

# ESWATINI 2019 HUMAN RIGHTS REPORT

## EXECUTIVE SUMMARY

Eswatini is an executive monarchy. King Mswati III and Queen Mother Ntombi, the king's mother, rule as co-monarchs and exercise varying levels of authority over the three branches of government. There is a bicameral parliament consisting of the Senate and House of Assembly, each composed of appointed and elected members. The king appoints the prime minister. Political power remains largely vested with the king and his traditional advisors. International observers concluded the 2018 parliamentary elections were procedurally credible, peaceful, and well managed.

The Royal Eswatini Police Service (REPS) is responsible for maintaining internal security as well as migration and border crossing enforcement. The Umbutfo Eswatini Defense Force (UEDF) is responsible for external security but also has domestic security responsibilities, including protecting members of the royal family. His Majesty's Correctional Services (HMCS) is responsible for the protection, incarceration, and rehabilitation of convicted persons and keeping order within the HMCS institutions. HMCS personnel sometimes worked alongside police during demonstrations and other large events, such as national elections, that call for a larger complement of personnel. REPS reports to the prime minister. The UEDF reports to the principal secretary of defense and the army commander. The king is the commander in chief of the UEDF, holds the position of minister of defense, and is the titular commissioner in chief of REPS and the HMCS. Traditional chiefs supervised volunteer rural "community police," who have the authority to arrest suspects concerning minor offenses for trial by an inner council within the chiefdom. For serious offenses suspects are transferred to REPS for further investigations. Civilian authorities generally maintained effective control over the security forces.

Significant human rights issues included: unlawful or arbitrary killings, a political prisoner, restrictions on political participation, and corruption.

The government was inconsistent in its investigation, prosecution, and punishment of officials who committed human rights abuses. The government often did not identify officials who committed abuses, and impunity remained an issue of concern.

### **Section 1. Respect for the Integrity of the Person, Including Freedom from:**

**a. Arbitrary Deprivation of Life and Other Unlawful or Politically Motivated Killings**

There were reports that the government or its agents committed arbitrary or unlawful killings.

In June police shot and killed a man suspected for harboring prison escapees and drug dealing. There were no reports that the suspect attacked or otherwise threatened police.

In early June a man was found severely injured after being questioned by police. The man's cousin alleged that the man was beaten by police, and then left to die in a secluded area some 18 miles away. Police stated that they had questioned the person, decided not to charge him, and then gave him a ride to a nearby town. The man died in the hospital almost two months later. REPS promised to investigate, but there were no further reports concerning any investigation or disciplinary action by year's end.

**b. Disappearance**

There were no reports of disappearances by or on behalf of government authorities.

**c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment**

The constitution and law prohibit such practices, and there were few credible reports that government officials employed them. The 2018 Police Service Act prohibits police from inflicting, instigating, or tolerating torture and other cruel, inhuman, or degrading treatment or punishment. It also establishes a disciplinary offense for officers who use violence or unnecessary force, or who intimidate prisoners or others with whom they have contact in the execution of their duties. During the year two officers were charged with homicide in relation to their alleged roles in the 2015 death of a detainee during an interrogation. Three additional officers were investigated for torture in response to a referral from the Commission on Human Rights and Public Administration Integrity.

In February the High Court awarded 70,000 emalangeneni (\$4,870) damages for pain and suffering to a man who was assaulted by members of the UEDF in 2003.

There also were scattered reports throughout the country of cruel, inhuman, and degrading treatment by “community police”--untrained, volunteer security personnel who exist outside the country’s formal legal structures and are empowered by rural communities to act as vigilantes, patrolling against rural crimes such as cattle rustling. In August five community police members in Sihhohweni punched, kicked, and beat a man with a broomstick so severely that he needed to be hospitalized. The abuse was reported to the REPS, and the community police members were arrested for assault. The magistrate found them guilty and sentenced each to 10 months’ imprisonment with an option of a 2,000 emalangeni (\$140) fine. In October a UEDF member was sentenced to 10 years’ imprisonment with an option of a 14,000 emalangeni (\$975) fine for an off-duty xenophobic assault on a Mozambican national.

### **Prison and Detention Center Conditions**

Prison conditions varied and did not always meet international standards due to overcrowding and, in certain locations, facilities that required repair or modernization.

Physical Conditions: In September the HMCS reported a total prison population of 3,776, exceeding the prison system’s designed capacity by 938 inmates. Facilities were of mixed quality: some were old and dilapidated; others such as the women’s prison were newer and well maintained. Prisoner-on-prisoner violence remained a concern due to increased gang activity among inmates as prison populations expanded and diversified in recent years. The HMCS and the Commission on Human Rights and Public Administration Integrity (CHRP AI) were cooperating on a case involving a transgender inmate who reported abuse from both fellow inmates and guards.

Administration: Authorities conducted investigations of credible allegations of mistreatment and held prison officials accountable through appropriate disciplinary measures--primarily suspensions without pay. During the year the HMCS signed a memorandum of understanding with CHRP AI; it met quarterly with CHRP AI to review prison conditions, individual cases, and prisoner needs (such as legal counsel). The HMCS seconded one of its staff to the commission to help it investigate allegations of abuse.

