one. It further follows that had the first Defendant put in place mechanisms to ensure

that his said employee would find it difficult if not impossible to escape with the rifle, the incident complained of would again not have occurred. It is clear that the employee acting improper or in an untrustworthy manner towards his employer had the result of ensuing damage being attributed to the first Defendant as his employer in law. To this end, the Defendant is liable to the Plaintiff. The parties thereafter reached a settlement agreement of E150 000.

Administrative measures

57. His Majesty, the King pardons convicts including those on death row. To this end, only one remains on death row (the details of those pardoned are found in Table A3 below) . However, there are pending cases on the issue of commutation of the death penalty to life sentence, wherein the convicts are invoking His Majesty's prerogative of Mercy of converting the death penalty to a life sentence with a condition of a release from prison upon attainment of 75 years.

58. The Commission on Human Rights and Public Administration (CHRPA) reports that since 1983, 45 inmates have been sentenced to death, 44 of which have had their sentence commuted to life imprisonment.

59. With regards to the International Covenant on Civil and Political Rights (ICCPR) Eswatini State Report of 2017- the country highlighted that, even though Eswatini had previously reported that she is not yet ready to adopt the Second Optional Protocol on the Abolition of death penalty, there is political will to adopt this protocol as the country voted for the moratorium on the death penalty in UN General Assembly in 2016.

Table A2: Statistics for Claims on allegations of unlawful shooting from 2010 to 2018[17]

Case		Year								Grand total
	2010	**2011**	**2012**	**2013**	**2014**	**2015**	**2016**	**2017**	**2018**	
Unlawful shooting	6	2	12	3	4	3	5	3	2	**40**

[17] Royal Eswatini Police Service Annual Report 2018.
[18]HMCS Annual Report 2018.

Table A3: Statistics of capital punishment inmates from 1983 to 2019[18]

year	DATE OF ADMISSION	DATE OF RELEASE
1984	09/11/84	13/06/1997
1984	09/11/84	07/06/1997
1984	30/08/84	10/10/85
1984	30/09/84	12/10/85
1984	30/09/84	18/11/96
1984	30/09/84	29/07/95
1987	20/07/87	25/02/2000
1987	10/07/87	11/01/93
1987	10/07/87	09/06/97
1989	28/06/89	02/10/90
1998	06/10/98	Pardon from the death penalty but to be released at the age of 75
1993	23/09/93	Pardon from the death penalty but to be released at the age of 75
1993	04/02/03	Pardon from the death penalty but to be released at the age of 75
1991	19/07/91	02/09/94
1986	31/10/86	18/05/89
1983	31/03/83	O4/05/84
1983	31/03/84	04/05/84
1983		Released on appeal
1986	05/05/86	03/03/87 deceased
1992	26/02/1992	06/10/1993 released on appeal
1992	09/04/92	Pardon from the death penalty but to be released at the age of 75
1988	18/11/88	30/04/90
1995	16/06/1995	13/04/1996
1992	14/12/92	09/12/94
1992	14/12/92	09/12/94
1994	29/09/94	Pardon from the death penalty but to be released at the age of 75
2000	13/11/00	01/06/2018
2000	13/11/00	07/08/11 deceased

2000	13/11/00	2016 released by court order
2011	10/07/01	Still on death row
1988	26/09/88	17/11/98
1982	17/12/82	04/10/83
1982	03/12/82	04/10/83
1992	24/08/92	08/03/96
1996	30/10/96	04/05/02
1993	23/09/93	Pardon from the death penalty but to be released at the age of 75

Challenges and factors inhibiting the full enjoyment of the right to life.

60. Convicts on death row spend what amounts to an indefinite prison sentence unsure of whether the current policy position, that is not to carry out executions, will continue.

61. The Game Act of 1953 in section 23(3) absolves Game Rangers from liability in respect of any act or omission done in the exercise of their powers. As a result, a number of persons have been shot and some killed by game rangers whose actions are always held to be justifiable as per section 23 (3) of the Game Act.

Efforts to mitigate these challenges

62. The King on the advice of the Prerogatives of Mercy Committee generally commutes death sentences, noting that 44 out of 45 people who have been sentenced to death since last execution in 1983 had their sentences commuted. His Majesty, the King has pardoned prisoners on death row almost on an annual basis.

63. Security officials who violate the right to life are prosecuted. The cases demonstrating instances where officials were prosecuted, and compensation paid to victims are discussed below:

- In 2017, a Police officer who shot and killed a jaywalker was convicted of murder, sentenced to nine years' imprisonment.
- Also in 2017, Police shot and injured a man on failure to heed to orders to stop. He was suspected to be dealing in marijuana; however, none was found in his car. Police officers involved in the shooting were charged with using excessive force.

Prosecution of the case is pending in Courts.

ARTICLE 5: RIGHT TO DIGNITY, PROHIBITION OF TORTURE AND SLAVERY

Constitutional measures

64. Section 18 of the Constitution of Eswatini provides for protection from inhumane or degrading treatment.

(1) the dignity of every person is inviolable.

(2) A person shall not be subjected to torture or inhumane or degrading treatment or punishment.

- Section 57 of the Constitution provides for law enforcement objectives which are that: –

(1) Law enforcement officials shall at all times fulfil the duty imposed upon them by the law by serving the community and by protecting all persons against illegal acts, consistent with the high degree of responsibility required by their profession.

(2) In the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons.

(3) law enforcement officials may not inflict, instigate or tolerate any act of torture or other cruel inhumane or degrading treatment or punishment, nor may any law enforcement official invoke superior orders or exceptional circumstances as a justification of torture or other cruel inhumane or degrading treatment or punishment.

(4) Law enforcement officials shall not commit any act of corruption. They shall also rigorously oppose and combat all those acts.

- Section 17 of the Constitution provides that:

a person shall not be held in slavery or servitude nor shall a person be required to perform forced labour.

Legislative measures

65. Discussed below are some of the legislative measures promoting, protecting and fulfilling the above right.

- **Police Act 22 of 2018 section**- seeks to provide for the establishment and administration of Royal Eswatini Police service, as well as, the appointment of a Police Service Commission, appointment and discipline of police officers,

establishment of such necessary funds and incidental matters.

Section 10 (1) A member of the Police Service shall at all times serve the community and protect all persons against illegal acts, consistent with the high degree of responsibility required by their occupation or profession.

(2) In the performance of their duties, members of the Police Service shall respect and protect human dignity, maintain and uphold the human rights of all persons.

(3) A member of the Police Service may not inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment, nor may any member of the Police Service invoke superior orders or exceptional circumstances as justification for torture or other cruel, inhuman or degrading treatment.

- **The Correctional Services Act 13 of 2017**- which seeks to provide for the establishment and administration of a Correctional Services and other incidental matters.

  6. (1) In the performance of their duties, members of the Correctional Services shall ensure that all inmates are treated with the respect due to their inherent dignity and value as human beings and their human rights shall be upheld at all times.

  (2) Members of the Correctional Services shall not inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment, nor shall any member of the Correctional Services invoke superior orders or exceptional circumstances as a justification for torture or other cruel, inhuman or degrading treatment or punishment.

  (3) All offenders shall be treated equally. There shall be no discrimination on the grounds of race, color, gender, language, religion, political or other opinion, national or social origin, property, birth or any other status. The religious beliefs and moral precepts of offenders shall be respected.

Judicial measures

66. Individuals who allege that they have been tortured have the right to institute legal proceedings in Courts for redress. This is demonstrated in the case below:

Case	Legal issue	Decision

The Eswatini Government v Aaron Ngomane Civil Appeal Case No. 25/2013:	Whether Plaintiff's right to dignity was infringed. The respondent defecated in the open near the International border gate at Lomahasha; Plaintiff was ordered by a soldier who was patrolling the borderlines to pick up the faeces and remove it; the soldier also ordered the Plaintiff to do some pushups. Plaintiff sued the government in the sum of E350,000 as damages for	The Court held that there was material misdirection in the process of the award warranting interference with the award; the award of E50,000 set aside and replaced with an award of E30,000 as damages for the injuria and *contumelia*
	infringement of his dignity;	
	the court a quo awarded	
	E50,000 as damages for injuria and *contumelia.*	

Administrative measures

67. Eswatini acceded to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) on 25 April 2004.

68. As set out in CAT, the State party endevours to strengthen the capacity of the Commission on Human Rights to build the capacity of all duty bearers with the intention of preventing torture. The Commission for Human Rights on numerous occasions has (as mandated by the Constitution), been working on capacitating key government role actors with information against torture and supporting the actors by setting up structures that will provide sufficient redress to victims of torture.[18]

[18] The Commission for Human Rights has visiting correctional centres and detention facilities in the country with the aim of addressing the rights of people in detention centres.

69. With respect to the mechanisms for handling allegations of torture, such are investigated through the Internal Complaints and Investigations Unit, with the option of referring the matter to the Director of Public Prosecution (DPP) or Police Internal Disciplinary Unit. Upon conviction, dismissal from the Police Services may be imposed.

70. Given the State Party's commitment towards eradication of all forms of torture, there are ongoing efforts to take the optional protocol through the necessary steps of ratification as articulated by the Constitution in Section 238. The process entails approval of the instrument through an Act of Parliament or through a joint sitting of both chambers of Parliament. Strengthening of structures like the Commission on Human rights is aimed at improving efforts to prevent and eradicate torture.

71. His Majesty's Correctional Services (HMCS) strives to adhere to the United Nations Standard Minimum Rules for the treatment of offenders (Mandela Rules) and conscientiously observes Human Rights Principles and Guidelines in the execution of its duties. Inmates confined in Correctional Centres are given a balanced diet three times a day. Regulation 36 of the Prisons Regulations of 1965 sets out the procedure on how food is to be distributed to inmates, it further has a schedule that spells out the quantity of food to be given to inmates.

72. Inmates are allowed to consult doctors of their preference where a particular ailment cannot be treated in the Government health institutions. It is worth noting that in every Correctional Centre there is a Clinic with a minimum of 2 nurses. The organization has two Medical Officers who conduct scheduled visits to the various Correctional Centres.

73. In the past ten years, the Police received a total of one hundred and sixty-nine civil claims occasioned by assault and torturing of suspects. A notable trend is that the claims are on the decrease as tabulated in Table A4 below.

Table A4: Civil Claims on Assault and Torture

Case		Year	Grand total

	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	
Assault and torture	32	17	22	21	18	18	15	9	13	4	169

Challenges

74. The Kingdom of Eswatini does not have an Independent Complaints Body to deal with allegations of torture from security forces. Currently, cases of torture are handled by the respective institutions against whom the allegations have been made with an option of reporting same to the Royal Eswatini Police Service.

75. Torture is not yet specifically criminalized in Eswatini. Currently, cases of torture are treated as assault cases and people implicated are held for criminal charges. People affected are at liberty to claim for compensation using civil proceedings.

Corporal punishment Constitutional measures

76. Section 29 (2) of the Constitution provides as follows:

A child shall not be subjected to abuse or torture or other cruel inhumane and degrading treatment or punishment subject to lawful and moderate chastisement for purpose of correction.

Legislative measures

77. Discussed below are legislative measures which the country has adopted to promote, protect and fulfil the above right.

- **The CPWA 2012** - abolishes the use of corporal punishment in sentencing children under section 161 (2) "No sentence of corporal punishment or any form of punishment that is cruel, inhuman or degrading may be imposed on a child."
- In penal institutions such as HMCS, corporal punishment is provided for by the CP&E,[19] however, the provisions of the Constitution prohibit same and the latter as the supreme law supersedes the former legislation.

[19] Section 306

Challenges and factors inhibiting the full enjoyment of the right against corporal punishment

78. The CP&E Act still provides for whipping sentences despite the supremacy of the Constitution which prohibits all forms of inhuman and degrading treatment. There is a need to align the CP&E Act with the Constitutional provisions.

79. The moderate chastisement in the constitution is not defined.

80. The socialisation of parents and caregivers hinders the use of positive discipline in home settings as they prefer corporal chastisement.

81. The School Regulations provides for the procedure of how a student may be subjected to corporal punishment. It is only the Headteacher who can impose corporal punishment and with a maximum of three (3) strokes and using a thin finger size stick.

Mitigating factors

82. The Ministry of Education and Training through the National Education and Training Sector Policy of 2018 has also abolished the use of corporal punishment in schools, in this regard the ministry has also initiated and implemented the positive discipline program under the Guidance and Counselling department. Further, the Ministry has partnered with CSOs[20] to promote the use of positive discipline in family settings. This initiative is aimed at gradually incorporating these principles in different settings where corporal punishment has been practised.

ARTICLE 6: RIGHT TO LIBERTY AND SECURITY OF PERSON

Constitutional measures

83. Section 16 provides as follows:

> *No person shall be deprived of personal liberty save as may be authorized by law. However, the right to liberty be derogated from in the following cases:*

[20] Save the Children Eswatini

a) in execution of the sentence or order of a court, whether established for Eswatini or another country, or of an international court or tribunal in respect of a conviction of a criminal offence;

(b) in execution of the order of a court punishing that person for contempt of that court or of another court or tribunal;

(c) in execution of the order of a court made to secure the fulfilment of any obligation imposed on that person by law;

(d) for the purpose of bringing that person before a court in execution of the order of a court;

(e) upon reasonable suspicion of that person having committed, or being about to commit, a criminal offence under the laws of Eswatini;

(f) in the case of a person who has not attained the age of eighteen years, for the purpose of the education, care or welfare of that person;

(g) for the purpose of preventing the spread of an infectious or contagious disease;

(h) in the case of a person who is, or is reasonably suspected to be, of unsound mind, addicted to drugs or alcohol, or a vagrant, for the purpose of the care or treatment of that person or the protection of the community;

(i) for the purpose of preventing the unlawful entry of that person into Eswatini, or for the purpose of effecting the expulsion, extradition or other lawful removal of that person from Eswatini or for the purpose of restricting that person while being conveyed through Eswatini in the course of the extradition or removal of that person as a convicted prisoner from one country to another; or

(j) to such extent as may be necessary in the execution of a lawful order — (i) requiring that person to remain within a specified area within Eswatini or prohibiting that person from being within such an area;

(ii) reasonably justifiable for the taking of proceedings against that person relating to the making of any such order; or

(iii) reasonably justifiable for restraining that person during any visit, which that person is permitted to make to any part of Eswatini in which, in consequence of that order, the presence of that person would otherwise be unlawful.

- Section 15 (3) of the Constitution provides: *that a person arrested on the suspicion of committing a crime shall be brought without undue delay before the court. Further, where a person arrested or detained pursuant to the provisions of subsection (3), is not brought before a court within forty-eight hours of the arrest or detention, the burden of proving that the provisions of subsection (3) have been complied with shall rest upon any person alleging that compliance.*

Legislative measures

84. Discussed below are the legislative measures that the country has adopted to promote, protect and fulfil the above-stated right.

- **Correctional Services Act 13 of 2017** - seeks to provide for the establishment and administration of a Correctional Services and other incidental matters. The Act provides as follows:

Section 64. (l) A person detained in a correctional centre shall be deemed to be in the lawful custody of the officer in charge.
(2) A person shall not be admitted for detention in a correctional centre unless accompanied by-
(a) an order or warrant of detention, remand, commitment or conviction under the hand of a person authorized by the law to sign or endorse such order or warrant: or (b) a certificate. under the hand of an authorised officer to the effect that the person is to be detained in accordance with the requirements of the Immigration Act, 17. 1982, or its successor.
(3) A person shall not be detained as a result of a certificate under subsection 2 (b) for a period longer than the minimum period of detention permitted by the appropriate law in question and the certificate in question shall not be a lawful authority for the detention after the expiry of that period.

- **The Immigration Act 17 of 1982** - seeks to consolidate the law in relation to immigration and to introduce new provisions relating thereto. Section 13 of the Act provides as follows:

S13. (1) Any immigration officer or police officer who has reasonable cause to suspect that a person has committed an offence under this Act, or is unlawfully present in Eswatini, may, if it appears to him to be necessary to do so in order to ensure that the purposes of this Act shall not be defeated, arrest that person without warrant; and sections 23 and 30 of the CP&E Act, 1938, shall apply to any such arrest as if the reference in the said section 23 to a peace officer included a reference to an immigration officer.
(2) Any person other than a citizen of Eswatini or a person in possession of an entry permit or pass who having been deported from any country, enters Eswatini on his way to his final destination, maybe arrested without warrant by any immigration officer or police officer and maybe detained in police custody for as long as is necessary for arrangements to be made for his departure from Eswatini, and shall be deemed to be in lawful custody while so detained. (3) Any person who is detained under this Act shall, upon entering Eswatini and on-demand made by an immigration

officer, police officer or prison officer, submit to having his photograph and his fingerprints or palm prints taken by such officer or by any other person appointed for that purpose.

(4) A person who is not a citizen of Eswatini shall, on being required to do so by an immigration officer or a police officer: —

(a) declare whether or not he is carrying or conveying any written matter;

(b) produce to the officer any documents which he is carrying or conveying; and an immigration officer or police officer may search any such person, and any baggage belonging to him under his control, in order to ascertain whether that person is carrying or conveying any documents, and may examine, and may detain for such time as he thinks proper for the purpose of examination, any documents produced to him or found on such a search.

(c) An Immigration Officer or Police Officer, who detains any document or any written matter under this subsection, shall issue a receipt therefor.

- **The CP&E Act 67 of 1938** which provides the processes and procedures of arrest under the law with or without a warrant. Section 22 provides as follows:

S22 Every peace officer and every other officer empowered by law to execute criminal warrants is hereby authorised to arrest without warrant every person-

(a) Who commits any offence in his presence;

(b) Whom he has reasonable grounds to suspect of having committed any of the offences mentioned in Part II of the first schedule;

(c) Whom he finds attempting to comment an offence, or clearly manifesting an intention so to do.

Section 23 provides as follows:

S23 Any peace officer may, without any order or warrant, arrest any person-

(a) Who has in his possession any implement of house-breaking, and is not able to account satisfactorily for such possession;

(b) In whose possession anything is found which is reasonably suspected to be stolen property or property dishonestly obtained, and who is reasonably suspected of having committed an offence with respect to such things;

(c) Who obstructs a policeman or other peace officer while in the execution of his duty, or who has escaped or attempts to escape from lawful custody;

(d) Who is reasonably suspected of being a deserter from His Majesty's Naval or military or air forces or from the Royal Eswatini Police;

(e) *Who is or is loitering in any place by night under such circumstances as to afford reasonable grounds for believing that he has committed or is about to commit an offence;*

(f) *Reasonably suspected of committing or having committed an offence under any law governing the making, supplying, possession or the possession or disposal of arms and ammunition.*

Judicial Measures

Case	Legal issue	Decision
***Magagula v The Attorney General* SHSC (94/2016) [2018] 3:**	Appellant instituted legal proceedings for damages arising from unlawful arrest, detention and torture. The Appellant alleged *inter alia* that he was detained for four days without reasonable cause.	The court held that although the arrest and detention were justified in law, the appellant was detained in excess of four hours from the maximum of forty-eight hours allowed by law and that this constitutes a violation of his right to personal liberty.
***Mandla Mngometulu v National Commissionerof Police* (2553/01) [2004]:**	The plaintiff instituted legal proceedings for damages arising *inter alia* from unlawfully arrest and detention.	The Court held that the detention was unreasonable in terms of the law and awarded the Plaintiff E70.000 (seventy thousand Emalangeni) in respect of the loss of liberty and freedom, discomfort and *contumelia*.

Table A5: Statistics on unlawful arrest

Case		Year		Total

	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	
Unlawful arrest			6	6	Nil	4	1	4	10	8	10	7	56

Challenges with the implementation of the right to liberty

85. There have been instances regarding Police not investigating before arresting' hence there is a need for continuous capacity building for Police Officers to collect sufficient evidence to warrant an arrest.

86. Cases take too long to be finalised due to the backlog in the Courts. Due to this backlog, there is a large number of inmates on remand who have pending cases.

Progress and measures proposed to address the challenges

87. On the issue of backlog, more magistrates were employed in 2015 pushing the number to twenty-six magistrates for the whole country, covering the four regions. Furthermore, the Judiciary as part of the interventions to ease case backlog acting judicial officers (Judges and Magistrates) are appointed to specifically adjudicate upon cases that have been stalled for too long.

88. The curriculum of the security forces includes human rights training, all subsequent training conducted includes content on human rights, and periodically tailored training addressing human rights issues.

ARTICLE 7: RIGHT TO FAIR TRIAL

Constitutional measures

89. The right to a fair trial is entrenched in section 21 of the Constitution of Eswatini. Section 21 provides that

    ''In the determination of civil rights and obligations or any criminal charge a person shall a fair and speedy public hearing within a reasonable time by an independent and impartial court or adjudicating authority established by law. It provides several guarantees including the following to ensure fair trial in criminal proceedings:

    a) presumption of innocence until proven or pleaded guilty;

b) *prompt and detailed information of the nature of the offence charged, in a language which the accused person understands;*
c) *adequate time and facilities to prepare for one's defence;*
d) *legal representation of one's choice;*
e) *the right to have an interpreter if the accused cannot understand the language of the proceedings;*
f) *Permitted to present a defence before the Court either directly or through a legal representative of one's choice;*
g) *Afforded facilities to examine in person or by legal representative the witness called by the prosecution and to obtain the attendance of witnesses to testify on behalf of that person on same conditions as those applying to witness called by prosecution;*
h) *A person who is tried may not be compelled to testify or confess guilt;*
i) *The right to appeal to the Supreme Court;*

90. The law generally extends the foregoing rights to all citizens. The Constitution also provides for the right to a fair determination of a person's civil rights.

Legislative measures

91. The CP&E Act of 1938 comprehensively provides for processes safeguarding the rights to fair hearing and trial. Further, the High Court Rules and Magistrates Court Rules stipulate the procedural processes that ensure that the rights to fair trial and hearing are promoted.

92. In labour relations practice there are various labour laws legislations, that is, the Employment Act 1980, Industrial Relations Act 2000 as amended, Police Act 2018, Correctional Services Act 2017, which safeguard the rights to fair hearing in industrial dispute resolution.

Judicial measures

93. The following cases are discussed as they demonstrate the right to a fair trial.

Table A6: Cases on the right to a fair trial

Case	Facts	Decision
Dlamini v Senior Magistrate Gumedze N.O and Another **((2627/06)) [2007] SZHC 6 (26 January 2007);**	The Applicant instituted review proceedings against a conviction and sentence from the Magistrate Court. The Applicant alleged that during his trial, all witnesses gave their evidence in siSwati and the Court Interpreter at all material times never interpreted for the court the evidence given by the witnesses as they were led in examination in chief or crossexamined. The court recorded in English whatever they said notwithstanding that they gave their evidence in siSwati and there was no interpretation of what they testified to. Everything that was said in siSwati was silently translated and taken down in English by the Magistrate. The court had to determine whether the fact that the Magistrate silently acted as an interpreter from Siswati	The Court held that, it is what is said in public that is recorded, whether it be evidence from one language into another or expert evidence. The court further held that it constitutes an irregularity for the Magistrate to adopt the procedure which he did in the case, therefore the application for review succeeded.
	into English was an irregularity in the proceedings.	

***Ray Gwebu and another v Rex* appeal court case 19 & 20/2002**	Appellants challenged the validity of Decree No.3 of 2001(Non-bailable offences), whose effect was to preclude persons charged with certain offences listed in a schedule thereto, from applying for bail.	In upholding their appeal, the Court remitted the matter back to the Court a *quo* for purposes of determining, on the ordinary principles applicable to bail, whether or not the Appellants ought to be so admitted to bail. The court held that the proceedings were a nullity and that as a result of the gross irregularity, the conviction and sentenced were set aside.
***Professor v King (41/2000)* (41/2000) [2001] SZSC 13 (01 June 2001)**	The appellant was facing a series of charges and was imprisoned in respect of those charges. He brought an urgent application for bail as he was imprisoned by virtue of the Non-Bailable Offences Order No. 14 of 1993 Many of those charges prevented the appellant from being admitted to bail under the said Order. Appellant alleged that the NonBailable Offences Order No. 14 of 1993 as amended ultra vires Article 7(a) of the African Charter on Human and Peoples Rights in so far as the said Order violates the applicant (sic) fundamental rights as recognised and guaranteed by the Charter, Universal Declaration of Human Rights and International Human Rights, Customary law and principles.	The court held that the nonBailable Offences Order was unconstitutional, following which the appeal was allowed.

Administrative measures

94. Prior to the Constitution, there was a Non-Bailable Offences Order 14 of 1993 which sought to preclude the Courts from admitting bail to accused persons who had committed certain offences. The Courts in consideration of International Human Rights Instruments ratified by the State Party invalidated the Orders in the Supreme Court case of *Dlamini Professor v King* (41/2000) (41/2000) [2001] SZSC 13 (01 June 2001), *Rex v Gwebu and Another (20/2002) [2002] SZSC 21 (01 November 2002)*.

95. Following the invalidation of the Non-Bailable Offences Order, part VIII and schedule of the CP&E was amended to be aligned with International Human Rights Standards for a fair trial. Currently, bail determination is left at the discretion of the presiding officers and is regulated by the provisions of the CP&E Act.

96. The Legal Aid Bill has been developed and is currently undergoing stakeholder consultation, which will see the establishment of Legal Aid Board as an institutional framework that will provide free legal advice and representation to indigent persons. Further, it promotes the principle of equality and non-discrimination by directing the Board to provide legal aid to all qualifying persons regardless of age, race, gender, language amongst others.

97. In Eswatini Courts or Traditional Courts set up, the Judicial Officers have been trained in the principles of natural justice, rights to fair hearing as per the concluding observations of the Universal Periodic Review (UPR) and from the Human Rights Committee in 2019. Magistrates were also trained in the interpretation of CEDAW.

98. The University of Eswatini has established a legal aid clinic , whereby law students under the supervision of lecturers and practising attorneys provide legal aid services to indigent members of the society, paying special attention to vulnerable and minority groups such as children and women. The legal aid clinic was set up through support from the United Nations Joint Gender Programme, the Ministry of Justice and the University of Eswatini -
Faculty of Law have been providing legal aid services to disadvantaged community members.

99. In addition to this, Non- Governmental Organisations (NGOs) working in the areas of human rights, such as Women and the Law Southern Africa (WLSA) , Council of Churches have through their trained paralegals been providing legal advice and support to indigent members of the society who cannot afford private legal services.

100. Private Legal Practitioners also provide *pro bono* (at no cost) services to indigent members and vulnerable groups of society. With regards to accused persons charged with capital offences, it is mandatory for the state to provide legal counsel. With the support of the Law Society of Eswatini, the government has developed a Legal Practitioners Bill that seeks to compel Legal Practitioners and Candidate Attorneys to provide legal aid services to disadvantaged members of society.

Challenges with the implementation of the right to a fair trial

101. The backlog of cases hampers speedy determination of both criminal and civil trials.In some instances, witnesses may be untraceable or found to have hardship in recalling the events in question.

102. Lack of adequate courtrooms is a factor contributing to the backlog of cases. The High Court Building is also used as the Supreme Court as well as the Industrial Court of Appeal. The Magistrate Courts are also in need of additional courtrooms.

103. The Legal Aid Bill has not yet been passed into law, hence there is no legal aid system. However, *pro deo* services are provided by practising Attorneys at the expense of Government in the case of any offence which carries a sentence of death.

Efforts and mitigating measures to address the challenges

104. The State Party has increased the number of Judicial Officers; thus, the problem of lengthy pre-trial detentions is being addressed in all cases. The Judiciary is in a process of constructing more courtrooms and land has been secured at *Buhleni* and Mbabane.

ARTICLE 8: FREEDOM OF CONSCIENCE

Constitutional measures

105. The Constitution protects this right in section 23 as follows:

S23. (1) A person has a right to freedom of thought, conscience or religion.

(2) Except with the free consent of that person, a person shall not be hindered in the enjoyment of the freedom of conscience, and for the purposes of this section freedom of conscience includes freedom of thought and of religion, freedom to change religion or belief, and freedom of worship either alone or in community with others.

(3) A religious community is entitled to establish and maintain places of education and to manage any place of education which that community wholly maintains, and that community may not be prevented from providing religious instruction for persons of that community in the course of any education provided at any place of education which that community wholly maintains or in the course of any education which that community otherwise provides.

(4) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision -

(a) that is reasonably required in the interest of defence, public safety, public order, public morality or public health; or

(b) that is reasonably required for the purpose of protecting the rights and freedoms of other persons, including the right to observe and practise any religion or belief without the unsolicited intervention of members of any other religion or belief.

Judicial measure

Case	Legal issue	Decision
Senate of University of Swaziland v Maziya **(51/2004) [2005] SZSC 10 (24 June 2005):**	The respondent was a Christian and a devout member of the Seventh Day Adventist Church. The University's examination timetable caused a conflict with his religion as he was required to write his exam on Saturdays. He wrote to the University requesting that his exam be	The Court held that the University's decision to deny the student in *casu* any relief was procedurally flawed, arbitrary, misdirected and grossly unreasonable.

	rescheduled, and the University declined, as follows: "It is therefore unfortunate that you will indeed have to choose between writing the examination and complying with your ten commandments."	

Administrative measures:

106. Eswatini is largely a religious society, with Christianity, and Eswatini traditional religion being the most popular and common religions. Other sections of the society ascribe to other religions which include but not limited to Muslim, Bahai faith, Rastafarian, Shembe. Worth noting is that there is no legislation that comprehensively caters for and regulates how freedom of conscience should be promoted and enjoyed. However, there are bodies that have been established to regulate faith-based institutions such as Council of Churches, League of Churches, and the Islamic Faith Council.

107. The Constitution and other pieces of legislations prescribe series of oaths of office that contains religious connotations. However, the Courts and other institutions are particularly aware of the right to freedom of conscience and therefore witnesses who do not wish to take an oath are given freedom to make an affirmation instead.

ARTICLE 9: FREEDOM OF SPEECH AND RIGHT TO RECEIVE INFORMATION

Constitutional measures

108. The Constitution of Eswatini guarantees freedom of expression and opinion including freedom of the media and freedom to receive or communicate ideas and information.

Section 24 of the Constitution provides as follows:

(1) A person has a right of freedom of expression and opinion.

(2) A person shall not except with the free consent of that person be hindered in the enjoyment of the freedom of expression, which includes the freedom of press and other media, that is to say –

(a) Freedom to hold opinions without interference;

(b) Freedom to receive ideas and information without interference

(c) freedom to communicate ideas and information without interference (whether the communication be to the public generally or to any person or class of persons); and

(d) freedom from interference with the correspondence of that person.

109. However, this right is not absolute according to section 24 (3).

(3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision –

(a) that is reasonably required in the interests of defence, public safety, public order, public morality or public health;

(b) that is reasonably required for the purpose of –

(i) protecting the reputations, rights and freedoms of other persons or the private lives of persons concerned in legal proceedings;

(ii) preventing the disclosure of information received in confidence;

(iii) maintaining the authority and independence of the courts; or

(iv) regulating the technical administration or the technical operation of telephony, telegraphy, posts, wireless broadcasting or television or any other medium of communication; or

(c) that imposes reasonable restrictions upon public officers, except so far as that provision or, as the case may be, the thing done under the authority of that law is shown not to be reasonably justifiable in a democratic society.

Legislative measures

110. Discussed below are the legislative measures that the country has put in place to promote, protect and fulfil the above right.

- **The Suppression of Terrorism (Amendment) Act 2016**, which narrows down the definition of terrorist and terrorist group to exclude employee organizations from the definition of the phrase 'terrorist group' which was perceived to hinder the exercise of freedom of expression by workers' organizations. It is worth noting the Suppression of Terrorism Act 2008 was alleged to be used to suppress freedom of

expression and that it induced self-censorship.

- **Archives Act 5 of 1971** establishes the National Archives which establishes archives for information preservation in the country.
- **Books and Newspapers Act 20 of 1963,** make provision as to the registration of newspapers and also to make provision as to the deposit of books and newspapers**.**

Judicial measures

Case	Legal issue	Decision
***Thulani R Masek& 3 others v Rex* Crim Appeal 18/2014:** cas	Appellants appealled against a conviction on two counts of contempt of Courts. Appelllants published statements about the case of Rex v Bhantshana Vincent Gwebu, a criminal matter pending before the High Court and therefore *sub judice*. The appeal raised important issues inter alia relating to the right of freedom of expression and the media. The court took judicial notice on the need to balance freedom of expression or of the press with the protection of fair hearing and authority of the courts.	The Supre Court set aside a convicti based c number of errors ar regulari committe by the court. rial

***African Echo (Pty) Ltd t/a Times of Swaziland v Inkhosatana Gelane Simelane* (77/2013) SZSC 83 (3 December 2014).**	The appellant appealed against an award for damages arising from defamatory publication. The appeal steeped in the fundamental human rights of dignity of every individual	The Court held that the freedom of expression must be balanced against other rights guaratnteed by the Constitutuion. Therefore the Court dismissed the appeal on the
	as well as the right of freedom of expression, both common law rights acquired constitutional supremacy in the Constitution Act, 2005.	basis that the publication was false and violated the respondent's right to dignity.

Administrative measures

111. The Ministry of Information, Communication and Technology (ICT) is responsible for efficient national information, communications and the technology delivery framework, in order to ensure access to ICT.

112. In 2005, a Media and Information Policy was adopted. It proposes legal reforms with a view to update and/or introduce supportive mechanisms that address the needs of the mass media environment. The policy also recognises the importance of the right to access to information. The Information and Media Policy of 2005 also require the media to eradicate information poverty through the provision of information.

- **Social Media policy of 2019** - The purpose of this policy is to create awareness of some of the opportunities that social media present for the State Party, as well as making Government ministries and staff aware of how to manage the risks associated with the use of these platforms. The guidelines focus on guidance in the use of social media within the Government of Eswatini communication environment, in order to improve Government transparency, participation and

interaction with the public. The Kingdom of Eswatini Government employees have the same rights of free speech as other citizens when it comes to the use of, and participation in online social media platforms to promote their right to free speech as enshrined in Section 24 of the 2005 Constitution.

- **The National Development Strategy (NDS) of 1999** locates information at the heart of sustainable socio-economic development, social justice and political stability. National Strategy 2022 also promotes the right to receive information.

113. The State Party has established institutions that seek to promote the freedom of information and expression such as the National Libraries, National Archives, Broadcasting & Information Services as well as Print Media.

 National archives

The Eswatini National Archives promotes National identity, protects personal and public rights of Emaswatis and promotes efficiency, accountability and transparency of government through the preservation of public records of research value regardless of format and historical information on Eswatini for use in the government and the people of Eswatini. This department was established through Archives Act 5 of 1971.

 Broadcasting & Information Services

This portfolio is responsible for disseminating news and information, which is aimed at educating, informing and entertaining the Eswatini nation effectively, and impartially for the purposes of development and social welfare through radio broadcast and publications.

 Media platforms

There are currently 2 major newspapers in Eswatini, The Times of Eswatini and The Eswatini Observer, 2 state broadcasters (Eswatini Broadcasting Information Service – SiSwati Channel and Eswatini Broadcasting Information Service – English Channel, 1 State Tv Station (Eswatini Tv), 1 private TV station (Channel Eswatini Tv), 2 religious stations (Voice of the Church SiSwati and English), 2 periodical magazines and few other start-up print media.

- **The Editorial Policies for Public Service Broadcasters** - were developed in response to abuses observed, where radio stations were used for electoral campaigns and defamatory exchanges. This measure was meant to maintain order and to ensure a

balance in the range of issues being discussed, rather than to curtail free expression.

- **The Communications Commission Act 10 of 2013** which seeks to provide a framework for the further development of electronic communications networks and services in Eswatini. It regulates internet-based activities through the Communications Commission. The Commission regulates all electronic communications, data protection in electronic communications, postal services, electronic commerce and broadcasting. The Commission issues broadcasting guidelines on how the licence holders should operate.

Challenges

114. The alignment of laws with the provisions of the constitution has taken a long time due to lack of a Law Reform Commission to review all laws.

115. Concerning the press media, where the situation is slightly more diverse and plural, in the private newspapers, there are still concerns about self-censorship that compromises the role of the media as a watchdog against corruption and bad governance.

116. One of the biggest challenges to the implementation of laws and policies is the absence of adequate budgets. Sensitization, transcription (disability accommodative language (braille) and translation(local language) of laws and pollicies for the general populace is limited. This contributes to a lack of awareness of these laws and policies by the general populace.

Mitigating measures

117. The State Party has shown political will by introducing bills addressing the use of media and information dissemination. A number of bills have been drafted to efficiently give effect the freedom of expression and information. For instance, the Broadcasting and Corporation Bill seeks to liberalize and open up the media space and establish an

enabling environment for the media, at the levels of public, private and community broadcasting, in the country.

118. The Media Communications Bill emphasizes the need for educational qualifications of journalists, continuous training for journalists and provides for a minimum remuneration for journalists. The Bill further seeks to establish the Media Commission which would regulate the media and grant license and accredit journalists.

119. In 2007, the government released a draft Freedom of Information and Protection of Privacy Bill. This Bill received some criticism and has not been passed. A new Access to Information Bill has been mooted.

120. **The Eswatini Broadcasting Act 2016** has been enancted and as such the University of Eswatini has been granted a broadcasting licence. This makes the University of Eswatini Radio Station a privately-owned station as ownership and control of the major radio stations and television station is done by the State Party.

121. Another positive development is that in recent years a launch of a second mobile network operator was witnessed and is operating as, Eswatini Mobile, thus expanding the telecommunication and media space.