Independent Monitoring: The government permitted monitoring of prison conditions by independent nongovernmental observers such as the International Committee of the Red Cross, the African Union, local nongovernmental

organizations (NGOs), and diplomatic missions. Independent monitoring groups generally received broad access to prison facilities and were able to conduct unchaperoned interviews of inmates and prison guards.

Improvements: Although the impact has been counterbalanced by an increased number of convictions and sentences, the 2018 Correctional Services Act expanded opportunities for sentences to be served through community service and appeared to be easing prison overcrowding.

#### **d. Arbitrary Arrest or Detention**

The constitution and law prohibit arbitrary arrest and detention and provide for the right of any person to challenge the lawfulness of his or her arrest or detention in court. The government generally observed these requirements.

#### **Arrest Procedures and Treatment of Detainees**

The law requires warrants for arrests, except when police observe a crime being committed, believe a person is about to commit a crime, or conclude evidence would be lost if arrest is delayed. The law requires authorities to charge detainees with the violation of law within a reasonable time, usually within 48 hours of arrest or, in remote areas, as soon as a judicial officer is present to assume responsibility. Authorities sometimes failed to charge detainees within this time period, sometimes taking up to a week. There is a bail system, and suspects may request bail at their first appearance in court, except in serious cases such as those involving murder or rape charges. In general detainees could consult with lawyers of their choice, to whom they were generally allowed prompt access. Lawyers may be provided to indigent defendants at public expense in capital cases or if conviction of a crime is punishable by life imprisonment.

The director of public prosecutions has the legal authority to determine which court should hear a case. The director delegated this responsibility to public prosecutors. Rather than refer a case to the director, police often referred cases not properly investigated to one of the traditional courts because the standard of evidence required for conviction was not as high as in the civil judicial system. Persons convicted in the traditional courts may appeal to the High Court.

Pretrial Detention: CHRPAI stated lengthy pretrial detention was common, with some individuals remaining in custody almost three years without trial. CHRPAI's March 2018 survey of detainees cited 245 inmates awaiting or undergoing trial for

12 or more months, compared with 133 cited in its 2016 survey. CHRPAI noted the majority of 2016 pretrial detainees remained incarcerated due to shortages of judges, prosecutors, and court rooms; a weak case management and coordination system; and a lack of access to legal representation.

#### **e. Denial of Fair Public Trial**

The constitution and law provide for an independent judiciary, and the government with some limitations respected judicial independence and impartiality in nonpolitical criminal and civil cases not involving the royal family or government officials. The king appoints Supreme Court and High Court justices on the advice of the Judicial Service Commission, which is chaired by the chief justice and consists of other royal appointees.

Judicial powers are based on two systems: Roman-Dutch law and a system of traditional courts that follows traditional law and custom. Neither the Supreme Court nor the High Court that interprets the constitution have jurisdiction in matters concerning the Offices of the King or Queen Mother, the regency, chieftaincies, the Swati National Council (the king's advisory body), or the traditional regiments system. Unwritten traditional law and custom govern all these institutions. Traditional courts were unwilling to recognize many of the fundamental rights provided for in the constitution and instead relied on customary laws that often reduce or disregard these rights.

Most citizens who encountered the legal system did so through the 13 traditional courts. Each court has a presiding judicial officer appointed by the king. These courts adjudicate minor offenses and violations of traditional law and custom. Authorities generally respected and enforced traditional, as well as magistrate, High Court, and Supreme Court rulings.

#### **Trial Procedures**

The constitution and law generally provide for the right to a fair and public trial, and the judiciary generally enforced this right.

Defendants enjoy a presumption of innocence and the right to be informed of charges promptly, in detail, and with free interpretation if necessary. The constitution provides for the right to a fair public trial without undue delay, except when exclusion of the public is deemed necessary in the "interests of defense, public safety, public order, justice, public morality, the welfare of persons under

18, or the protection of the private lives of the persons concerned in the proceedings.” Although the judiciary generally enforced rights to a fair public trial, prolonged delays during trials in the magistrate courts and High Court were common. Court-appointed counsel is provided to indigent defendants at government expense with free assistance of an interpreter for any defendant who cannot understand or speak English or SiSwati and if the crime is punishable if convicted by death or life imprisonment. Defendants and their attorneys have access to relevant government-held evidence, generally obtained from the Public Prosecutor’s Office during pretrial consultations. Defendants have the right to adequate time and facilities to prepare a defense. Defendants may question witnesses against them and present witnesses and evidence on their own behalf. Defendants may not be compelled to testify or confess guilt. Defendants and prosecutors have the right of appeal up to the Supreme Court. The law extends the foregoing rights to all persons.

The traditional courts operate under traditional authorities, including local chiefs. In general chiefs preside over traditional courts as court presidents. Traditional courts hear both civil and minor criminal matters. By law traditional courts may not impose fines above 240 emalangen (E17) or prison sentences longer than 12 months.

Traditional courts are empowered to administer customary law only “insofar as it is not repugnant to natural justice or morality” or inconsistent with the provisions of any civil law in force, but some traditional laws and practices violate civil laws, particularly those involving women’s and children’s rights. Defendants in traditional courts are not permitted formal legal counsel but may speak on their own behalf, call witnesses, and be assisted by informal advisors. Traditional law and custom provide for an appeals process, but the process is long and cumbersome. Under the constitution the High Court has review and appellate jurisdiction over matters decided in traditional courts. Judicial commissioners within the traditional legal system may adjudicate appeals themselves or refer appeals to a court within the civil judicial system on their own volition. Those making or receiving an appeal also have the right to seek High Court review of traditional court decisions.