122. For diversifying views in the media, two weekly newspapers and new entrants into the print sector: Publishers of the Eswatini Mirror and *Ingwazi* News launched their news publications. Eswatini Newsweek newspaper and Zion Magazine were launched, and this increased the number of newspapers in the country to nine and magazines to three. Eswatini citizens now have multiple media platforms which are a positive move towards diversity and plurality.

123. Social media platforms such as Facebook, WhatsApp, Twitter and the likes are commonly utilised in Eswatini by all age groups that have a need for them.

ARTICLES 10 AND 11: FREEDOM OF ASSOCIATION AND ASSEMBLY

Constitutional measures

124. Eswatini's Constitution protects the right to freedom of association and assembly. Constitutionally, section 25 extensively caters for the right of peaceful assembly and association. It provides as follows:

(1) A person has the right to freedom of peaceful assembly and association.

(2) A person shall not except with the free consent of that person be hindered in the enjoyment of the freedom of peaceful assembly and association, that is to say, the right to assemble peacefully and associate freely with other persons for the promotion or protection of the interests of that person.

125. Furthermore, the Constitution of the country list instances in which the rights under this article or provision can be limited, and it provides as follows:

(3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision -

(a) that is reasonably required in the interests of defence, public safety, public order, public morality or public health;

(b) that is reasonably required for the purpose of protecting the rights or freedoms of other persons; or

(c) that imposes reasonable restrictions upon public officers, except so far as that provision or, as the case may be, the thing done under the authority of that law is shown not to be reasonably justifiable in a democratic society.

(4) Without prejudice to the generality of subsection (2), nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision -

(a) for the registration of trade unions, employers' organisations, companies, partnerships or co-operative societies and other associations including provision relating to the procedure for registration, prescribing qualifications for registration and authorising refusal of registration on the grounds that the prescribed qualifications are not fulfilled; or

(b) for prohibiting or restricting the performance of any function or the carrying on of any business by any such association as is mentioned in paragraph (a) which is not registered.

(5) A person shall not be compelled to join or belong to an association.

126. The Constitution[21] further entrenches workers' rights to freely form, join or not to join a trade union for the promotion and protection of their economic interests and collective bargaining and representation.

Legislative measures

127. The country has adopted legislation which further protects the right to freedom of association and assembly:

- **Section 40** of the **Industrial Relations Act, No. 1 of 2000 (as amended)** guarantees the right of any organization registered with the Office of the Commissioner of Labour to embark upon a protest action in pursuit of any socio-economic complaint against the State or any State Ministry or Department. This legislation was adopted to domesticate **ILO Convention No.**

  87 (Freedom of Association and Protection of the Right to Organize (1948) (ratified by the country on 26th April 1978) as well **ILO Convention No. 98 (The Right to Organize and Collective Bargaining Convention) (1949)** (also ratified by the Country on 26th April 1978). This has been done to ensure that any restriction on the exercise of the right to freedom of expression, association and peaceful assembly by labour formations (Trade Unions, Staff Associations and Federations) complies with the strict requirements of the ACHPR and International Standards.

- **Section 4** of the **Industrial Relations Act**[22] provides that the purpose of the Act, amongst others, is to promote freedom of association and expression in labour relations [section 4(1) (c)].
- The Industrial Relations Act has been supplemented by the promulgation of the **Code of Good Practice for Industrial and Protest Actions** adopted in 2015 and published through **Legal Notice No. 202 of 2015**. This Code was drafted under technical assistance received from the ILO and subsequent to

[21] Section 32

[22] No. 1 of 2000 (as amended),

comprehensive consultations with the tripartite constituent partners as well as other departments, including Municipal Councils, the Royal Eswatini Police Service, the Correctional Services Department, the Conciliation, Mediation and Arbitration Commission (CMAC) and Humanitarian Organizations, amongst others.

128. The main objectives of the Code are contained in Article 3(2) and these are to:

a. provide a framework for the orderly and peaceful conduct and management of protest and industrial actions;
b. regulate the conduct of the Parties during the protest and industrial actions; and
c. promote public order, safety and industrial harmony to ensure that the right to protest and industrial action is respected.

129. Through technical assistance received from the ILO, several workshops have been held to capacitate numerous key stakeholders on the purposes and spirit of the Code. These capacity building sessions are still on-going. Stakeholders who have already benefitted from these advocacy workshops include the leadership of the labour formations (that is, both workers' and employers' federations in the country), Municipal Councils, Police and Correctional Services Staff, Humanitarian Organizations (Red-Cross), Politicians (that is, Portfolio Committee Members for the House of Assembly and House of Senate), amongst others. Judges and Prosecutors will be considered for inclusion in due course in these capacity-building workshops on the Code.

- **Public Order Act 12 of 2017** which is supplemented by a **Code of Practice on Gatherings Notice 201 of 2017**, ensure that any restriction on the exercise of the right to freedom of expression, association and peaceful assembly by any person or group of persons (including labour formations), complies with the strict requirements of the Constitution. This is because, for several years, the 1963 Public Order Act was impugned for its apparent infringement on the exercise of the right to association, expression and assembly. The 1963 Act has since been repealed by the recently adopted legislation regulating gatherings and events

held in a public space, including protest and industrial actions.

130. It suffices to mention that in promulgating this law, the country received technical assistance from the ILO who engaged a highly skilled Consultant from the Republic of South Africa to prepare the draft legislation. The ILO commented on the draft legislation together with civil society and other development partners of the country, something which rendered the final draft legislation to be a product of extensively wide consultations and input. The Code of Practice on Gatherings has since been made part of the advocacy workshops in line with the Code of Practice for Industrial and Protest Actions.

131. During the 2018 regular reporting cycle in terms of **Article 22** of the **ILO Constitution** to the **ILO Committee of Experts on Application of Conventions and Recommendations (CEACR)**, the country has been reporting about the status of implementation of the two (2) fundamental or core Conventions of the International Labour Organization mentioned hereinabove, being **Conventions 87 and 98**, respectively. When filling its Article 22 reports for Conventions 87 and 98 in October 2018 and under separate cover, the State Party comprehensively dealt with the allegations of violations of Union's rights to peaceful assembly and protest action which was mentioned in the CSO assessment.

132. **The Police Act No. 22 of 2018** seeks to ensure that Human Rights principles are observed by Police officers. The Police Act incorporates law enforcement objectives from section 57 of the Constitution of the Kingdom of Eswatini 2005, as guiding principles and values of the organisation in section 10. The Police Act makes actions of police officers that violate human rights offences that are subject to disciplinary action. To ensure that members of the Police Service adhere to human rights principles, Police recruits and officers are taught a module on human rights. Furthermore, the Directorate of Legal Affairs in the Police Service ensures that lectures are conducted periodically to all Police officers in their respective Police

Stations on the protection of human rights.

133. The Public Service Act 16 of 2015 has recently been enacted, it allows civil servants to form and/or join trade unions. There are no legislative restrictions on the right to form and join a trade union, except for members of the Disciplined or Armed forces who are only entitled to form staff associations.

Judicial measures

134. Discussed below are Court decisions having a bearing on the freedom of association

Table A7: Cases on freedom of association

Case	Facts	Decision
Minister of Labour and Social Security and Another v National Public Service & Allied Workers Union And 3 Others (15/2019) [2019] SZIC 63 (29 July 2019)	The Applicant instituted legal proceedings to interdict and restrain Respondents members from participating in a strike in accordance with Section 89 (1) of the Industrial Relations Act 2000 (as amended). . The questions for determination was whether strike action threathened or affected national interest	The court held that the Applicant was entitled to approach the Court, given that the Respondents had introduced a new issue regarding the strike, through their statement. In the circumstances, it cannot be said that the Court is precluded from addressing the Applicant's concerns which have never come before the Court previously. The court further held that strike action had been tainted by the statement issued by the Respondents.The strike seized to be in the interest of labour relations but of a political interest.

Attorney General (N.O) V National Public Service Allied Workers Union and Another Industrial Court Case No.298/2018	The Applicant instituted legal proceedings against the Respondents on the grounds that 1st Respondent's strike notices did not comply with the requirement of Section 86 of the Industrial Relations Act. Furthermore, the Applicant raised the fact that there was no constitutionally established government at the time to whom a demand was directed through the strike action in accordance with section 2 of the Industrial Relations Act.	The Court held that the strike proposed by the 2nd Respondent (SNAT) is lawful. The Strike proposed by 1st Respondent (NAPSAWU) is unlawful due to insufficient notice given to government (Applicant) as required by section 86(8) of the Industrial Relations Act 1/2000(as amended). The court further held strike that is proposed by (2nd Respondent) though lawful is hereby deferred to 23 November in order to give the New Government of the kingdom of Eswatini a chance to deal with the unions demands. Should it become necessary for the Respondents to commence the strike action, they shall give government new dates after the 23rd November 2018.
Swaziland Police Union and Another v Commissioner of Police and Others (341/07; 764/07) [2008] SZHC 114 (29 April 2008)	The Applicants applied to the Commissioner of Labour (the 4th Respondent) to register their respective unions under section 32 of the Constitution of Eswatini 2005 as read with section 27 of the Industrial Relations Act 2000 (IRA). The Commissioner of Labour declined to register the Unions citing section 3 of the Industrial Relations Act which excludes the police from the application of the IRA.	The Court held section 3(b) and (c) of the Industrial Relations Act 2000to be inconsistent with section 32 (b) of the Constitution and invalid.
Sithole NO and Others v The Prime Minister and others (35/2007)[2008] SZSC 22 (23 May 2008)	Appellannts sought an order to strike down and declare null and void the entire Constitution of the Kingdom of Swaziland which came into existence on 26 July 2005. As an alternative the Appellant sought an order directing the Government of Swaziland to convene a Constitutional assembly, national convenetion or other democretatic instution, broadly representatives of Swaziland Society to discuss the	Court reffered to the Preamble of the present Constitution wherein it reads ..whereas the Constitution in draft form was circulated in both languages and vetted by the people at Tinkhundla and Sibaya meetings. Now therefore on approaval of the swazil nation hereby accepts the following Constitution as the supreme

	Constitution and to consider oral and written represeantation in regard to it in order to "facilitate the adoption of a legitimate final Constitution by His Majesty and the People of Swaziland".	law of the land. The Court therefore held that were this Court to strike down the Constitution, the 1973 King's Proclamation would then become the supreme law of the land. The people of Swaziland, as set out above, have accepted their Constitution, created by themselves for themselves, as the supreme law of the land. The Court therefore declined to strike down the Constition.

Challenges

135. The state party's political system is a democratic, participatory , tinkhundla based system which emphasis devolution of state powers from central government to tinkhudla areas and individual merit as a basis for election or appointment to public office . This system of governance (preferred by most Emaswati) precludes political parties from constesting in election or appointmet to public office. See the case *of Sithole NO and Others v The Prime Minister and others (35/2007)[2008] SZSC 22 (23 May 2008).*

Mitigating measures

136. The electoral system does not bar people from organizing as political parties. Members of political parties can contest in elections, albeit on an individual basis and not as party candidates and can , therefore, exercise their rights to freedom of association and to political participation.

ARTICLE 12: FREEDOM OF MOVEMENT

Constitutional measures

137. The Constitution protects this right as follows:

S26. (1) A person shall not be deprived of the freedom of movement, that is to say, the right to move freely throughout Eswatini, the right to reside in any part of Eswatini, the right to enter Eswatini, the right to leave Eswatini and immunity from expulsion from Eswatini.

(2) Any restriction on the freedom of movement of a person or residence that is involved in the lawful detention of that person shall not be held to be inconsistent with or in contravention of this section.

(3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision -

(a) for the imposition of restrictions on the movement or residence within Eswatini of any person or on the right of any person to leave Eswatini that are reasonably required in the interests of defence, public safety or public order;

(b) for the imposition of restrictions on the movement or residence within Eswatini of persons generally or any class of persons that are reasonably required in the interests of defence, public safety, public order, public morality or public health, and except so far as that provision or, as the case may be, the thing done under the authority of that law is shown not to be reasonably justifiable in a democratic society;

(c) for the imposition of restrictions, by order of a court, on the movement or residence within Eswatini of any person or on the right of any person to leave Eswatini either in consequence of having been found guilty of criminal offence under the law of Eswatini or for the purpose of ensuring the appearance of that person before a court at a later date for the trial of such a criminal offence or for proceedings preliminary to trial or for proceedings relating to the extradition or lawful removal from Eswatini of that person;

(d) for the imposition of restrictions on the freedom of entry or movement of any person who is not a citizen of Eswatini;

(e) for the imposition of restrictions on the movement or residence within Eswatini of any person who holds or is acting in any public office;

(f) for the removal of a person from Eswatini to be tried or punished in some other country for criminal offence under the law of that other country or to undergo imprisonment in some other country in execution of the sentence of a court in respect of a criminal offence under the law of Eswatini of which that person has been convicted; or

(g) for the imposition of restrictions on the right of any person to leave Eswatini that are reasonably required in order to secure the fulfilment of any obligation imposed on that person by law.

(4) If any person whose freedom of movement has been restricted by virtue of such a provision as is referred to in subsection (3)(a) so requests at any time during the period of that restriction not earlier than three months after the order imposing that restriction was made or three months after he last made such a request, as the case may be, the case of that person shall be reviewed by the Commission on Human Rights and Public Administration.

(5) On any review by a tribunal in pursuance of subsection (4) of the case of any person whose freedom of movement has been restricted, the tribunal may make recommendations concerning the necessity or expediency of continuing that restriction to the authority by whom it was ordered and, unless it is otherwise provided by law, that authority shall be obliged to act in accordance with any such recommendations.

(6) Nothing contained in or done under the authority of any provision of Eswatini law and custom shall be held to be inconsistent with or in contravention of this section to the extent that that provision authorises the imposition of restrictions upon the freedom of any person to reside in any part of Eswatini.

138. Chapter IV of the Constitution regulates the procedures of acquisition and loss of citizenship.

Legislative measure

139. Freedom of Movement is protected through several legislations, that is:

- **The Immigration Act 17 of 1982** which seeks to provide for immigration procedures.
- **Citizenship Act 14 of 1992** which spells the procedures for acquiring Eswatini citizenship.
- **Refugees Act 15 of 2017**, seeks to provide for the recognition, protection, assistance and control of refugees by giving effect to the 1951 Convention Relating to the Status of Refugees, the 1967 Protocol Relating to the Status of Refugees and the 1969 Convention Governing the Specific Aspects of Refugee Problems in Africa.
- **CP&E Act 67 of 1938**, to regulate procedure and evidence in criminal cases.
- **Eswatini Administration Act 79 of 1950** which consolidates the law relating to the administration of Eswatini Affairs.

Administrative measures

140. The State Party has guaranteed the right to movement and residence in any part of the country. As a result, Emaswati have the right to apply and to be issued with a travel document or passport to travel in and out of the country. The State Party is in the

process of brokering long term bilateral agreements with its neighbours; The Republic of South Africa and Mozambique to make borders open 24 hours.

141. On the same breath, refugees and asylum seekers have the right to establish themselves in any part of the country and to leave the country if they so desire.

Challenges and mitigating measures

142. Emaswati may from time to time be resettled in other parts of the country to give way to capital projects which are aimed at the advancement of every Liswati. Whenever people are resettled, they are provided with land and /or new buildings or homes.

ARTICLE 13: RIGHT TO PARTICIPATE IN GOVERNMENT

Constitutional measures

143. Political objective section 58(1) of the Constitutions provides as follows:

S58. (1) Eswatini shall be a democratic country dedicated to principles which empower and encourage the active participation of all citizens at all levels in their own governance.

S79. The system of government for Eswatini is a democratic, participatory, Tinkhundla based system which emphasises devolution of state power from central government to Tinkhundla areas and individual merit as a basis for election or appointment to public office.

S84. (1) Subject to the provisions of this Constitution, the people of Eswatini have a right to be heard through and represented by their own freely chosen representatives in the government of the country.

(3) Without derogating from the generality of the foregoing subsection, the women of Eswatini and other marginalized groups have a right to equitable representation in Parliament and other public structures.

S85. (1) Subject to the provisions of this Constitution, every Eswatini or person ordinarily resident in Eswatini has a right to vote at any election of members of the House or members of the Bucopho.

(2) A person is not entitled to vote in terms of subsection (1) if that person is for any reason unable to attend in person at the place and time prescribed for polling except as it may otherwise be prescribed.

(3) A person shall not vote at any election in terms of this section except at an inkhundla where that person is registered as a voter unless a special polling arrangement has been prescribed.

(4) A person is not entitled to stand as a candidate for election in terms of this section or section 86 unless that person is registered as a voter in that inkhundla or Region.
S86. (1) Where at the first meeting of the House after any general election it appears that female members of Parliament will not constitute at least thirty per centum of the total membership of Parliament, then, and only then, the provisions of this section shall apply.
(2) For the purposes of this section, the House shall form itself into an electoral college and elect not more than four women on a regional basis to the House in accordance with the provisions of section 95(3).

Electoral Model

144. Eswatini's political system is called Tinkhundla. Under this system specifically, everyone has a right to vote in terms of the Constitution,[23] the system of governance is democratic, participatory, constituency-based[24] and the life of Parliament shall be five years.[25]

145. Voting is by secret ballot[26] and it is maybe emphasized that although Section 79 of the Constitution declares that a person shall be elected or appointed into public office on the basis of individual merit, this individual represents the constituency and is supposed to serve the entire community.

146. The National Elections legislative framework includes the Elections and Boundaries Act,[27] **Voter Registration Act**,[28] **Elections Expenses Act**,[29] **Elections Act**,[30] **Senate (Elections) Act**,[31] **Election of Women Members to the House of Assembly Act 9 of 2018** and the **Parliament (Petitions) Act**.[33] These laws regulate and clearly articulate the conduct of elections in the country.

[23] Section 85(1).
[24] Section 79.
[25] Section 134 (2).
[26] Section 87.
[27] No.7 of 2013.
[28] No.8 of 2013.
[29] No.9 of 2013.
[30] No.10 of 2013.
[31] No.11 of 2013.
[33] No.12 0f 2013.

Administrative measures

147. The National elections are managed by the Elections and Boundaries Commission (EBC), an independent Commission, established and mandated in terms of the Constitution,[32] and **Elections and Boundaries Commission Act of 2012**. In addition, the EBC conducts Civic Voter education to sensitize members of the public on the electoral process before elections are administered. Civic and voter education aims, *inter alia*;

- To capacitate citizens on their roles and obligations as active citizens in the electoral process;
- To empower citizens to be well informed on governance and democracy and their rights so to make informed decisions and elect effective leaders;
- To raise awareness of the importance of citizens actively participating and contributing to issues of development.

148. Prior to 2013 and 2018 National elections civic and voter education exercise was conducted in 335 Chiefdoms/Polling Divisions countrywide and in other forums using a comprehensive Civic and Voter Education Manual.

149. The rollout plan targeted a number of stakeholders which included, the youth (*Imbali*,[33] *Emajaha*[34]) Woman Organisation, Religious Leaders, People with Disability, Media practitioners, Security Forces (His Majesty's Correctional Services, Royal Eswatini Police, Umbutfo Eswatini Defence Force), Inmates, Scouts, Brigades, Schools, Private Sector, Industrial Training Colleges, Emergency Preparedness and Response, Fire And Emergency Services, Government officials, and Civil Society Organization.

150. In carrying out the exercise EBC partnered with the Media, Business Community, Traditional Leaders, Eswatini National Youth Council and Non-governmental Organisations such as FODSWA for People with Disability and Women and the Law.

[32] Section 90.

[33] Girls and young women are traditionally organized as *Imbali* – Flowers.

[34] Boys and young men are traditionally organized as *Emajaha* – Warriors.

Voter registration

151. Voter registration in 2008 and 2013 has been constantly on the increase rising from 58% to 69% respectively. This was based on 2008 national Statistics Data which had approximately 600, 000 eligible voters above the age of 18 years.

Table B: Registered voters for the year 2008 & 2013 disaggregated in terms of sex

Year			
	Male	Female	**Total**
2008	157,484	197,023	**349,507**
2013	193,171	221,533	**414,704**

152. The 2018 national voter registration exceeded previous records by reaching 90% of the estimated eligible voter population.

Table B1: Registered voters for the year 2018 disaggregated in terms of age and sex

Age group	Gender		Grand total
	Male	**Female**	
18- 35	-	-	297278
35-59	-	-	191112
60 and above	-	-	59036
Total	**255,165**	**291,619**	**546,784**

153. Voter turnout has also been consistent over the past elections ranging between 58% and 60 % in all stages.

Table B2: No of registered voter vs voter turnout: Secondary Elections 2008, 2013 & 2018

Year	Registered voters	Voter turn out	Percentage
2008	349,507	201,339	58%
2013	414,704	251,278	61%
2018	546 784	330 791	60%

Table B3: Number of appointees in the House Assembly and Senate disaggregated by sex

House of Assembly	Senate

Year	Gender		Year	Gender	
	Male	**Female**		**Male**	**Female**
2008	48	7	2008		
2013	61	4	2013	20	10
2018	64	9	2018	18	12

Political atmosphere

154. With regard to the non-participation of political parties in elections, a majority of Emaswati[35] expressed their preference of representation based on individual merit, as opposed to representation through political parties, as per the aspiration of Emaswati in the Constitution and reaffirmed during S*ibaya* in 2018 before the administration of national elections.

155. In this regard, anyone can contest in elections once they have the support of ten people, thereby giving each person equal chances of contesting for Parliament. Worth noting is that this is a 'homegrown' democratic political system for the Eswatini people, which enjoys the peoples' support and elections are keenly contested, as demonstrated for instance by the turnout in the last elections, which was about 60% of the registered voters. Notwithstanding this preferred political system, political parties do exist, and persons belonging to political parties participate freely in elections and have been elected to Parliament, although in their personal capacities and not on the platform of political parties.

Judicial measures

156. On participation of political parties in elections, the country system of governance (preferred by most Emaswati) precludes political parties from constesting in election or appointmet to public office however, individual members of political parties are able to contest in their personal capacities. This position is in line with the interpretation of

[35] Sibaya in 2018. Section 232 of the Constitution *(1)- The people through Sibaya constitute the highest policy and advisory council (Libandla) of the nation. (2) The Sibaya is the Eswatini National Council constituted by Bantfwabenkhosi, the tikhulu of the realm and all adult citizens gathered at the official residence of the Ndlovukazi under the chairmanship of iNgwenyama who may delegate this function to any official.*

section 79 by the Supreme Court in the case of ***Sithole NO and Others v The Prime Minister and others, SC 50/2008***. In this case, the Supreme Court pronounced that political parties were not allowed to field candidates because of the system of governance however, members of such parties could participate based on individual merit in accordance with the Constitution.

Challenges

157. The state party's political system is a democratic, participatory , tinkhundla based system which emphasis devolution of state powers from central government to tinkhudla areas and individual merit as a basis for election or appointment to public office . This sysyem of governance precludes political parties from constesting in election or appointmet to public office.

ARTICLE 14: RIGHT TO PROPERTY

Constitutional measures

158. The right to property protected by the Eswatini Constitution as follows:

S19. (1) A person has a right to own property either alone or in association with others.

(2) 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 contained in section 19 and Section 211 of the Constitution of Eswatini.

S211. (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 iNgwenyama in trust for the Eswatini Nation as it vested on the 12th April 1973.

(2) Save as may be required by the exigencies of any particular situation, a citizen of Eswatini, without regard to gender, shall have equal access to land for normal domestic purposes.

(3) 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.

(4) Subject to subsection (5), all agreements the effect of which is to vest ownership in land in Eswatini in a non-citizen or a company the majority of whose share-holders are not citizens shall be of no force and effect unless that agreement was made prior to the commencement of this Constitution.

(5) A provision of this chapter may not be used to undermine or frustrate an existing or new legitimate business undertaking of which land is a significant factor or base.

Legislative measures

159. It must be noted that property is classified as movable and immovable property.

- **Administration of Estates Act 28 of 1902 -** to regulate the administration of the estates of deceased persons, minors, and of persons of unsound mind, and of derelict estates.
- **Intestate Succession Act of 1953 -**to regulate the interstate succession.
- **The Crown Lands Act No. 9 of 1949 -** to proclaim certain areas of land in the Kingdom of Eswatini to be Crown lands.
- **Crown Lands Disposal Act 1911 –** to dispose of the land to the citizenry**.**
- **The Acquisition of Property Act 10 of 1961 -** to make provision for authorising the acquisition of property for public and other purposes and for settling the amount of any compensation to be paid or any matter indifference.
- **The Theft of Motor Vehicle Act 16 of 1992 - to** provide for the offence of theft of motor vehicles.
- **The Farm Dwellers Control Act No. 12 of 1982** - to regulate and control relations between owners of farms and other persons residing on such farms.
- **The Roads and Outspans Act 40 of 1931** - makes provision for the establishment of Public Roads and Outspans, and to provide for the establishment of Road Boards.

160. Immovable property in Eswatini is categorized as privately-owned land (Title Deed land) and Eswatini Nation Land (ENL). Title deed land is regulated by the Deeds Registry Act 37 of 1968 and is administered by the Ministry of Natural Resources and Energy – Deeds Department. ENL is regulated through Eswatini Law and Custom and is administered by Chiefs in terms of section 233 of the Constitution.

161. Section 211 of the Constitution declares that all land (including any existing concessions) in Eswatini, save privately held title-deed land; vest in the King (*iNgwenyama)* in trust for the Eswatini Nation. It further affirms that a citizen of Eswatini, without regard to gender, shall have equal access to land for normal domestic purposes and cannot be deprived of land without due process of law.

Administrative measures

162. The Constitution establishes a Land Management Board[36] which is responsible for the overall management and regulation of any right or interest in land whether urban or rural or vesting in iNgwenyama in trust for the Eswatini Nation.

163. The Sustainable Land Administration and Management (SLAM) project is spearheaded by the Government in partnership with the European Union. It commenced in 2016 and is scheduled to end in 2019. The project aims at strengthening the administration of Eswatini Nation Land including making land-related information more widely accessible and utilized. Information on ENL holdings will inform the process of defining the 385 chiefdom areas in Eswatini.

164. Four *tinkhundla* were selected to pilot a system of recording past land allocations and present-day use that will provide clarity and greater certainty on landholdings. The project also seeks to help farmers, especially women, to make a living and feed their families. It is therefore required to ensure that guidelines and voluntary processes are embedded into local practice and governance, national policies and eventually into legislation.

165. The SLAM project has the overall objective, that is; to improve the security of tenure and access to land for the rural poor, thereby improving food security. The purpose is to provide tools and capacities for sustainable land administration and management at the national, regional and chiefdom level.

[36] Section 212, National Constitution of the Kingdom of Eswatini Act 2005.

166. Government agencies that are responsible for the implementation of this project are the Ministry of Natural Resources and Energy, Ministry of Agriculture, Ministry of Tinkhundla Administration and Development and Land Management Board.

167. Further, the project provides for Alternative Dispute Resolution which will rope in the Conciliation, Mediation and Arbitration Commission (CMAC). CMAC is an independent body established by law to provide conciliation, mediation and arbitration services to stakeholders. In addition to helping resolve various types of disputes, CMAC will provide training in dispute resolution methods.

168. In 2017, project stakeholders agreed that the most appropriate form of Alternative Dispute Resolution for ESNL is mediation, and guidelines have been prepared for conducting land dispute mediation at the local and chiefdom level.

Judicial measures

169. The High Court has jurisdiction to deal with cases in which the right to property has been infringed. Some of the cases which the High Court of Eswatini has adjudicated on are illustrated in the table below:

Table C: Cases on the right to property

Case	Facts	Ruling
***Tsabedze & Others v Swaziland National Provident Fund & Others* (1400/11) [2011] SZHC 30 (12 June 2011);**	The applicants in this matter approached the High court seeking, *inter alia*, an interdict preventing the respondents from evicting 140 schoolchildren and from demolishing their homesteads. The applicants argued that the evictions were arbitrary and contravened s 18 and 29 of the Eswatini Constitution and that such evictions were a threat to the education of their children.	The Court held that the rights of children did not supersede the rights of the property owners. Therefore, the court held that the applicants failed to establish the requirements of an interdict and the rest of the orders they were seeking. The matter was dismissed

***Dandane Malinga v Patrick Myeni & 3 Others* (786/2014) [2014] [SZHC 209] (24 October 2014)**	The Applicant (Farm dweller) instituted legal proceedings for an order declaring the eviction and demolition of her homestead as unlawful as it was not authorized by a Court of law nor a body that has authority to make such orders. Further, the eviction was unlawful as it was not in accordance with Section 10 (1)d(i) and (ii)of the Farm	The Court held that the Applicant was entitled to an Order setting aside the eviction and the demolition of her homestead. The Court further held that 1st Respondent rebuild the Applicant's house or houses in the order to put her back in the position she would have
	Dwellers Act of 1982 in that no reasonable alternative accommodation for the applicant was available nor reasonable arrangements have been made by the owner to pay compensation to farm dweller.	been but for the demolition.
***Umbane Limited v Sofi Dlamini and Three Other [*2013] SZSC 25**	Appellant was a registered owner of the property (farm) having purchased same from Usuthu Pulp Company. When Appellant acquired the property, Respondents were already resident in the property and had temporary structures as dwellings. Appellant sought ejectment from property, respondents cited prescriptive acquisition as a Defence. The court a quo ruled in favour of the respondents and order of ejectment dismissed.	On Appeal the decision of the Court a *quo* was overturned: the defence of acquisitive prescription defeated by the fact that Respondents occupied the Suitland with the permission of the previous owner NB: issue of compensation as per S19 (2) of the Constitution were not part of the case.

I) Access to land by women

170. Section 211(2) provides that all citizens of Eswatini have access to land regardless of gender. Post Constitution, some Chiefdoms still followed the traditional system of land allocation (*kukhonta*). This meant that women only accessed land through males which could be their husbands, male relative or male child. For some women who were unmarried or widowed, access to land was a struggle. It is worth mentioning that there is a paradigm shift from the patronage system. Chiefs are now aware of the Constitutional

rights of women thus land is now accessible to women without the assistance of a male.[37]

171. Access to Tittle Deed Land has also been a challenge to women married by Civil Rights in Community of Property. These women were subjected to their husbands' marital power even when there were eligible to apply for credit to purchase land, required their husband's consent to do so. Where consent has been secured and land purchased, such land could not be registered in their joint names but in the name of their husbands thus removing ownership and control over the land. Section 16 of the Deeds Registry Act 37 of 1968 precluded women married in community of property to register the property in their own names. This position has been changed by the amendment of the Deeds Registry Act in 2012 and the Sacolo judgment of 2019 (discussed under judicial measures) to give effect to the rights of women married in community of property to own and administer land and have it registered in their own names.

ii) Evictions

172. The Kingdom has received a communication from the Chairperson of the working group on Economics, Social and Cultural Rights (ECOSOC) of the African Commission on Human and Peoples Rights, dated 12 November 2018 with a reference number; ACHPR/LPROL/SM/WGESCR/1714 (A)/18. The communication brings to the attention of the Government of Eswatini the Commissions concerns regarding forced evictions happening in Eswatini and reminds our Government of the commitment she made to promote, protect and fulfil human rights contained in the International/Regional Conventions she ratified. Thereafter, the Commission requested the Kingdom to address the human rights concerns relating to evictions.

173. The government of Eswatini responded to the concerns. For brevity purposes, we beg the leave to attach or incorporate the government's response in this report, annexed

[37] The Commission for Human Right Report 2018.

hereto marked “ACHPR 1”.

Challenges and mitigating measures

174. Despite the provisions of section 211 of the Constitution read together with the right to equality it is conceded that the practice requiring women to acquire property through a male relative still exists in some chiefdoms. As a response and a corrective measure to this challenge, the Deputy Prime Ministers Office together with NGOs have put in place programs to address this issue through community leadership and traditional leaders’ sensitisation meetings and workshops on the rights of women as postulated by the Constitution and the ACHPR.

175. Concerning women’s right to administer the property of their deceased husbands, there is a conflict between customary law and the Roman-Dutch Common Law; hence a draft Administration of Estates Bill has been developed to ameliorate this conflict. In terms of Eswatini Law and Custom, the administration of deceased husband’s estate is transferred to the first-born son, whereas, under the Roman-Dutch Common Law, it is possible for a widow to take charge of her husband’s property.

176. Government is working with relevant stakeholders including the Commission on Human Rights in an effort to identify and implement solutions that will systematically address the issues on evictions.

ARTICLE 15: RIGHT TO WORK UNDER JUST AND EQUITABLE CONDITIONS

Constitutional measures

177. The Constitution protects this right as follows:

Section 32. (1) A person has the right to practise a profession and to carry on any lawful occupation, trade or business.
(2) A worker has a right to –
(a) freely form, join or not to join a trade union for the promotion and protection of the economic interests of that worker; and (b) collective bargaining and representation.

(3) The employer of a female worker shall accord that worker protection before and after childbirth in accordance with law.

(4) Parliament shall enact laws to -

(a) provide for the right of persons to work under satisfactory, safe and healthy conditions;

(b) ensure equal payment for equal work without discrimination;

(c) ensure that every worker is accorded rest and reasonable working hours and periods of holidays with pay as well as remuneration for public holidays, and (d) protect employees from victimisation and unfair dismissal or treatment.

Section17. (1) A person shall not be held in slavery or servitude.

(2) A person shall not be required to perform forced labour. (3) For the purposes of this section, the expression "forced labour" does not include any labour –

(a) required in consequence of the sentence or order of a court;

(b) required of any person while that person is lawfully detained which, though not required in consequence of the sentence or order of the court, is reasonably necessary in the interests of hygiene or for the maintenance of the place at which that person is detained;

(c) required of a member of a disciplined force in pursuance of the duties of that member or, in the case of a person who has conscientious objections to service as a member of a naval, military or air force, any labour that that person is required by law to perform in place of that service;

(d) required during a period of public emergency or in the event of any other emergency or calamity that threatens the life or well-being of the community, to the extent that the requiring of that labour is reasonably justifiable in the circumstances of any situation arising or existing during that period or as a result of that other emergency or calamity, for the purpose of dealing with that situation; or (e) reasonably required as part of reasonable and normal parental, cultural, communal or other civic obligations, unless it is repugnant to the general principles of humanity.

Legislative measures:

178. Labour and employment relations are governed by the following pieces of legislation:

- **Employment Act 5 of 1980 as amended** - aims to consolidate the law in relation to employment and to introduce new provisions designed to improve the status of employees in Eswatini. Section 27 provides, no contract of employment shall provide for any employee any less favourable conditions than is required by law. Any

condition in a contract of employment which does not conform to this Act or any other law shall be null and void, and contracts shall be interpreted as if that condition has substituted the appropriate condition required by law.

Employment of children:

Section 97. (1) No person shall employ any child in any industrial undertaking other than —

(a) an industrial undertaking in which only members of his immediate family are employed;

(b) a technical school under the supervision of a teacher or person authorised by the Minister responsible for Education;

(c) an industrial undertaking which is not being conducted for commercial profit and where the work is essentially of an educative character approved as such by the Labour Commissioner in writing.

(2) No person shall employ any child in any undertaking —

(a) during school hours;

(b) between the hours of 6.00 p.m. of one day and 7.00 a.m. of the following day;

(c) for more than six hours in any one day;

(d) for more than 33 hours in one week;

(e) for more than four hours continuously, without an interval of at least one hour for a meal or rest.

(3) In this section "school-hours" means the school hours prescribed in accordance with the Education Act, 1964.

The exaction of forced labour prohibited.

Section 145 of the Employment Act of 1980 as Amended provides that any person who exacts or imposes forced labour or causes or permits forced labour to be exacted or imposed contrary to this Part shall be guilty of an offence and liable to a fine of five hundred Emalangeni or to imprisonment for six months.

Penalty for official coercion.

Section 147 of the Employment Act provides that any person who, acting in his official capacity, puts any coercion upon the population under his charge, or upon any individual members of such population to work for any private individual, company or association shall be guilty of an offence and liable to a fine of not exceeding three thousand Emalangeni or to imprisonment not exceeding one year or both. (Amended A.5/1997.)

- **The Industrial Relations Act of 2001** (as Amended) seeks to provide for the collective negotiation of terms and conditions of employment and for the provision of dispute resolution mechanisms and for matters incidental thereto. These laws were enacted to improve status of workers, provide for the collective negotiation of terms and conditions of employment and also provide dispute resolution mechanisms.

  Section 98. An employee may —
  (a) take part in the formation of any trade union or staff association or federation as the case may be;
  (b) be a member of any trade union or staff association and take part in its lawful activities outside working hours or, with the consent of the employer, within working hours;
  (c) hold office in any trade union, staff association or federation; (d) take part in the election of workplace trade union representative or staff association representative, or be a candidate for such election; (e) in the capacity of the workplace trade union representative or staff association representative;
  (f) exercise any right conferred or recognized by this Act, and assist any employee, staff association or trade union to exercise such rights.

- **Workman's Compensation Act of 1983** – seeks to provide for the compensation and medical treatment of workmen who suffer injury or contract disease in the course of their employment.
- **Wages Act 16 of 1964** – seeks to provide for the establishment of a Wages advisory Board and wages councils and otherwise for the regulation of the minimum wages and conditions of employment of employees.
- **Occupational Safety and Health Act 9 of 2001** - to provide for the safety and health of persons at work and at the workplace and for the protection of persons other than persons at the workplace against hazards to safety and health arising out of or in connection with the activities of persons in the workplace.
- **Children's Protection and Welfare Act of 2012**.
  Section 232 provides that no person shall engage a child in exploitative labour and exploitative labour is defined in the act as any labour that deprives or hinders the child access to health, education or development.[38]

[38] See also section 98 of the Employment Act of 1980 as Amended.

Judicial measures

179. The **Industrial Act of 2000** (as amended) establishes an Industrial Court which has jurisdiction over labour disputes touching upon industrial relations and employeremployee relations. Further, a labour dispute resolution mechanism which is the Conciliation Mediation and Arbitration Commission (CMAC) has been put in place, and this Commission has regional offices.

Table C1: Cases on the rights of workers

Case	Facts	Ruling
***Swaziland Government v Swaziland National Association of Civil Servants & Others* 156/07[2000] SZIC 28**	Applicant instituted legal proceedings for an order interdicting Respondents or their members from reporting disputes/ grievances to CMAC in relation to a Job Evaluation and Salary Restructuring exercise. The application was based on the fact that the Respondents had unanimously accepted and adopted a report on the implementation of the exercise in a Joint Negotiation Team meeting. Such adoption precluded themselves or employees they represented from raising any further dispute in relation to the exercise.	The application was dismissed on the basis that an Employer shall not restrain or seek to restrain an employee from exercising any right conferred or recognized by the Industrial Relations Act – S.100.

Swazila Corporation Developiland Finance Finanand v. of and InstitutiWorkers Allied otl **(394/2C189 [SZHC 2016] [2017]**	The Applicant and Respondent were negotiating the cost of living adjustment for the Applicants employees. The Respondent tabled a demand of 10.5% and later revised it to 9.5% and Applicant offered 4.96% as mandated by Standing Committee on Public Enterprise (SCOPE) but could not get a revised mandate. Applicant invoked Section 10 (1)(e) of the Public Enterprise Act (Control and Monitoring) Act, 1989 which precludes public enterprise from making major adjustments to the level of structure of staff salaries and wag es or other terms and conditions of service of its staff without approval in writing of the Minister responsible acting in consultation with SCOPE. The Union alleged that Section 10 of the PE Act limits their rights to Collective bargaining and therefore contrary to Section 32(b) of the Constitution.	The Court held that there was nothing in the wording of Section 10(1)e of the PE Act that may be construed as inconsistent with the Section 32(2) of the Constitution as to affect the employees right to full collective Bargaining.
Nomsa Sigudla v Standard Bank Swaziland Ltd & Another **ase No.4050**	Applicants had their employment terminated before they finished their probation period.	The Court held that these Sections are not

consolidated with *Joseph Sibandze and 9 others vs Prime Bakeries Pty Ltd* Case No. 1717 /2015 [2016] SZHC119*(23 September 2016)*- unreported	Applicants filed an application for unfair dismissal and the respondents based their defence on Section 32 and 35 of the Employment Act No5/1980. Applicants challenged these two sections and contended that they are inconsistent with Sections 20 and 21 of the constitution Act 1/2005.	inconsistent with the aforementioned sections of the Constitution. The court held further that Section 35(1) of the Employment Act is inconsistent with Section 14(1) of the Constitution and therefore Parliament to amend this Section within twelve months from date of judgement.

Administrative measures in place

180. The Kingdom of Eswatini has ratified a number of the International Labour Organizations Conventions which demonstrate commitment in ensuring the full enjoyment of workers' rights. These include ILO Forced Labour Convention, Equal Remuneration Convention, Abolition of Forced Labour Convention, Discrimination (Employment and Occupation) Convention, Freedom of Association and Protection of the Right to organize Convention, Worst Forms of Child Labour Conventions. These conventions have been domesticated to ensure compliance, enforcement and vindication of violated rights. The Employment and the Industrial Relations Acts have been amended to conform to the standards and provisions of the various Conventions.

181. The Department of Labour under the Ministry of Labour and Social Security is tasked with ensuring compliance with international, regional and national instruments relating to employment. This department performs spot-checks/inspections as per sections 9 & 11 of the Employment Act 1980 in the workplace establishments periodically. Any perpetual non-compliance is referred to the Director of Public

Prosecutions (DPP) for criminal prosecution.

182. The government in consultation with the stakeholders developed the National Action Programme on the Elimination of the Worst Forms of Child Labour (NAP-WFCL). The implementation of this Action Programme is monitored or supervised by a multisectoral task team involving, inter alia, the Social Welfare Unit under the Deputy Prime Minister's office, UNICEF, Anti-Human Traffic Department under the Prime Minister's Office and the Child Labour Unit within the Ministry of Labour and Social Security (Department of Labour). This unit also ensures coordination, implementing and monitoring of child labour related activities.

183. The country established specialized labour dispute resolution agencies for victims of unfair dismissals and related unfair labour practices to vindicate their rights. These are the Conciliation, Mediation and Arbitration Commission (CMAC) and the Industrial Court. CMAC is established in terms of Part VIII of the Industrial Relations Act, to provide speedy, cost-effective, fair and equitable dispute resolution services for all parties involved in the labour market. The establishment of CMAC was meant to enable everyone to access justice without being hindered by financial constraints since legal representation is not a requirement for both the reporting and prosecution of labour disputes at CMAC. In terms of Section 17(1) of the Industrial Relations Act, an arbitrator at CMAC has all the remedial powers of the Industrial Court referred to in Section 16.

184. The Industrial Court, on the other hand, is established in terms of Section 6 of the Industrial Relations Act, effectively *"for the furtherance, securing and maintenance of good industrial or labour relations and employment conditions in Eswatini."* The Industrial Court is an alternative to CMAC in that it allows disputants who pursuant to conciliation/mediation opt not refer the unresolved dispute to arbitration.

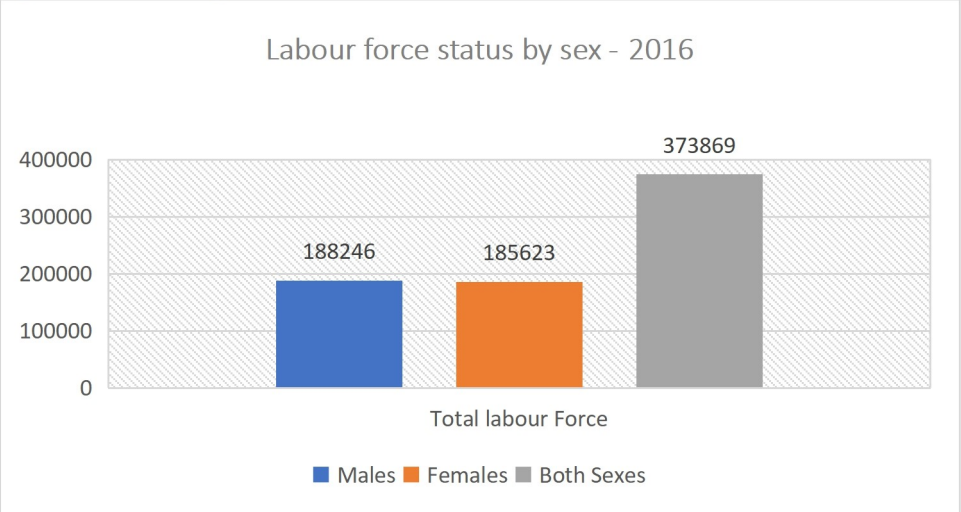
185. Moreover, in terms of Section 11, the Industrial Court is not strictly bound by the rules of evidence or procedure which apply in civil proceedings and may disregard

technical irregularity which does not or is not likely to result in a miscarriage of justice.

186. In ensuring that economic exploitation of vulnerable and disadvantaged groups is avoided, the Employment Act provides for "Equal Pay for Equal Work" in an effort to eliminate any discrimination in respect of pay or remuneration on the basis of gender. There is a positive trend on equal opportunity and treatment in employment; the country recorded 0.05% from 0.25% in 2013.[39]

187. Figure 2 below shows the working-age population for both sexes to be 373 869 persons which is equivalent to 50.6 per cent of the working-age population is in the labour force.[40]

Figure 2: Labour force status 2016[41]



188. The Government also amended the Industrial Relations Act, 2000 to allow for registration of workers and employer federations and thereby ensuring that workers and businesses enjoy the freedom of association as provided for under ILO Convention No. 87 concerning freedom of association and the right to organize. The amendment was effected through the promulgation of the Industrial Relations (Amendment) Act, 11 of 2014. Workers and Employer Federations have been duly registered and are part of the

[39] CSO The integrated labour force survey 2016.
[40] Ibid.
[41] Ibid.

social dialogue forum and are represented in all consultative fora where legislative and policy decisions relating to their socio-economic interest are taken. According to a Labour Survey Report of 2016, the union density had gone up from 21.4% in 2013 to

23.9% in 2016. This indicates a positive strength in the bargaining of workers terms and conditions of employment.

189. Acting in accordance with the ILO's recommendation to the effect that the Government of Eswatini gives the right to organize for Correctional Services employees, the Government has reviewed the law establishing the Correctional Services by, inter alia, including the right to organize for such employees in the amended Correctional Service law.

190. Further, the Government has also tabled in Parliament a Bill titled "Public Service Bill" which amongst other things seeks to strengthen collective bargaining in the Public Service and to improve service delivery. Similarly, this bill was drafted in consultation with tripartite constituencies and was reviewed by the ILO before being tabled.

191. In the Public Service, collectives bargaining mechanisms are placed centrally in a forum known as the Joint Negotiation Forum (JNF). The JNF constitutes the Government and trade unions representing public servants. Collective bargaining in the private sector takes place between an individual employer and a trade union at the plant level in terms of a recognition agreement concluded between the parties. Joint Negotiations Councils (JNC) are constituted for sectors of economic activity where employees provide a similar service.

Challenges and efforts to mitigate

192. The kingdom is facing a stagnant economic growth having an impact on job creation, thus resulting in unemployment. In an effort to alleviate this problem, the country has developed a Strategic Road Map 2018-2023 which identifies sectors of the economy that will have an impact on job creation amongst priorities.

193. Entreprenership courses within the education system have been introduced to encourage scholars to establish their business after completion of their studies.

Table C2: Employment and unemployment percentage by sex[42]

	Males	Females	Both Sexes
Employed Population	78.8	75.2	77.0
Unemployed Population	21.2	24.8	23.0

ARTICLE 16: THE RIGHT TO BEST ATTAINABLE STANDARD OF HEALTH

Constitutional measures

194. The Constitution of Eswatini categorises the right to health as a non-justiciable directive principle of state policy.

Section 60(8) the Constitution provides as follows: "The state shall take all practical measures to ensure the provision of basic health care services to the population."[43]*Section 30(1) Persons with disability have a right to respect and human dignity and the government and society shall take appropriate measures to ensure that those persons realise their full mental and physical potential.*
Section 30(2) Parliament shall enact laws for the protection of persons with disabilities to enable those persons to enjoy productive and fulfilling lives.

Legislative Measures

195. The following legislative measures have been adopted by the country to promote, protect and fulfil the right to best attainable standard of health:

- **The Public Health Act and Regulations 5 of 1969** makes provision to public health.
- **Mental Health Order 20 of 1978** – Establishes the Mental Hospital Board and outlines procedures for dealing with persons with mental health challenges.
- **The Biosafety Act 7 of 2012** - provides for the safe handling, transfer and use of genetically modified organisms.
- **The Tobacco Products Control Act 16 of 2013** - gives effect to the World Health Organisation's Framework Convention on tobacco control.
- **The Control of Radio-Active Substances Act 23 of 1964** - makes provision for the control and use of radioactive substances.

[42] CSO (above n48).
[43] Section 60(8) of the Constitution.

- **The Leprosy Act 23 of 1904** - provides for the isolation and detention of persons affected with leprosy.
- **Opium and Habit-Forming Drugs Act 37 of 1922** - restrict and regulate the importation and the exportation, and the production and use therein of opium and other habit-forming drugs.

- **The Nutrition Council Act 11 of 1945** - establish a Council of Nutrition which is mainly mandated to investigate and report to the Minister upon all matters relating directly or indirectly to the prevention of malnutrition and the improvement of the diet of the inhabitants of Eswatini.
- **The Conveyance and Burial of Dead Bodies Act 33 of 1970** - makes provision for the conveyance of dead bodies and their burial.
- **The Control of Slaughter-Houses Act 10 of 1964** - to control new slaughterhouses.
- **Persons with Disability Act of 2018** - provides for access to health for persons with disability. The Act provides in section 33 as follows:

(1) Persons with disabilities have the right to the enjoyment of health on an equal basis with persons without disabilities.

(2) The Council, the private sector and non-governmental organisations shall take appropriate measures to ensure that persons with disabilities have access to health, including health-related and gender-sensitive rehabilitation.

(3) The government and private healthcare services providers shall make available essential health services to persons with disabilities which shall include the following-

(a) Prevention of further occurrence of disabilities, immunization, nutrition, environmental protection and preservation and genetic counselling; and

(b) Sponsor or cause to be sponsored awareness campaigns and disseminate or cause to be disseminated information on causes of disabilities and the preventive measures to be adopted and on general hygiene, health and sanitation.

- **Medicines and Related Substances Act of 2016** – Standardises treatment for all, at Primary health care, secondary and tertiary health care services.
- **Children's Protection and Welfare Act (CPWA) 2012** in place, this has helped increased accessibility to services by young people as they are able to access health care services at age 12, without parental consent. The CPWA in Part III section 11 provides as follows:

A Child with disability has a right to special care, medical treatment, rehabilitation, family and personal integrity, sports and recreation, education and training to help

him enjoy a full and decent life in dignity and achieve the greatest degree of selfactualisation, self-reliance and social integration possible.

- **SODV Act 2018** - makes provision concerning sexual offences and domestic violence, prevention and the protection of all persons from harm from other sexual acts and acts of domestic violence.
- **Plant control Act 1981**; Aims to prohibit the importation of cannabis into the Kingdom of Eswatini. This Act is currently under review.

Judicial measures

Case	Facts	Decision
***Theresa-Marie Earnshaw Zeeman vs. The Women and Children's Hospital and Another* (1264/12) [2018] SZHC 51 22nd March 2019**	Plaintiff instituted legal proceedings against the Defendants for damages allegedly arising from negligence of the First Defendant's employees in carrying out a caesarean section operation. The question for determination was whether Defendant's employees exercised their duty of reasonable care and skill in treating the Plaintiff.	The court held that Plaintiff had established on balance of probabilities that the Defendants were negligent in the discharge of their duty towards her, and Defendants were ordered to pay special damages and general damages for pain and suffering, permanent disability and loss of amenities of life.

Administrative measures

196. The Ministry of Health (MoH) is mandated to improve the health, increase the longevity and quality of life of people of Eswatini by providing leadership in the production, delivery and utilisation of health services.

197. Eswatini's health service delivery system is structured around a four-tier system of service provision, comprising: the community, clinics and public health units, health centres and regional referral hospitals, and national referral hospitals.

- **Community:** This level is the foundation of service delivery. Services at this level should include a community-based promotion, prevention and basic curative care.

- **Clinics:** Rural clinics are categorized into Type A (without a maternity wing) and Type B (with a maternity wing). Rural clinics form the backbone of the primary health care infrastructure. They are the bases from which primary health care programmes operate and provide first-line curative and emergency interventions as well as promotive and preventive services to the rural population.

- **Public health units:** The public health services include promotive, preventive, outpatient curative, outreach health care services and interface with communitybased health systems, including households and individuals.
- **Health centres:** The purpose of the health centres is to provide an intermediate range of services at this level, including promotive, preventive, outpatient curative, maternity and inpatient services as well as diagnostic services, outreach care and interface with community-based health systems.
- **Regional referral hospitals:** In addition to primary services, they provide curative, rehabilitative and selected specialist services. They are referral facilities and are responsible for providing technical support and supervision to sub-regional and primary health care facilities within their defined catchment areas. The regional hospitals also provide in-service training, consultation and research in support of primary health care programmes.
- **National referral hospital:** This is the highest referral level, also known as the tertiary level. The kingdom has three national referral hospitals: Mbabane Government Hospital receives referrals from regional hospitals and also serves as a general hospital, while the National TB Hospital and the National Psychiatric Hospital provide specialized services.

198. Health services are delivered through a decentralized system in the four regions of Hhohho, Manzini, Lubombo and Shiselweni. The central level performs executive and administrative functions and also provides strategic guidance on the delivery of health care services at all levels of care based on the Essential Health Care Package (EHCP). At the regional level, each region is headed by a Regional Health Administrator and supported by the Regional Health Management Teams (RHMTs). About 85% of the country's population lives within a radius of 8km from a health facility (National Health Policy, 2007). Referral hospitals are different from specialised centres e.g. TB centre etc

Figure 1: Structure of the health service delivery system

Table 2: Service delivery capacity, by region

Region	Numbers of facilities				# of facilities per 10,000 population (2013)
	Total	Tier 2	Tier 3	Tier 4	
Hhohho	82	79	3	1	2.7
Lubombo	48	46	2	0	2.2
Manzini	121	117	2	2	3.4
Shiselweni	36	33	3	0	1.7
Total	**287**	**274**	**10**	**3**	**2.6**

Source: Service Availability Mapping, 2013

199. The Ministry has put in place preventative, curative and rehabilitative measures for all to ensure that every person enjoys the best attainable state of physical, mental and emotional health. All these are aimed to be affordable, information of health issues is readily available and age-appropriate written in both English and siSwati to accommodate everyone.

200. The Ministry has ensured that this right is fulfilled for all people by having a number of health facilities and ensuring that 88% are within the radius of 8km as required by WHO. The country has about 45% health facilities in rural areas and the Ministry to increase accessibility to services has mobile outreach services that go to the hard to reach areas to render free primary healthcare services to all.

201. The country has trained a number of healthcare workers on the provision of quality youth-friendly services at all levels of healthcare delivery. The Kingdom has moved to a standard driven approach as a requirement by WHO and has developed

Adolescent Youth-friendly Standards (AYFHS) to measure youth friendliness in health facilities. A baseline assessment has been conducted before the implementation of the standards. SARA (Service Availability Readiness) report conducted in 2017 revealed that 84% of the health facilities are ready to render health services to adolescents and youth in the country.

202. People within the reproductive age group have access to contraceptives generally in the country, though it has been noted that accessibility to contraceptives is minimal for youth in rural areas. Access to antenatal care services is high as it is currently at 99% for the first booking and 77% for subsequent visits. This has also increased accessibility to PMTCT as it is currently at 89% for the country.

203. The National Health Sector Policy 2006 state mission is to improve the health and social welfare status of the people of Eswatini by providing preventive, promotive, curative and rehabilitative services that are of high quality, relevant, accessible, affordable, equitable and socially acceptable.[44]

204. The Ministry to ensure the provision of basic health care services has developed and reviewed a number of guiding documents and these are as follows;

- Pharmacy Bill is currently being developed to regulate the practice by professionals.
- The National Multi-Sectoral HIV and AIDS Strategic Framework 2018-2023 outlines the approach in addressing HIV and AIDS which has been a challenging epidemic in the country.
- The Sexual and Reproductive Health Policy 2013 and its accompanying Strategic Plan

205. The Kingdom also ensures the provision of quality health services and thus has developed standards and guidelines for service provision across all the thematic health areas:

[44] Ministry of Health and Social Welfare, National Health Policy (2006) 10.

a. The Ministry of Health is implementing a Quality Management System (QMS) Standard (ISO 9001:15), and other relevant Health Standards. This standard focuses on specific health rights for Emaswati accessing health services.

Indicators

206. As a result, the country has committed to ensuring the following:

- Availability of plan (part of facility quality improvement plan) to address Patients' and Family Rights,
- Number of Patients' Rights implemented,
- Number of a client's satisfaction survey conducted in one year,
- Number of clients reportedly satisfied with the health services (disaggregated by age, sex),
- Availability of Standard Operation Procedure (SOP) on responding to Client Complaints,
- Percentage (least 80%) of the action points emanating from the client survey /feedback implemented, and
- Availability of client feedback system.

207. National Health Sector Strategic Plan (NHSSP 111) for 2019: This Strategic plan is integrated and multi-sectoral as the government has embraced the complexity of healthcare as there are predisposing factors for a poor health state.

Challenges and efforts to mitigate the challenges

208. Challenges in the health sector includes:

- Accessibility to healthcare for people with disabilities is restricted in some health facilities .
- Healthcare workers have limited capacity in communicating with persons with disabilities such as where the patient uses sign language or Braille tools to identify medication etc.
- Specialised services are centralised to one National referral hospital and this results in overcrowding in the Referral Hospital, hence reducing the quality of care.
- There is a lack of monitoring systems within the Ministry of Health to regulate the private health sector in terms of quality and standards of services.

- There is no legislation and regulatory framework to prescribe how traditional healers should operate their sector. However, currently, there are existing traditional healers associations which oversee their sector but there is no much collaboration with the health sector.
- There is the challenge of inconsistent medical supplies due to financial constraints.
- There is a limited human resource to deliver health care.

- The Abuja Declaration benchmark of 15% of the national budget to be allocated to health has not yet been achieved due to economic constraints. The national budget for 2018/2019 was at 10.1 per cent of the total national budget.[45]

ARTICLE 17: THE RIGHT TO EDUCATION

Constitutional measures

209. The Constitution provides as follows:

Section 29(1). A child has the right to be protected from engaging in work that constitutes a threat to the health, education or development of that child.

(6) Every Eswatini child shall within three years of the commencement of this Constitution have the right to free education in public schools at least up to the end of primary school, beginning with the first grade.

- *Section 60 (8) "without compromising quality, the state shall promote free and compulsory basic education for all and shall take all practical measures to ensure the provision of basic health care services to the population"*
- *Section 60 (10) "The state shall take steps to encourage the integration of appropriate customary values into the fabric of national life through formal and informal education and shall ensure that appropriate customary and cultural values are adapted and developed as an integral part of the growing needs of the society as a whole".*

Legislative measures

210. The country has adopted the following legislative measures to promote, protect and fulfil the right to education:

- **The Education Act 9 of 1981 –** Provides for the establishment and registration of schools, National Education boards, District Education Advisory Boards, school committees, adult

[45] See the Eswatini National Budget Brief as reported by UNICEF for the period 2018/2019.

education council.

- **Teaching Service Act 1 of 1982 –** Establishes the Teaching Service Commission and the hiring of teachers.
- **The Industrial and Vocational Training Act 16 of 1982** - consolidates the law in relation to industrial and vocational training and to introduce new provisions relating thereto.
- **The University of Eswatini Act 2 of 1983** - establishes the University of Eswatini.
- **The Study Loan and Scholarship Agreement Order 8 of 1977** - to provide for the inclusion of certain terms in loan and scholarship agreements.

- **The Royal Science and Technology Act 5 of 2012** - provides for the establishment of the Royal Science and Technology Park for the furtherance of research of science and related fields.
- **The Higher Education Act 2 of 2013 -** provides for the regulation of higher education by establishing a Council for Higher Education.
- **Free Primary Education Act 2010-** the country enacted the Free Primary Education (FPE) Act of 2010. The FPE Act provides for the implementation of the right to free primary education at public schools. The Act ensures the implementation of section 29(6) and 60 (8) of the Constitution. The FPE Act has provisions that compel parents to send children to school,

  Section 10 (1) "a parent of a child to whom this Act applies, who neglects, or refuses to cause the child to attend school, unless the child is excused under section 11, commits an offence and is liable on conviction to a fine not exceeding E1000 or in default of which to three months community services".
- **CPWA of 2012** provides as follows:

  Section 9 (1) "a child has a right to access education, Preventative health services, adequate diet, clothing, shelter medical attention, social services or any other services required for the child development".

  Section 9 (3) "A child has a right to education regardless of the type or severity of the disability he may have".

  Section 11 "A child with disability has a right to special care, medical treatment, rehabilitation, family and personal integrity, sports and recreation, education, and training to help him enjoy a full and decent life in dignity and achieve the greatest degree of self-actualization, self-reliance and social integration possible".

Administrative measures

211. The primary mandate of the Ministry of Education and Training is to provide access to quality education at all levels to all Eswatini citizens; taking into account all

issues of efficacy, equity and special needs. Realizing that education is the foundation and the main pillar of economic and social development and being cognisant of its core mandate, the Ministry of Education and Training continues to commit itself to provide accessible, affordable and education of the highest quality. The Ministry committed to being responsive to its core business, its contribution to the achievement of the country's long-term vision of ensuring that Eswatini is amongst the top 10% of the medium human development group of countries founded on sustainable economic development, social justice and political stability, as articulated in the country's National Development Strategy (NDS) Vision 2022, will be realised.[46]

212. The Free Primary Education started in 2010 and was rolled out to the final grade in primary level in 2015**.** Currently, the Gross Enrolment Rate is standing 131.3% at primary school and the Net Enrolment Rate is 94% (Annual Education Census 2017). The data suggest that almost all age-eligible children are enrolled in primary level.

213. **The Teaching Service Commission** is a department under the Ministry of Education and Training and is responsible for: Making appointments (including promotions and transfers) of teachers; disciplinary control and removal from office of teachers in the Teaching Service; Developing and formulation of national standards for the Teaching Service; Make recommendations to the Minister on terms and conditions of service and methods of ensuring improvements in general working conditions within the Teaching Service; Compile and publish a code of conduct and discipline binding on all persons in the Teaching Service.

214. **Sebenta National Institute** is a non-profit making organization (public enterprise) that provides a variety of services to enable people to achieve personal goals through Adult Basic Literacy and Non-formal Education. The Institution delivers a professional Basic Literacy Programme through professionally trained personnel, armed with

[46] http://www.gov.sz/index.php/ministries-departments/search-and-menus-setup. Accessed on 16 August 2019.

necessary resources and a broad inclusive curriculum.[47]

215. To give effect to the right to education the Ministry of Education and Training has put in place the following initiatives and policies:

- **The National Education and Training and Sector Policy 2018 -** The Ministry has reviewed its **Education and Training Sector Policy of 2011** which guides the operations of the Education Sector in addressing all the subsectors of the education and training continuum. It reflects the Eswatini's commitment to inclusive lifelong learning and draws attention to access, quality, equity, relevance, efficiency and effectiveness of service delivery. It also commits for the implementation of free, inclusive and compulsory Education of sustainable quality for all Eswatini children in public primary schools (from grade 1-grade 7).

- **Education Sector Strategic Plan 2010 – 2022 -**The Strategic Plan is intended to guide comprehensive development of education in the country to ensure that the system does not merely churn out certificate holders but result in proper human capital development i.e. produces skills that are in line with the socio-economic demands of the country and geared towards supporting technology and knowledge-based economic growth. It lays out the future vision of the country's education system and highlights the main lines of action that the Government will execute in order to realize the vision. It defines the national priorities within the education sector and provides a framework for decisions on the allocation of education resources.

- **The National Education and Training Improvement Plan 2018 to2022 (NETIP) -** This operationalizes the Education Sector Strategic Plan and the National Education and Training Sector Policy; it defines the sector strategic objectives, priorities, strategies and key activities over the next three years.

- **Orphaned and Vulnerable Education Grant -** The NETSP further seeks to ensure all learners have equal access to quality secondary education. The country has established the Orphaned and Vulnerable Education Grant to cover for education fees specifically for orphaned and vulnerable children for secondary education. It is state-funded.[48]

[47] http://www.gov.sz/index.php/departments-sp-799263136/sebenta. Accessed 16 August 2019.

[48] According to the AEC 2017, The GER stands at 74%. This means not all are enrolled at lower secondary level, this mean low access to secondary levels. However, there is an increase by 10 per cent (64%) between 2016 and 2017 suggesting there are improvements in this sub-sector. The NER stands at 46.3%. The policy objective as part of Education for Sustainable Development and mitigating the issues of access, it is committing to ensure the introduction of Free Secondary Education by the year 2030.

- **Budgetary Implications for State-Funded Grants for Primary and Secondary Learners-** The tables below provide a concise illustration of School Fees Payments for OVC and free primary education from the year 2009 to 2018.

Table D: Education budget for OVCs Each E2500 (form 4) and E1950 (Forms 1, 2, 3, 5)

Period	No of OVC	Total Amount	Examination Fee	Grand Total
2009/2010	89.706	E98.720350	E158,137	E98,968193
2010/2011	118,219	E103,703,664	E21,637,768	E125,341,432
2011/2012	87,713	E121,340,405	E22,464,589	E143,804994
2012/2013	87,551	E115,320,376	E20,852,848	136,173,224
2013/2014	77,014	E115,654,523	E26,187,651	E141,834,174
2014/2015	61,998	E108,610,825	E30,556,396	E139,167,221
2015/2016	53,564	E109,714,800	E26,076,797	E135,791,597
2016/2017	52,632	E108,034,458	E29,295,802	137,320,260
2017/2018	55,572	E114,292,643	E35,986,595	E150,279,238
2018/2019	58,186	E118,944,509	E39,850,661	E158,795,170

216. NB: 2018/2019 figures are subject to change because school are still verifying their payments.

Table D1: Actual Expenditure on Free Primary Education for the year 2010 -2019

Year	FPE	Books & Stationery	School Feeding
2010	E18,002,190.00	E54,068,452.00	E18,342,417.00
2011	E58,327,244.14	E32,328,770.84	E21,547,783.60
2012	E96,219,908.91	E48,130,671.41	E15,430,742.50
2013	E80,547,499.30	E49,556,456.33	E18,832,417.00
2014	E95,765,519.00	E56,425,769.47	E24,536,756.00
2015	E117,696,336.53	E72,036,952.44	E51,252,426.00
2016	E279,923,959.00	E79,999,540.00	E51,252,426
2017	E142,946,919.51	E87,878,490.95	E59,262,171.00
2018	E140,679,587.35	E84,868,369.06	E47,409,736.00
2019	E145,431,545.49	E85,478,209.21	E47,409,736.00
Total	**E1,038,456,844.08**	**E651,674,775.24**	**E363,800,411.10**

Care and Support for Teaching and Learning Framework

217. Care and Support for Teaching and Learning (CSTL) is a regional initiative adopted by the Member States of the Southern African Development Community (SADC). The initiative is captured in the SADC Policy Framework on Care and Support for Teaching and Learning which was endorsed by all SADC Ministries of Education in 2015. The aim of the initiative is to remove all barriers to teaching and learning thereby creating a caring, secure, safe, supportive and inclusive teaching and learning environment.

218. Eswatini's Ministry of Education and Training through the endorsement of the SADC CSTL Policy Framework has committed to take a number of transformative measures to enable, empower and capacitate every school in the country to become a CSTL school. The initiative has been localised to **INQABA** meaning fortress, the approach is to make all schools in the country a safe haven for the school community. It also specifically responds to the Eswatini educational barriers children face. This initiative has brought an overhaul of the whole education system in the country. A number of measures ensuring safe, secure and conducive learning and teaching environment are being developed and implemented.

Competency-Based Curriculum (CBE)

219. The Ministry of Education is currently going through curriculum reform, the country is moving from objective-based curriculum to the competency-based curriculum. CBE infuses life specifically personal skills in addition to the cognitive and vocational skills, to empower the learners. This is supported by gender-responsive books.

Eliminating Violence in Schools

220. In the advert of the high prevalence and incidences of violence in and around schools, the Ministry is doing a paradigm shift from corporal punishment to positive discipline. This has led to the alignment of the School Rules and Regulations to completely abolish corporal punishment. The Ministry has also through wide consultations developed a Strategy to Prevent and Respond to Violence in Schools and Guidelines for Positive Discipline. All these documents are now in their final drafts form, waiting to go through

the whole process of endorsing a government document.

- **Life Skills Education**

221. This is a curriculum-based process of teaching and learning about cognitive, emotional, physical and social aspects of sexuality. It aims to equip children and young people with knowledge, skills, attitude and values that will empower them to realize their health, well-being, dignity, and develop a respectful social and sexual relationship. At regional level it is known as Comprehensive Sexuality Education, however, Eswatini has adopted Life Skill Education for the same concept.

- **Feeding Schemes programmes**

222. All public schools are provided with at least one meal per day to ensure learners are retained and improve in their academic performance. The approach is to provide two meals, breakfast and lunch however due to the financial constraints the government is unable to provide.

- **Medium of instruction**

223. SiSwati and English are both regarded as the official languages in accordance with the national constitution. This MoET policy directive (2018) is that the mother tongue SiSwati shall be used officially as a medium of instruction. In the first four grades of primary school teachers are free to explain difficult concepts in SiSwati to help learners understand, thereafter English shall be the medium of instruction. All children going through the school system in Eswatini are expected to learn SiSwati.

224. Moreover, SiSwati is taught as a subject at all grade levels in the school's system. SiSwati as a subject remains a core subject in all schools at all grade levels. This is supported by the Circular number 12 of 2017 stipulates the following:

i) Head Teachers shall ensure that in the school timetable, SiSwati is not paired with another subject where learners are made to choose between SiSwati and any other subject,

ii) English and SiSwati should be treated in the same equal status at the school level, iii) Learners shall not be punished for speaking SiSwati in school, iv) Teachers should promote debates and creative writing in both languages, particularly in the SiSwati language,

v) Under the SiSwati subject (Syllabus) learners are also taught tradition, culture and values for Emaswati.

 Higher Education

225. The policy goal is to restructure and redirect and inclusive research-driven higher education sector to provide a recurrent flow of relevant high- level human resources to achieve Eswatini's Socio-economic development goals. The country has seven government-supported tertiary institutions these are:

i) **UNESWA** (3 campuses; *Kwaluseni* Campus for most Faculties, *Luyengo* Campus for Faculty of agriculture, Mbabane Campus Faculty of Health Sciences,

ii) **Southern African Nazarene University**: Faculty of Health and Faculty of Education **iii) Limkokwing University**

iv) **Training Colleges**; Eswatini College of Technology, Ngwane Teachers College, William Pitcher Teacher, Good Shepard Nursing College

226. The country has also a number of private institutions that are monitored by the Eswatini Higher Education Council, to ensure that they are fully registered and adhere to the set standards. The sector has committed to reviewing Higher Education programmes to meet the needs of the industry and establish a revolving loan fund to ensure equitable access to higher education for all suitably qualified school graduates.

227. The country is also looking into investing in Open Distance Learning (ODL)to widen the scope of access to tertiary institutions, An ODL policy has recently been launched by the Ministry of Education and Training.

 Technical and Vocational Education and Training

228. The MOET policy goal is to initiate and sustain an inclusive demand-led TVET system and subsector responsive to market needs which will contribute to the realisation of the Eswatini's socio-economic development.

229. Currently, there are 45 training institutions, out of the 45 there are only two categorised as formal. These are Eswatini College of Technology which offers programmes at the technical level, and Vocational and Commercial Training Institute Matsapha.

230. The country has the National Technical and Vocational Education and Training and Skills Development Policy and Strategy of 2010, its main goal is to improve external efficiency and relevance of TVET by making it socially and economically demand-driven and ensure participation of all diverse target groups in TVET programmes. The country is currently going through skills and employability audit of the currently available TVETSD, this is done in collaboration with other key ministries and other relevant stakeholders.

Judicial Measures

Case	Fact & issues	Decision
Swaziland National Ex- mine Workers Association v The Ministry of Education **case numbe(335/09). [2009] SZHC 104 (19 March 2009)**	The Applicant instituted legal proceedings against Respondent for a mandatory order that the Government is liable in terms of section 29 (6) and 60 (8) of the Constitution Act No1 of 2005 to make free education available in public schools for every child.	The Court held that the Government has the obligation to provide education free of charge, at no cost, to every child.

***Ndlangamandla v Swaziland Government* (27/08) [2009] SZIC 77 (21 October 2009)**	The Applicant was dismissed by the Respondent on allegations of gross immoral conduct(sexual relationship) allegedly committed against two students at the school where Applicant was a Teacher, against the provisions of Regulation 15 of the Teaching Service Commission Act.	The Court held that it was clear from the verdict of the disciplinary hearing that the Applicant was dismissed for committing an offence under Regulation 15. However, there is no offence or misconduct called "gross immoral conduct". The Applicant was therefore wrongly charged, and the conviction cannot stand. The court further recommended that the applicant be transferred to another school.
***Lukhele v The Teaching Service Commission and Others* (135/2015) [2016] SZIC 30 (19 June 2015)**	The Applicant instituted legal proceedings for an order reviewing and setting aside the decision of the Respondent suspending the Applicant without pay. The Applicant was suspended for acting utra vires in contravening Regulation 15(1)g and (j) of the Teaching Service Regulations of 1983 as read with Regulation 17 and for contravening Regulation 1(c) of the Teaching Service Regulations of 1983 as read with Regulation 17 .	The Court held that in the exercise of its statutory powers, the Teaching Service Commission is an agency of the Government of Eswatini whose functional authority is responsible for the recruitment and appointment of teachers as well as the human resource management of the teaching service, which includes discipline. (See section 14(1) of the Teaching Service Act 1982). No one else has any right whatsoever to usurp the powers of the TSC in this

		regard, except with the written authority of the Commission in terms of section 14(2). The Court ultimately held that the Teaching Service Commission applied its mind honestly and applied the rules of natural justice correctly to the matter, thus the application was found without merit and thereby dismissed.

Challenges

231. Although the country has put measures to ensure that the populace enjoy the right to education, there are still challenges such as:

- The numbers of pupils in public schools far exceed the normal teacher/pupil ratio of 1:40 and this result in the pupils not receiving the necessary attention.
- Classrooms are not adequate and learning and educational materials are not enough to cater for all the children. The high number of children in public schools also has a bearing on the sanitation facilities and the schools are expected to provide appropriate and gender-sensitive water and sanitation facilities in all schools.

- The introduction of top-up fees for capital projects as stipulated in Circular No. 5 of 2017 and Circular No.6 of 2017 defeats the essence of free education. However, top up fees are regulated such that all schools seeking to charge additional fees over and above the stipulated fee, shall do so by seeking approval from Government.
- There are push out factors that lead to a substantive number of learners dropping out of school which include hidden costs, teenage pregnancy, and grade repetition amongst others. The current net enrolment is standing at 94% according to the Annual Education Census of 2017. It means that 6% are not enrolled at school. In an effort to address the increasing number of dropout rate, the Ministry has conducted two studies in 2018; namely the Out of School Study and the Repetition study to ascertain the push-out factors. The findings of the two studies have informed the

development of a Strategy to address dropout rate and the repetition rate, which is still in its draft form.