Military courts are not allowed to try civilians. They do not provide the same rights as civilian criminal courts. For example, military courts may use confessions obtained under duress as evidence and may convict defendants based on hearsay.

## **Political Prisoners and Detainees**

There was one report of a person detained in lengthy pretrial detention for criticism of the king. In May activist Goodwill Sibiyi filed an application in civil court accusing the king of embezzlement and lawlessness and demanded that he be arrested. Authorities arrested Sibiyi and charged him with belonging to a terrorist group and with violating a section of the Sedition and Subversive Activities (SSA) Act ruled unconstitutional in 2016 by the High Court. In September the High Court ruled the government could not charge someone under a section of law that had been declared unconstitutional. The government responded by dismissing the SSA charge against Sibiyi; however, the activist remained in prison awaiting trial on a Suppression of Terrorism Act charge at year's end.

## **Civil Judicial Procedures and Remedies**

Individuals and organizations may seek civil remedies for human rights violations, including appeal to international courts or bodies. Administrative remedies are also available under civil service rules and regulations.

### **f. Arbitrary or Unlawful Interference with Privacy, Family, Home, or Correspondence**

The constitution and law prohibit such actions except “in the interest of defense, public safety, public order, public morality, public health, town and country planning, use of mineral resources, and development of land in the public benefit.” Unlike in prior years, there were no reports of unlawful interference by the government. The law requires police to obtain a warrant from a magistrate before searching homes or other premises, but officers with the rank of subinspector or higher have authority to conduct a search without a warrant if they believe delay might cause evidence to be lost.

## **Section 2. Respect for Civil Liberties, Including:**

### **a. Freedom of Expression, Including for the Press**

The constitution and law provide for freedom of expression, including for the press, but the government restricted this right, particularly with respect to press freedom and matters concerning the monarchy.

Freedom of Expression: In one case an activist was arrested and detained for criticizing the king in a civil court case (see section 1.e, Political Prisoners and Detainees).

Press and Media, Including Online Media: The law empowers the government to ban publications it deems “prejudicial or potentially prejudicial to the interests of defense, public safety, public order, public morality, or public health.”

Daily independent newspapers criticized government corruption and inefficiency but generally avoided criticizing the royal family. Independent online media and an independent monthly magazine were more likely to criticize the royal family as well as government. Many government officials avoided providing information to journalists. According to a 2018 survey of eight government organizations by the NGO Media Institute of Southern Africa, only Municipal Council of Mbabane members were willing to respond to journalists’ requests for information. Since the new government took office in November 2018, government officials have become far more communicative, with official spokespeople appointed to every ministry, the launch of an official government Twitter page, and quarterly, on-the-record press briefings for all editors with the prime minister and other cabinet members.

Broadcast media remained firmly under state control. Most persons obtained their news from radio broadcasts. Access to speak on national radio was generally limited to government officials, although the University of Eswatini was granted a radio license to broadcast university events. Despite invitations issued by the media regulatory authority for interested parties to apply for licenses, no licenses were awarded. In March the first community radio station was registered, and at year’s end it was raising funds to apply for a license and start broadcasting.

Censorship or Content Restrictions: Although observers noted journalists since 2017 have become more willing to speak out against the government, some journalists and most broadcast media practiced self-censorship due to fear of reprisals, such as losing paid government advertising, particularly if their reporting was perceived as critical of the monarchy.

National Security: Although the country has no formal criminal libel or slander laws and has no laws forbidding criticism of the monarchy, the government prosecuted one individual for criticizing the king, using provisions of antiterrorism and other laws (see section 1.e, Political Prisoners and Detainees).



## **Internet Freedom**

The government did not restrict or disrupt access to the internet or censor online content, and there were no credible reports the government monitored private online communications without appropriate legal authority.

## **Academic Freedom and Cultural Events**

There were no government restrictions on academic freedom or cultural events.

### **b. Freedoms of Peaceful Assembly and Association**

The constitution and law provide for the freedoms of peaceful assembly and association, and the government generally respected these rights.

#### **Freedom of Peaceful Assembly**

Several national demonstrations and community meetings and rallies occurred without incident. For example, in April political parties conducted the first national political marches and rallies since the 1973 decree banning political parties. Nevertheless, in May police used nonlethal measures to control and disperse student protesters after they began vandalizing school property by throwing stones and setting fires, and in September and October, police used tear gas and rubber bullets to control and disperse crowds of strikers after protesters deviated from agreed routes, set fires, threw rocks, and vandalized property. Some protesters and police suffered injuries during these incidents, including a marshal at a labor demonstration in Manzini who was hospitalized after being hit in the back by a rubber bullet fired at close range by police.

In December the Matsapha Town Council prohibited a proposed political march. The organizers of the march appealed the decision, and the case continued at year's end.