- The Technical and Vocational Education and Training System (TVETSD) is constrained in terms of access, equity, participation, unsustainable financing and quality assurance.[49]The Ministry of Education and Training and the Ministry of Labour and Social Security is working towards addressing these issues. A draft National Qualifications Framework is in place.

ARTICLE 18: RIGHT TO PROTECTION OF THE FAMILY, WOMEN, CHILDREN AND THE DISABLED

Constitutional measures

232. The Constitution provides for the rights and protection of the family as follows:

Section 14 (1) the fundamental human rights and freedoms of the individual enshrined in this Chapter are hereby declared and guaranteed, namely —

(a) …

(f) Respect for rights of the family, women, children, workers and persons with disabilities.

Section 27(1) Men and women of marriageable age have a right to marry and found a family.

(2) Marriage shall be entered into only with the free and full consent of the intending spouses.

(3) The family is the natural and fundamental unit of society and is entitled to protection by the State.

(4) Motherhood and childhood are entitled to special care and assistance by society and the State.

(5) Society and the State have the duty to preserve and sustain the harmonious development, cohesion and respect for the family and family values.

(6) Subject to the availability of resources, the Government shall provide facilities and opportunities necessary to enhance the welfare of the needy and the elderly.

233. The Constitution provides for the rights and freedoms of women as follows:

[49] Assessing Eswatiniland's Technical and Vocational Education and Training System to improve Economic Growth, 2010, World Bank.

Section 28(1) Women have the right to equal treatment with men and that right shall include equal opportunities in political, economic and social activities.

(2) Subject to the availability of resources, the Government shall provide facilities and opportunities necessary to enhance the welfare of women to enable them to realise their full potential and advancement.

(3) A woman shall not be compelled to undergo or uphold any custom to which she is in conscience opposed.

234. The Constitution provides for the rights of the child as follows:

Section 29(1) a child has the right to be protected from engaging in work that constitutes a threat to the health, education or development of that child.

(2) A child shall not be subjected to abuse or torture or other cruel inhuman and degrading treatment or punishment subject to lawful and moderate chastisement for purposes of correction.

(3) The child has the right to be properly cared for and brought up by parents or other lawful authority in place of parents.

(4) Children, whether born in or out of wedlock, shall enjoy the same protection and rights.

(5) Children have the duty to respect their parents at all times and to maintain those parents in case of need.

(6) Every Eswatini child shall within three years of the commencement of this Constitution have the right to free education in public schools at least up to the end of primary school, beginning with the first grade.

(7) Parliament shall enact laws necessary to ensure that -

(a) a child has the right to the same measure of special care, assistance and maintenance as is necessary for its development from its natural parents, except where those parents have effectively surrendered their rights and responsibilities in respect of the child in accordance with law;

(b) a child is entitled to reasonable provision out of the estate of its parents; (c) parents undertake their natural right and obligation of care, maintenance and proper upbringing of their children; and

(d) children receive special protection against exposure to physical and moral hazards within and outside the family.

235. The Constitution provides for the rights of persons with disabilities as follows:

Section 30(1) Persons with disabilities have a right to respect and human dignity and the Government and society shall take appropriate measures to ensure that those persons realise their full mental and physical potential.

(2) Parliament shall enact laws for the protection of persons with disabilities so as to enable those persons to enjoy productive and fulfilling lives.

236. A surviving spouse's rights to provision out of the estate of the deceased's spouse are protected and recognised in the Kingdom of Eswatini. Section 34 (1) of the Constitution provides that a surviving spouse is entitled to a reasonable provision out of the estate of the other spouse whether the other spouse died having made a valid will or not and whether the spouses were married by civil or customary rights. Further, in line with section 34(2) the state party initated family law bills which seek to regulate the property rights of spouses including common-Law husband and wife.[50]

Legislative measures

237. The Childrens Protection and Welfare Act 06 of 2012 provides that a child has a right to reasonable provision out of the estate life, insurance or pension fund of a deceased parent whether or not born in wedlock or orphaned.[53]The Act further emphasises the family structure's importance in that a child has a right to know, live with his parents and family, and grow up in a caring and peaceful environment.

238. A surviving spouse 'rights to manage the estate of the deceased spouse is recognised and protected by the Administration of Estates Act[51] which provides that in the case where there is competition for the office of the executor, the surviving spouse shall be preferred by the Master for such office.[52]

239. On the protection of the institution of marriage, the Constitution[53] provides that men and women of marriageable age have a right to marry and found a family. Further marriage shall be entered into only with the free and full consent of the intending

[50] Matrinonial Property, Marriages, Administration of Estates and Intestate succession Bills
[53] Section 17.
[51] Act No 28/1902.
[52] Section 25.
[53] Section 27.

spouses. If the spouses are married in accordance with the Marriage Act[54] the marriage is monogamous and if that other party marries another person during the subsistence of that marriage, he/she is guilty of having committed bigamy in terms of Section 7 thereby.

For comprehensive administrative measures undertaken by the country please refer to Part B (Maputo Protocol) Articles 6 and 7 responses.

240. Children are protected from entering into a marriage by the provisions of section 43 of the Sexual Offences and Domestic Violence Act (SODV) Act 2018[55] which provides that, a person shall not marry a child in contravention of the Marriage Act or any act succeeding the Marriage Act.

241. The aged and the disabled shall also have the right to special measures of protection in keeping with their physical or moral needs. The Persons with Disabilities Act 16 of 2018 seeks to provide for the protection of rights and welfare of persons with disabilities, it further establishes the National Advisory Council and the office of Registrar of persons with disabilities to monitor the promotion and protection of their rights.

242. The National Disability Unit was established under the Deputy Prime Minister's Office, the Department of Social Welfare, to ensure political support to realise the development of all relevant disability legislative frameworks that creates an enabling environment to mainstream issues of disability across government machinery. This includes the development of policies, regulations and proactive strategies that address issues of disability in the country.

[54] Act No.47/1964.
[55] Act No. 15/2018.

ARTICLE 19: RIGHT TO EQUALITY OF PEOPLE

Constitutional measures

243. The Constitution provides as follows:

Section 20 guarantees the right to equality and non-discrimination.

Section 23 (3) A religious community is entitled to establish and maintain places of education and to manage any place of education which that community wholly maintains, and that community may not be prevented from providing religious instruction for persons of that community in the course of any education provided at any place of education which that community wholly maintains or in the course of any education which that community otherwise provides.

Section 58(6) The State shall promote, among the people of Eswatini, the culture of political tolerance and all organs of State and people of Eswatini shall work towards the promotion of national unity, peace and stability.

Administrative measures

244. Emaswati are indigenous to Eswatini and predominantly homogenous. There are two official languages, SiSwati and English. Concerning the equality of a people, given that the people of Eswatini are homogenous, there is no legislative framework for group rights. However, in drafting the Constitution, fundamental human rights and freedoms of the individual were enshrined, including that of equality before the law and equal protection of the law. For more administrative action on this subject see administrative measures under article 8 above.

245. There are various religious groups in the country which include Christianity, Eswatini traditional religion, Muslim, Bahai faith, Rastafarian, Shembe and others. These religious afflictions are recognised on an equal basis such that none is considered to be superior to the other. Further, access to amenities and public services is not subject to one's religious affliction.

ARTICLE 20: RIGHT TO SELF DETERMINATION

Constitutional measures

246. The right to self-determination is promoted and protected in the Constitution as follows:

- *Section 79 provides that the system of Government for Eswatini is a democratic, participatory, tinkhundla-based system which emphasises devolution of state power from central Government to tinkhundla areas and individual merit as a basis for election or appointment to public office.*
- Section 58 (2) *In the conduct of public affairs the State shall be guided by the principle of decentralisation and devolution of governmental functions and powers to the people at appropriate levels where the people can best manage and direct their own affairs.*

- *Section 60 (12) All public offices shall be held in trust for the people and the State shall do everything to ensure transparency in the conduct of public affairs*.

Legislative and administrative measures

247. The Kingdom of Eswatini was held by South Africa as a protectorate from 1894 to 1899 and in 1902, after the Boer War, the same was transferred to British administration. The kingdom of Eswatini attained its independence on 06th September 1968 and an Independence Constitution was put in place until its suspension in 1973. The King's Proclamation 12 of 1973 was then issued and through it the King assumed supreme power in the country. It is during this time that political activities and political parties were banned. The Tinkhundla system of government was then put in place in 1978 and amended in 1993.

248. Prior to the enactment of the Constitution of Eswatini Act, 2005, a Constitutional Review Commission was established with the aim of conducting a constitutional reform. This saw the people taking part in the political direction that they wanted to follow, thus shaping their political destiny.

ARTICLE 21: RIGHT TO DISPOSE OF WEALTH AND NATURAL RESOURCES

Constitutional measures

249. Chapter XII of the Constitution regulates the use of Minerals, Land, Water and Environment of the country, as follows:

- *Section 210. (1) Subject to the provisions of this Constitution or any other law, land, minerals and water are national resources.*
  (2) In the interests of the present and future generations, the State shall protect and make rational use of its land, mineral and water resources as well as its fauna and flora, and shall take appropriate measures to conserve and improve the environment.
- *Section 211 of the Constitution affirms that all land (including any existing concessions) in Eswatini, save privately held title-deed land, shall continue to vest in iNgwenyama in trust for the Eswatini Nation as it vested on the 12th April 1973.*
  (2) Save as may be required by the exigencies of any particular situation, a citizen of Eswatini, without regard to gender, shall have equal access to land for normal domestic purposes.
  (3) 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.

Legislative measures

- The excavation of minerals is controlled through the **Mines & Minerals Act 4 of 2011** which consolidate the law on mining and provide for the management and administration of minerals, mineral oils. The Act establishes the office of the Commissioner of Mines which is comprised of an inspectorate, mine engineers, geoscientist, geologists, minerals valuators, minerals marketing body and other officers as the Commissioner may consider necessary[56].
- The functions of the Office of the Commissioner include receiving applications for consideration, assessment and advice of the Board; issuing of mineral licences granted; ascertaining whether provisions of the Act, the terms & conditions of any mineral rights and minerals agreement are complied with; give directions and take steps necessary to enforce the provisions of the Act and the terms and conditions of

[56] Section 16.

mineral rights and minerals agreement; and maintain a Register of Mineral Rights amongst other things. Section 74 of the Act provides as follows:

- *S 74 The holder of a retention licence shall —*
  - *(a) demarcate the retention area in the prescribed manner;*
  - *(b) in the prescribed manner or as otherwise directed by the Commissioner, backfill or otherwise make safe excavations made during the course of prospecting operations;*
  - *(c) in the prescribed manner or as otherwise directed by the Commissioner, permanently preserve or otherwise make safe any borehole or mine;*
  - *(d) remove any equipment, plant or building erected for prospecting operations in the area specified in the licence;*
  - *(e) carry out studies and assessments of the prospects of the commercial exploitation of the mineral deposits concerned as may reasonably be required by the Commissioner;*
  - *(f) comply with the terms and conditions contained in any applicable Environmental Compliance Certificate;*
  - *(g) comply with the conditions of the licence and any applicable minerals agreement;*
  - *(h) notify the Commissioner of any archaeological discovery; and*
  - *(i) repair or make good any damage caused to the surface of the land to the satisfaction of the Commissioner*.

- **The Diamond Act No. 3 of 2011** provides for the implementation of the Kimberly Process Certification Scheme and for the control of production, processing, sale, purchase, import and export of diamonds and other incidental matters.

Administrative measures

250. The Mining Department under the Ministry of Natural Resources and Energy is resp onsible for the administration of the mining and minerals industry in the Kingdom of Eswatini. The responsibilities involve the enforcement of the provisions of the Constitution; legislation namely: Mines and Minerals Act No. 4 of 2011, Diamond Act No. 3 of 2011, Explosives Act, Mines; Works and Machinery Regulations, Mines and Quarries (Safety) Regulations.

251. The mandate also includes enforcement of the terms and conditions of mineral rights leases or licences issued through the Minerals Management Board for

reconnaissance, prospecting and mining.

252. The Kingdom has put in place various management Boards for the administration and supervision of natural resources such as:

- **Land Management Board** – the Board is established in terms of section 212 of the Constitution. The Board is responsible for the overall management, and for the regulation of any right or interest in land whether urban or rural or vesting in iNgwenyama in trust for the Eswatini nation.

- **Minerals Management Board** (MMB) is established in terms of section 214 of the Constitution. The MMB consists of the Commissioner of Mines, mine engineer, economist, a legal practitioner and three other persons all of whom, including Chairperson, are appointed by the iNgwenyama on the advice of the Minister for Natural Resources and Energy. The main function of the Board is to advise iNgwenyama on the overall management of minerals and making of grants, leases or other dispositions conferring rights or interests in respect of minerals or mineral oils in Eswatini.

- **The Commissioner of Mines office** is established in terms of section 16 of the Mines and Minerals Act with the responsibility to administer the provisions of the mining legislation. This office is comprised of an inspectorate, mine engineers, geoscientist, geologists, minerals valuators, minerals marketing body and other officers as the Commissioner may consider necessary. As a member of the MMB; the Commissioner must synthesise all geoscientific data and/or information from Geology Department and Mining Department for the use by the MMB when adjudicating mineral rights applications.

  The data or information is for use by the MMB which ensures that the iNgwenyama receives holistic advice on mineral occurrences, reconnaissance, prospecting, mining or exploitation, processing, availability of mineral resources and the operations of the mining industry at large in the Country. Some operational information on geology and mining matters must be availed to the Minister for disseminating to Cabinet, Parliament and Public when necessary through the Commissioner of Mines.

  Section 21 and the First Schedule of the Mines and Minerals Act make a distinction between Small-Scale Mining and Large-Scale Mining. It defines Small-scale prospecting and mining operations as a prospecting or mining operation or a proposed prospecting or mining operation which the proposed prospecting area does not exceed 5km square or in the case of mining operations, the proposed mining area

does not exceed 0.05 km square.

Further, it can be defined to include mining operations, the actual or estimated annual extraction of minerals or material bearing minerals does not exceed 25,000 cubic meters, or the proposed prospecting or mining operations do not or will not employ specialised prospecting or mining technologies.

Large-scale prospecting and mining operations mean the proposed prospecting operations or mining operations that do not have or will not have any of the characteristics of a small-scale mining operation.

253. The state party realised that small scale mining (SSM) operations may provide additional or alternative rural livelihoods opportunities for Eswatini Citizens. Some minerals and mineral deposits or occurrences are reserved exclusively to be exploited by indigenous Eswatini Citizens. The department of Mines ensures the SSM exploit the minerals in an economically and environmentally sustainable manner.[57]

254. The SSM sector is new and must be adequately regulated; the state party has embarked on a project to train existing and aspiring small-scale miners. The educational exercises deal with themes including licensing, environment, health & safety, finance, taxation, reporting and labour laws.[58]

255. **The National Mining Policy of Eswatini 2011**

The purpose of the Policy is to declare the principles under which the Government manages the mineral resources endowment for the benefit of the people of Eswatini and to set out the basis upon which investment by mining companies in minerals exploration and exploitation will take place. The Mining Policy was formulated in view of the vision for the development of the Kingdom in the period to 2020, which is set out in the National Development Strategy, and in consideration of the Constitution. The National Development Strategy sets goals for economic growth and diversification leading to attainment of highermiddle income country status and an improvement in the standard and quality of life of all Eswatini people. In order to diversify the resources of economic development Government desires to foster development of a thriving mining industry that would

[57] http://www.gov.sz/index.php/departments-sp-623334762/84-natural-resources-a-energy/naturalresources-a-energy/405-mining-department. Accessed on 15 August 2019.

[58] Ibid.

contribute to economic sustainability. The Government recognises the positive contribution that mining can make as an engine for the economic development of Eswatini by diversifying the export base, widening the tax base, generating skilled employment, creating demand for local goods and services, contributing to infrastructure development, producing raw materials for local usage and acting as a catalyst for wider investment in the economy.

256. Available minerals in Eswatini can be classified as follows:

Table E: Minerals found in Eswatini

No.	Mineral types	Current status
1.	Coal	Exploited
2.	Gold	Exploited
3.	Iron Ore	Not exploited
4.	Diamond	Not exploited
5.	Barite	Not Exploited
6.	Kaolin	Not exploited
7.	Silica	Not exploited
8.	Tin	Not exploited

257. Development Minerals (Building and Construction Materials).

Table E1: Building Materials that are mined

No.	Mineral types	Current status
1.	Aggregate stones (Quarry)	Exploited
2.	Ball Clay	Not Exploited
3.	Talc	exploited
4.	Gravel	exploited
5.	River Sand	Not Exploited
6.	Plaster Sand	Not exploited
7.	Slate stones	Not exploited

258. In 2011, the country entered the Kimberley Process Certification Scheme. It is also worth mentioning that the only major active diamond mine in the country (Dvokolwako mine) was closed in 2006 as it was found unviable. The extraction of mineral resources can be summarized as follows;

Table E2: Active mining operations

Mine operations	Mineral types	Current status
Colliery Company	Coal	Active
Gold Mine	Gold	Active

Quarry Mines	Aggregate stones	Active
Several Small-Scale Mines	Development minerals	Active

Table E3: List of companies involved in mining

Company	Mineral type	Status
1. Maloma Colliery Pty Ltd	Coal	Foreign
2. Lomati Gold Mine	Gold	Foreign
3. Kwalini Quarry	Aggregate stone	Local enterprise
4. Mbabane Quarry	Aggregate stone	Local enterprise (project based)
5. AT & T Quarry	Aggregate stone	Local enterprise (Commercial)
6. Ligoga Sicunusa Quarry	Aggregate stone	Local enterprise (project based)
7. Kuthula Construction Pty Ltd	Aggregate stones	Local enterprise (commercial)
8. Several Small-Scale Miners	Development Minerals	Local, individuals and smallscale operations.

259. Concerning non-exploited minerals, deposits of kaolin, talc and silica were identified but despite the determination of the viability to mine these resources, no activity has taken place thus far. Deposits of green chert were also identified in some parts of the country, but the mineral remains unexploited due to negative environmental implications and the deposits are mostly located in protected areas (nature reserves).

260. Regarding Information on legal requirements to ensure access to information on all aspects of exploration and extraction plans, the Kingdom made provision for reconnaissance licences and prospective licences in section 36 to 43 and section 44 to 53 of the Mines and Minerals Act of 2011.

261. The Act further provides for surface rights, compensation and how to handle disputes in Section 118 to 120. It is worth noting, however, that disputes are mostly dealt with at the community level.

262. The distribution of revenue from natural resources is in three parts; 25% goes to the Eswatini Government, 25% to the King in trust for the people (Tisuka Takangwane) and the remaining 50% goes to the mining company.

263. The mining companies have a legal obligation to invest in the local community where the resources are being extracted, in projects which are responsive to the local population. Such projects must have been identified by the community and guidelines developed for this purpose.

264. Further, the companies or investors are required to submit quarterly reports to the Commissioner of Mines on compliance with the relevant laws. The Ministry of Natural Resources submits quarterly reports to Parliament on the concessions granted, licenses paid, and revenues received from the mining industry.

265. The right to dispose of wealth and mineral resources, in particular, land access especially relating to women is covered in detail in under Article 14 on the right to property and part B of this report.

Challenges

266. There are no regulations to operationalize the Acts relating to this sector as they are still at the drafting stage.

267. The geological data is not updated thus does not attract investment in the sector. This is mainly due to the costs associated with exploration programmes.

ARTICLE 22: RIGHT TO DEVELOPMENT

Constitutional and legal measures

268. The legislative framework of Eswatini does not have explicit provision for the right to development, however, this right is provided for to a larger extent in the Bill of

Rights as contained in the Constitution Act of 2005. The Bill of Rights promotes participation, contribution, and enjoyment by all persons of economic, social and cultural development.

269. Chapter V of the Constitution further provides for the directive principles of state policy and duties of citizens with regards to development in the sphere of economic, social, cultural, political, law enforcement and independence of the judiciary.

Administrative Measures

270. The Government has put in place various policies for the development of the people; **The National Social Development Policy 2010** whose vision is an empowered, resilient and more egalitarian Eswatini nation that promotes the holistic, equitable and sustainable development of all its people and is able to care for and support the most vulnerable members of its population as they progress towards self-reliance and meaningful participation in the socio-economic development of the country.

271. **The Education & Training Sector Policy 2018:** This policy is a result of the state party's recognition that education is the foundation and the main pillar of economic and social development. Through this policy, the Government is committed to providing accessible, affordable and education of high quality. The Policy is a guide to the operations of the Education Sector, with the ultimate goal of contributing to the achievement of the country's long-term vision of ensuring that Eswatini is among the top 10% of the medium development group of countries founded on the sustainable economic development, social justice and political stability, as articulated in the country's National Development Strategy (NDS) Vision 2022.

272. **National Policy on Small & Medium Enterprises 2018**: the policy aims to attain increased economic empowerment and ownership. It further aims at addressing deprivation, poverty, economic empowerment and adjusting economic disparities through increased wealth creation. This policy established a Small & Medium Enterprise Unit which continues to facilitate and support the creation of an enabling

environment for potential SMEs and emerging entrepreneurs.

273. The Ministry of Tinkhundla Administration & Development facilitates and support community-based socio-economic initiatives through community empowerment techniques involving: community mobilisation, community participation in poverty alleviation initiative and programmes, skills development for the creation of sustainable development and collaborative mechanisms in order to enhance self-reliance. This is in pursuance of the main goal of the Ministry which is the strengthening of community members' capacities to engage in poverty alleviation initiatives for self-reliance and sustainable development.[59]

The activities of the department are categorised in 5 programme areas namely:

- Community Mobilisation which results in identification of pipeline projects
- Training/Group Capacity Building
- Project Monitoring of Regional Development Fund and Tinkhundla Empowerment Fund Projects implementation.
- Women in Development (Skills Development) Programme
- Community Development Radio Programme

274. The department of youth affairs under the Ministry of Sports, Arts and Culture and Youth Affairs has the responsibility to facilitate the coordination and integration of programmes, service and activities geared towards youth development and recommending and designing programmes to enhance and propel youth development in Eswatini. The department *inter alia* mobilizes, secures and allocates financial resources to the Eswatini National Youth Council for the coordination and implementation of the youth policies and programmes such as rolling out of the Youth Enterprise Fund.

Challenges

[59] http://www.gov.sz/index.php/ministries-departments/ministry-of-tinkhundla-administration/commmunitydevelopment. Accessed on 13 September 2019.

275. Lack of mechanism for the regulation of funds meant for community development.

ARTICLE 23: RIGHT TO PEACE AND SECURITY

Constitutional measures

276. The Constitution protects the right in the following sections:

Section 60(7). The State shall provide a peaceful, secure and stable political environment which is necessary for economic development.

Section 61 (2). Eswatini shall actively participate in international and regional organisations that stand for peace and for the well-being and progress of humanity.

Section 189. (1) The Royal Eswatini Police Service shall be responsible for preserving the peace, for prevention and detection of crime and the apprehension of offenders.

Section 190 The Correctional Services for Eswatini shall be responsible for the protection and holding on terms convicted persons and the rehabilitation of those persons and the keeping of order within the correctional or prison institutions of the Kingdom.
Section 191(1) The Umbutfo Eswatini Defence Force consists of an Army, an Air Force and a Navy, in that order of precedence.

(2) The primary object of the Defence Force is to defend and protect the sovereignty and integrity and people of the Kingdom of Eswatini in accordance with the Constitution and the principles of international law regulating the use of force.

Section 236. (1) In dealing with other nations, Eswatini shall –
(c) promote the principle of peaceful settlement of international disputes;
(d) endeavour to uphold the principles, aims and ideals of
- the United Nations, - the Commonwealth, - the African Union, - the Southern African Development Community, - other international organizations of which Eswatini is a member.

Legislative measures

277. Discussed below are the legislative measure the country has adopted to promote, protect and fulfil the above right:

- **The Refugees Act 15 of 2017** – provides for the recognition, protection, assistance and control of refugees by giving effect to the 1951 Convention Relating to the Status of Refugees, the 1967 Protocol Relating to the Status of Refugees and the 1969 Convention Governing the Specific Aspects of Refugee Problems in Africa; and to provide for matters incidental thereto.
- **Suppression of Terrorism Act 3 of 2008 as amended by Act 11 of 2017** – provides for the detection, suppression and deterrence of terrorism and for the punishment of all forms of terrorist acts and persons engaged in terrorist acts in compliance with the conventions and resolutions of the United Nations. The Amendment Act provides for the definition of the word funds, to replace the definition of terrorist act, to provide for the judicial review of an order declaring certain entities to be specified.
- **The Money Laundering and Financing of Terrorism (Prevention) Act of 2011** – criminalise money laundering and suppress the financing of terrorism; establishes the financial intelligence unit; to provide for the forfeiture of ill-gotten property.
- **The Prevention of Organised Crime Act 2018** - provides measures to combat organised crime and criminal gang activities; to prohibit certain activities relating to racketeering; to criminalise certain activities associated with gangs; to provide for the recovery of the proceeds of unlawful activities; to provide for the forfeiture of assets that have been used to commit an offence or assets that are the proceeds of unlawful activities; to provide for the establishment of a Criminal Assets Recovery Fund and a Criminal Assets Recovery Committee

Administrative measures

278. The Ministry of Home Affairs has the department of Refugees which has the mandate of protecting Refugees and asylum seekers in the country. Refugees' protection and subsequent provision of basic services required by refugees and asylum seekers are executed through systematic program designed to be a one-stop-shop for all those that would need assistance.

279. The refugee regime in Eswatini is mainly composed of three units. These are the Government of the Kingdom of Eswatini through Ministry of Home Affairs, United Nations High Commissioner for Refugees (UNHCR) and Caritas Eswatini. This tripartite is also assisted by other stakeholders be it Governmental Departments, Non-Governmental Organizations and faith-based institutions.

280. There are two refugee camps in Eswatini, which are, *Malindza* Refugee Reception Centre and *Ndzevane* (this site is no longer operational). Most refugees reside at Malindza Refugee reception centre wherein they receive emergency food and medical aid until it is safe to return to their homes or until they are re-united with their relatives. The staff at the Refugee Section (both Headquarters and Malindza) offer counselling services to the refugees in need, given the inherent traumatic effect of refugee flight and also provides psychological support.[60]

281. Below are measures designed to restrain refugees allowed into the country from engaging in subversive activities against their country of origin or any other State Party. The Refugees Act prohibits or restricts refugees to possess firearms and weapons. It compels them to surrender such weapons to authorised offices and in the event, they default they are liable to pay a maximum fine of E1000 or imprisonment not exceeding three months.

282. The Suppression of Terrorism Act mandates the Minister of Home Affairs to refuse the application of any person applying for status as a refugee, if that Minister has reasonable grounds to believe that the applicant has committed a terrorist act or is likely to be involved in the commission of a terrorist act, having regard to the interests of national security and public safety.[61]

283. Further, the Suppression of Terrorism Act gives the High Court jurisdiction to try any offence related to terrorism committed outside Eswatini which would be an offence if committed in Eswatini and where the person committing the act or omission is a citizen of Eswatini or is not a citizen but is ordinarily resident in Eswatini.

284. The Money Laundering and Financing of Terrorism (Prevention) Act of 2011 and The Prevention of Organised Crime Act 2018 establish institutions and task teams

[60] http://www.gov.sz/index.php/ministries-departments/ministry-of-home-affairs/citizenship-2. Accessed on 15 August 2019.
[61] Section 42.

mandated to combat activities that fund terrorism and subversive activities by any person in the country. These institutions include amongst others, Eswatini Financial Intelligence Unit, The Directorate of Public Prosecutions, Royal Eswatini Police Service, Asset Forfeiture and Recovery Unit, the National Task Force on Anti-Money Laundering.

Judicial measures

285. The suppression of terrorism act is demonstrated in the case of *Rex vs Amos Mbulaheni Mbedzi (236/2009) [2012] SZHC182 (2012)* which illustrates the High Court's jurisdiction in trying any matter related to terrorism whether a person is a liswati or non-liswati.

Challenges

286. There is a language barrier within the refugee camps which poses difficulty to detect acts of terrorism and subversive activities that may be committed in the country or elsewhere.

287. Court interpreters may be limited for those who are from non-English speaking states.

288. In the determination for refugee status, there are difficulties to distinguish the authenicity of the refugee application; some applications are disguised as asylum seekers yet they are economic migrants.

ARTICLE 24: RIGHT TO SATISFACTORY ENVIRONMENT

Constitutional measures

289. The Constitution of Eswatini addresses issues in relation to the environment as follows:

Section 216- *(1) Every person shall promote the protection of the environment for the present and future generations.*

(2) Urbanisation or industrialisation shall be undertaken with due respect for the environment.

(3) The Government shall ensure a holistic and comprehensive approach to environmental preservation and shall put in place an appropriate environmental regulatory framework.

- section 217 - Parliament may make laws -

  (a) providing for the management of land and settlement of land disputes and for the regulation of any right or interest in land whether urban or rural and whether privately owned or vesting in the King;

  (b) regulating the rights and interests in minerals and mineral oils;

  (c) regarding the use of water naturally found in Eswatini, and

  (d) for the protection of the environment including management of natural resources on a sustainable basis.

Legislative measures

290. The legislative measures discussed below were adopted by the country to promote, protect, and fulfil the above right.

- **Swaziland Environmental Act of 1992** (SEA) establishes the Eswatini Environmental Authority and confers general powers and functions of environmental protection to it. This Act has been repealed by the Environment Management Act of 2002 (EMA) which transforms the SEA into a body corporate with powers to sue and to be sued. It is intended to promote the integrated management of the environment and natural resources. To ensure appropriate enforcement, this Act allows for both public and private prosecution.

- **The Environmental Audit, Assessment and Review Regulations, 2000** is established in terms of Section 18 of the Eswatini Environment Authority Act 1992, the objectives of these Regulations are to avoid and mitigate adverse effects of proposed projects and existing undertakings. It provides a method of certifying project proponents who comply with both preliminary procedures for their activities. It also arms the Authority with sanction measures in times of noncompliance. Most of all, it is the only piece of legislation that provides for public participation in environmental matters, one of the most important components of the Rio 10 Principles.[62]

[62] Rio Declaration of the United Nations Environment Programme.

- **The Waste Regulations, 2000**- these Regulations are also made in terms of section 18 of the SEA Act. The objectives of these regulations are to ensure appropriate waste management in the country. In fact, this piece of legislation is a landmark framework to the problem of solid waste in Eswatini. The legislation imposes a string of stringent sanctions in cases of poor management of waste. Although the new Act repeals the SEA it does not, however, repeal these Regulations, hence they are applicable as long as they are not inconsistent with the EMA.

- **The Ozone Regulations, 2003** - the purposes these regulations are to control the licensing system on the import and export of ozone-depleting substances as a means of regulating the transfer of such substances which can leave the country with adverse impacts. This will, in turn, help the Eswatini Envirormental Authority to improve its monitoring exercises to end-users of such substances.

Other laws related to the environment but not administered by the SEA authority are:

- The Water Act of 2003
- The Game Act of 1993
- The Flora Protection Act of 2001
- The Natural Resources Act of 1951
- The Natural Resources Regulations of 1951
- The Eswatini National Trust Commission Act of 1972
- The Plant Control Act of 1981

Administrative measures

291. The Kingdom has established Eswatini Environmental Authority (EEA), a body mandated to provide and promote the protection, conversation and enhancement of the environment and the sustainable management of natural resources of Eswatini.

292. The EEA undertakes public awareness in order to encourage environmental stewardship among Eswatini citizens. This is done through intensive multimedia awareness-raising programmes. There is citizen participation in decision making which is achieved by giving interested and affected parties the opportunity to object or raise questions on environmental issues. A toll-free line ensures that members of the public report environmental violations at no cost.

293. EEA also supports community activities that address environmental problems such as land rehabilitation and litter management that has grown into a major problem in peri-urban areas. The organisation has further developed a litter management plan as well as Litter Regulations of 2011 that criminalise the indiscriminate dumping of litter.

294. The Environmental Management Act 2002 establishes the National Environmental Fund for the promotion of a sustainable environment at the grassroots' level. Some of the projects that have been implemented through the fund are reflected in the table below:

Table F: Projects funded by the National Environment Fund from 2009-2015

Project name	The objective of the Project	Budget allocation
Waste Management Project Lobamba (2012)	To manage, collect waste around communities.	E310 600
Donga rehabilitation Project implemented at *Sihlangwini* (2013), *Ngonini* (2011), *Ngculwini* (2013), *Madulini* (2014)	To rehabilitate the dongas that were threatening infrastructure such as roads, telephone and power lines; livestock.	E330,020.00
Water harvesting Project implemented at *Mhlatane* (2014), *Kalanga* (2009)	To harvest rainwater from the rooftops of classrooms as a climate change adaption strategy to ensure the supply of cheap water for consumption and agricultural purposes.	E427,190.00
Protected wetland implemented at *Sigwe* (2010), *Lawuba* (2011), *Luve* (2012)	To protect wetlands as a major source of water for life support systems from livestock and indiscriminate	E433,146.00
	harvesting	
N*tondozi* Botanic garden (2010)	To develop the site into a fully fledged botanic garden for crop production initiatives and indigenous plant nursery	E 160 000.00

295. Part (d) of the Environmental, Assessment and Review Regulations of 2000 provides for public participation as follows:

11. (1) Immediately after the Authority has issued a notice of acceptance in respect of an IEE or EIA and the accompanying CMP, or a summary of any of these documents, and has received any additional copies of these documents requested from the proponent, the Authority shall concurrently —

(a) distribute copies of these documents to concerned and affected ministries, local authorities, parastatals, non-governmental organizations and any other persons;

(b) display conspicuously such copies in public places or such other places in the vicinity of the site of the proposed project; and (c) advertise the public review — (i) in the Government Gazette;

(ii) on the Eswatini Broadcasting Service; and

(iii) in a newspaper circulating in Eswatini twice a week and for two consecutive weeks,

specifying the place and the times where copies may be available for inspection, inviting objections, comments or submissions from interested and affected persons, specifying the procedure for the submission of comments and objections and the date on which the public review period will terminate in accordance with sub-regulation (2).

(3) The period for public review of the reports mentioned in the sub-regulation (1) shall be calculated from the date of the last notification in the newspaper and subject to subregulation (3), shall not be less than —

(a) fifteen (15) days for category 2 projects; and

(b) twenty (20) days for category 3 projects.

(4) The Authority may extend a public review period for a period of not more than ten (10) days where the Authority considers it necessary because of the sensitive nature of a project.

(5) Where the Authority believes a project is likely to have significant impacts on the environment of a neighbouring country or that country so requests the Authority shall forward the relevant reports and documents to that country at the same time the reports or documents are made available for public review in Eswatini.

(6) The Authority shall immediately after receipt of objections, comments or submissions:

(a) acknowledge receipt of all written objections, comments or submissions; and

(b) send a copy of the objections, comments or submissions to the proponent and the authorising agency.

(7) The Authority shall, at the expiration of the public review periods specified under sub-regulation (3) review the comments or submissions and in accordance with regulation 12, determine within five (5) days whether or not to hold a public hearing.

(8) The Authority shall not if so, requested by a person who submitted a written comment, or an objection, disclose or make public the personal information or data of that person.

(9) The proponent shall be responsible for all expenses incurred including expenses for the preparation of an IEE, EIA reports and the CMP and shall provide sufficient copies during all review procedures.

296. The 2000 Regulation further provides for public hearing:

12. (1) The Authority shall hold a public hearing, where —

(a) after examining the IEE and/or EIA report and accompanying CMP for the proposed project, it is of the opinion that the project is of such a sensitive or significant nature that the public should have the opportunity to make submissions or comments at a public hearing; or

(b) the public concern over the project is great and the number of written and substantiated objections exceeds ten (10).

(2) The Authority shall, where a public hearing is to be held —

(a) publish a notice, at least once a week for two (2) consecutive weeks, in a newspaper circulating in Eswatini, stating the date and place where the public hearing is to be held at least fifteen (15) days before the public hearing is held and the expenses in respect of the publication of the notice shall be borne by the proponent;

(b) display and make available for inspection and copying in public or other places in the vicinity of the proposed project, all reports, documents, written comments and objections during and after the period of public review until the public hearing is finalised; and

(c) call upon any party who has an interest in the outcome of the public hearing, including the project proponent, the authorising agency, the commenting agency and any other person, to attend the public hearing or solicit in writing comments from other government agencies or offices with expertise or regulatory power over the proposed project.

(3) A public hearing provided for under sub-regulation (1) shall be held within twenty-five (25) days after compliance with sub-regulation (2), by the Authority, but where the Authority is of the opinion that the number and complexity of the issues to be considered at the hearing requires additional time for preparation by any party to the public hearing, it may extend by ten (10) days the date of the public hearing.

297. Furthermore, the report on the findings of public hearings is provided for by the Regulation as follows:

14. (1) The Chairperson of the public hearing shall make and deliver within fifteen (15) days after that public hearing a report approved by all the appointed hearing officers who participated in the public hearing, of its findings to the Authority for its determination.

(2) The Authority shall make the report of the public hearing available for public inspection for a period of not less than twenty (20) days and shall advertise details of where and when it may be inspected and copied, in accordance with regulation 11(1)(c).

Challenges

298. Despite the legal and administrative measures in place, incidences of littering and pollution in the country remains a matter of concern.

Mitigating measures

299. Radio and other mass media programmes are in place to educate the public about keeping a litter and pollution-free environment.

300. There are programmes aimed at addressing the dangers of pollution and climate change.

ARTICLE 25: DUTY TO PROMOTE AWARENESS OF THE CHARTER

Legislative and administrative measures

301. Eswatini's Constitutional framework on the respect for, promotion, protection and fulfilment of all human rights and fundamental freedoms are provided for under Chapter 3 (Bill of Rights) of the Constitution of Eswatini.

302. Eswatini has put in place an institutional framework that will help improve its human rights record. The institutions include the Human Rights Commission which doubles as an Integrity Commission responsible for the protection and promotion of human rights;

the Election and Boundaries Commission responsible for the free and fair conduct of elections; the Land Management Board responsible for the overall management and regulation of any right or interest in land; Government Ministries and Departments. There are also active civil society organisations that continue to promote and ensure through teaching, education and publication, the respect of the rights and freedoms contained in the present Charter.

Challenges

303. The country lacks a monitoring and evaluation framework that adequately captures the awareness-raising interventions carried out by the government.

304. Insufficient human and financial resources to support institutions, such as the Commission on Human Rights and Public Administration to fulfil the obligations set out in this article.

Mitigation factors

305. There are government departments that collaborate with NGOs in conducting human and peoples' rights awareness-raising campaigns in the country.

306. Despite the financial and human resource challenges, there are institutions that are carrying out human rights literacy and awareness, inclusive of mass media coverage.

ARTICLE 26: DUTY TO GUARANTEE JUDICIAL INDEPENDENCE

Constitutional measures

307. The above right is promoted, protected and fulfilled in the Constitution by section 141 which provides for the independence of the judiciary in its functions.

- The section further provides that no person or the Crown may interfere with Judges or judicial officers, or other persons exercising judicial power, in the exercise of their judicial functions.

- It provides that administrative expenses of the Judiciary, including all salaries, allowances, gratuities and pensions payable to, or in respect of persons serving in the Judiciary, shall be charged on the Consolidated Fund. The Crown appoints Justices of the superior courts on the advice of the Judicial Service Commission.
- The constitution provides that justices of the Supreme Court and High Court are to retire at the age of seventy-five years.
- In terms of Section 158 of the Constitution, a Justice of superior courts may be removed from office for stated serious misbehaviour or inability to perform the functions of office arising from infirmity of body or mind.

Legislative measures

308. The legislative measures promoting and protecting the above right are discussed below:

- **Judicial Service Commission Act 13 of 1982 –** establish a Judicial Service Commission and to provide for other matters relating to the Commission and the judicial service.
- **Court of Appeal Act (Supreme Court) 74 of 1954 -** to prescribe the jurisdiction, powers and authorities of the Court of Appeal.

 Court of Appeal Rules

- **High Court Act 20 of 1954 -** consolidates the law relating to the High Court of Eswatini.
- **High Court Rules** – regulating and prescribing the practice, procedure, fees, costs and charges of, and the forms to be used in, the High Court Act.
- **Magistrates Court Act 66 of 1938 -** makes provision for the constitution of Magistrate's Courts, and the jurisdiction, powers and duties of officers presiding over such courts.
- **Magistrates Court Rules 1938** - regulating and prescribing the practice, procedure, fees, costs and charges of, and the forms to be used in, the magistrate's courts; and all such rules shall have the same force and effect as if they had been contained in the Act.
- **Swazi Court Act 80 of 1950 -** to make better provision for the recognition, constitution, functions and jurisdiction of Eswatini Courts, and generally for the administration of justice in Eswatini in cases recognisable by Eswatini Courts.

- **Small Claims Court Act 01 of 2011 -** to establish the Small Claims Court for the adjudication of small claims and provide for incidental matters.

Administrative measures

309. The country through the University of Eswatini – Law Department offers courses to law students designed to protect human and people's rights and respect for the rule of law. Courses offered by the University that advance the subject of Human Rights and respect for rule of law are amongst others the Constitutional law, Public International, Human Rights Law, International Organisations, introduction to Legal systems and methods.

310. The Legal Practitioners Act 1964 as part of capacity strengthening initiative compels Bachelor of Laws and Bachelor of Arts in law degree holders to serve articles of clerkship under the supervision of a principal who is a practising attorney. Further to this, the candidate attorneys have to successfully sit for the Bar Exam to be eligible for admission to practice law at the Superior Courts of Eswatini.

311. Law Society of Eswatini conducts capacity building workshops and symposiums to ensure training of independently minded lawyers. As a best practice, the Law Society of Eswatini invites eminent legal practitioners, Judges and legal experts to facilitate the seminars. It also operates independently and ensures for checks and balances in the administration of justice in the country. Recently the Law Society filled an application challenging the appointment of acting Judges in the Supreme Court.

312. Instruments appointing permanent and pensionable judicial officers comply with the provisions of the Constitution guaranteeing security of tenure of office as enshrined in Section 155. Worth noting is that all Justices of the superior courts have been employed on a permanent basis and will retire at age 75 in terms of our Constitution. The removal of Judges from office is done in accordance with the Constitution.[63]

313. Until the Constitution of 2005 was enacted, the tenure of office of judges of the High Court was governed by the retained articles 99 and 100 of the Independence Constitution of 1968. Article 99 (4) stated that the office of any judge of the High Court

[63] Section 158.

could not be abolished while there was a substantive holder thereof. For some time, there appeared to be uncertainty concerning the retirement age of judges. In terms of article 99 (5) of the Independence Constitution, judges were required to retire at the age of 62 years or such other age as might be prescribed by an Act of Parliament. This confusion led to the Chief Justice seeking a High Court declaration concerning the retirement age of judges. Fortunately, the Constitution of 2005 clarified the issue by providing that the office of a judge shall not be abolished while there is a substantive holder of the office and that judges may retire at attaining the age of 75 years[64].

314. In contrast to the 1973 Decree, which vested all judicial as well as executive and legislative powers in the King, the 2005 Constitution vests all judicial powers in the Judiciary.

315. Furthermore, the country has seen the setting aside of the Practice Directive issued by the Former Chief Justice ordering the non-registration of all lawsuits that challenge the King directly or indirectly.

316. Several cases indirectly challenging the King have been registered in our courts and these include among others, a case challenging the change of country name from Swaziland to Eswatini and cases filed in 2019 challenging the appointment of acting Judges.

317. The Judiciary has a budget separate from the Ministry responsible for the administration of justice. In accordance with the Constitution, the judges' remuneration is not subject to annual appropriation but charged on the consolidated fund.

318. Previously, those who served as Justices on the Supreme Court came from other countries, primarily South Africa. This was considered to be necessary because the Supreme Court only sat for six weeks each year, and part-time judicial service would create conflicts of interest for virtually every experienced legal practitioner in Eswatini. Pursuant to the 2005 Constitution, only citizens of Eswatini have been eligible for

[64] Section 156.

appointment as Justice of a superior court since 26 July 2012. Section 157 (1) of the Constitution has been complied with as the incumbent Chief Justice is a Liswati national, and no foreign Judge has been recruited after the cut-off date.

319. Eswatini provides a conducive environment for institutions that promote and protect human and peoples' rights. The Commission on Human Rights and Public Administration is mandated by the Constitution to promote and protect human and peoples' rights. The Gender and Family Affairs Department under the Deputy Prime Ministers Office is mandated to promote gender equality. The Civil Society Organisations such as international, local and faith-based organisations are also active players/stakeholders in the promotion and protection of human and peoples' rights in the Kingdom.

Judicial measures

320. The following cases that have a bearing on the independence of the judiciary are discussed.

Table G: Cases on the Independence of the Judiciary

Case	Facts	Decision

***The Attorney General v Nkosinathi Simelane* & Others (59/14) [2014] SZSC 77 (03 DECEMBER 2014)**	The Appellant issued Legal Notice No. 177 of 2013 purporting to alter or reduce the salaries, allowances and terms of service of judicial officers which they were enjoying. The Court had to determine the following issues - • The validity and constitutionality of Legal Notice No. 177 of 2013. • The protection of the salaries and terms of office of judges of the superior courts from being altered to their disadvantage while being holders of those offices. • The financial and judicial independence of the	Held: the judiciary is an independent pillar of State, constitutionally mandated to exercise the judicial authority of the state fearlessly and impartially. Under the doctrine of separation of powers, it stands on an equal footing with the executive and the legislative pillars of the state. Further, the judiciary must be left free to disburse the funds allocated to it in administering its own affairs: subject only to the duty of accountability which falls upon all agencies to which government funds are allocated for the provision of services to the public.
	Judiciary. • The powers, duties, and responsibilities of the Chief Justice under the Constitution. • The powers, or lack thereof, of the Principal Secretary Ministry of Finance.	Held Further: Sections 141 (6) and 208 (3) of the Constitution read together mandate that the following terms of any judicial officer shall not be varied or altered to the disadvantage of that Judge or judicial officer. Those terms are: Salary, Allowances, Privileges and rights in respect of leave of absence, Gratuity, Pension, Other conditions of service, Terms of Office Decision: Legal Notice No. 177 of 2013 was thus declared to be null, void, and of no legal effect whatsoever.

Lawyers for Human Rights and Another v Attorney General ((1822/01) [2001] SZHC 40 (29 August 2001)	The applicant sought an order declaring the retiring age of all superior court Judges of Swaziland to be seventy-five years and those Judges who were already over sixty-five years to remain in office until they reach the age of seventyfive (75).	The Court held that the applicants lacked *locu standi in judicio,* but the matter could be persued by the Law Society or the Judges themselves.

Challenges

321. Independence of the Judiciary in Eswatini has had several challenges. In 2002, the Judges of the Court of Appeal resigned *en masse,* following the press statement issued by the then Prime Minister which was to the effect that the Executive arm of Government will not abide by the decisions of the Court relating to the evictions in *Macetjeni* and Non-Bailable offences.

322. On or about 2011, the state party encountered another crisis wherein practising Lawyers boycotted court activities as an outcry on the maladministration of the Judiciary. This led to the impeachment of the then Chief Justice in 2014.

323. The legislation guaranteeing the independence of the Judiciary (listed in Legislative measures) must be revised to align them with the Constitution.

Mitigation factors

324. In an effort to restore the rule of law as alluded in the challenges above, the government gave an assurance to abide by the decisions of the courts and the rule of law was restored in the country. This led to the Judges returning to courts thus retracting their resignations. There was further the enactment of the Constitution of 2005 which assured the return of the rule of law and independence of the Judiciary in the country.

325. Having impeached the then Chief Justice the Judicial system was overhauled, and the recruitment of Judicial officers was done through a transparent process of advertising vacant posts in the widely circulated newspapers. The advertising and

interviewing of the candidates in 2015 pursuant to the impeachment marked a new start and a progressive step towards ensuring the independence of the Judiciary.

PART B (MAPUTO PROTOCOL)

INTRODUCTION

326. The Kingdom of Eswatini ratified the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (hereinafter referred to as the Maputo Protocol) on 5 October 2012.

327. This report is the initial report and is submitted in accordance with Article 62 of the African Charter on Human and Peoples Rights read together with Article 26(1) of the Maputo Protocol. The report is aligned to the guidelines for reporting on the Maputo Protocol and it covers the period 2012 – 2018.

328. In preparing this report, consultative meetings were held with a diverse range of stakeholders comprised of government, private sector, civil society and development sectors. These stakeholders include those working on human rights, gender, social welfare, justice/legal affairs, academia, and other relevant areas.[65]

329. This report provides details on the legislative, administrative, judicial, budgetary and other measures taken by the country to promote and protect the rights of women as enshrined in the Maputo Protocol. This is supported by data from research publications

[65] See the methodology section in Part A pages 8-9.

in the area of women's human rights, interviews with key stakeholders and the abovementioned consultations.

BACKGROUND INFORMATION

330. The Kingdom of Eswatini adopted its Constitution in 2005 as the supreme law of the country.[66] This law was founded on principles of equality and non- discrimination. Pursuant to this, the kingdom of Eswatini reviewed, amended and repealed laws in a bid to align existing laws with the Constitution, international and regional women's rights instruments. This process is still ongoing and efforts to have a Law Reform Commission are being made.

331. The Kingdom of Eswatini held its last population Census in 2017, the results however, have not been published. The preliminary report indicates that the country has a population of 1.1million people, the female population ratio is currently at 51.6 per cent which makes women the majority in the country.

332. The Kingdom of Eswatini has made some strides towards the protection and promotion of women's rights. This is reflected in the Gender and Development Index 2017.

333. Despite these measures, women and girls in Eswatini still face a number of challenges as they bear the brunt of poverty, unemployment, inequality and are the most affected by HIV/AIDS in the country. The Kingdom of Eswatini has made efforts in putting in place a number of measures addressing some of these challenges. This report also recognises that women and girls face various intersecting factors which increase their vulnerability to various forms of oppression.

334. The Constitution of Eswatini in its Bill of Rights entrenches the principle of equality before the law and non-discrimination. More specifically, the principle of equality is guaranteed in section 20(1) which provides for equality across political, social

[66] See the legal system section in Part A pages 11-13.

and economic spheres. Section 20(2) lists a number of grounds under which discrimination is prohibited and these include race, gender, disability etc.

LEGISLATIVE AUDITS AND POLICY ENVIRONMENT

335. A legislative audit exercise aimed at aligning all existing laws in Eswatini with the equality provisions of the Constitution, regional and international instruments was carried out by the Kingdom of Eswatini with the support of the United Nations Development Programme between 2008-2010. The recommendations from this process resulted in the review, repeal and amendment of key pieces of legislation. The table below indicates legislative developments in response to issues faced by women and girls in the Kingdom.

Table H: Legislation and Bills on the protection of Girls and Women's Rights.

Legislation	Status	Summary
The People Trafficking and People Smuggling (Prohibition) Act of 2009	Currently being implemented	An Act to provide for the offence of people trafficking and people smuggling, the protection and support of trafficked or smuggled persons, the establishment of the Task Force for the Prevention of People Trafficking and People Smuggling, and for matters connected therewith.
The Childrens Protection and Welfare Act of 2012	Currently being implemented	An Act to extend the provisions of section 29 of the Constitution and other international instruments, standards and rules on the protection and welfare of children, and to provide for matters incidental thereto.

Amendment of Section 16 of the Deeds Registry Act (2012)	Currently being implemented	Provides for spouses to register the property under both names.
The SODV Act[67]	Currently being implemented	Provides for the normative framework to curb domestic violence and sexual offences. It also expands the definition of rape to include men and boys and expressly prohibits marital rape. The SODV Act provides for a victim-centred approach for survivors of sexual and gender-based violence.
The Legal Aid Draft Bill & Legal Practitioners (Amendment) Bill.	The Legal Aid Bill has to be harmonized with the Legal Practitioner's Act; hence a draft Legal Practitioners amendment Bill has been developed. Currently, the Legal Practitioner's amendment Bill is being vetted by the office of the Attorney General, which will be followed by stakeholders' consultation and thereafter both Bills will be submitted to Cabinet for approval.	The Legal Aid Bill seeks to establish the Legal Aid Board, to define its powers, functions and responsibilities. The Legal Practitioner's amendment Bill seeks to establish the Legal Aid Board and to supplement the powers, functions and responsibilities of the Law Society Counciland subcommittees.

[67] No. 15 of 2018

The Marriage Act, 1964	Currently under review	The object of this Bill is to reform and consolidate the laws relating to marriage and align with the Constitution. Once amended, it will address the challenges relating to womens human rights infrigments.
Matrimonial Property Bill, 2017	Still at tation consul stage.	Seeks to regulate the property rights of spouses. It introduces changes to the current law which attributes the husband sole responsibility to administer matrimonial property.
The Administration of Estates Act, 1902	Currently being reviewed.	The Bill seeks to revise the law relating to the administration of estates and also provide for the recognition of customary law marriages
Regulation of Wages (Domestic Employees) Order, 2016	Currently being implemented.	It extends on the Employment Act by providing for a minimum wage, maternity leave, hours of work, sick leave, compassionate leave etc.

336. In addition to the above legislative developments, the Kingdom of Eswatini developed the Gender policy, 2010. This policy was guided by women's rights instruments such as the Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa.[68] The policy seeks to institutionalise gender mainstreaming at all levels and in all sectors including the allocation of adequate resources. A review of the policy was conducted in 2018 with the objective of assessing its effectiveness and the impact it has had on improving the lives of women and girls in

[68] See Preamble of the National Gender Policy Framework, 2010

the country. The purpose of the review is to incorporate internationally adopted legal instruments such as UN Resolutions, Agenda 2030 (SDGs) and 2063.

337. The Kingdom's National Development Strategy (NDS) and the National Strategic Roadmap (being operationalised through Ministerial Plan of Actions) aimed at enhancing development, eliminating gender gaps and offering equitable opportunities to all citizens irrespective of their sex. The NDS also emphasises the adoption of a genderbalanced approach to development in all national development plans, policies and projects.

ESTABLISHMENT OF INSTITUTIONAL MECHANISMS AIMED AT PROMOTING GENDER EQUALITY

338. The Kingdom of Eswatini established a Gender Coordination Unit in 1997 for purposes of coordinating all gender-related activities in the country. In 2014, this unit was converted into a Department of Gender and Family Issues and is currently located in the Deputy Prime Minister's office. Its main mandate is to mainstream gender into all government policies, programmes and activities.

339. In line with the National Gender Policy 2010, the Kingdom of Eswatini established Gender Focal Points across all government departments. The focal points are aimed at providing a link between their Ministries and the Department of Gender and Family Issues. One of the key responsibilities of the focal points is to guide sector ministries for the mainstreaming of gender, this is still work in progress.

340. The Kingdom of Eswatini also established the Commission on Human Rights, Public Administration and Integrity through Legal Notice 143/2009. Its Constitutional mandate is to promote and protect human rights and to ensure equitable access to public services. Comprised of five (5) Commissioners, this institution is empowered to investigate *inter alia* complaints of human rights violations under the Constitution. Despite being established in 2009, the Commission is not yet fully operational due to financial and human resource constraints.

Gender mainstreaming, planning and budgeting

341. Gender mainstreaming is the core mandate of the Department of Gender and Family Issues. A number of initiatives have been undertaken by this department in a bid to execute its mandate.[69] As a result, capacity building initiatives have been conducted for central Government ministries on Gender Responsive Planning and Budgeting.

MEASURES ON THE IMPLEMENTATION OF SPECIFIC PROVISIONS OF THE PROTOCOL

ARTICLE 2: ELIMINATION OF DISCRIMINATION (EQUALITY/NON DISCRIMINATION

Constitutional measures

342. Section 20 of the Constitution provides for the principle of equality. (Refer to Article 2 under Constitutional measures on Part A of the report for more details on the equality provisions).

343. Section 28(1) provides that women have the right to equal treatment with men and that right shall include equal opportunities in political, economic and social activities.

344. In relation to representation of women in Parliament, Section 94 (2) provides that Ten Senators, at least half of whom shall be female, shall be elected by the members of the House in such manner as may be prescribed by or under any law at their first meeting so as to represent a cross-section of the Swazi society.

345. Further, Section 86 (1) provides that where at the first meeting of the House after any general election it appears that female members of Parliament will not constitute at least thirty percentum of the total membership of Parliament, then, and only then, the provisions of this sectionshall apply.

Section 86(2) states that for the purposes of this section, the House shall form itself into an electoral college and elect not more than four women on a regional basis to the House in accordance with the provisions of section 95(3).

[69] See Administrative measures under Article 2 of Part A

346. Section 211 of the Constitution provides for equal access to land for men and women.

347. Section 268(1) of the Constitution of Eswatini provides that all existing laws, including customary laws, are to be modified, adapted, qualified and exceptions made in so far as is necessary to bring that law in conformity with the Constitution.

Legislative measures

348. Apart from the above constitutional guarantees of equality and non - discrimination, the Kingdom of Eswatini has enacted key pieces of legislation that give effect to these principles as mandated by section 268 of the Constitution.

349. **The Deeds Registry Act (as amended) 2012** has been amended to provide for spouses, married by civil rights, to be able to procure title in immovable property and in its registration. Section 4 provides that parties married in community of property, regardless under whose name it is registered belongs to both parties and as such it should be ceded to the joint estate pending the dissolution of the marriage in instances of death or divorce.

350. **The SODV Act of 2018** provides a wide definition of domestic violence and domestic relationships, it is unique in that it criminalizes acts of domestic violence (Part XIII-XVIII). The Act introduces an obligation on Police and Prosecutors to refer victims to support services and to inform them about the availability of post-exposure prophylaxis for HIV

as part of post-rape care services. It also provides for protection orders as a remedial measure in cases where a person experiences domestic violence.

351. **The Persons with Disabilities Act of 2018** provides for the protection of rights and welfare of persons with disabilities.

352. To counter trafficking in the country, the **People Trafficking And People Smuggling (Prohibition) Act, 2009** was enacted. It provides for the offence of people trafficking and smuggling; the protection and support of trafficked or smuggled persons; and establishment of a taskforce for the prevention of people trafficking and people smuggling.

Judicial Measures

353. A number of progressive judgments have been delivered by the Courts in a bid to align laws and practices in conformity with the principles of equality and non – discrimination as stipulated in the Constitution. Some of the landmark judgments issued by the various Courts since the the adoption of the Constitution include the following:

Table H1: Cases on women's right to equality & non-discrimination

Nombuyiselo Sihlongonyane v Mholi Joseph Sihlongonyane[70]	The applicant instituted legal proceedings for an order concept of marital power insofar as and others for the to the extent that it bars married women respondentto relinquish to applicant his rights and is powers as administrator of the 28 of joint estate on allegations of maladministration of the estate. Aplicant and Respondent were married in terms of civil rites and in marital power of community of property.	The Court held that the common law from suing and being sued without the assistance of their husbands inconsistent with sections 20 and the Constitution. This invalidity was with effect from 25 March 2013 from which date all married women subject to the their husbands shall have the right to sue and to be sued in their own names. Applicant challenged the husband's marital power to be in contravention with Section 20 and 28 of the Constitution.

[70] *Nombuyiselo Sihlongonyane v Mholi Joseph Sihlongonyane* (470/2013A) [2013] SZHC 144 (July 18, 2013)

Attorney General vs. Mary-Joyce Doo Aphane[71]	The Respondent and her husband were married in community of property. They purchased a piece of land with a deed of sale that reflected both their names. Respondent attempted to register this property under both their names but was advised that pursuant to Section 16(3) of the Deeds Registry Act, the property must be registered exclusively in the husband's name. All parties agreed that Section 16(3) of the Act was unconstitutional. Rather than strike down the invalid section, the High Court used a process of 'severing' and 'reading in' (or, in other words, altering the wording of the law) such that Section 16(3) would be amended as follows: Immovable property, bonds or other real rights shall not be transferred or ceded to or registered in the name of, a woman married in community of property, save **even** where such property, bonds or real rights are by law or by a condition of a bequest or donation excluded from the community.	The Court affirmed the High Court's finding regarding the unconstitutionality and consequent invalidity of Section 16(3) of the Deeds Registry Act. The Supreme Court suspended the declaration of invalidity for 12 months from the date of its order to allow Parliament to pass legislation bringing the Act in conformity with the Constitution. Pending enactment of legislation by Parliament, the Supreme Court authorized the Registrar of Deeds to register "immovable property, bonds and other real rights in the joint names of husbands and wives married to each other in community of property.

[71] Civil case No 383/2009. Appeal court judgement, see Swazilii.org/sz judgement/supreme-court/2010/32 *Attorney General v. Aphane*.

	The Attorney General appealed to the Supreme Court of Eswatini (Supreme Court), arguing that the process of curing Section 16(3) of the Act of its unconstitutionality is the role of the legislature, not the Court. He further argued that the High Court should have confined its judgment to declaring Section 16(3) as inconsistent with Section 20 and 28 of the Constitution.	
***R v Shabangu* [2007] SZHC 47**	Accused was indicted to have had an unlawful and intentional sexual intercourse with a female minor aged 13years without her consent. The complainant failed to report or inform any family member about the incindent.	Court held that "the cautionary rule, as hitherto applied in our courts, is outmoded, arbitrary, discriminatory of women and empirically false and should no longer be part of our law". This position was subsequently endorsed in the SODV Act which abolished the cautionary rule in relation to the evidence of the complainant of a sexual offence or a child.
Makhosazane Eunice Sacolo (nee Dlamini) and Another vs. Jukhi Justice Sacolo and 2 Others (1403/16) [2019] SZHC (166) 30th August 2019	A constitutional challenge of the common law principle of marital power of the husband as to whether it infringes the right to equality and dignity for married (in community of property) women. Further, an order was sought declaring that sections 24 and 25 of the Marriage Act of 1964 to be unconstitutional and invalid in that they are inconsistent with sections 20 and 28 of the Constitution of Eswatini. The basis for seeking such order was that the word	The Court held that the common law doctrine of marital power is discriminatory against married women and offends against the Constitutional right to equality before the law and the right to dignity, and therefore declared invalid. The Court further declared that spouses married in terms of the Marriage Act 1964 and in Community of Property have equal capacity and authority to administer marital property. Held, further: Section 24 of The Marriage Act is declared invalid, save for the first portion which reads as follows: "The consequences flowing from a

		marriage in terms of this Act shall be in
	"African" in the two sections of the Marriage Act is discriminatory on the basis of race in that it imposes upon African spouses the customary consequences of marriage while non-African spouses automatically have the benefit of common law consequences.	accordance with the common law as varied from time to time by any law". Held, further: Section 25 of The Marriage Act is declared invalid in its entirety. The Court in reaching its decision to invalidate part of section 24 and entire section 25 noted that that the word "African" is not defined in the Act. The Act defines only one word, "Minister". It takes no ingenuity to know that there are indigenous Africans and nonindigenous Africans on this continent.

Administrative Measures

354. The Kingdom of Eswatini established a full-time Secretariat dedicated entirely to the fight against Trafficking in Persons (TIP) and an Emergency Response Team (ERT) comprised of front-line practitioners who are mandated to attend to individual TIP cases.[72] The Anti-Human Trafficking Secretariats' mandate is to coordinate the implementation of the Taskforce for the Prevention of People Trafficking and People Smuggling. The Taskforce was initially established in June 2009 as part of the government's efforts to prevent trafficking ,it was re-established in January 2017.

[72] Ibid.

355. This Taskforce is comprised of representatives from Government Ministries, law enforcement agencies, the maiden regiment (*Imbali*),[73] development partners, NGOs, and Faith-based organisations. The main function of the taskforce is to provide strategic guidance on issues of trafficking and also conduct advocacy to prevent people trafficking and people smuggling. This is conducted in collaboration with all sectors in the country.

356. To increase efforts to prevent the trafficking and smuggling of people, the Secretariat conducts awareness raising programmes such as weekly media programmes (radio, tv, print media) and during national events[74]. These platforms are used to sensitise and educate women and girls and the citizenry on combating trafficking and smuggling, reporting procedures and action to be taken in suspected cases. Community dialogues are conducted with the same stakeholders. The Secretariat also facilitates the commemoration of World Day against Trafficking in Persons, an annual event commemorated on 30 July.

357. Ports of Entry sensitization programmes were also conducted where various stakeholders were sensitized on victim identification guidelines, national referral mechanisms and related legislation. These stakeholders included officials from Immigration, Police, Eswatini Revenue Authority (Customs Department) and Eswatini Civil Aviation Authority. Members of the public are sensitized through posters at strategic points at the ports of entry.

358. In partnership with NGO's, the Anti-trafficking Secretariat conducted an analysis on capacity gaps in order to improve prevention, protection and prosecution of trafficking cases.

359. In November 2015, the state party launched the guidelines for assisting victims of Human Trafficking titled: *Victim Identification Guidelines and Referral Mechanism for Assisting Victims of Human Trafficking in the Kingdom of Eswatini: a practical guide to identifying, referring and assisting victims of trafficking*. These guidelines are in line

[73] Above n 36.

[74] Eswatini International Trade Fair, Umhlanga Reed Dance, Lutsango LwakaNgwane amongst others.

with a victim-centred approach aimed at ensuring that survivors of trafficking receive adequate and essential services as provided for in the SODV Act and the Constitution. In addition to this, the Secretariat facilitated the development of the National Strategic Framework and Action Plan to Combat People Trafficking (2019-2023).

Challenges

360. One of the biggest challenges to the implementation of laws and policies is the inadequate budgets or gender-responsive budgets. Sensitization, transcription (disability accommodative language (braille) and translation(local language) of laws and pollicies for the general populace is limited. This contributes to a lack of awareness of these laws and policies by the general populace.

361. Further, due to the financial constraints faced by the state party, ministerial budgets cuts pose a challenge in the implementation of programmes geared towards addressing the gender issues.[75]

362. Whilst Section 211 of the Constitution provides for equal access to Swazi Nation Land for domestic purposes, this can only be accessed through a payment of a beast as homage under the traditional system to the Chief of the area (kukhonta). However, inconsistencies in understanding and application of the constitutional provisions still exist in some chiefdoms. For instance, in some chiefdoms, women without a male child cannot khonta.

363. The country does not have a Law Reform Commission to review, repeal, amend and enact all laws that have implications on the rights of women. This delays the process of fast-tracking the review of laws such as the Matrimonial Property Bill, Marriages Bill, Administration of Estates Bill, drafting of the Land Policy and the citizenship Bill to promote gender equality[79].

[75] Sadc Guidelines_On_Gender_Responsive_Budgeting accessed from https://www.sadc.int/files/8914/4681/2781/SADC

[79] Also see WLSA-Eswatini recommendations.

364. While the country has enacted the SODV Act, the full implementation of the Act is still in progress: for instance the country is yet to establish support services in the form of shelters or temporary housing for women. There is also need for comprehensive response structures to be put in place for the protection of survivors of sexual and gender-based violence including safe houses, education centres, decentralized and prompt referral mechanisms at the community level as well as economic empowerment initiatives to support the economic independence of survivors.

365. Furthermore, the Department of Gender and Family Issues under the Deputy Prime Minister's office is not sufficiently staffed, human and financial resources remain a major challenge.

ARTICLE 3: THE RIGHT TO DIGNITY

Constitutional measures

366. Section 18 of the Constitution of Eswatini provides for protection from all forms of *inhumane or degrading treatment. The section especially states that 18(1)*

> *"The dignity of every person is inviolable. Subsection 2 also provides that "A person shall not be subjected to torture or to inhuman or degrading treatment or punishment".*

367. The protection of the right to dignity is also articulated in Section 14 (1) (e) and (f). Section 14 (1) (f) is specific to the protection of vulnerable groups. These provisions provide for protection from inhumane and degrading treatment for all Swazis regardless of gender. These constitutional provisions read in conjunction with the nondiscrimination and equality clause ensure the same protections for women. In addition to this, section 38 of the Constitution re-emphasises protection from any derogation, freedom from torture, cruel and inhumane and degrading treatment or punishment

368. The right to respect and the free development of personality is enshrined in Section 28 (1)(2) of the Constitution. This section provides for that "*Women have the right to equal treatment with men and that right should include equal opportunities in political, economic and social activities."* Particular emphasis is on subsection 2 which

places a positive obligation on the state to enhance the welfare of women – it specifically provides that: -

"*subject to the availability of resources the government shall provide facilities and opportunities necessary to enhance the welfare of women to enable them to realize their full potential and advancement."* To safeguard against cultural practices that have a bearing on the dignity of a woman, subsection 3 provides that, "*A woman shall not be compelled to undergo or uphold any custom to which she is in conscience opposed*."

Legislative measures

369. Section 48 of the **SODV Act** criminalises sexual harassment and provides that a person on conviction shall be liable to pay a fine not exceeding twenty-five thousand Emalangeni or to imprisonment for a period not exceeding 10 years or both.

370. To protect women in conflict with the law, Section 10 (3) of the **Police Service Act 22 of 2018 and Section 6(2) of Correctional Service Act 13 of 2017** provides that "members of the Correctional Services and Police service shall not inflict, instigate or tolerate any act of torture or cruel, inhuman or degrading treatment or punishment or nor shall any member of the Correctional Services or Police service invoke superior orders or exceptional circumstances as a justification for torture and other cruel inhuman or degrading punishment".

371. Further, section 49(1) (b) (ii), (iii) (iv) of the Police Service Act and section 44 (o) (p) and (q) of the Correctional Services Act makes it a disciplinary offence to use violence or unnecessary force or to intimidate a prisoner or other person with whom the officer may be in contact within the execution of duty.

372. To preserve the dignity of women, the CP&E Act,[76] the Police Act[77] and Correctional Services Act[78] directs that searches shall be conducted by officers of the corresponding sexes.

[76] Section 40 (3)
[77] Section 13 (6)
[78] Section 11 (4)

373. The **SODV Act** as mentioned earlier provides for protection of persons against domestic violence, survivors of gender-based violence and remedial measures for victims of violence. The Act covers general sexual offences, commercial sexual offences[79].

Judicial measures

374. A number of key judgments have been delivered by the Courts in recent years weighing in on the principles of evidence in sexual offences.

Table I: Cases on Violence Against Women

Case	Facts	Decision
***R v Shabangu* [2007] SZHC 47**	This case concerned the rape of a thirteen (13) year old girl. The victim was scared to inform her sister about the rape and waited for other family members who had been away to return home. She waited for a few months before reporting the crime to the police. Due to delayed reporting, the High Court had to decide whether the victim's testimony was fabricated or not, and if it could be used as evidence to support the case. In its reasoning, the Court concluded that it was convinced that the evidence could be used to support the case provided there were safeguards to reduce the risk of wrongful	The High Court held that "the cautionary rule, as applied in our courts, is outdated, arbitrary, discriminatory of women and empirically false and should no longer be part of our law". This position was subsequently endorsed in the SODV Act which abolished the cautionary rule in relation to the evidence of the complainant of a sexual offence or a child.[81]

[79] Section 77 of SODV

[80] See Summary of case retrieved from the Southern Africa Litigation Centre (2018) Alignment of Domestic Laws with Recommendations of United Nations Human Rights Mechanism retrieved from https://www.southernafricalitigationcentre.org/wp-content/uploads/2018/09/Eswatini-Human-RightsResearch-Report.pdf

[81] See Section 49 on the SODV Act,2018

	conviction[80].	

[80] See Summary of case retrieved from the Southern Africa Litigation Centre (2018) Alignment of Domestic Laws with Recommendations of United Nations Human Rights Mechanism retrieved from https://www.southernafricalitigationcentre.org/wp-content/uploads/2018/09/Eswatini-Human-RightsResearch-Report.pdf

Mbuso Blue Khumalo v Rex (12/12) [2012] SZSC 21 (31 May 2012)	The appellant was convicted of Rape with aggravating circumstances as envisaged by section 185 bis of the CP&E Act No. 67 of 1938 as amended. He was sentenced to twelve years imprisonment. He appealed against his conviction and sentence. He pleaded his innocence and denied committing the offence for the following reasons: first, that the complainant is his girlfriend and the mother of his threeyear-old child; secondly, that on the alleged day, he did not have sexual intercourse with the complainant because his manhood was dysfunctional. He further argued that on the day in question he found the complainant having sexual intercourse with another man.	The Court observed that the essence of the crime of rape is that the complainant has not consented to the sexual intercourse. The absence of physical resistance by the complainant does not amount to consent; the reality is that the submission may have been induced by threats of violence, fear or duress or incapacity to consent. The woman's consent must be real and given prior to sexual intercourse. The Court held that our law is clear that even your wife or girlfriend must consent to sexual intercourse. The appeal against conviction was dismissed and increased the twelve years sentence with eighteen years imprisonment.

Administrative measures

375. The Government in collaboration with NGO's has embarked on a number of initiatives in an effort to ensure the protection of every woman's right to respect for her dignity and her protection from all forms of violence. Such includes awareness campaigns on women's rights, economic and educational empowerment.

376. The country extended the National Multi-Sectoral HIV and AIDS Framework (20142018) to include sex workers in the list of key vulnerable populations.

377. In relation to the rights of LGBTI persons, Eswatini LGBTI community convened in 2018/19 the Gay pride march which was attended by hundreds of supporters to highlight the importance of respecting diversity and calling for equality and protection of LGBTI persons.[82]

Challenges

378. Even though the state party has enacted legislation to curb violence against women, violence is still prevalent in our society.

379. The courts having pronounced that the husbands marital power is nolonger part of our law however, there is still a slow progress in passing into law the Marriages Bill which will be incorporate the pronouncement and also be aligned with the rights enshrined in the Constitution and the Maputo Protocol.

ARTICLE 4: THE RIGHT TO LIFE, FREEDOM AND SECURITY OF A PERSON

Constitutional measures

380. The right to life is enshrined in section 15(1) of the Constitution which provides that *"A person shall not be deprived of life intentionally save in the execution of the sentence of a court in respect of a criminal offence under the law of Eswatini of which that person has been convicted.*

A moratorium, however, has been formalised on the death penalty.

381. Moreover, section 15(1) (5) prohibits termination of pregnancy in the country *"except in exceptional circumstances such as medical and therapeutic grounds where the doctor certifies that the pregnancy will endanger the life or pose a serious threat to the physical health of the mother."*[83]

382. This section also makes provision for termination in instances where rape, incest or unlawful sexual intercourse with a female with mental disability has taken place. It also confers powers on parliament to prescribe other grounds in which termination

[82] Article published on the Times Newspaper,30 June 2018 and retrieved from https://www.timeslive.co.za/news/africa/2018-06-30-eswatini-gay-pride-waves-its-rainbow-flag-for-the-firsttime/

[83] See section 15(5) of the Constitution of Eswatini of 2005.

of pregnancy can occur. The country, however, has not yet enacted legislation expanding

on the grounds for termination – this is important in ensuring the constitutional rights to privacy and bodily integrity are upheld and more importantly that sexual and reproductive health rights are promoted

383. Section 38 of the Constitution provides that *"there shall be no derogation from the enjoyment of the rights and freedoms provided in the Bill of Rights particularly the protection of the right to life, equality before the law, and security of persons among other fundamental rights*."