#### **Freedom of Association**

The law provides for the right of freedom of association, and the government generally respected this right. Although several political parties competed in elections, the constitution requires candidates for public office to run as independents; their parties may not offer slates of candidates, so their affiliation does not appear on ballots. In September the Registrar of Companies refused to

register a lesbian, gay, bisexual, transgender, intersex (LGBTI) nongovernmental organization on the grounds the constitution and domestic laws do not protect against discrimination on the basis of sex or sexual orientation and prohibit same-sex relations (see also section 6).

### **c. Freedom of Religion**

See the Department of State's *International Religious Freedom Report* at <https://www.state.gov/religiousfreedomreport/>.

### **d. Freedom of Movement**

The law provides for freedom of internal movement, foreign travel, emigration, and repatriation, and the government generally respected these rights.

By traditional law and custom, chiefs have the power to decide who may reside in their chiefdoms; evictions sometimes occurred due to internal conflicts, alleged criminal activity, or opposition to the chief.

### **e. Internally Displaced Persons**

Not applicable.

### **f. Protection of Refugees**

The government cooperated with the Office of the UN High Commissioner for Refugees (UNHCR) and other humanitarian organizations in providing protection and assistance to refugees, returning refugees, asylum seekers, stateless persons, and other persons of concern.

Access to Asylum: The law provides for the granting of asylum or refugee status, and the government has established a system for providing protection to refugees.

Freedom of Movement: The government generally allowed freedom of internal movement for resettled refugees. Refugees could visit the neighboring countries of Mozambique and South Africa with ease.

Durable Solutions: The government permanently resettled refugees in the country. It allowed some refugees to compete for jobs and granted them work permits and

temporary residence permits. The government also provided refugees with free transportation twice a week to buy and sell food in local markets. Refugees who live in the country more than five years are eligible for citizenship. The government conducted a psychological support program that provided counseling to refugees.

### **g. Stateless Persons**

UNHCR figures from 2016 found only three stateless persons, who were descendants of refugees. The constitution does not provide for women to transmit citizenship except in cases of births out of wedlock. In October, in consultation with UNHCR, the government approved a national action plan to end statelessness, including by eliminating gender discrimination in the country's nationality laws.

### **Section 3. Freedom to Participate in the Political Process**

Political rights were restricted, although citizens could choose 59 of the 69 members of the House of Assembly in procedurally credible, periodic elections held by secret ballot.

Legislation passed by parliament requires the king's consent to become law. Under the constitution the king selects the prime minister, the cabinet, two-thirds of the Senate, 10 of 69 members of the House of Assembly, the chief justice and other justices of the superior courts, members of commissions established by the constitution, and the heads of government offices. On the advice of the prime minister, the king appoints the cabinet from among members of parliament.

### **Elections and Political Participation**

Recent Elections: The 2018 parliamentary elections were described by international observers as credible, peaceful, and well managed. The system of nominations in the country organizes nominations for members of parliament by chiefdoms. Traditional chiefs convene nominating meetings for candidates to parliament and other offices and in a few cases confirm whether nominees are members of the chiefdom. Candidates for each chiefdom are then chosen in a primary election conducted by secret ballot. Although some chiefs may exercise influence through lobbying, there was little evidence their influence was widespread or decisive in the formation of electoral lists.

Political Parties and Political Participation: The constitution provides for freedom of association but does not address how political parties may operate, and there was no legal mechanism for them to contest elections. The constitution also requires that candidates for public office compete on their individual merit, which courts have interpreted as blocking competition based on political party affiliation.

Participation in the traditional sphere of governance and politics takes place predominantly through chiefdoms. Chiefs are custodians of traditional law and custom, report directly to the king, and are responsible for the day-to-day running of their chiefdoms and maintenance of law and order. Although local custom mandates that chieftaincy is hereditary, the constitution, while recognizing that chieftaincy is “usually hereditary and is regulated by Swati law and custom,” also states the king “may appoint any person to be chief over any area.” As a result, many chieftaincies were nonhereditary appointments, a fact that provoked land disputes, especially at the time of the death and burial of chiefs.

Participation of Women and Minorities: No laws limit participation of women and members of minorities in the political process, and they did participate. The constitution provides for five of the king’s 10 appointed seats in the House of Assembly to be held by women and for the appointed members to represent “interests, including marginalized groups not already adequately represented in the House.” The king appointed only three women to the House of Assembly following the 2018 elections, in which only two women were elected. If, after an election, women constitute less than 30 percent of the total membership of parliament, the constitution and law require the House to elect four additional women, one from each region. The House complied with this requirement.

The king appoints 20 members of the 30-seat Senate, and the House of Assembly elects the other 10. The constitution requires that eight of the 20 members appointed by the king be women and that five of the 10 members elected by the House be women. The House of Assembly complied by electing five women to the Senate, but the king appointed only seven women.

Widows in mourning (for periods that may extend up to two years) were prevented from appearing in certain public places or being in proximity to the king or a chief’s official residence. Widows were sometimes excluded from running for office or taking active public roles in their communities during those periods. Nevertheless, in the 2018 elections a mourning widow ran for a local office seat previously held by her spouse.

There were very few ethnic minority members in the government.

#### **Section 4. Corruption and Lack of Transparency in Government**

The law provides criminal penalties for corruption by officials, but the government did not implement the law effectively. Officials sometimes engaged in corrupt practices with impunity. There were isolated reports of government corruption during the year, although there was a widespread public perception of corruption in the executive and legislative branches of government and a consensus that the government did little to combat it.

Corruption: The law provides criminal penalties for corruption by officials, but the government did not implement the law effectively. Officials sometimes engaged in corrupt practices with impunity. Corruption continued to be a problem, most often involving personal relationships and bribes being used to secure government contracts on large capital projects. In October the royal family accepted a gift of 13 luxury vehicles from a company that receives millions of dollars in government contracts. There also were reports of immigration and customs officials seeking bribes to issue government documents such as visas and resident permits. A 2019 Transparency International survey stated that 17 percent of respondents reported paying a bribe, up from 9 percent in 2015.

There were credible reports that a person's relationship with government officials influenced the awarding of government contracts; the appointment, employment, and promotion of officials; recruitment into the security services; and school admissions. Authorities rarely acted on reported incidents of nepotism.

Although parliament's Public Accounts Committee was limited in its authority to apply and enforce consequences except by drawing public attention to potential corruption, it continued to pursue investigations, particularly those related to public spending, and received broad media attention for its efforts.

Financial Disclosure: The constitution prohibits government officials from assuming positions in which their personal interests are likely to conflict with their official duties. The constitution requires appointed and elected officials to declare their assets and liabilities to CHRPAI. The commission is mandated to monitor and verify disclosures. There are criminal and administrative sanctions for noncompliance. Sanctions for failure to disclose assets and conflicts of interest include removal from office, disqualification from holding a public office for a period determined by a court, and confiscation of any property illegitimately

acquired during tenure in office. According to the commission, the majority of those required to declare assets and liabilities did so, but the commission suspected underreporting in some cases. The commission did not make this information public.

### **Section 5. Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Abuses of Human Rights**

Several domestic and international human rights groups generally operated without government restriction, investigating and publishing their findings on human rights cases. Government officials were generally cooperative but rarely responsive to their views.

Government Human Rights Bodies: CHRPAI is empowered by the constitution to investigate complaints of corruption, abuse of power, human rights violations, and mismanagement of public administration. During the year CHRPAI investigated dozens of complaints, made findings of fact, appeared in court on behalf of aggrieved parties, issued recommendations to judicial and governmental bodies, and provided human rights training to law enforcement officers. Issues CHRPAI addressed included evictions, corporal punishment in schools, police torture, and prolonged detentions. CHRPAI signed memoranda of understanding with the HMCS and REPS to increase cooperation and collaboration on human rights issues, including investigation of human rights abuses, and secured seconded staff from the HMCS and REPS to help it conduct human rights investigations.

### **Section 6. Discrimination, Societal Abuses, and Trafficking in Persons**

#### **Women**

Rape and Domestic Violence: During the year authorities actively implemented the 2018 Sexual Offenses and Domestic Violence (SODV) Act that established a broad framework to curb sexual offenses and domestic violence. The law criminalizes domestic violence and rape, including spousal rape. The penalties for conviction of rape are up to 30 years' imprisonment for first offenders and up to 40 years' imprisonment for repeat offenders. The penalties for conviction of domestic violence are a fine of up to 75,000 emalangen (approximately \$5,200), 15 years' imprisonment, or both. Several convicted perpetrators have received sentences of 10 to 20 years' imprisonment, and one man was sentenced to 30 years' imprisonment for conviction of two counts of rape, one of which was of an 11-year-old girl. Another convicted perpetrator was sentenced to 12 years in prison without the option of a

fine despite the victim's request to withdraw charges. Although men remained the primary perpetrators, women have also been arrested and convicted under the SODV Act. In May a REPS inspector told the press 430 cases of rape were reported in the first eight months after the enactment of the SODV in August 2018.

Rape remained common, and domestic violence against women sometimes resulted in death. There were few social workers or other intermediaries to work with victims and witnesses to obtain evidence of rape and domestic violence.

Rural women who sought relief in traditional courts often had no relief if family intervention failed, because traditional courts were unsympathetic to "unruly" or "disobedient" women and were less likely than courts using Roman-Dutch-based law to convict men of spousal abuse.

Other Harmful Traditional Practices: Accusations of witchcraft were employed against women in family or community disputes that could lead to their being physically attacked, driven from their homes, or both. In January a traditional healer and church bishop and his mother were accused of witchcraft and killed by relatives, who were arrested and charged with murder.

Sexual Harassment: The SODV Act establishes broad protections against sexual harassment, with penalties if convicted of a fine up to 25,000 emalangeneni (\$1,750), 10 years' imprisonment, or both. In May REPS stated 28 cases of sexual harassment were reported under the SODV from August 2018 to March. In December 2018 a chef in a Manzini restaurant was sentenced to four years' imprisonment or a 10,000 emalangeneni (\$700) fine for conviction of sexually harassing a subordinate employee.

Coercion in Population Control: There were no reports of coerced abortion or involuntary sterilization. For additional information see Appendix C.

Discrimination: Women occupied a subordinate role in society. The dualistic nature of the legal system complicated the protection of women's rights. Since unwritten customary law and custom govern traditional marriage and certain matters of family law, women's rights often were unclear and changed according to where and by whom they were interpreted. Couples often married in both civil and traditional ceremonies, creating problems in determining which set of rules applied to the marriage and to subsequent questions of child custody, property, and inheritance in the event of divorce or death.