384. Section 298 of the CP& E Act provides that:

(1) If a woman convicted of an offence punishable with death is found under this section to be pregnant, the sentence to be passed on her shall be a sentence of imprisonment with hard labour instead of a sentence of death.

(2) If a woman convicted of an offence punishable with death alleges that she is pregnant, or if the court before which a woman who is so convicted thinks fit to order, the question whether or not she is pregnant shall, before sentence is passed on her, be determined by such court.

385. *(3) The question whether such woman is pregnant or not shall be determined on such evidence as may be led before the court either on the part of such woman or on the part of the Crown, and the court shall find that the woman is not pregnant unless it is proved affirmatively to its satisfaction that she is pregnant.*

386. *(4) The rights conferred by this section on a woman convicted of an offence punishable with death shall be in substitution for the right of such woman to allege in stay of execution that she is quick with child.*

PROTECTION FROM VIOLENCE

387. Violence against women and girls remains pervasive in the Kingdom of Eswatini. Whilst there is no accurate data on the rates of violence against women in the country, various surveys conducted in previous years show that almost 48 per cent of women who reported sexual violence had two or more incidents of violence before the age of 18

years. In addition to this, 1 in 4 young women reported experiencing physical violence prior to the age of 18 years[84].

388. According to a National Study on violence against children and young women[85]report, 1 in 3 Swazi girls has experienced some form of sexual violence by the time they reach 18 years old. The main perpetrators of this form of violence in many instances are intimate partners such as husbands, boyfriends and in some cases relatives and less of strangers.

389. Eswatini criminalises acts of sexual violence through the CP&E Act of 1938 as amended, SODV Act 2018, the CPWA 2012 and Common Law.

390. The SODV Act, 2018 criminalises all forms of violence including sexual violence, intimate partner violence and domestic violence. The Act responds to the outcry on the escalation of sexual offences and domestic violence against women and children including infants, which has accelerated the HIV and AIDS pandemic by imposing high terms of imprisonment on convicted offenders. This Act expands the definition of rape and provides for stiffer penalties, it addresses sexual acts amongst adolescents.

391. In addition to the above, the Act provides that prosecution may further not be instituted without the written consent of the Director of Public Prosecutions where the victim was under the age of 18 years at the time of the offence or where there was an age difference of no more than 5 years between the victim and the accused.

392. The SODV Act also makes provision for recourse in domestic matters through the issuing of protection orders for victims of domestic violence, as well as a range of alternative remedies which may be applied to protect victims and their family members.

[84] See UNFPA fact sheet on the Violence Against Women in the Kingdom of Eswatini retrieved from https://www.togetherforgirls.org/eswatini/ . Also download UNFPA National Survey on Violence Against Children in Eswatini

[85] A National Study on Violence Against Children and Young Women in Swaziland, October 2007

Section 77 of the SODVA has a wide definition of domestic violence and domestic relationships and makes domestic violence a criminal offence, this is a progressive step in addressing the alarming rates of domestic violence in the country.

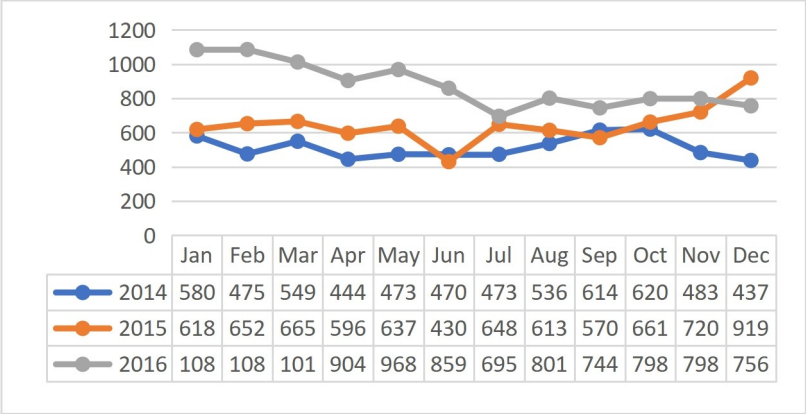
393. Section 126 also makes provision for the establishment of Domestic Violence Courts at Magistrate court level. These are special courts tasked with dealing with cases of domestic violence. It also attributes specific duties to Police officers and Prosecutors. Section 121 further prohibits an officer from refusing to institute a prosecution or from withdrawing a charge without authorisation from the Director of Public Prosecutions, in respect of offences committed under sections 119 and 120.

394. As earlier stated, Eswatini enacted the People Trafficking and People Smuggling (Prohibition) Act 2009, to protect trafficking and smuggling of all people especially vulnerable groups such as women, girls and persons with disabilities.

Administrative and other measures

395. In relation to GBV, the Kingdom of Eswatini has engaged in a number of advocacy efforts to heighten awareness on this scourge. The National Surveillance System on Violence (2016) Report reflects an increasing trend in reported cases particularly in the period January 2014 to December 2016. A total of 6, 154 incidences were reported in 2014 and 7, 729 in 2015 while in 2016 the total number of reported incidences were 10, 504, see statistics below:

Figure 3: National Surveillance System on Violence Report, 2016



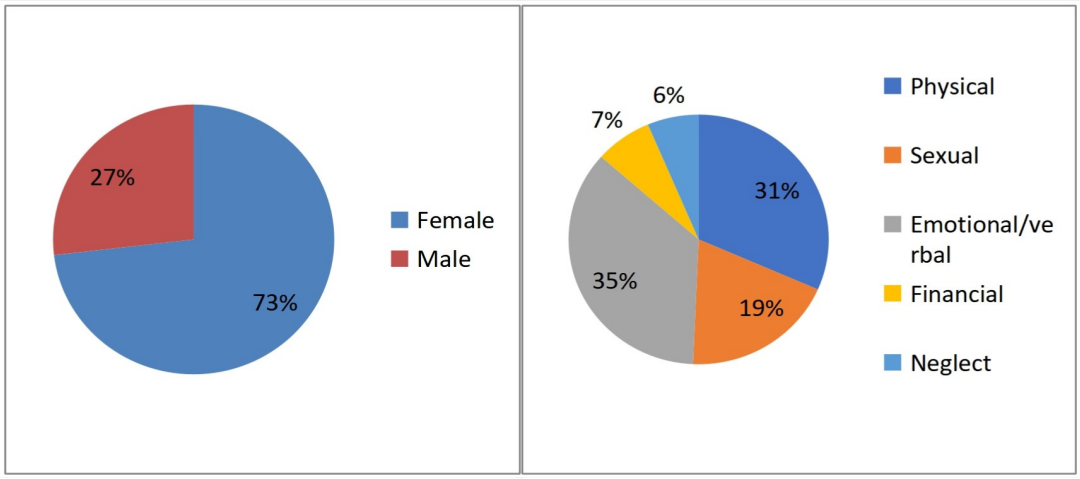
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2014	580	475	549	444	473	470	473	536	614	620	483	437
2015	618	652	665	596	637	430	648	613	570	661	720	919
2016	108	108	101	904	968	859	695	801	744	798	798	756

396. The above statistics, are expected to decline in the long run as the country rolls out the National Strategy to End Violence (2017-2022) in an effort to tackle this scourge. The costs of implementing this strategy is currently estimated at E400 Million; Government is making efforts for adequately resourcing this strategy. The strategy has also taken into account the costs of implementing the SODV Act, 2018 in relation to GBV victim/survivor support.

397. The National Surveillance Report also revealed that sexual violence, physical and emotional violence levels remain high.[86] The diagram below depicts the proportion of cases by type/form of violence and the distribution of cases (victims) by sex:

Figure 3.1: National Surveillance System Annual Report, 2016

[86] National Surveillance System Annual Report, 2016



National Surveillance System Report, 2016

398. Eswatini has set up One-Stop centres (currently in three out of the four regions) which provide comprehensive services to survivors/victims of GBV. The country has also developed National Multi-sectoral Guidelines for GBV response to provide a comprehensive coordinated service delivery approach with minimum standards to ensure survivors/victims needs are met. The country further adopted the global Guidelines for Integrating Gender-Based Violence Interventions in Humanitarian Action.

399. The Government of the Kingdom of Eswatini established a High-Level Task Force on Violence that comprises of Principal Secretaries from respective ministries, nongovernmental organisations, faith-based organisations and civil society at large. The mandate of this task force is to provide policy direction on gender-based violence issues. In addition to this, a Multi-Sectoral Task Team was established to provide technical expertise to initiatives aimed at ending violence.

400. The State Party through the support of Development Partners conducted a study in 2017 on the drivers of violence against children. This study contributes to evidence building on the subject and is also instrumental in developing strategies to counter the violence against children in the country.

401. Further, Development Partners supported the establishment of country's first sexual offences unit in 2008 to counter sexual violence amongst children located at a Magistrate Court. It also has a child-friendly room for investigative purposes.

402. Eswatini established the Commission on Human Rights and Public Administration whose mandate, *inter alia* is to investigate complaints concerning alleged violations of fundamental rights and freedoms.

403. Domestic Violence and Protection units have been set up in most Police stations across the country to provide support to victims of domestic violence. These units aim to improve the process of managing and prosecuting rape and violent offenders; to reduce the cycle time for finalising court cases and to restore victims' optimal state of health.[87]

404. The Government of Eswatini has embarked on capacity building initiatives aimed at enhancing the knowledge of criminal justice role-players on the SODV Act – this will ensure that victims of these forms of violence are able to obtain redress in the justice system including accessing services to address their needs.

Challenges

405. Even though the state party has enacted legislation to curb violence against women, it is still prevalent in our society. Some of the drivers of gender-based violence are family stress (due to socio-economic situation), family secrets, high tolerance of violence (i.e child discipline – corporal punishment at all levels). Further, societal sterotypes (men superiority to women) perpetrates violence in that men still perceive women as subjects to their authority and control.

[87] See https://www.unicef.org/infobycountry/swaziland_89829.html for more detail on the one stop centre in the country.

ARTICLE 5: ELIMINATION OF HARMFUL PRACTICES

Constitutional measures

406. Section 28(3) of the Constitution provides for that "*A woman shall not be compelled to undergo or uphold any custom to which she is in conscience opposed*". Furthermore, section 252 (2) of the Constitution recognises the principles of Swazi Customary Law as part of the enforceable law of the land. Section 252(3) further adds that the provisions of subsection (2) do not apply in respect of any custom that is, and to the extent that it is inconsistent with the provisions of this Constitution or repugnant to natural justice or morality or general principles of humanity.

407. Having a Constitution in place, women are no longer forced to engage in cultural practises such as kungenwa, kuzila and kwendziswa.

Legislative measures

408. The **SODV Act of 2018** penalises actions that subject women to harmful cultural practices which violate the dignity and security of their person. Section 42 criminalises the unlawfully taking of a child out of the control of the custodian of that child or a person in charge of that child (a) with the intention of performing a sexual act or sexual violation with that child; (b) For the purposes of harmful rituals or sacrifices; (c) for any other unlawful purpose. The Act prohibits sexual relations with a person under the age of 18 years.

409. The country enacted the **Children Protection and Welfare Act of 2012**. The Act makes provision for the full protection of children's welfare and the promotion of their rights. It criminalises forced and/or early marriages. Section 15 provides that "a child has a right to refuse to be compelled to undergo or uphold any customary practices that are likely to negatively affect the child's life, health, welfare, dignity or physical, emotional, psychological, mental and intellectual development".

410. The Marriage Bill, when passed, will align the marriageable age to 18 years old in line with international, regional and domestic legislation. It further sets a criterion for the validity of a marriage to include voluntary consent amongst parties. This confirms with the customary practice of *kuteka*, that voluntary consent is attained.

Administrative Measures

411. Eswatini is one of the countries with the lowest rate of child marriage in SubSaharan Africa. According to the survey, four (4) per cent of girls are married before the age of 18[88]. The country has made great strides in its commitment to the eradication of child marriages by 2030. Campaigns on ending pre-teen and post-teenage pregnancy were launched by the Deputy Ministers Office in August 2019.

412. The state party in collaboration with development partners has been conducting sensitisation awareness campaigns and dialogues on sex discrimination. The Men Engage Network has been implementing prevention programmes by engaging men and boys through dialogue on their role in ending the scourge.

ARTICLE 6 RIGHTS RELATING TO MARRIAGE

Equality in Marriage.

413. Section 20 of the Constitution guarantees the right to equality before the law and prohibits gender discrimination. Cases of *Mary Joyce Doo Aphane v The Attorney General, Joseph Mholi Sihlongonyane v Nombuyiselo Sihlongonyane* High Court case 2012 and *Makhosazane Eunice Sacolo (nee Dlamini) and Another vs. Jukhi Justice Sacolo and 2 Others* (1403/16) [2019] SZHC (166) 30th August 2019 are key indications of the promotion of the right to equality in marriage by the courts.[89]

[88] Swaziland Multiple Indication and Cluster Survey, 2014
[89] See Table H1 under Article 2
[94] Widow inheritance. [95]
Arranged marriage.

Free and full Consent of intending spouses

414. Section 27 (2) of the Constitution provides that "*Marriage shall be entered into only with the free and full consent of the intending spouses*". Section 28 (3) declares that a woman shall not be compelled to undergo or uphold any custom to which she is in conscience opposed. In practice, customary practices of *kungenwa,*[94] *kwendziswa*[95] and others are no longer practised against the free and full consent of the intending spouses. At the Customary marriage ceremony, the chief's representative has the very important role of witnessing if the woman is a consenting party to the smearing with the red ochre.

Minimum age of marriage

415. Section 27(1) of the Constitution of Eswatini provides that men and women of marriageable age have a right to marry and found a family. Currently, the Marriage Act 1964 places the marriageable age for women at 16 and 18 for men. It is also worth noting that parental consent is required for women between the ages of 16 to 18 years. However, the SODV Act and the Children Protection and Welfare Act 2012 places the status of majority to be at the age of 18. As a corrective measure, the Marriage Act is under review to place the marriageable age at 18. The Marriages Bill 2018 is undergoing stakeholder consultation.

Registration of marriages.

416. Registration of marriages in Eswatini is regulated by the Birth, Marriages and Deaths Registration Act 1983. Section 25 and 26 of the Births, Marriages and Deaths Act 05 of 1983 obligates marriage officers, Chiefs, *Tindvuna* and *Bagijimi* who solemnise marriages in terms of civil rites/customary marriage to complete in triplicate marriage information of such marriage in the prescribed form and within 14 days transmit same to the District Registrar or Assistant District Registrar for registration and issuance of marriage certificate. These provisions further criminalised omissions of the above marriage officers to register the marriage.

417. Efforts are being made to encourage spouses married in terms of customary law to register their marriages as well Marriage officers to ensure the registration of marriages. The Marriages Bill, seeks to formalise the solemnisation of customary marriages so that they are easily registered.

418. *In* ***Samuel Myeni Hlawe v Beatrice Tholakele Seyama and two others (56/2016) [2017] SZSC 41 (09 October 2017)*** the Court at para 12 alludes to the provisions of B.M.D's Act.

"It is noted that section 26 of the *Births, Marriages and Deaths Act, 1983* makes it an offence for a chief, *indvuna*[90] or *umgijimi*[91] who fails to transmit the information necessary to register a customary law marriage that has taken place in the chief's area. The provision anticipates the presence of the chief or *indvuna* or *umgijimi* at the marriage celebration as an official who has a specific role to play."

419. Further, in ***Mduduzi Masiko Dlamini vs Philile Nonhlanhla Dlamini (nee Ndzinisa* (33/2017) [2017] SZSC 58** (10th November 2017) the Supreme Court opined that the parties first marriage under custom was not registered. This was a breach of the law (Section 25 and 26 of the Births, Marriages and Deaths Act) which requires that all marriages should be registered within a specified period. Not having the marriage registered however does not mean that such marriage does not exist, it is only that it is difficult or cumbersome to prove in a court of law.

420. One of the challenges encountered in the registration and deregistration of marriages is that the same parties tend to first marry in terms of customary marriage then later contract civil rites marriage or vice versa, without appreciating the complex consequences of mixing the two marriage regimes which attract two marriage proprietary regimes. On divorce or dissolution of the marriage, the procedure they have to follow is quite cumbersome, different and untenable in most cases. The ***Mduduzi Masiko Dlamini vs Philile Nonhlanhla Dlamini (nee Ndzinisa* (33/2017) [2017] SZSC 58 (10th November 2017)** illustrates this challenge.

[90] Community leader reporting to a chief.

[91] A chief's runner – liaises with the community members and the chief.

- **Facts:** the parties entered into what is termed 'dual marriage', whereby customary and civil rights marriages co-exist. The first marriage to be solemnised was customary marriage and its matrimonial property regime is regulated by Swazi law and custom. The subsequent civil rites marriage property regime is governed by Common law. On dissolution of the dual marriage, the customary marriage was dissolved through Swazi law and Custom, and divorce proceedings for the civil rites marriage were instituted.
- **Legal implications:** The dual marriage system introduces challenges at the termination of the marriages due to the conflict of laws governing the different regimes.

- **Courts (*Orbiter dictum*)**: Civil and Customary marriages in a dual marriage arrangement co-exist since there is no law which provides for what happens to either of the marriages. The later marriage does not swallow up or absorb or dissolve the earlier nor the earlier the later and the formal dissolution of either marriage would not affect the existence of the other since the couple went through two phases of marriage under different legal regimes.

Monogamy and Polygamy

421. There are two modes of marriages in Eswatini, namely the Civil Marriage and Customary marriage. Civil Marriages are regulated by the Marriage Act 1964, this Act only recognises monogamous marriages (section 7). On the other hand, customary marriages are potentially polygamous and regulated by the principles of Swazi Law and Custom. The principles of Swazi law and custom address the issue of protection and promotion of women's property rights in a polygamous marriage, however, individuals in an extended family tend to interfere with the spouses property rights. This is due to the fact that customary law is not codified rendering it subject to different interpretations, thus causing uncertainty. However, in a bid to promote and protect women's property rights, the Matrimonial Property Bill has been developed to give clarity on the devolution of property in polygamous marriages.

Freedom to choose marriage property regime rights

422. In light of the *Sacolo case,*[92] spouses married in the community of property regime are automatically governed by the common law. The position that prevailed before was that Section 25 of the Marriage Act 1964 gave freedom to spouses to choose their property regime at the time of solemnisation. On the otherhand, in customary marriages spouses do not have the option to choose the property regime. However, in practice the spouses are at liberty to devise a will stipulating how their properties should be divested, the Master of the High Court should supervise.

Right to use and retain the maiden surname

423. The Ministry of Home Affairs, upon the registration of marriage does not prohibit the use of a women's maiden surname after marriage.

Acquisition of nationality through marriage by a woman

424. Section 44 *(1)* of the Constitution prescribes that *a woman who is not a citizen of Eswatini at the date of her marriage to a person who is a citizen (otherwise than by registration) shall become a citizen by lodging a declaration in the prescribed manner with the Minister responsible for citizenship or with any Diplomatic Mission or Consular Office of Eswatini or at any other prescribed office, either before or at any time during the marriage, accepting Eswatini citizenship.*

Right to transmit nationality to a child by a woman

425. Section 43 (4) of the Constitution declares that *where a child born outside of marriage is not adopted by its father or claimed by that father in accordance with Swazi law and custom and the mother of that child is a citizen of Eswatini, the child shall be a citizen of Eswatini by birth.*

426. It is conceded however that Section 43(1) is inconsistent with provisions of the Maputo Protocol in as far as it restricts married women from transmitting nationality to their children. The National Action Plan on statelessness is being developed recognising the need to review section 43(1) to align with international standards.

[92] *Makhosazane Eunice Sacolo (nee Dlamini) and Another vs. Jukhi Justice Sacolo and 2* others (1403/16) [2019] SZHC (166) 30th August 2019.

Duty to maintain family and children

427. *Section 29 (7) of the Constitution obligates Parliament to enact laws necessary to ensure that —*

(a) a child has the right to the same measure of special care, assistance and maintenance as is necessary for its development from its natural parents, except where those parents have effectively surrendered their rights and responsibilities in respect of the child in accordance with law;

(b) a child is entitled to reasonable provision out of the estate of its parents;

(c) parents undertake their natural right and obligation of care, maintenance and proper upbringing of their children.

428. *The Children Protection and Welfare Act 2012 in Section 18 (1) provides that " A parent or guardian, whether —*

(a) married or not; or

(b) the parents of the child continue to live together or not, shall not deprive a child of his welfare.

(2) A parent or guardian has a responsibility, whether imposed by law or otherwise, towards the child which include the responsibility to —

(a) ….

(b) provide good guidance, care, assistance and maintenance for the child to ensure the survival and development of that child;

(c) ensure that during temporary absence, the child shall be cared for by a competent person;

(d) exercise joint primary responsibility for raising the children, except where the parent or guardian has surrendered those rights and responsibilities in accordance with the law.

(3) A parent or guardian shall be responsible for the registration of the birth of his children and the name(s) of the parent(s) or guardian shall appear on the birth certificate.

429. Chapter 24 of the Children Protection and Welfare Act 2012 further provides that *"A parent or any other person who is legally liable to maintain a child or contribute towards the maintenance of the child is under a duty to supply the necessities of food, clothing, health, life, education and reasonable shelter for the child. This Chapter further provides procedures and remedies for compelling defaulting parents to maintain their children".*

Right of a married woman to own property

430. In civil rites marriages, there are two recognised matrimonial proprietary regimes, these are in community of property and out of community of property. In the case of the latter, the spouses are at liberty to own properties in their sole names. In the case of the former, the spouses own property jointly, however, there are exceptions or instances which permit one spouse to own their property solely and such include property acquired through inheritance, donations preceding marriage amongst others.

ARTICLE 7: PROTECTION OF WOMEN DURING SEPARATION, DIVORCE OR ANNULMENT OF MARRIAGE

Legislative measures

431. Substantive law that regulates divorce and property rights of spouses is the Common law which lists two grounds for divorce, that is, adultery and desertion. Procedurally the High Court Rules and Magistrates Court Rules prescribes the procedure for the dissolution of civil rites marriage.

432. The principles that regulate the procedure for dissolving customary marriages are not codified, the recognised grounds for dissolution of this type of marriage are witchcraft and adultery by the woman. It must be stated that the dissolution of customary marriage at the instance of women was difficult, however, this challenge is being progressively ameliorated as there are several cases where the dissolution was at the instance of women on grounds that are not confined to those listed above. The Supreme Court Case judgment of *Samuel Myeni Hlawe v Beatrice Tholakele Seyama and two others (56/2016) [2017] SZSC 41 (09 October 2017*) have comprehensively prescribed the procedure for dissolving the same. It is thus as follows: -meetings between the families of the wife and the husband have to be convened with the aim of reconciling the differences of the spouses. A follow up meeting should be at the *umphakatsi*[93] representative's home or a place like *inkhundla* where local cases are usually

[93] It's a chief kraal where community members meet to discuss community issues and projects.

heard/tried. The representative is not just informed of the decision taken but She/he listens to the deliberations and intervenes where necessary.

433. The representative would preside over the deliberations. If a settlement is not reached the matter would move to the chief's kraal for a full hearing and determination. The *umphakatsi* has an interest in knowing the reason for the breakdown of the family and the party responsible for it. The *umphakatsi* intervenes where the husband wrongly accuses his wife of any offence likely to seriously disrupt the family. The *umphakatsi* would facilitate the proceedings with an aim of reconciling the differences of the spouses and not assume an observer role.

The best interest of a child in dissolution of marriage

434. The Children Welfare and Protection Act provides that the dissolution of marriages should be administered under the principle that the welfare and best interests of a child are paramount, hence in cases of separation and/or divorce of women and men are equally obligated towards their children as provided for in the Act.

Judicial measures

435. A number of court judgments have brought clarity in the dissolution of customary marriages such as in case of Samuel Myeni Hlawe v Beatrice Tholakele Seyama and Two Others (56/2016) [2017] SZSC 41(09th October 2017) and Attorney General v. The Master of the High Court (55/2014) [2014] SZSC10 (30th June 2016) discussed in Table H1.

436. The Matrimonial Property Bill will address inequalities relating to marriage. This Bill seeks to regulate the property rights of spouses and in particular provide for equal access to property jointly owned or acquired during the subsistence of a marriage; matrimonial property to be equitably distributed between the spouses upon termination of the marriage; agreements regulating property rights of common law husband and wife; and the protection of matrimonial home.

437. Statistical data on Marriages and the Dissolution of Marriages contracted in the period 2016 -2019 in respect of court orders served to the office of Civil Registration and Vital Statistics are presented as follows:

Table J1: Statistics on Marriages & Dissolution of Marriage contracted from 2016 – 2019.

Year	Civil Rites Marriages	Civil Rites Divorces	Customary Marriages	Customary Marriages Dissolution
2016	1644	170	751	93
2017	1721	211	699	91
2018	1713	223	503	73
As at 07.06.2019	529	108	71	32

ARTICLE 8: RIGHT OF ACCESS TO JUSTICE INCLUDING LEGAL AID AND THE TRAINING OF LAW ENFORCEMENT OFFICIALS.

Constitutional measures

438. Section 20(1) of the Constitution of Eswatini guarantees the right to equality and equal protection of the law.

439. Section 28 provides that "*women have the right to equal treatment with me and that right shall include equal opportunities in political, economic and social activities".*

Legislative measures

440. Generally, everyone is entitled to institute Court proceedings or to sue , whether that individual has a legal representative or not. With regards to a party that is not legally represented, the free and full enjoyment of the right to access to justice is limited by the fact that his or her side of the story is not properly ventilated due to the fact that he or she cannot understand the complexities of the legal processes involved. In such instances, the presiding officer explains in simple terms what is expected from a party that has no legal representative. As a corrective measure, the Legal Aid draft Bill has been developed and is currently undergoing stakeholder consultation. This Bill will see the establishment of Legal Aid Board as an institutional framework that will be mandated

to provide free legal advice and representation to indigent persons. This Bill has a specific provision that obligates the Legal Aid Board to develop appropriate measures to: -

(a) *ensure that the right of women to access legal aid adheres to best practices, regional and international Conventions and other applicable laws;*

(b) *ensure that, where possible, female lawyers are available to represent female defendants, accused persons and victims; and*

(c)*provide legal aid, court support services and psycho-social services in all legal proceedings to female victims of violence in order to ensure access to justice and avoid secondary victimization.*

441. Furthermore, it seeks to promote the principle of equality and non-discrimination by directing the Board to provide legal aid to all qualifying persons regardless of age, race, gender, language etc. It also affirms that a gender perspective shall be incorporated into all policies, processes, procedures, programs and practices relating to legal aid, so as to ensure gender equality and equal and fair access to justice for all.

442. The provision of free legal services have been the establishment of a legal aid clinic at the University of Eswatini, whereby law students under the supervision of lecturers and practising attorneys provide legal aid services to indigent members of the society, paying special attention to vulnerable and minority groups such as children and women. The Legal Aid Clinic was set up through support from the United Nations Joint Gender Programme, the Ministry of Justice and the University of Eswatini - Faculty of Law who has been providing legal aid services to disadvantaged community members.

443. Another initiative that is geared towards the provision of legal aid services is the maintenance of children where parents are represented by officers from the Directorate of Public Prosecutions Chambers (DPP) seeking children maintenance orders against the defaulting parent.

444. Non- Governmental Organisations (NGOs) working in the area of women's rights, have, through their trained paralegals, provided legal advice and support to women who

cannot afford private legal services.

445. Private Legal Practitioners also provide *pro bono* services to indigent members and vulnerable groups of society. The state party has developed a Legal Practitioners Bill which seeks to compel Legal Practitioners and Candidate Attorneys to provide legal aid services to disadvantaged members of society.

446. The Kingdom of Eswatini has facilitated the training of the Judiciary, State lawyers, Private Practitioners and members of the Royal Eswatini Police Service on the legal instruments promoting Gender Equality. The training was conducted at University level, Police Academy, and regular workshops convened in partnership with the country's development partners. The legal instruments promoting Gender Equality include but not limited to; the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW); Maputo Protocol, Constitution of the Kingdom of Eswatini (Bill of Rights) and other domestic pieces of legislation.

447. Statistics of women representation in the judiciary and law enforcement organs (police, correctional services and law society, Attorney General and Directorate of Public Prosecutions) is provided in the table below.

Table K: HMCSs' Gender Staff Strength as of August 2019

Rank	Males	Females	Total
1. Commissioner General	-	1	1
2. Commissioners	3	0	3
3. Deputy Commissioner General	5	1	6
4. Chief Assistant Commissioner	2	3	5
5. Senior Assistant Commissioner	7	2	9
6. Assistant Commissioner	17	4	21
7. Senior Superintendent	18	6	24
8. Superintendent	22	11	33

9. Assistant Superintendent	45	18	63
10. Chief Officer	85	38	123
Total	**204 (71%)**	**84 (29%)**	**288**
	Junior Ranks		
11. Assistant Chief Officer	81	38	119
12. Sergeant Instructor	19	5	24
13. Sergeant	265	63	328
14. Cadet	4	-	4
15. Instructor	28	9	37
16. Warder/Wardress	1370	511	1881
Total	**1767 (74%)**	**626 (26%)**	**2393**
	Civilian Staff		
	21 (49%)	**22 (51%)**	**43**
Grand Total	**1992 (73%)**	**732 (27%)**	**2724**

Table K1: Gender staff strength in the REPS[94] as of August 2019

Rank	Male	Female	Total	Male %	Female %
National Commissioner	1	0	1	100	0
Senior Deputy National Commissioner	2	1	3	67	33
Deputy National Commissioner	9	1	10	90	10
Assistant National Commissioner	5	1	6	83.33	16.67
Senior Assistant Commissioner	5	1	6	83.33	16.67
Assistant Commissioner	11	6	17	64.71	35.29
Senior Superintendent	24	9	33	72.73	27.27
Superintendent	46	12	58	79.31	20.69
Assistant Superintendent	82	19	101	81.19	18.81
Inspector	162	49	211	76.78	23.22
Assistant Inspector	139	62	201	69.15	30.85

[94] Royal Eswatini Police Service 2018.

Sergeant	497	243	740	67.16	32.84
Constable	2404	1419	3823	62.88	37.12
Total	**3387**	**1823**	**5210**	**65.01**	**34.99**
Civilian Staff	126	195	321	39.25	60.74

Table K2: State Lawyers – Statistics

Attorney Generals Chambers	
Males	19 (52.77%)
Females	17 (47.22%)
Total	36

Table K3: State Lawyers – DPP Statistics

Directorate of Public Prosecutions Chambers	
Males	34 (44.74%)
Females	42 (55.26%)
Total	**76**

Table K4: Judiciary statistics

Supreme Court – Judges	
Males	6
Females	0
Total	**6**
High Court – Judges	
Males	9
Females	4
Total	**13**
Magistrates Court – Magistrates	
Males	15
Females	13
Total	**28**

Master of the High Court - Master and Deputy Master and Assistant Masters	
Males	1
Females	5
Total	**6**
Supreme Court – Registrars	
Males	0
Females	2
Total	**2**
High Court – Registrars	
Males	0
Females	2
Total	**2**

Table K5: Statistics of Legal Practitioners in Eswatini

Males	396	58.5 %
Females	281	41.5 %
Total	**677**	**100 %**

Table K6: Statistics of Women representation in the Commission on Human Rights Public Administration and Integrity (2013-2018):

Sex	NO.	Percentage
Males	2	40%
Females	3	60%
Total	**5**	**100%**

Table K7: Representation of Women in the Elections and Boundaries Commission (2013 – 2018).

Sex	NO.	Percentage
Males	2	50%
Females	2	50%
Total	**4**	**100%**

448. It is conceded that reforms of legislation that have a discriminatory effect and practices have been slow, due to the fact that there is an acute shortage of legislative drafters in the Attorney Generals Chambers. Currently there are ongoing efforts to have a Law Reform Commission that will be responsible for the alignment of outdated laws to the

Constitution , Regional and International Standards. Despite the above-highlighted challenges, the government has managed to develop a draft of family law bills (Marriages Bill, Matrimonial Property Bill, Administration of Estates Bill and Intestate Succession Bill), Civil Registration and Vital Statistics Bills that seek to promote and protect the rights of women.

Challenges

449. The high costs of legal representation serve as a barrier on the access to justice particularly for women and children who are often placed in a compromising position in areas of marriage, divorce, administration of estates should there be contestation.

450. Whilst the Kingdom of Eswatini has developed and implemented training programmes for the justice sector, refresher courses are necessary to further sensitise these role – players on the dynamics of gender, gender justice and the context in which gender inequality manifests itself.

ARTICLE 9: RIGHT TO PARTICIPATION IN POLITICAL AND DECISION MAKING

Constitutional measures

451. Section 28(1) of the Constitution of Eswatini provides that, "*Women have the right to equal treatment with men and that right shall include equal opportunities in political, economic and social activities.*" Section 28(2) adds that, *"Subject to the availability of resources, the Government shall provide facilities and opportunities necessary to enhance the welfare of women to enable them to realise their full potential and advancement*".

452. In relation to women's political representation, section 84(1) of the Constitution of Eswatini provides that *"subject to the provisions of this Constitution, the people of Eswatini have a right to be heard and represented by their own freely selected representatives in the Government of the country."* S*ection 84(2) adds that "Without derogating from the generality of the foregoing subsection, the women of Eswatini and other marginalized groups have a right to equitable representation in Parliament and other public structures*".

453. Section 86 provides for a quota system in the representation of women.

86. (1) Where at the first meeting of the House after any general election it appears that female members of Parliament will not constitute at least thirty per cent of the total membership of Parliament, then, and only then, the provisions of this section shall apply.

- *(2) For the purposes of this section, the House shall form itself into an electoral college and elect not more than four women on a regional basis to the House in accordance with the provisions of section 95(3)*[95].

Legislative measures

454. To give effect to the constitutional provisions above, the country has enacted the **Election of Women Members to the House of Assembly Act of 2018**. The Act provides for a process and mode of nomination of women members in the House of Assembly; the election of the women members to the House of Assembly where, after any general election, it appears that the female members of Parliament will not constitute thirty per cent of the total membership of Parliament; monitoring of the election of women to the House of Assembly;

455. The **Elections Act of 2013** also stipulates that discrimination in terms of political participation for a voter and an electorate is prohibited. **The Senate Elections Act 7** of **2013** provides for the manner of electing Senators in terms of section 94(2) of the Constitution which directs that ten Senators, at least half of whom shall be female, shall be elected by the members of the House in such manner as may be prescribed by or under any law at their first meeting so as to represent a cross-section of the Swazi society.

456. A statistical representation of women in politics and decision making is provided below:

[95] Section 95(3) provides that The members elected on a regional basis, under subsection (1)(c), shall continue to be so elected, whenever the provisions of section 86 (1) are true, in terms of the following paragraphs – (a) at the instance of the Chairman of the Elections and Boundaries Commission, the elected members from each Region shall on their first meeting nominate not less than three and not more than five women from each Region qualified to be members of Parliament; (b) the list of nominated candidates shall be published in at least two local newspapers and the electronic media on at least three consecutive days; and 52 53 (c) after ten days from the date of last publication the House shall meet to vote for one woman from each of the Regions, taking into consideration any relevant in-put in terms of paragraph (b).

Table L: Composition and female representation in decision-making institutions

1. POLITICAL POSITIONS - ELECTED AND APPOINTED	
Members of Parliament	**9/69 (12%)**
Cabinet	**6/21 (29%)**
Indvuna Yenkhundla **(Constituency development Elected Leader)**	**8/59 (14%)**
Bucopho **(Chiefdom development Elected Leader)**	**48/335 (14%)**
Senator	**12/30 (40%)**
2. NON-ELECTED POSITIONS	
Regional Administrators	**1/4 (25%)**
Principal Secretaries **(Controlling Officers in government Ministries)**	**5/20 (25%)**
JUDICIARY	
Supreme court Judges	**0/6**
High Court Judges	**4/11 (36%)**
Industrial Court Judges	**0/4**
Magistrates	**13/28 (46%)**
Registrars of Courts	**4/4 (100%)**

457. The Elections and Boundaries Commission conducts Civic Voter education to sensitize members of the public on the electoral process before elections. Civic and voter education aims, *inter alia*; to capacitate citizens on their roles and obligations as active citizens in the electoral process; to empower citizens to be well informed on governance and democracy and their rights so as to make informed decisions and elect effective leaders; to raise awareness on the importance of citizens actively participating and contributing to issues of development.[96]

458. A Women Parliamentary Caucus committee, comprises of 13-legislators. The principal mandate of this committee is to enhance women's role in participating in Parliamentary issues at National, Regional (SADC – Parliamentary Forum) and

[96] See Administrative measures under Article 13 of Part A report

International levels.

Judicial measures

459. A number of progressive judgments have been passed by the courts in relation to women's political participation and decision making, these include the following:

Table L1: Cases on women representation

Case	Facts	Decision
Case No.1311/13 - *Mana Mavimbela v Elections and Bounderies Commission (EBC) & 2 Others, Lubulini, LR*	The Applicant instituted legal proceedings in which she alleged to have been discriminated by the Presiding Officer during preliminary election stage because she wore a trouser at the *umphakatsi on the day of nominations.* The Respondents agreed not to contest the matter and allowed the Applicant to become a candidate for the election.	A consent Order was issued by the court and Respondents made to pay costs.
***Jennifer Lindiwe Dupont-Shiba vs EBC & 3 Others*, Case No.1342/13**	It was alleged that the second respondent who is a chief exerted undue influence on community members not to vote for Applicant because she is a widow and is in	The applicant's right to be voted into Parliament during the Primary election was held to have been violated and prejudiced.

	mourning gowns, hence the election was alleged not to have been free and fair. It was further alleged that the utterances are against the spirit and wording of sections 20 and 28(3) of Constitution.	