In August the High Court ruled common law “marital power” that formerly denied married women the right to act without their husband’s consent in many instances is unconstitutional. The High Court also struck down sections of the Marriage Act that allowed marital power and spousal property rights to be governed by Swazi law and custom.

Women faced employment discrimination (see section 7.d.). The constitution provides for equal access to land, and civil law provides for women to register and administer property, execute contracts, and enter into transactions in their own names.

Girls and women faced discrimination in rural areas by community elders and authority figures. Boys received preference in education. Although customary law considers children to belong to the father and his family if the couple divorce, custody of the children of unmarried parents typically remains with the mother, unless the father claims paternity. When the husband dies, tradition dictates the widow must stay at the residence of her husband’s family in observance of a strict mourning period for one month. Media reported widows heading households sometimes became homeless and were forced to seek public assistance when the husband’s family took control of the homestead. Women in mourning attire were generally not allowed to participate in public events and were barred from interacting with royalty or entering royal premises. In some cases, the mourning period lasted up to two years. No similar mourning period applied to men.

## **Children**

The law sets the age of majority at 18. It defines child abuse and imposes penalties for abuse; details children’s legal rights and the responsibility of the state, in particular with respect to orphans and other vulnerable children; establishes structures and guidelines for restorative justice; defines child labor and exploitative child labor; and sets minimum wages for various types of child labor.

Birth Registration: Birth on the country’s territory does not convey citizenship. Under the constitution children derive citizenship from the father, unless the birth occurs outside marriage and the father does not claim paternity, in which case the child acquires the mother’s citizenship. If a Swati woman marries a foreign man, even if he is a naturalized Swati citizen, their children carry the father’s birth citizenship.



The law mandates compulsory registration of births. According to the 2014 Multiple Indicator Cluster Survey, 50 percent of children younger than five were registered, and 30 percent had birth certificates. Lack of birth registration may result in denial of public services, including access to education.

Education: The law requires that parents provide for their children to complete primary school. Parents who do not send their children to school through completion of primary education were required to pay fines for noncompliance. Education was tuition-free through grade seven. The Office of the Deputy Prime Minister received an annual budget allocation to pay school fees for orphans and other vulnerable children (OVC) in both primary and secondary school. Seventy percent of children were classified as OVC and so had access to subsidized education through the secondary level.

Child Abuse: The 2018 SODV Act provides broad protections for children against abduction, sexual contact, and several other forms of abuse. The penalty for conviction of indecent treatment of children is up to 20- or 25-years' imprisonment, depending upon the age of the victim. Child abuse remained a serious problem, especially in poor and rural households.

Corporal punishment in schools occurred, despite Ministry of Education and Training policy that teachers who hit pupils should be reported to the ministry for disciplinary action. Education regulations permit school administrators to administer corporal punishment, and there were reports some teachers performed such practices with impunity.

Early and Forced Marriage: The legal age of marriage is 18 for both boys and girls, but with parental consent and approval from the minister of justice, girls may marry at 16. The government recognizes two types of marriage, civil marriage and marriage under traditional law. By traditional law marriages are permitted for girls as young as 13, although marriages at such an age were rare. For additional information see Appendix C.

Sexual Exploitation of Children: The SODV Act prohibits commercial sexual exploitation, sale, offering, and procuring of children for prostitution, and practices related to child pornography; conviction of these acts carries strong penalties. Children were occasional victims of sex trafficking and commercial sexual exploitation. The law criminalizes "mistreatment, neglect, abandonment, or exposure of children to abuse" and imposes a statutory minimum of five years' imprisonment if convicted. Although the law sets the age of sexual consent at 16,

the SODV Act provides for a penalty of up to 20 years' imprisonment for conviction of "maintaining a sexual relationship with a child," defined as a relationship that involves more than one sexual act with a person younger than 18.

International Child Abductions: The country is not a party to the 1980 Hague Convention on the Civil Aspects of International Child Abduction. See the Department of State's Annual Report on International Parental Child Abduction at <https://travel.state.gov/content/travel/en/International-Parental-Child-Abduction/for-providers/legal-reports-and-data/reported-cases.html>.

### **Anti-Semitism**

The Jewish community is very small, and there were no reports of anti-Semitic acts.

### **Trafficking in Persons**

See the Department of State's *Trafficking in Persons Report* at <https://www.state.gov/trafficking-in-persons-report/>.

### **Persons with Disabilities**

The law protects the rights of persons with physical, sensory, intellectual, and mental disabilities, including their access to education, employment, health services, information, communications, buildings, transportation, the judicial system, and other state services. The 2018 Persons with Disabilities Act codified into domestic law the Convention on the Rights of Persons with Disabilities and mandated access to health care for persons with disabilities and accessibility to buildings, transportation, information, communications, and public services. Little progress has been made to date in expanding accessibility and access to public services for persons with disabilities.

The Office of the Deputy Prime Minister is responsible for upholding the law and for protecting the rights of persons with disabilities. Persons with disabilities complained of government neglect and a significantly lower rate of school attendance for children with disabilities. Newer government buildings, and those under construction, included various improvements for persons with disabilities, including access ramps. Public transportation was not easily accessible for persons

with disabilities, and the government did not provide any alternative means of transport.

There were only minimal services provided for persons with disabilities, and there were no programs in place to promote the rights of persons with disabilities. There was one private school for students with hearing disabilities and one private special-education school for children with physical or mental disabilities. The hospital for persons with mental disabilities, located in Manzini, was overcrowded and understaffed.

By custom persons with disabilities may not be in the presence of the king, as they are believed to bring “bad spirits.” Persons with disabilities were sometimes neglected by families. In March local newspapers reported that a teenager with disabilities was forced to stay alone in a makeshift structure outside the family home, isolating and exposing her to harsh conditions.

### **National/Racial/Ethnic Minorities**

Governmental and societal discrimination was practiced against nonethnic Swatis, primarily persons of South Asian descent and those of mixed race. Nonethnic Swatis sometimes experienced difficulty in obtaining official documents, including passports, and suffered from other forms of governmental and societal discrimination, such as delays in receiving building permits for houses, difficulties in applying for bank loans, and being required to obtain special permits or stamps to buy a car or house.

### **Acts of Violence, Discrimination, and Other Abuses Based on Sexual Orientation and Gender Identity**

While there are colonial-era common law prohibitions against sodomy, no penalties are specified, and there has never been an arrest or prosecution for consensual same-sex conduct. The law does not prohibit discrimination against LGBTI persons in housing, employment, nationality laws, and access to government services such as health care. Societal discrimination against LGBTI persons remained widespread, and LGBTI persons generally concealed their sexual orientation and gender identity. LGBTI persons who were open regarding their sexual orientation and relationships faced censure and exclusion from the chieftdom-based patronage system. Chiefs, pastors, and government officials criticized same-sex sexual conduct as neither morally Swati nor Christian. Church elders in Siphofaneni demoted a pastor on allegations he was bisexual. Despite

these barriers, LGBTI persons conducted the country's second Pride Parade, which occurred in June without incident.

## **HIV and AIDS Social Stigma**

Although HIV-related stigma and discrimination appeared to be in decline, discriminatory attitudes and prejudice against persons living with HIV persisted. Individuals living with HIV reported it was difficult or uncomfortable for them to disclose their HIV status and that frequently their status was revealed to others without their permission. The armed forces encouraged testing and did not discriminate against active military members testing positive. Persons who tested HIV-positive, however, were not recruited by the armed forces.

## **Section 7. Worker Rights**

### **a. Freedom of Association and the Right to Collective Bargaining**

The law provides that workers, except for those in essential services, have the right to form and join independent unions, conduct legal strikes, and bargain collectively. The law places restrictions on these rights. The law provides for the registration of unions and federations but grants far-reaching powers to the labor commissioner with respect to determining eligibility for registration. Unions must represent at least 50 percent of employees in a workplace to be automatically recognized.

The constitution and law provide for the right to organize and bargain collectively, subject to various legal restrictions. The law gives employers discretion as to whether to recognize a labor organization as a collective employee representative if less than 50 percent of the employees are members of the organization. If an employer agrees to recognize the organization as the workers' representative, the law grants the employer the ability to set conditions for such recognition. The law provides for the registration of collective agreements by the Industrial Court. The court is empowered to refuse registration if an agreement conflicts with the law, provides terms and conditions of employment less favorable to employees than those provided by any law, discriminates against any person, or requires membership or nonmembership in an organization as a condition for employment. The Conciliation, Mediation, and Arbitration Commission presides over dispute resolution. The commissioner of labor has the power to "intervene" in labor disputes before they are reported to the commission if there is reason to believe a

dispute could have serious consequences for the employers, workers, or the economy if not resolved promptly.

Employees not engaged in “essential services” have the right to undertake peaceful protest actions to “promote or defend socioeconomic interests” of workers. The law defines “socioeconomic interest” as including “solutions to economic and social policy questions and problems that are of direct concern to the workers but shall not include matters of a purely political nature.” The law prohibits antiunion discrimination. Extensive provisions allow workers to seek redress for alleged wrongful dismissal.

Although the law permits strikes, the right to strike is strictly regulated, and the administrative requirements to register a legal strike made striking difficult. Strikes and lockouts are prohibited in essential services, and the minister’s power to modify the list of these essential services provides for broad prohibition of strikes in nonessential sectors, including postal services, telephone, telegraph, radio, and teaching. The procedure for announcing a protest action requires advance notice of at least seven days. The law details the steps to be followed when disputes arise and provides penalties for employers who conduct unauthorized lockouts. When disputes arose with civil servant unions, the government often intervened to reduce the chances of a protest action, which may not be called legally until all avenues of negotiation are exhausted and a secret ballot of union members conducted. When civil servant unions tried to strike in January, the government filed suit based on the unions’ failure to abide by certain technical requirements. The litigation took several months to work its way through the court system. The court ultimately ruled in favor of the unions, which proceeded with their strike action in September.

In September and October, approximately 3,000 public-sector employees engaged in legal strike actions. The government honored their right to strike but informed employees it would apply the “no work, no pay” rule. The Eswatini Electricity Company suspended 17 workers (including some union leaders), although with pay, after they participated in an illegal five-day strike action in March.

The government has legal restrictions on labor brokers, but these were inconsistently enforced.