Challenges

460. Barriers that hinder women's ability to be elected or appointed into decision making positions (politically) are patriarchy, economic disadvantages, social stereotypes, and socio-political perceptions around women's' leadership.[97]

461. The Government of Eswatini has developed a National Strategy on women's participation in politics and decision-making. This strategy seeks to actively address barriers to women's participation however due to financial constraints it has not been implemented.

ARTICLE 10: RIGHT TO PEACE

Constitutional and legislative measures

462. Gender-Based Violence against women and children remains a threat to peace and human security in the Kingdom of Eswatini. As mentioned Article 4, it is estimated that 1 in 3 girls have experienced some form of violence.[98] Whilst the true extent of violence against women is unknown due to the absence of accurate statistical and disaggregated data, various research studies show that this form of violence is rife.

463. To address this scourge, the country enacted the SODV Act which criminalizes certain acts of violence. This Act is applicable to persons who experience domestic violence regardless of their nationality status or gender.

[97] Women in Decision Making Positions Survey, 2013..

[98] See UNICEF Study on Violence Against Children in Eswatini 2007.

464. The country also established Domestic Violence Child Protection and Sexual Offences Units as structures where victims of this scourge can seek some redress. Further to this, the country has established one-stop centres where victims can receive comprehensive services on domestic violence. The challenge, however, is these structures are only available in three regions (out of four regions) and as such not accessible to victims in remote communities.

465. The Kingdom of Eswatini is State Party to a number of international legal instruments that protect the rights of refugees and asylum seekers. These instruments include the 1951 UN Convention Relating to the Status of Refugees subject to reservations regarding articles 22 and 34, the 1954 Convention Relating to the Status of the Statelessness of Persons, the 1961 Convention relating to the Reduction of Statelessness, the 1967 UN Convention Protocol on the Status of Refugees and the 1969 Organisation of the African

Union (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa.[99]

466. The country has also enacted the Refugee Act,2017 which provides for the recognition of refugees, their protection, assistance and control. This Act repeals the Refugee Control Order, 1968 which is outdated. The Act further provides for the establishment of the National Commission of Refugees responsible for asylum seekers and refugees.[100]

467. The Political Asylum Committee (POLASCO) is responsible for refugee status determination. This is an executive body comprised of government officials, its functions include undertaking an assessment on whether or not a person's claim for refugee status is valid. Recommendations are thereafter made to Minister of Home Affairs for final

[99] See Article by S. Gumedze on Refugee Protection in Swaziland retrieved from https://sarpn.org/CountryPovertyPapers/Swaziland/Refugee/index.php
[100] Ibid.

decision making.[101]

Challenges

468. There is a language barrier within the refugee camps which poses difficulty to detect acts of terrorism and subversive activities that may be a threat to peace in the country.

469. Women still need capacitation to accept and appreciate their value addition in them being part of the decision making and peacebuilding structures or initiatives.

Mitigation

470. There are ongoing state led sensitization initiatives directed at capacitating women on their rights to participate in peacebuilding exercises.

471. State party participation in international peace exercises through the security forces involve delegation of both genders.

ARTICLE 11: PROTECTION OF WOMEN IN ARMED CONFLICT

Legislative measures

472. The SODV Act of 2018 in Eswatini makes provision for redress for victims of genderbased violence. This section has a broad application; therefore, refugee and migrant persons can seek redress in this regard.

ARTICLE 12: RIGHT TO EDUCATION AND TRAINING

Constitutional measures

473. Section 29 (6) of the Constitution of Eswatini provides for the right to free primary education for every Swazi child.

- *Section 29 (6) Every Swazi Child shall within three years of the commencement of this Constitution have the right to free education in public schools at least up to the end of primary school, beginning with the first grade."*

[101] Ibid.

- *Section 60 (8) further provides that "without compromising quality, the state shall promote free and compulsory basic education for all and shall take all practical measures to ensure the provision of basic health care services to the population."*

Legislative measures

474. To give effect to the above Constitutional provisions, the **Free Primary Education Act of 2010** was enancted. This Act regulates the roll-out of free primary education in Eswatini. Section 10 of the Act makes it compulsory for parents to enrol their children in a school for free primary education schooling.

475. The **CPWA of 2012** operationalises section 29 of the Constitution on the right to education and specifically provides in Section 9(1) that "a child has a right to access education, Preventative health services, adequate diet, clothing, shelter medical attention, social services or any other services required for the child development." Section 9(3) further adds that "A child has a right to education regardless of the type or severity of the disability he may have."

476. Further, Section 11 of CPWA guarantees the rights of persons with special needs by adding that "A child with disability has a right to special care, medical treatment, rehabilitation, family and personal integrity, sports and recreation, education, and training to help him enjoy a full and decent life in dignity and achieve the greatest degree of self-actualization, self-reliance and social integration possible"

477. **The Teaching Service Commission Act**, inter alia, provides for the protection of the right to education of learners by providing disciplinary measures against teachers who violate learners.

Judicial Measures

478. The enactment of the Free Primary Education Act was a result of *the Swaziland National Ex- mine Workers Association* case number 335/09. Details of this case are as follows:

Table M: Cases on education and training

Case	Facts	Outcome

***Swaziland National Ex- mine Workers Association* case number 335/09.**	On 29 January 2009, The Swaziland National Ex-mine workers association (applicant) against Eswatini Government (respondent) instituted an application under case number **335/09** against the Eswatini government for a mandatory order that the government is liable in terms of section 29 (6) and 60 (8) of the Constitution of 2005 Act No1 of 2005 to make free education available in public schools for every child. On March 2009 the High court suited the applicant and granted a declaratory order which did not award the remedy. On the **23rd July 2009,** The Swaziland National Ex-Mine Workers again instituted legal proceedings against the government under case number **2168/09**, seeking a mandatory order as an appropriate relief for an alleged violation of section 29 (6) and Section 60 (8) of the Constitution of 2005. Respondent opposed the same application. They raised points of law which include the following: The prayer for a mandatory order was a claim for the same thing on the same ground against the party yet such a claim was	**Court Finding:** In the judgement of **16th March 2009 (335/09)** the court stated that the constitutional responsibility cannot be suspended or be abdicated for whatever reason or excuse including lack of funds, shortage of teachers etc. The applicant was granted the order they were seeking. It was the courts` view that the provision of Free Primary Education was not dependent on the availability of funds since that was not stated in the constitution. To implement the court, order the government enacted the Free Primary Education (FPE) Act 2010 which was deemed to have come to force on the **1st January 2009**. They implemented the order by first paying for the first and second grade. To date, the FPE has been gradually rolled out to grade 7

	adjudicated upon by the court of competent jurisdiction. The respondent argued that in so far as the present application seeks to enforce the order made under case number 335/09, that application was misconceived. A court order is enforced through contempt of court proceedings and not by a fresh application against the same party.	

Administrative Measures

479. The National Education and Training Sector Policy 2018 was developed to provide free inclusive and accessible compulsory primary education.

480. The increase in retention of children under the FPE has, moreover been enhanced by the introduction of the Orphan and Vulnerable Children (OVC) Grant which provides financial assistance to OVCs for their secondary and high school enrolment. This has proved invaluable in maintaining the enrolment of children in schools.[102]

481. The Government of Eswatini has introduced a programme of making schools as centres of Care and Support for Teaching and Learning (*Inqaba*), a mechanism which has improved children's access to services like nutritional support, clean water drinking sources, hand washing facilities, accessible toilets and hygiene education. The programme has six pillars aimed at enhancing a safe learning environment for all children. The six pillars are Protection and Safety, Psychosocial Support, Food Security, Water and Sanitation, Health and the pillar on Prevention of Violence and HIV through Lifeskills Education.

[102] See the Swaziland Millennium Development Terminal Progress Report 2015.

482. Since 2010, the European Union assisted the Department of Education to deliver educational grants for Grades 1 and 2. However, the project ended in 2017 and the Government has taken over the responsibility of providing grants from Grade[103] 1 to 7 which are intended to enable needy children to access financial resources for school fees.

Free Primary Education commenced in grade 1 and grade 2 concurrently in 2010**.**

483. In the advent of the introduction of the Competency-Based Curriculum, the Ministry of Education and Training has reviewed and developed a gender-sensitive primary school curriculum, which ensures the adoption and implementation of gender-sensitive educational guidelines and programmes addressing gender stereotypes in education.

484. The Education Sector Policy,2018 also includes information technology to equip students (boys and girls) with information, communication and technology (ICT) skills. In addition, the Ministry is taking the necessary measures to ensure that girls do take science and mathematics subjects in schools, through JICA-STEM programme and partnership with private companies. Government is also developing programmes to improve school infrastructure in rural areas so as to make education accessible to all especially children living with a disability.

Table M1: State of FPE in Eswatini (Strategic Roadmap 2019 -2023)

Indicator	Baseline	2014	2015	2016	2017	2018	Percentage Change (2018)	2018 Target	2022 Target
Primary school net enrolment rate	94.0%	96.3 %	94.4 %	91.4 %	94.5 %	94.5 %	0.5%	96%	**98%**
Secondary school net enrolment rate	35.0%	41%	42%	48.5 %	48.5 %	48.5 %	13.5% (38.5 %)	57%	**80%**

[103] Primary level of Education.

Primary Pupil/ Teacher Ratio	29.5	28	28	27.00	27.00	27.00	-2.5 (-8.5%)	29.5	**29.5**
Secondary pupil to teacher ratio	16.4	16	16	15	15	15	-1.4 (-8.5%)	16.4	**16.4**
Primary school completion rate	69%	87%	87.2%	87.2%	87.2%	87.2%	18.2% (26.4%)	84%	**98%**
Average years of total schooling of adults 25+	7	7	7	7	7	7	0%	8	**8**

Source: state of FPE in Eswatini(Strategic Roadmap 2019-2023)

485. The Department of Education has provided all primary schools with free textbooks, stationery, free school furniture and a feeding programme. These initiatives have been implemented in a bid to retain children in schools.[104]

486. A registered increase in the number of female enrolments for technical subjects was realised after the establishment of the career guidance and counselling program by the Ministry of Education and Training. The programme is focused on awareness on vocational options available to allow females to have the choice of entering into traditionally male dominated vocations. The increase in enrolment is relished in technical subjects like architecture, computer science and engineering.[105]

487. Eswatini is a in the process of finalising its Lifeskills programme, which is integrated into subjects at primary level, it is offered as a stand-alone at secondary level. This framework is envisaged to inform and integrate Sexual Reproductive Health (SRH)services to all young people at all levels of health care delivery systems and other relevant settings according to their age and need.

[104] See Department of Education website in the Kingdom of Eswatini
[105] Ibid

488. The Education Sector Strategic Plan (2010 – 2020) is intended to guide comprehensive development of education in the country to ensure that the system does not merely churn out certificate holders but result in proper human capital development i.e. produces skills that are in line with the socio-economic demands of the country and geared towards supporting technology and knowledge-based economic growth. It lays out the future vision of the country's education system and highlights the main lines of action that the Government will execute in order to realize the vision. It defines the national priorities within the education sector and provides a framework for decisions on the allocation of education resources.

489. The Ministry of Education and Training's Education Sector Policy, in a bid to address incidences of violence in school, has prohibited the use of corporal punishment in schools by promoting positive discipline and respectful relations amongst learners and teacher. This has led to the process of reviewing the School Rules and Regulations to completely abolish corporal punishment in the school setting. The Ministry has also, through wide consultations, developed a Strategy to Prevent and Respond to Violence in Schools and Guidelines for Positive Discipline. All these documents are now in their final drafts form, waiting to go through the whole process of endorsing a government document.

490. The National Education and Training Sector Policy 2018 policy directive 2.2.1 puts emphasis on Science, Technology, Engineering and Mathematics. The policy Rationale is that Science, technology, engineering and mathematics (STEM) are a critical component in the development of 21st century skills for the knowledge-based economy and the achievement of the socio-economic development of all Swazis. Girls and women are acutely under-represented in these areas, this undermines the country's ability to fully develop all its human resource potential. The policy therefore seeks to ensure that girls and women are appropriately represented among STEM learners. It also commits to ensuring teachers are adequately trained for teaching STEM. The Ministry has prioritized the provision of resources (laboratories, furniture and equipment, qualified teachers and

inspections) for effective teaching of STEM.

491. The Ministry of Education and Training's Education Sector Policy of 2018 advocates for the provision of dignity packs (consisting of sanitary pads, roll-on, toothpaste, toothbrush and soap). Through the CSTL programme schools are encouraged to keep emergency sanitary packs.

492. The Ministry of Education has entrepreneurship programmes in schools' programmes. Further, a Partnership with the Ministry of Education and Ministry of Commerce Industry and Trade to support the introduction of entrepreneurship skills through the Junior Achievement Programme has been developed. The target population is for secondary school learners and Enactus for students in Tertiary Institutions. The aim is to improve and grow the entrepreneurship skill level. Government supports by giving subventions of E500, 000.00 per year to each agency.

493. The Education Rule section 10 (5) reads, 'in the event of a pupil being convicted on an offence of the kind referred to in paragraph (4) or in the event of a pupil falling pregnant with a child, the headmaster may forthwith suspend such pupil from attending the school and forthwith report such suspension to the Director, who may take steps in regards thereto as he thinks fit'. Such a rule perpetuates inequality between boys and girls and also denies the girl child the right to education. As a part of the legislative review exercise, the country will review this rule and bring it into conformity with the constitutional right to equality.

Challenges

494. Despite these measures in place, Eswatini continues to experience some challenges in fully realising the right to education particularly for young women and girls. Whilst the government of Eswatini subsidises school fees and textbooks, there are other push-out factors that lead to a substantive number of learners dropping out of school. These include hidden costs, teenage pregnancy, and grade repetition amongst others.

The net enrolment is standing at 94% according to the Annual Education Census of 2017. It means that 6% are not enrolled at school. In an effort to address the increasing number of dropout rate, the Ministry has conducted two studies in 2018; namely the Out of School Study and the Repetition study to ascertain the push-out factors. The findings of the two studies have informed the development of a Strategy to address dropout rate and the repetition rate, which is still in its draft form.

495. The reintegration policy for pregnant learners still lacks clear guidelines hence there are some inconsistencies in implementing this policy directive, however, the Ministry is in the process of developing specific action plans to guide schools in implementing it.

496. According to the Report on Out of School Children in Eswatini, Drivers for Dropping out of School[106],include female learners' missing school lessons due to lack of sanitary pads. Currently, the coverage for the provision of sanitary pads to preserve dignity is very low due financial constraints the country is facing. A number of learners are unable to provide for themselves due to poverty and orphan-hood.

497. At University level, female enrolment rate in science is half that of males while female enrolment in Distance Education is three times higher than that of males.[107]

498. The approach to implementing the positive discipline programme has been limited by the fact it has been deemed to have been introduced at the school level without proper consultation with teachers and parents.

499. The right to education has also been limited by the need for every learner, including those without the financial means, to provide "top-up" fees- for capital projects as per circular No. 5 of 2017.

[106] Report on Out of School Children in Eswatini, 2018 .

[107] Swaziland Millennium Development Terminal Progress Report 2015

500. The Gross Enrolment Rate is standing 131.3% at primary school and the Net Enrolment Rate is 94% (Annual Education Census 2017). The data suggest that almost all age-eligible children are enrolled in schools.

ARTICLE13: ECONOMIC AND SOCIAL WELFARE RIGHTS

Constitutional measures

501. The Kingdom of Eswatini has ratified a number of the International Labour Organizations Conventions which demonstrate commitment in ensuring the full enjoyment of workers' rights. These include ILO Forced Labour Convention, Equal Remuneration Convention, Abolition of Forced Labour Convention, Discrimination (Employment and Occupation) Convention, Freedom of Association and Protection of the Right to organize Convention, Worst Forms of Child Labour Conventions. These Conventions have been domesticated to ensure maximum compliance, enforcement and vindication of violated rights. The Employment and the Industrial Acts have been amended to conform to the standards and provisions of the various Conventions.

502. Section 28(1) provides that *"Women have the right to equal treatment with men and that right shall include equal opportunities in political, economic and social activities". Section 28(2) adds that "Subject to the availability of resources, the Government shall provide facilities and opportunities necessary to enhance the welfare of women to enable them to realise their full potential and advancement*".

- *Section 32 of the Constitution guarantees the right of workers. Section 32(1) stipulates that "A person has the right to practice a profession or to carry a lawful occupation and trade or business."*
- *Section 32(3) further provides that: "the employer of a female worker to accord that worker protection before and after childbirth in accordance with law."*
- *Section 32 (4) further provides that" Parliament shall enact laws to ¬ (a) provide for the right of persons to work under satisfactory, safe and healthy conditions; (b) ensure equal payment for equal work without discrimination; (c) ensure that every worker is accorded rest and reasonable working hours and periods of holidays with pay as well as remuneration for public holidays; and (d) protect employees from victimisation and unfair dismissal or treatment."*

Legislative measures

503. National laws that regulate relations between employer and employees are the Employment Act, No. 5 of 1980 (as amended), the Industrial Relations Act, No. 1 of 2000 (as amended), Wages Act No.16 of 1964 and the Occupational Safety and Health Act, Act No. 9 of 2001.

- The Employment Act's sought *"to consolidate the law in relation to employment and to introduce new provisions designed to improve the status of employees."*
- Section 29 of Act specifically provides that "*No employer shall, in any contract of employment between himself and an employee, discriminate against any person or between employees on grounds of race, colour, religion, marital status, sex, national origin, tribal or clan extraction, political affiliation, or social status."*
- Section 96 of the Act provides for "Equal Pay for Equal Work." Section 96 (1) states that "*…No employer shall, by failing to pay equal pay for equal work, discriminate between male and female employees employed by him". Section 96 (3) further adds that "any provision of any contract of employment or collective agreement which contravenes subsection (1) shall be null and void and the provisions of sub-section (1) shall be deemed to apply."*

504. The Industrial Relations Act, No. 1 of 2000 (as amended) provides for the collective negotiation of terms and conditions of employment and for the provision of dispute resolution mechanisms and for matters incidental thereto. The purpose and objective of this Act is *to —(a) promote harmonious industrial relations; (b) promote fairness and equity in labour relations;(c) promote freedom of association and expression in labour relations;(d) provide mechanisms and procedures for speedy resolution of conflicts in labour relations;(e) protect the right to collective bargaining; (f) provide a healthy and legally sound environment for the creation of smart partnerships between the government, labour and capital;(g) promote and create employment and investment;(h)stimulate economic growth, development and competitiveness; (i) stimulate a self-regulatory system of industrial and labour relations and selfgovernance;(j) ensure adherence to international labour standards; and (k)provide a friendly environment for both small and big business development."*

505. Section 2 of the Industrial Relations Act, 2000 prohibits discrimination by an employer against an employee based "*on any arbitrary ground including, but not limited to, race, gender, sex, ethnic or social origin, colour, age, disability, religion,*

conscience, belief, political opinion, culture, language, marital status, or family responsibility."

506. The Schedule on Code of Good Practice: Employment Discrimination; (under Section 109 of the Industrial Relations Act), Clause 4 thereof, provides that *"every employer should formulate a policy for the prevention of discrimination and promotion of equal opportunity in employment."*

- This Policy must address several areas including, inter alia, remuneration for work of equal value (as per Article 4.5 of the Code). This Code prohibits all forms or kinds of discrimination perpetrated by employers either directly or indirectly (Article 5 of the Code).

507. The legal position in respect of equality between men and women is further enshrined under Part IV of the Employment Bill on Fundamental Rights: Equality at Work, in order to ensure continuity in the protection against discrimination between men and women at work.

508. The Wages Act No. 16 of 1964 provides for the establishment of a Wages Advisory Board, under Section 4 and Sectoral Wages Councils, under Section 6 for the regulation of the minimum wages and conditions of employment of workers in different industries which are reviewed periodically by the Sectoral Wages Councils.

509. Section 48 (1) of the SODV Act 2018 provides: *"A person who sexually harasses another commits an offence and shall, on conviction, be liable to pay a fine not exceeding twenty-five thousand Emalangeni or to imprisonment for a period not exceeding ten years or to both".* Sexual harassment in the workplace not only stifles productivity but also violates the rights of workers, dignity and security of a person.

510. Section 48 of the SODV Act, 2018 specifically criminalises sexual harassment with a fine or 10 years' imprisonment as a sentence. To address the issues of equal pay, the

country ratified the Convention No. 111 on Discrimination (Employment and Occupation), 1958[108] and the Convention 100 on Equal Remuneration, 1951 (ratified on the 5th June 1981) respectively.

511. Reasonable effort has been taken by the country to domesticate these Conventions in order to ensure maximum compliance, enforcement and vindication of violated rights through the established labour dispute resolution agencies such as the Conciliation Mediation and Arbitration Commission (CMAC) or the Industrial Court at the instance of any aggrieved person (or employee) or through criminal prosecutions.

512. In relation to promoting women entrepreneurship, the Ministry of Commerce, Industry and Trade has created a conducive policy environment for the operation of the Small, Micro and Medium Enterprise (SMME). The Ministry developed and approved an SMME policy in 2011 and is currently in the process of drafting the Citizen's Economic Empowerment Bill. The Bill has specific provisions aimed at empowering women.

Judicial measures

513. A number of judgments have been made by courts to deal with sexual harassment, equal pay and discrimination on the basis of pregnancy.

Case	Facts	Decision
Nonhlanhla Mngometulu v Matsapha Knitwear Industrial Court case No. 267/2005	Applicant instituted legal proceedings against her dismissal by the Respondent because she fell pregnant.	The Court held that the applicant was was entitled to compensation for unfair dismissal on the basis of her pregnancy.

[108] These instruments were ratified on the 5 June ,1981

***Khanyisile mini v MPD Food cessors (Pty) LTD* SWMZ 282/10**	The Applicant reported a dispute for unfair dismissal to the Commission, which was conciliated, however, the dispute remained unresolved, and a Certificate of Unresolved Dispute No: 388/10 was issued. By consent, the dispute was referred to arbitration by the parties. The Applicant had not formally requested for maternity leave before proceeding to leave. The Respondent argued that because the Applicant had not requested and was not granted maternity leave, her absence from work was not authorized therefore had absconded from work.	The Respondent was ordered to re-instate the Applicant in the position that she previously held or any other suitable position commensurate with her skill and experience, and with a pay scale not less than that at which she was previously paid. When the Applicant went on maternity leave, her employment was expressly protected by the Employment Act, The Industrial Relations Act and the Constitution of the Kingdom of Eswatini Act. The International Labour Organisation's Convention 183, which is law in Eswatini also offered her protection.
***Swaziland Government Khanyisile* (787/2014) *v* SZHC 206 *Msibi* November [2015] 2015) (25**	This was an Application in terms of Section 19 (5) of the Industrial Relations Act, 2000 ("the Act") for the review of an award made by the First Respondent and arbitrator at the Conciliation	The Court upheld the decision of the Arbitrator. Further support for the proposition that discrimination must not be limited to the instances

	Mediation and Arbitration Commission ("CMAC") that of upgrading the position of all orderlies in the country to Grade A4. The issue in dispute before the arbitrator was the payment of Hospital Orderlies in psychiatric hospitals on grade A4 whereas Hospital Orderlies who are in nonpsychiatric hospitals were paid on a lower grade. Respondents were directed to upgrade the positions of all orderlies in the country to Grade A4.	listed in section 29 of the Employment Act 1980.
Swaziland Development Finance Corporation v. Eswatini Union of Financial Institutions and Allied Workers and others **(394/2016) [SZHC 2016] 189 [2017]**	The Applicant and respondent were negotiating the cost of living adjustment for the Applicants employees. The Respondent tabled a demand of 10.5% and later revised it to 9.5% and Applicant offered 4.96% as mandated by Standing Committee on Public Enterprise (SCOPE) but could not get a revised mandate. Section 10 (1)(e) of the Public Enterprise Act (Control and Monitoring) Act, 1989 precludes public enterprise from making major adjustments to the level of structure of staff salaries and wages or other terms and conditions of service of its staff without approval in writing of the Minister responsible acting in consultation with SCOPE.	The Court held that there was nothing in the wording of Section 10(1) e of the PE Act that may be construed as inconsistent with the Section 32(2) of the Constitution as to affect the employees to full collective Bargaining.

	The Union alleged that Section 10 of the PE Act limits their rights to Collective bargaining and therefore contrary to Section 32(b) of the Constitution.	

Administrative measures

514. According to the Labour Survey, 2016 the working population of the Kingdom is 738 799 persons. Of this number, females dominate by a percentage ratio of 54,1 vis a vis 45,9 per cent of males. The distribution of the work population is explained in the diagram below:

Table 2.1.1 Percentage distribution of Working age Population by Age group and Sex

	Sex		
	Male	**Female**	**Both Sexes**
Working age Population	**339 353**	**399 446**	**738 799**
Age group			
15-24 years	36.5	30.4	33.2
25-34 years	23.7	25.5	24.7
35-44 years	17.8	15.7	16.6
45-54 years	9.0	11.1	10.2
55-64 years	7.2	8.3	7.8
65 years and over	5.7	9.0	7.5
Total	**100.0**	**100.0**	**100.0**

Source: Integrated Labour Force Survey, 2016

515. The Government, through the office of the Labour Commissioner undertakes periodical labour inspections in all establishments to ensure compliance with labour laws and international, regional and national instruments relating to employment. Any perpetual non-compliance is referred to the Director of Public Prosecutions (DPP) for criminal prosecution and sanction.

516. The country has put in place Regulations under the various employment legislations to improve the stability and security of work, equal opportunity and

treatment in employment including adequate earnings.

517. Radio programmes are also undertaken on specific issues which affect employment, the public gets the opportunity to ask questions and/or seek clarifications on issues affecting them at the workplace.

518. The country established specialized labour dispute resolution agencies for victims of unfair dismissals and related unfair labour practices to vindicate their rights. These are the Conciliation, Mediation and Arbitration Commission (CMAC) and the Industrial Court.

Challenges

519. Whilst the country has made great efforts to provide for maternity benefits for pregnant women, paternity benefits on the other have not been catered for. This omission fails to foster the important role that needs to be played by fathers in the upbringing and development of their children. Moreover, it places an unequal burden on women to care for children and further perpetuates gendered divisions of labour.

520. Organisations such as the Coalition of Informal Economy Associations of Swaziland (CIEAS) have highlighted the current vulnerability of women street vendors in Eswatini and treatment of domestic workers. There is currently a legislative framework that responds specifically to domestic workers' rights, moreover, the country Eswatini still needs to establish clear directives on how the Conciliation, Mediation and Arbitration
Commission (CMAC) should respond to reported cases.[109]

ARTICLE 14: HEALTH AND REPRODUCTIVE HEALTH RIGHTS

Constitutional measures

521. Section 60 (8) of the Constitution places a duty on the state to provide basic healthcare services to the population of Eswatini. It specifically states that "*Without compromising quality, the State shall promote free and compulsory basic health education for all and shall take all practical measures to ensure the provision of basic health care services to*

[109] See SALC "Eswatini Human Rights Report on domesticating united Nations Human Rights Instruments retrieved from

the population "

Section 15 (5) Abortion is unlawful but may be allowed —

(a) on medical or therapeutic grounds including where a doctor certifies that — continued pregnancy will endanger the life or constitute a serious threat to the physical health of the woman; continued pregnancy will constitute a serious threat to the mental health of the woman; there is serious risk that the child will suffer from physical or mental defect of such a nature that the child will be irreparably seriously handicapped;

(b) where the pregnancy resulted from rape, incest or unlawful sexual intercourse with a mentally retarded female; or

(c) on such other grounds as Parliament may prescribe

Legislative measures

522. The **Health Care Act and Regulations No. 5 of 1969** make provisions to public health.

523. The SODV Act, 2018 addresses sexual and gender-based violence as a sexual and reproductive health rights issue.

524. Section 244 of the Childrens Protection and Welfare Act explicitly provides that children may not be denied information on reproductive healthcare, devices and technologies relating to reproductive healthcare and in instances where a child is a victim of sexual abuse and exploitation, emergency contraception must be provided as soon as is feasible.[110]

Administrative Measures

525. Eswatini has adopted the National Health Policy 2007 which seeks to guide principles on access to health care for the citizenry. Everyone has access to a government hospital which serves as a referral for the clinics which are available in almost every constituency countrywide. The access to these services is open to all persons however priority is given to children, the elderly and persons living with disabilities.

[110] Section 244 provides that: (1) No person may refuse.

526. Eswatini has also developed Health Sector Strategic Plans with the aim of improving health sector delivery systems, this includes the reduction of morbidity, disability and mortality that are due to disease and other social conditions. These plans also seek to promote effective allocation and management of health sector resources and reduce the risk and vulnerability of the country's population to social welfare problems as well as the impact.

527. The country has also developed the Sexual and Reproductive Health Rights Policy to guide the implementation of Health and Reproductive Rights at the health facility level. A Sexual and Reproductive Health Rights Strategy is in place and is currently being reviewed taking it from the RMNCAH&N Global strategy for Women and Adolescents.

528. Through the National Emergency Response Council on HIV/AIDS (NERCHA), the government of Eswatini reviewed and extended the Multi-Sectoral Strategic Framework 2014-2018 to guide the national response to HIV and AIDS. The strategy covers issues of prevention, treatment, impact and mitigation including addressing issues of stigma and discrimination.

529. The country has also set up Phalala Fund to provide specialised medical services which would not otherwise be available in the country.

530. The Maternal Mortality Rate (MMR) has also improved in the past years. In 2017 the Maternal Mortality Rate stood at 452/100,000 - this has decreased from 593/100,000 in 2012 (Population Census, 2017). The major causes of MMR are excessive bleeding, infections, hypertensive disorders of pregnancy. Similarly, the infant mortality rate is at 20 deaths /1000 live births.[111]

531. In order to address the above, the Ministry of Health has conducted a confidential enquiry into maternal death that audits cases per facility on a quarterly basis and

[111] Eswatini Population census, 2017.
See

provides feedback to health facilities for improvement of quality services. More recently, some health facilities recorded zero deaths in a quarter. The Ministry also conducts quarterly clinical mentoring meetings at the regional level to allow healthcare workers to mentor their peers, this has improved service delivery in the different healthcare facilities.

532. The country, in terms of Antenatal care attendance for first visits is currently at 99%.[112] The Teenage pregnancy rate decreased from 22.1% in 2010 to 16.7% in 2014. This is a great improvement and shows that the country is responding to sexual and reproductive health needs of individuals. Contraceptive use for married women is at 66% and an unmet need for family Planning is at 15.2%. With support from development partners, the Ministry of Health has upgraded maternity wings thus contributing to healthy mothers and healthy babies post-delivery.

533. Eswatini has also embarked on a campaign titled" *Umndeni Lotfokotile*" to raise awareness on family planning for both men and women. The campaign, through the health care system, makes provision for free contraceptives and placing condoms in public spaces and schools.

534. The country is currently reviewing the Sexual and Reproductive Health (SRH) Policy of 2013, to accelerate efforts towards the realization and strengthening of access and utilisation of the sexual and reproductive health services at all levels.

535. The National SRH Strategy 2014-2018 provides a national roadmap in the provision of Maternal, New born and Child Health services at national, regional and health facility levels. The strategy envisions "a healthy and well-informed population with universal access to quality Sexual and Reproductive Health(SRH) services that are sustainable, and which are provided through an efficient, effective and rights-based system". In the last

[112] Multiple Indicator Cluster Survey(2014) to be sourced from the Ministry of Health.
See

five years the Ministry of Health, with its partners scaled up SRH and Rights programmes for women and adolescents. The adolescent SRH & Rights subcomponent was strengthened with tools and evidence to ensure the general SRH services are youth and adolescent-friendly.

536. The Ministry of Health developed the Adolescent Health guidelines (2013) for healthcare workers, these are currently being implemented in health facilities however they are due for review. The development of the guidelines was purposed to standardise services in all healthcare facilities. The Ministry has conducted several studies in adolescent health including the sociocultural influences on Adolescent SRH service uptake by young people, this study was conducted in 2016. It revealed that young people need youth-friendly healthcare services.

537. To understand the drivers of teenage pregnancy, the Ministry of Health conducted a study in 2015, which found that one of the main drivers was lack of information on SRH, growth and development and low levels of education amongst women as 35% of women who participated in the study had primary education and gave birth before age 18.[113]

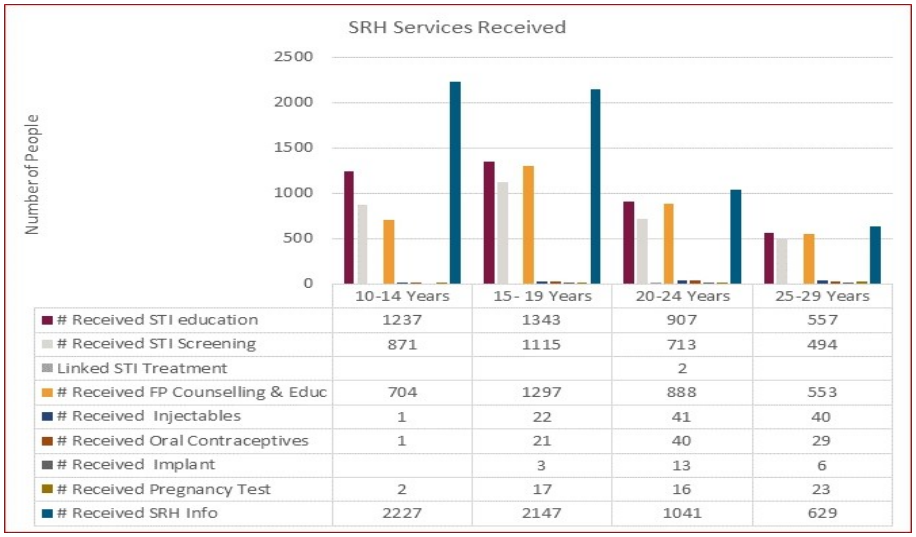
538. In a bid to reduce teenage pregnancy, awareness-raising efforts have been intensified & SRH education strengthened. Awareness-raising efforts and steps are taken to ensure that men, women and adolescents in all regions of the country have access to contraceptives and sexual and reproductive health education and services. These include life skill education for the youth in school and Institutionalization of youth-friendly services into all health facilities in the county.

539. Furthermore, the country has embarked on Comprehensive Sexual Education for youth in communities. This campaign was piloted in 38 out of 55 constituencies by the Ministry of Youth, Sport and Culture. The types of services rendered in relation to SRH and Rights are presented in the diagram below:

[113] Multiple indicator Cluster Survey ,2010
See

Figure 4: People receiving SRH services

See



	10-14 Years	15- 19 Years	20-24 Years	25-29 Years
# Received STI education	1237	1343	907	557
# Received STI Screening	871	1115	713	494
Linked STI Treatment			2	
# Received FP Counselling & Educ	704	1297	888	553
# Received Injectables	1	22	41	40
# Received Oral Contraceptives	1	21	40	29
# Received Implant		3	13	6
# Received Pregnancy Test	2	17	16	23
# Received SRH Info	2227	2147	1041	629

Source: Ministry of Health

540. The Ministry has also developed the Adolescent Youth-friendly standards in 2017. A pre-assessment before the implementation of the standards was done in October 2018. The Ministry is currently implementing the standards in all healthcare facilities. This will aid in the reduction of unwanted/unintended pregnancies amongst adolescents and youth, reduction in STIs and new HIV infection.

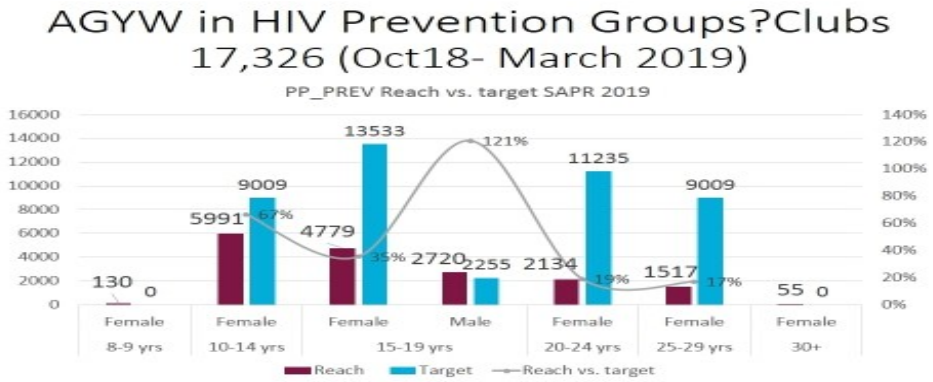
541. An Adolescent SRH module for tertiary institutions was developed in 2017 to enhance the capacity of healthcare officials, this has been integrated into the curriculum at institutions of higher learning. An Adolescent SRH training manual for healthcare workers (in-service) has also been developed, it incorporates Comprehensive Sexuality Education(CSE) to build the capacity of healthcare workers on SRH and Rights.

542. The country has, in partnership with the United Nations Population Fund designed and implemented training programmes targeted at nurses on Adolescent SRH and Youth Friendly Services. The purpose of these training programmes is to ensure that ageappropriate and culturally sensitive adolescent services and information are provided. Research on the Socio-cultural factors affecting or promoting SRHR service uptake was undertaken to inform the development of the standards.

543. As a result of the increased risk of HIV transition among particularly adolescents, the health sector continues to scale up Integration of HIV/AIDS into SRH services and viceversa. In an effort to systematically implement the integrated services a number of guidelines on maternal, neonatal child, adolescent health service provisions were developed and rolled out to all health facilities. Standards for delivering adolescent and youth-friendly health services were also developed, and health service providers were trained on the application of the standards.