## **b. Prohibition of Forced or Compulsory Labor**

The labor code punishes those convicted of imposing forced labor. These penalties were considered sufficient to deter violations. Because forced labor was almost exclusively in the informal sector, these laws were rarely enforced.

Forced labor, including forced child labor, takes place in the sectors of domestic work, agriculture, and market vending.

Also see the Department of State's *Trafficking in Persons Report* at <https://www.state.gov/trafficking-in-persons-report/>.

### **c. Prohibition of Child Labor and Minimum Age for Employment**

The law prohibits some but not all of the worst forms of child labor. The minimum age for employment is 15, for night work 16, and for hazardous employment 18. The Employment Act, however, does not extend minimum age protections to children working in domestic or agricultural work. The law also prohibits children younger than 18 from engaging in hazardous work in industrial undertakings, including mining, manufacturing, and electrical work, but these prohibitions do not address hazardous work in the agriculture sector. The law limits the number of night hours children may work on school days to six and the overall hours per week to 33.

The Ministry of Labor, the Office of the Deputy Prime Minister through the Department of Social Welfare, and REPS are responsible for enforcement of laws relating to child labor. The government did not effectively enforce laws combating child labor. The government did not dedicate sufficient resources to combat child labor, coordinate effectively among different sectors, or provide labor inspectors sufficient authority in the informal sector, where the majority of child labor took place.

Penalties for conviction of child labor violations were sufficient to deter violations.

Children were employed in the informal sector, particularly in domestic services and agricultural work such as livestock herding. This work might involve activities that put at risk their health and safety, such as working long hours, carrying heavy loads, being exposed to pesticides, and working alone in remote areas.

Child domestic servitude was also prevalent, disproportionately affecting girls. Such work could involve long hours of work and could expose children to physical

and sexual exploitation by their employer. Children's exploitation in illicit activities was a problem. Children, particularly in rural areas, grew, manufactured, and sold cannabis.

Also see the Department of Labor's *Findings on the Worst Forms of Child Labor* at <https://www.dol.gov/agencies/ilab/resources/reports/child-labor/findings> and the Department of Labor's *List of Goods Produced by Child Labor or Forced Labor* at <https://www.dol.gov/agencies/ilab/reports/child-labor/list-of-goods>.

#### **d. Discrimination with Respect to Employment and Occupation**

The labor law prohibits discrimination in employment and occupation based on race, gender, language, HIV/AIDS or other communicable disease status, religion, political views, or social status. The law does not prohibit discrimination based on age, sexual orientation, and gender identity.

Gender-based discrimination in employment and occupation occurred (see section 6). While women have constitutional rights to equal pay and treatment and may take jobs without the permission of a male relative, there were few effective measures protecting women from discrimination in hiring, particularly in the private sector. The average wage rates for men by skill category usually exceeded those of women.

Persons with disabilities faced discrimination in hiring and access to work areas. The government did not effectively raise awareness of or enforce disability and employment law provisions. Openly LGBTI persons were subject to discrimination in employment and to social censure.

Migrant workers enjoy the same legal protections, wages, and working conditions as citizens but sometimes faced discrimination in employment due to societal prejudice against foreigners.

#### **e. Acceptable Conditions of Work**

There is no national minimum wage. The Ministry of Labor and Social Security sets wage scales for each industry. There is a legally mandated sliding scale of minimum wages depending on the type of work performed. Minimum wages are above the poverty line in all sectors.

There is a standard 48-hour workweek for most workers and a 72-hour workweek for security guards spread over a period of six days. The law requires all workers to have at least one day of rest per week and provides for premium pay for overtime. Most workers received a minimum of 12 days of annual leave with full pay. Workers receive 14 days of sick leave with full pay and 14 days with half pay after three months of continuous service; these provisions apply only once per calendar year. No sick leave is granted if an injury results from an employee's own negligence or misconduct.

The law provides for some protection of workers' health and safety. The government set safety standards for industrial operations and encouraged private companies to develop accident prevention programs. By law workers may remove themselves from situations that endanger their health or safety without jeopardy to their employment. Authorities did not effectively protect employees in this situation.

The government inconsistently enforced the Occupational Safety and Health Act that lays out the rights and responsibilities of employers, employees, and the government with respect to occupational health and safety.

The Ministry of Labor and Social Security is responsible for enforcement of labor laws but did not effectively enforce them. The government did not dedicate sufficient resources to enforcement, resulting in constraints such as a lack of motor vehicles and inability to hire additional staff. The number of labor inspectors was insufficient to enforce the law, and while the labor commissioner's office conducted inspections in the formal sector, it did not have the resources to conduct inspections in the informal sector.

Labor laws are applicable to the informal sector but were seldom enforced. Most workers were in the informal sector, but credible data on the proportion were not available. Workers in the informal sector, particularly foreign migrant workers, children, and women, risked facing hazardous and exploitative conditions. Minimum wage guidelines do not apply to the informal sector.

Public transportation workers complained they were required to work 12 hours a day or more without overtime compensation and that they were not entitled to pensions and other benefits. In September civil servants held several demonstrations and went on strike to demand a salary increase that the government refused, citing the continuing fiscal crisis.



Credible data on workplace fatalities and accidents were not available.