544. The Ministry of Health has established a number of teen clubs attached to health facilities to sensitise young women on prevention, treatment, care and support. Teen clubs attached to health facilities currently stand at eighty-one (81). The number of teen clubs rolled of the years are as follows:

Figure 5: HIV Prevention Clubs



Source: Ministry of Health, 2017

Challenges

545. Whilst the country has made great progress in the provision of healthcare services, many healthcare facilities still experience a shortage of critical drugs.

546. Furthermore, whilst Section 15(5) Constitution makes provision for medical abortion in specific grounds, the absence of any regulations, guidelines or rules of procedure

poses a challenge for persons seeking these services.

547. Attitudes of health care providers tend to hinder the provision of quality health care services. Lack of regulatory frameworks guiding the provision of complimentary delivery of modern medical and traditional medical services**.**

ARTICLE 15: RIGHT TO FOOD SECURITY

Constitutional measures

548. Section 59(3) of the Constitution provides that *"The State shall take appropriate measures to promote the development of agriculture and industry."* Although the Constitution in part recognises the right to food, this right cannot be enforced in the courts of law, as they are non- justiciable.

Administrative measures

549. About 70 per cent of the population in Eswatini is dependent on agriculture for sustainable livelihood. However, over 80% of arable land is used by small-hold farmers who practise subsistence farming on Swazi Nation Land. Rural households involved in non-commercial farming activities are the poorest followed by self- employed femaleheaded households.[114] The effects of climate change manifested in chronic droughts have significantly constrained the rural populations who are largely dependent on agriculture. In July 2017, the National Disaster Management Agency indicated that the 2015/16 El Niño-induced drought which cost the country E3.843 billion (US$ 296 million), representing 7 per cent of Eswatini's Gross Domestic Product in 2016, equivalent to 18.58 per cent of government expenditure in 2016.

550. In 2016, the number of people requiring food assistance was estimated at 308,059. 189,000 children were affected by drought and amongst these 8,460 children aged between 6-59 months were affected by severe and moderate acute malnutrition .

[114] Swaziland United Nations Development Assistance Framework (2016-2020).

551. Women continue to play a meaningful role in agricultural production as part of the agricultural workforce and as food producers, despite this role few women take part in decision making processes aimed at meaningfully contributing to agricultural preservation and management.

552. The **Water Act No.7 of 2003** provides for improved catchment management through stakeholder participation and planning and the decentralization of the management of the water resource.

553. The Ministry of Agriculture is piloting the Eswatini Nation Land Commercialization Bill of 2019, which seeks to address the issue of food security.

554. The Kingdom of Eswatini is committed towards ensuring that all people have access to adequate quantity, quality and nutritious food at all times in order for them to live healthy and have productive lives. To this end, agriculture is one of the key strategic sectors prioritized by the country to address poverty and food insecurity.

555. The Kingdom of Eswatini approved a National Development Strategy which is aligned with the National Food Security Policy. The policy has 4 key pillars, namely: food availability, food access, food utilisation and nutritional requirements, as well as stability inequitable food provision. This framework is aimed at raising the capability of the agricultural sector to generate a higher volume of goods and services for given factors of production, without compromising environmental sustainability measures of the country.

556. The National Strategic Road Map 2019-2023 prioritises the agriculture sector amongst the five priority areas set out therein.

557. A Comprehensive Agriculture Sector Policy (CASP) 2005 was developed, to propel the sustainable development of the sector in order to enhance poverty reduction and food

security both at the household and national level.

558. Furthermore, to counter food insecurity the Department of Agriculture in partnership with Food and Agriculture Organisation of the United Nations conducted intensive training aimed at developing the capacities of extension providers in the field of nutrition-oriented Farmer Field Schools.

559. In July 2016, sector stakeholders endorsed the Swaziland National Agriculture Investment Plan (SNAIP) which is aimed at increasing both public and private investment for development of the sector. The country has also initiated a Subsidy Programme to assist farmers with fertilisers, seeds at half the market value and technical expertise.

560. In the event of disasters, National programmes aimed at addressing food insecurity emergencies have been driven through collaboration with partners including the World Food Programme, World Vision, Red Cross and the National Disaster Management Agency. Transitory food insecurity has been addressed through the distribution of food hampers to ensure vulnerable households have access to basic commodities.

561. The National Maize Corporation (NMC), is entrusted with the responsibility to ensure that the staple food i.e. Maize is available at all times. Their capacity at the moment cannot meet the national requirements.

562. There is also a Home Economics Section under the Ministry of Agriculture which is responsible for improving household economies and livelihoods through the promotion of improved nutrition, home management, childcare and development, consumer education and income-generating activities. This section carries out educational sessions on nutrition through various forums such as radio and workshops. Further, there is a testing laboratory set up for testing levels of food poisoning.

563. The country has made substantial progress in providing access to safe drinking water by the population. The proportion of people with access to safe drinking water has

increased by 16% from 56.4 per cent in 1997 to 72.4 per cent in 2014 at the national level. The improvement is observed in both the rural and urban areas. In 2014, 63.4 per cent of the rural population had access to improved water sources compared to 95.8 per cent for urban areas. As of 2014, the proportion of the population estimated to have access to electricity is 65 per cent. Urban and rural households had electricity access of 83.8 per cent and 53.8 per cent, respectively.

564. The country has made substantial progress in providing water for irrigation purposes through the construction of dams such as the Lubovane dam. The Ministry of Agriculture is also making strides in providing portable water community.

Judicial measures

Table O: Cases on the right to food

Case	Facts	Decision
Thoko Dlamini and Lomgcibelo Dlamini vs Principal Secretary, Ministry of Information and Technology **(856/15 & 782/15) [2018] SZHC 223 (26 FEBRUARY 2019)**	The Plaintiffs who are siblings resided in a farm which was previously privately owned but later purchased by the Government to build a Technology Park. Following numerous meetings, letters and orders to the residents of the farm to vacate the land, the Plaintiffs believed such was not directed to them as they possessed an Affidavit by the then *Indvuna* confirming their father had *khonta* under the chief of the area. Prior to the demolition of their homestead, the Plaintiffs made a living by selling fruits and had grown maize and sweet potatoes which were destroyed at the time of demolishing of their homestead.	The Court observed that Eswatini being a member of the UN should follow the UN Guidelines when evictions are to be carried out. In this case, such was not done and as a result of the failure left Emaswati homeless, poor and traumatized and displaced bringing the country to disrepute that it fails to take care of its citizens. The Plaintiffs claims succeeded

Challenges

565. The frequency and intensity of droughts appear to be increasing and the country has limited climate change resiliency and mitigation mechanisms. The agricultural sector is greatly affected by droughts, with livestock and crops under Swazi National Land, where irrigation coverage is still low, being particularly exposed.

566. The country relies on imports to meet its consumption requirements. Local maize produce is less price competitive compared to imported grains and local production makes up just 70 per cent of the national requirement, despite it being the staple food.

567. Further, a lack of co-ordination and inefficiencies associated with the rollout of the input-subsidy programme have reduced its potential impact.

568. The right to food security is pegged to the right to land. However, the right to land under Swazi Nation Land is curtailed by the lack of security of tenure as highlighted in article 14 of Part A.

ARTICLE 16: RIGHT TO ADEQUATE HOUSING

Constitutional measures

569. The right to adequate housing is not explicitly spelt out in our Constitution. However, Section 59 (1) provides "*The State shall take all necessary action to ensure that the national economy is managed in such a manner as to maximise the rate of economic development and to secure the maximum welfare, freedom and happiness of every person in Eswatini.*" The Section further provides adequate means of livelihood and suitable employment and public assistance to the needy.

Legislative measures

570. **The National Housing Board Act, 1988** establishes Eswatini Housing Board, a parastatal under the Ministry of Housing and Urban Development. It is responsible for

providing affordable housing to the Eswatini citizenry and takes over such housing schemes as the Government may determine. In pursuit of its mandate to provide affordable housing, the Board offers to the citizenry both rental and home-owner accommodation which is accessible to all income groups of the population, including women in their own right.

571. **The Human Settlement Act, 1988** (as amended in 1992) establishes the Human Settlements Authority whose function is to (a) assist the Government in formulating policy relating to human settlements and uphold and give effect to such policy; (b) ensure the orderly development of existing and future urban and rural settlements; (c) establish a finance mechanism for ensuring the supply and maintenance of approved shelter and infrastructure throughout Eswatini, which shall include a system of revenue recovery; (d) prepare appropriate standards for the provision of land, shelter and infrastructure by both private and public developers; (e) regulate real estate transactions including the standardization of lease agreements, rent control and sale of land and buildings; (f) encourage and support research on appropriate methods of providing shelter and infrastructure.

572. The Human Settlements Authority plays a facilitative role in the development of townships throughout the country. Approved townships have requisite infrastructural services such as portable water supply, electricity, telephone lines, paved roads and drainage which are part and parcel of adequate housing. Whilst some developers (both private and public) provide serviced plots, some also construct tailor-made housing units.

573. **Sectional Titles Act of 2003** (as amended in 2018) regulates the division of buildings into sections and common property and the acquisition of separate and joint ownership in sections and in common property. Being a new phenomenon, this piece of legislation is aimed at stimulating the housing market through empowering tenants to own the units they presently occupy. Similarly, a unit can be bonded by financial institutions

thereby making property acquisition accessible to all income groups.

574. Crown Lands Disposal Regulations of 2005 promulgated to regulate the disposal/allocation of Crown/government land. The regulations have in place procedures to be followed in the disposal of Crown Land. Its principle is that all individuals above 21 years of age irrespective of gender and marital status are eligible to access Crown Land.

Administrative measures

575. The Government of the Kingdom of Eswatini administratively coordinates housing and human settlements issues through the Ministry of Housing and Urban Development. Among other responsibilities the ministry ensures well planned, safe and integrated human settlements and also develop strategies of improving the provision of housing and human settlements in the country.

576. The country has established a National Housing Board which is a parastatal mandated to provide affordable housing to lower- and middle-income earners in the Kingdom. However, its operations have been confined to urban areas. Houses have been developed for ownership and rental by locals, which has ensured easier access to property ownership through township developments.

577. The Housing Policy, 2001 was developed to ensure equality and security of tenure regardless of gender and traditions governing the access to land in both peri-urban and rural areas. Its vision is that “all Eswatini households should have access to affordable shelter and services”. Central to the housing policy is ensuring that all households have access to the services required to ensure health and safety – water, sanitation and waste removal – and that a basic level of water consumption be provided for free to lowincome households. The policy objectives include among others: to improve access to land with secure tenure for those households seeking to build housing; identify and safeguard the rights of both Landlords and Tenants in the rental market. It highlights the areas that need to be addressed to make housing affordable to most residents of the country.

578. The Government continues to facilitate and guide the development of sustainable human settlements that are supported by basic services such as water, power, sanitation and telecommunications. These developments are often led by private developers where they develop sites for disposal as 'site and services only' type or developed further into housing estates where the end product would be houses for the beneficiaries.

579. The country has also introduced the 99-year leasehold to improve the security of tenure in these areas where beneficiaries were awarded 99 years leases to occupy and develop their properties for residential purposes. Piloted through the Urban Development Project (UDP) in the informal settlements within Mbabane and Manzini Municipalities, the project empowered women to own property in their own right. This was influenced by the realisation of the absence of male headed households.

Challenges

580. There is a need to review the Housing Policy in order to determine and address the current housing challenges faced in the Kingdom of Eswatini.

581. The right to adequate housing is hindered by the high cost of construction material and accessing land/housing in both urban areas and on SNL. Further, inadequate land parcels for developing housing for low-income individuals in urban areas.

ARTICLE 17: RIGHT TO A POSITIVE CULTURAL CONTEXT.

Constitutional measures

582. The Constitution of Eswatini in Section 20(1) enshrines the right to equality as follows *"All persons are equal before and under the law in all spheres of political, economic, social and cultural life and in every other respect and shall enjoy equal protection of the law."*

583. Section 28(3) of the Constitution further provides for that *"A woman shall not be compelled to undergo or uphold any custom to which she is in conscience opposed."*

584. Section 60 (10) provides that "*The state shall take steps to encourage the integration of appropriate customary values into the fabric of national life through formal and informal education and shall ensure that appropriate customary and cultural values are adapted and developed as an integral part of the growing needs of the society as a whole.*"

585. Section 252(2) states that "Subject to the provisions of this Constitution, the principles of Swazi customary law (Swazi law and custom) are hereby recognised and adopted and shall be applied and enforced as part of the law of Swaziland."

Section 252 (3) "The provisions of subsection (2) do not apply in respect of any custom that is, and to the extent that it is, inconsistent with a provision of this Constitution or a statute, or repugnant to natural justice or morality or general principles of humanity."

Legislative measures

586. A number of Bills[115] have been drafted to address issues of marital power, administration of matrimonial property systems in an effort to eliminate limiting traditional and cultural practices such as marital power.

Administrative measures

587. The Kingdom of Eswatini is a party to the Convention on Economic, Social and Cultural Rights that protects and promotes women's rights to a conducive cultural context. The Kingdom administratively coordinates all matters relating to culture through a National Council of Arts and Culture, which is an administrative organization, under the Ministry of Sports Culture and Youth Affairs, mandated to preserve, promote and coordinate all matters of Arts and Culture.

588. The Ministry of Youth Sport and Culture in collaboration with civil society organizations have taken the opportunity to provide educational sensitization sessions ranging from SRHR, health, and economic empowerment messages. Cultural practices such as Umhlanga (reed dance) and Umcwasho (carrying woollen tassels)

[115] See Legislative audits and Policy environment under Background Information.

are used to promote positive programmes for girls.

589. The Gender and Family Issues Department in collaboration with Civil Society Organisations (CSO) have held regular interactions and educational sessions with traditional authorities (King's Council, Chiefs), Security forces (Police, Correctional Services), Social Workers, Community Health Motivators on gender equality and women's empowerment. It is emphasised during consultations that leaders have a duty to promote equality and protect women and gilrs against discrimination. In addition to these sessions, a number of awareness-raising campaigns have been undertaken to sensitise the public on the newly enacted SODV Act.

590. Where there is a violation of women's and girls rights in relation to culture, there is redress through the courts . For instance, a matter was filed in the High Court challenging the principle of primogeniture. However, this matter was later withdrawn which would have been crucial in charting a path for the realisation of women's rights in the country.

591. A positive cultural change has led to women taking up Chieftaincy positions.

Judicial measures

A number of progressive judgments have been passed by the courts in relation to women's right to positive culture, cross reference is made to the case of *Sihlongonyane and others v Sihlongonyane, Sacolo & WLSA v Sacolo 1403\16 [2019]* (Article 2 of Part B) *and Mana Mavimbela v EBC & 2 Others, Lubulini, LR (*Article 9 of Part B*).*

Challenges

592. In the kingdom, the practice of primogeniture is still a challenge in some communities, though it is slowly declining at the realisation of its abuse.

593. The complexity with the non-codification of Swazi Law and custom results in lack of consistency in its application on the enjoyment of women's rights.

ARTICLE 18: RIGHT TO A HEALTHY AND SUSTAINABLE ENVIRONMENT

Constitutional measures

594. The Constitution of Eswatini in Section 59 (1) obligates that the *State shall take all necessary action to ensure that the national economy is managed in such a manner as to maximise the rate of economic development and to secure the maximum welfare, freedom and happiness of every person in Eswatini and to provide adequate means of livelihood and suitable employment and public assistance to the needy*.

595. The Kingdom of Eswatini is a party to and has ratified some of the key Multilateral Environment Agreements (MEAs). These include the following:

- **The Basel Convention on the Trans-boundary Movement of Hazardous Waste and their Disposal** of 1989 which seeks to promote environmentally sound management of waste including the minimization of its generation, the country ratified the Convention in 2005.
- **Montreal Protocol on Substances that Deplete the Ozone Layer the treaty of 1987**is designed to halt the production and import of ozone-depleting substances and reduce their concentration in the atmosphere to help protect the ozone layer. The treaty was ratified in 2005;
- **The Stockholm Convention on Persistent Organic Pollutants of 2001-** The Convention sets forth obligations upon State Parties to reduce and/or eliminate the production or use of certain listed chemicals that are persistent organic pollutants (POPs). It also specifies obligations relating to the import and export of those substances. Eswatini ratifies the treaty in 2006;
- In 2016, the Kingdom also acceded to the **Minamata Convention on Mercury of 2013**-the treaty is designed to protect human health and the environment from the adverse effects of mercury.

Legislative measures

596. In the Kingdom of Eswatini, a number of laws have been passed to protect the environment. The Environment Management Act No.5 of 2002 is the overarching law on the environment and it serves as the national framework for environmental

protection and management. The Act also creates the Eswatini Environmental Authority and mandates it to be the main environmental regulator.

597. Other key legislative frameworks include the following:

- **The Pesticide Management Act No.14 of 2017** -The Act regulates all pesticides trade and those received as donations. It, however, excludes household pesticides. The Act bestows on the Ministry of Agriculture to regulate pesticides quality, efficacy and adverse effects of pesticides imported in the country through a registration scheme;
- **The Biosafety Act, 2012** protects human health from the adverse impacts of the use of genetically modified organisms.
- **The Chemicals Management Bill:** This Draft Bill is intended to regulate control the manufacture, use, placement in the market, import, export, transport, storage and disposal of all chemical substances in the Kingdom and further harmonize the regulatory aspects of chemicals through the delineation of the roles and functions of the key players in the sound management of chemicals.

Administrative Measures

598. Other key policies, regulations and plans include the following;

- **Kingdom of Eswatini Strategic Road Map (2019-2022)-** This four-year Plan outlines the government's key priorities, for economic growth. It charts strategies for achieving sustainable development, of which the protection of the environment is one.
- **National Biodiversity Strategy and Action Plan (BSAP), 2001.** The NBSAP acknowledges EEA's prerogative of ensuring that environmentally sound management practices are adhered to in the Kingdom**.** This is intended, firstly, to conserve the biodiversity of Eswatini, secondly, to encourage the sustainable use of biodiversity, and lastly, to ensure that the benefits accrued from the use of biodiversity are shared equitably.
- **The National Environment Policy (NEP), 1999** The NEP was been formulated to promote the enhancement, protection and conservation of the environment to attain sustainable development. The policy establishes a framework for the management of pollution, the management of domestic

and industrial waste and hazardous materials.

- Environmental Audit and Assessment Review Regulations 2000; the Waste Regulations 2000;
- The Air Pollution Regulations 2001;
- The Water Pollution Regulations 2001;
- The Ozone Depleting Substances Regulations 2003; and The Chemical and Management Policy 2016.

599. A number of structures have been established to address environmental issues, these include the Environmental Health Association, health and safety forum that look into safety in the workplace.

600. Eswatini is also in the process of establishing the health and environment strategic alliance which is a forum that will assist health and environments' joint planning action and implementation of health and environment programmes.

601. Women play a critical role in managing naturals resources at family and community level, they manage water, sources of fuel, and food as well as agriculture and forestry.

Challenges

602. Despite the legal and administrative measures in place, incidences of littering and pollution in the country remains a matter of concern.

603. There is lack of awareness on the importance of environmental management .

ARTICLE 19: RIGHT TO SUSTAINABLE DEVELOPMENT, INCLUDING THE RIGHT TO PROPERTY; ACCESS TO LAND AND CREDIT

604. The country's commitment to promoting gender equality is comprised of commitments made at international and regional levels. At the international level, the country is a signatory to Convention on the Elimination of All Forms of Discrimination against

Women (CEDAW), the Beijing Platform of Action, International Covenant on Civil and Political Rights and the International Covenant of Social, Economic and Cultural Rights.

Constitutional measures

605. Section 211 of the Constitution of Eswatini provides that "*Save as may be required by the exigencies of any particular situation, a citizen of Eswatini, without regard to gender, shall have equal access to land for normal domestic purposes".*

606. Section 59 and 60 of the Constitution provides for the state to "*take all necessary action to ensure that the national economy is managed in such a manner as to maximize the rate of economic development and to secure the maximum welfare, freedom and happiness of every person in Eswatini and to provide adequate means of livelihood and suitable employment and public assistance to the needy".*

Section 59 (3) of the Constitution further places an obligation on the State to "*afford equality of economic opportunity to all citizens and, in particular, the State shall take all necessary steps so as to ensure the full integration of women into the mainstream of economic development."*

Section 60 (3) provides for the state to give the highest priority to the enactment of legislation for economic empowerment of citizens.

Admistrative measures

607. In light of the amendment of Section 16 of the Deeds Registry Act - married women in community of property can register land in both names if they so desire.

608. Despite the provisions above, women in some chiefdoms are still disadvantaged in accessing communal land referred to as Swazi Nation Land (SNL). It fulfils a function of social equity to the citizenry right of access to land. However, women in some chiefdoms have limited right, despite their role in agricultural production.

609. Women in Eswatini are enterprising and do participate in economic activities. About 59% of those in self-employment are women, they own about 70% of small businesses in the country[116]. However, these women face challenges in playing a significant role in the economic sphere due to financial and social impediments.

[116] Labour Survey Report, 2016

610. The Ministry of Commerce Industry and Trade developed a Small, Micro, Medium and Enterprise Policy (SMME) in 2011 which aims to create a modern, comprehensive, targeted and coherent framework that will create a highly profitable and entrepreneurial sector, characterized by innovative, competitive and sustainable businesses and supported by an enabling institutional and regulatory environment.[117]This policy also seeks to strengthen women's participation in the economy.

611. In addition to the development of this policy, the Ministry also established a Small, Medium and Micro sized Enterprises(SMME) unit whose overall responsibility is coordinating the implementation of SMME policy objectives. These objectives include fostering economic growth and development; increasing employment opportunities and alleviating poverty through sustainable livelihoods.

612. The country is also in the process of drafting the Citizen's Economic Empowerment Bill whose objects include promoting gender equality in accessing, owning, managing, controlling and exploiting economic resources. This Bill also establishes the Citizen Economic Empowerment Board whose function promotes the empowerment of citizens whose access to economic resources and development capacity has been constrained due to various factors including race, sex, educational background, status and disability.[118] The Bill specifically provides that women must make up at least one-third of the board composition.[119]

613. Nationally, the Constitution, NDS, PRSAP and a number of other sectoral policies such as the National Multi-sectoral Policy on HIV/ AIDS, National Population Policy Framework and the National Youth Policy all recognize the problems associated with discrimination against women and the need to address the existing disparities.[120]

[117] See SMME Policy retrieved http://www.gov.sz/index.php?option=com_content&view=article&id=498
[118] See Section 6(2) of the Citizen Economic Empowerment Bill
[119] Ibid section 7
[120] See CEDAW Country Report (2012)

ARTICLE 20: WIDOWS RIGHTS

Constitutional measures

614. Section 14 of the Constitution of Eswatini guarantees:

a) …

(e) protection from inhuman or degrading treatment, slavery and forced labour, arbitrary search and entry.

- Section 34(1) of the Constitution of Eswatini explicitly provides that *"A surviving spouse is entitled to reasonable provision under the estate of the other spouse regardless of whether the other spouse left a valid will or not and whether the spouse was married by civil rites or customary law."*
- Section 28(3) of the Constitution preventing society from "*compelling a woman to undergo a custom or practice to which she in conscience opposed to."*
- Section 27 of the constitution provides;

(1) *Men and women of marriageable age have a right to marry and found a family.*

(2) *Marriage shall be entered into only with the free and full consent of the intending spouses.*

(4)Motherhood and childhood are entitled to special care and assistance by society and the State.

(5)Society and the State have the duty to preserve and sustain the harmonious development, cohesion and respect for the family and family values.

- Section 195 (7) of the Constitution provides "pensions benefits" *means any pensions, compensation, gratuities or other like allowances for persons in respect of their service as public officers or for the widows, children, dependents or personal representatives of those persons in respect of that service.*

Legislative measures

615. Section 25 of the Administration of Estates Act 28 of 1902 provides; In every case in which a competition shall take place for the office of executor dative, the surviving spouse failing whom the next of kin and failing whom a creditor and failing whom a legatee shall be referred by the Master for such office.

616. Widows rights during separation, divorce or annualment of marriage are protected by the family laws in place, some of which are under review to ensure alignment with Constitituion, regional and international instruments.

Judicial measures

Table N1: Case enforcing widows rights

Case	Facts	Judgement/Ruling
***Sandile Hadebe V Sifiso Khumalo and others* (25/2012) {2013} SZSC 39**	In this case, a woman had lost her husband and the deceased's brother sought to evict her and children from the homestead. She sought redress from *Umphakatsi*, and the *Umphakatsi* decided in the widow's favour and ordered that instead, the brother in law should vacate the homestead. Dissatisfied with the *Umphakatsi's* ruling he approached the High Court for redress.	The Supreme Court confirmed the decision of the High Court, which had decided that at the death of the husband, the homestead accrued to his wife and children. The appellant (deceased's brother) was ordered to move out of the homestead to build his own.

Challenges

617. Despite the Constitutional provision and court judgment eliminating marital power, in cases of customary marriages, women are subjected to the marital power of the husband. For instance in the dissolution of marriage by death, the family makes decisions on the administration of the estate. Further, in some instances, the principle of primogeniture applies which deprives widows of their right of inherintance from the deceased husband's estate. This increases widows vulnerability to poverty and violence.

618. Furthermore, despite express provisions in the Constitution regarding inheritance rights, redress for widows is limited by the high costs of legal representation, if they were to contest the distribution of the estate. The majority of them cannot afford legal representation and in the absence of legal aid system, there can be very little recourse to justice.

Mitigating factors

619. The National Gender Policy emphasises the importance of mounting educational campaigns on inheritance rights and the importance of drafting wills in order to protect

the interest of women.[121] The Ministry of Justice and Constitutional Affairs has also embarked on community civic education on the Constitution to ensure that the population understands the provisions of the constitution and its implications on their lives.[128]

ARTICLE 21: RIGHT TO INHERITANCE

Constitutional provisions

620. Section 34(1) of the Constitution provides that- *a surviving spouse is entitled to a reasonable provision out of the estate of the other spouse whether the other spouse died having made a valid will or not and whether the spouses were married by civil or customary rites.*
(2) Parliament shall, as soon as practicable after the commencement of this Constitution, enact legislation regulating the property rights of spouses including common-law husband and wife.

Legislative framework

621. **The Administration of Estates Act, 1902** provides for the regulation of the administration of the estates of deceased persons, minors, and of persons of unsound mind, and of derelict estates.

The Retirement Funds Act of 2005 section 31 (1) provides as follows- *save to the extent permitted by this Act and the Income Tax Order, 1975, no benefit or right thereto which arose in respect of contributions made by or on behalf of a member of a retirement fund, shall be capable of being reduced, transferred, ceded, pledged or hypothecated or be liable to attachment or subject to any form of execution under a judgment or order of Court or be capable of being taken into account in the determination of a judgment debtor's financial position.*

- Section 32 (1) also provides as follows, *"a retirement fund may deduct an amount from the member's benefit in respect of a debt arising from a housing loan or guarantee granted to or in respect of a member in terms of section 19."*

[121] See Eswatini's National Gender Policy, 2010.
[128] See CEDAW Country Report (2012).

The Public Service Pension's Order of 1993 provides as follows;

Section 15 provides *for a member who is entitled to, or receiving, a pension from the Fund shall be covered for one or more of the following benefits in the event of his death —*

(a) a death benefit,

(b) a surviving spouse's pension, (c) children's pensions, and (d) a residual settlement.

- Section 16 provides for a member of the Fund who dies while still being a member shall be entitled to a death benefit equal to two years' salary based upon that member's pay scale as at the day of the member's death, and such benefit shall be paid to the member's estate. (Amended L.N.71/2000.)

- Section 17 (1) *provides that if the member dies before his separation from the Fund and was married at the time of his death, his surviving spouse shall be entitled to a pension equal to one-half the pension referred to in regulation 8(2). (Amended L.N.153/2009.)*

(2) If the member dies after his separation from the Fund and while he is entitled to, or in receipt of, a pension from the Fund, his surviving spouse, if any, shall be entitled to a pension equal to one-half the amount of pension which the member was receiving, or was entitled to receive.

(3) The surviving spouse's pension shall be payable until the spouse's death or remarriage, whichever comes first.

(4) In the event that the deceased member leaves more than one surviving spouse, the surviving spouse's pension shall be divided among them in such proportion as the Master of the High Court may determine.

- Section 18 (1) provides *that Subject to paragraph (3) if a member dies before separation from the Fund, a child shall receive ten per cent (10%) of the pension referred to in regulation 8(2). (Amended L.N.153/2009.)*

(2) Subject to paragraph (3), if the member dies after separation from the Fund and while he is entitled to or in receipt of a pension from the Fund, a child shall receive a pension equal to ten per cent (10%) of the pension which the member was receiving, or is entitled to receive, at that time.

(3) If the member has more than five (5) children, the total amount of pension referred to in paragraph (1) and (2), shall be computed as if there were five (5) children, and such total shall be divided among all the member's children.

(4) If there is no surviving spouse's pension payable in terms of regulation 17, the child's pension shall be twice the amount referred to in paragraph (1) and (2) as the case may be.

The Intestate succession Act of 1953 provides that a person married in community of property is entitled to a half share plus a child's share of the matrimonial property.

Judicial measures

Table N2: Case of enforcing the right to inheritance

Case	Facts	Judgement/Ruling
Attorney General vs Titselo Dzadze Ndzimandze (nee Hlophe) and 27 others **(55/2014) SZSC78 (3 December 2014 and** ***Attorney General v. The Master of the High Court*** **(55/2014) [2014] SZSC10 (30th June 2016)**	Discussed under Table HI	
Lungile Hortencia Gamedze & two others vs Nosipho Gamedze and another **(1210/2018[2019] SZHC 20 (13 February 2019)**	The Applicant sought an order to have 1st Respondent undergo a paternity test to ensure that respondent is a biological child of the deceased so that she is treated evenly as an heiress or beneficiary of the estate in the event paternity yields positive results. The Respondent has a birth certificate with the father's particulars and whose pregnancy was timeously reported, and further upon birth certain SiSwati Customary ceremonies performed as acknowledgement of the child per the father's instruction.	The court held that it would be difficult for the court to order that 1st respondent undergo paternity test because that could mean the contests of the birth certificate which was prepared by the father and mother. The court observed that the case was one in the kind and if not carefully considered may lead to injustice to children born out of wedlock whereas their status has been properly addressed by the Constitution.

Administrative measures

622. The Administration of Estates Act establishes the office of the Master that regulates and safeguards the administration of estates for deceased persons, minors, and of persons of unsound mind. The Master's offices are located in all the four regions of Eswatini and are administered by Assistant Masters.

623. The Administration of Estates Act, 1902 is currently being reviewed and a draft Bill which seeks to provide for, *inter alia*; the recognition of customary law marriages in the administration of estates, restricting an executor or his close relative or associate from purchasing property of that estate without the consent or approval of the Master, provide for increase in the levels of penalties both pecuniary and custodial so as to secure compliance with the law. The Bill once enacted in law address some of the challenges faced by women, particularly in securing the rights to inheritance as guaranteed in the Constitution of the country.

Challenges and mitigating measures

624. Section 34 of the Constitution is not yet operational since there is no law that has been enacted that clearly defines a 'reasonable provision' from the estate of a deceased spouse. As a Corrective measure, the government has developed the Matrimonial Property Draft Bill, Administration of Estates Draft Bill and Intestate Succession Draft Bills that clearly define interests of married spouses in marital property.

ARTICLE 22: SPECIAL PROTECTION OF ELDERLY WOMEN

Constitutional and legislative measures

625. Section 60(5) of the Constitution obligates the state to make a reasonable provision for the welfare and maintenance of the aged and shall protect the family and recognise the significant role of the family in society.

Administrative measures

626. The Kingdom of Eswatini provides special social protection mechanisms to older persons in the country. The Department of Social Welfare provides elderly grants to citizens of Eswatini or persons with a permanent residency on a monthly basis. The criteria for qualification for this grant is that a person must be 60 years and above, live in Eswatini and must not be in receipt of any other social grants.[122]

627. The State Party developed the Social Development Policy 2010 to make available a policy framework for the provision of social-development services in the Kingdom. It protects the rights of elderly persons and provides the poor with the means to support themselves and any children in their care.

628. The country also provides free healthcare services in all government facilities for Elderly persons.

Challenges

629. The state party still lacks a framework that regulates and monitors the disbursement of the elderly grants. In some instances, the grants are received by undeserving persons.

Mitigating factors

630. The state party is in the process of developing a Social Grants Regulatory framework to control and monitor the various grants including the elderly grants.

631. Whilst the extent of violence targeted at the elderly is unknown, there is anecdotal evidence of the elderly being abused and there are reported cases of elderly neglect by family members in various parts of the country. The Sexual and Domestic Violence Act, however, makes provision for elderly persons to apply for protection orders in instances of abuse. The country also recognises that more educational campaigns need to be conducted to raise consciousness amongst the elderly on their rights.

[122] See Department of Social Welfare website on http://www.gov.sz/index.php/departments-sp767085135/social-welfare-department.

ARTICLE 23: SPECIAL PROTECTION FOR WOMEN WITH DISABILITIES

Constitutional provisions

632. Section 14(3) of the Constitution states that *'(3) A person of whatever gender, race, place of origin, political opinion, colour, religion, creed, age or disability shall be entitled to the fundamental rights and freedoms of the individual contained in the [bill of rights].*

633. Section 30(1) of the Constitution of Eswatini provides that *"persons with disabilities have a right to respect and human dignity and the Government and society shall take appropriate measures to ensure that persons with disabilities realize their full mental and physical potential."*

634. Section 30(2) further states that "*Parliament shall enact laws for the protection of persons with disabilities so as to enable those persons to enjoy productive and fulfilling lives."*

Legislative and administrative measures

635. The Kingdom of Eswatini enacted the Persons with Disabilities Act 16 of 2018, an Act to promote and protect the rights of persons with Disability in the country.The state party endeavours to take appropriate non-discriminatory measures to improve the socio-economic status of all groups including women with disabilities in an effort to ensure that they have equal opportunities to education, health and other services at all levels.

636. The state party ratified the Convention on the Rights of Persons with Disabilities (CRPD) in 2012. The Government of Eswatini through the Deputy Prime Minister's Office recognised the need for the establishment of the Disability unit under the Department of Social Welfare to carry out the mandate of ensuring non-violation of the rights and privileges of people living with disabilities.

637. In 2013, the country developed the National Disability Policy to provide strategies to ensure promotion and protection for the full enjoyment of all human rights for persons

with disabilities in the country.[123]

638. A National Disability Action Plan, 2018 - 2022 was developed to ensure that national policies and development programmes mainstream disability in all stages of planning, implementation and monitoring of the programmes. It aims at promoting and protecting the fundamental rights of Persons with Disabilities as well as ensuring that they are empowered to exercise those rights and enjoy equal participation in the life of the community in which they live without discrimination.

639. The Deputy Prime Minister's Office in collaboration with non-governmental organisation provides training on Leadership and Entrepreneurship skills for women with disabilities. The Government of Eswatini supports Persons with disabilities to participate in International Trade Fares to showcase their talent.

640. In 2015, one of the Women with disabilities (under the Disability Category) won an Award of Excellence in the Business of the Women of the Year Award.

Challenges

641. The Persons with Disability Act has not been fully operationalised as the key institutions that are provided for by the Act have not yet been established.

ARTICLE 24: SPECIAL PROTECTION FOR WOMEN IN DISTRESS

Constitutional measures

642. Section 27 (4) of the Constitution provides that- *Motherhood and childhood are entitled to special care and assistance by society and the State.*

643. Section 28 (2) states that - *subject to the availability of resources, the Government shall provide facilities and opportunities necessary to enhance the welfare of women to enable them to realise their full potential and advancement.*

[123] See National Disability Policy for Eswatini retrieved from http://www.gov.sz/nw17/images/dpm/social/Disabilty.policy.pdf.

Administrative and legislative measures

644. The Ministry of Health (Psychiatric Centre) provides counselling and treatment to women who are in distressful situations to prevent them from developing mental illness.

645. The CP&E Act protects women who caused death of their children under the age of twelve months, but at the time of such act or omission the balance of their mind was disturbed by reason of her not having fully recovered from the effect of giving birth to such child or by reason of the effect of lactation consequent upon the birth of such child, from being sentenced to death.[124] Pregnant women are not subjected to death penalty on sentencing. [125]

646. The National Health Policy emphasises the importance of breastfeeding children. For women in detention centres, the Correctional Services Act provides that nursing mothers be afforded an environment which is suitable for bonding and breastfeeding.

647. The Correctional Services Department has the following facilities to cater for children born while their mothers are detained;

- *There are nurseries; with fully-fledged baby equipment's including baby cots and toys in a child-friendly environment.*
- *Both prenatal and postnatal care for the mother and child are provided within the facility. The mothers go through normal childbirth in Government hospitals. After birth, the mothers spend time with their children in the nurseries and they breastfeed them. If a mother is unable to breastfeed, the Government provides nutritional supplements such as the baby formula and other baby necessities.*
- *A Pre School is provided within the correctional facility that caters for the infants. This school has trained instructors.*

648. Cases of women (pregnant or with babies) in conflict with the law are afforded speedy trials so that the can be reunited with their families. These women are also afforded psycho –socio support whilst in detention.

[124] Section 296 (1).

[125] Section 298 (1).

649. Children born in custody are allowed to stay with their mothers up to 24 months then reintegrated back to their families. To avoid the stigma associated with being born in a correctional facility , the correctional services workers in transporting the children back to their families use plain vehicles, instead of the facility engraved vehicles.

Furthermore, the social workers accompanying the children do not wear uniforms.