

Shadow Report on Human Rights in Eswatini

In response to the Report of the Government of Eswatini under the African Charter on Human and Peoples' Rights and the Protocol to the African Charter on the Rights of Women in Africa

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Swaziland Rural Women Assembly (SRWA)

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Defined Terms

ACHPR	African Charter on Human and Peoples' Rights
AIDS	Acquired Immuno-deficiency Virus
AU	African Union
CSO	Civil Society Organisation
FPIC	Free, Prior and Informed Consent
GBV	Gender-Based Violence
GMO	Genetically Modified Organisms
HIV	Human Immunodeficiency Virus
LGBTQIA+	Lesbian, Gay, Bisexual, Transgender, Queer, Intersex, Asexual and others
Maputo Protocol	The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa
PUDEMO	Peoples' United Democratic Movement
SADC	Southern African Development Community
SDG	Sustainable Development Goal
SNAT	Swaziland National Association of Teachers
SNT	Swazi National Treasury
SNUS	Swazi National Union of Students
SODV Act	Sexual Offences and Domestic Violence Act
SUDF	Swaziland United Democratic Front
SUPMO	Swaziland Unemployed People's Movement
SWADNU	Swaziland Democratic Nurses Union
TUCOSWA	Trade Union Congress of Swaziland

Introduction

1. Eswatini¹ is a landlocked country in Southern Africa bordering South Africa and Mozambique, with a population of 1.2 million. The World Bank states that “poverty levels have stagnated at high levels in the last five years, with 39.7% of the population estimated to have been living under the international \$1.90 poverty line in 2017.² Challenges to poverty reduction include slowing economic growth, adverse weather patterns, high prevalence of HIV, high inequality, and high unemployment.³
2. Eswatini ratified the African Charter on Human and Peoples’ Rights (**ACHPR**) in 1995. The country submitted its first periodic report in May 2000. Although Eswatini has ratified both the African Charter on Human and Peoples’ Rights and the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women (**the Maputo Protocol**), the country still faces enormous challenges in implementing and guaranteeing the protected rights enshrined in these instruments.
3. In advance of the consideration of Eswatini’s 2nd to 9th combined periodic report to the African Commission, the organisations working in Eswatini have compiled this submission. The submission integrates our observations on the State’s compliance with the provisions of the African Charter on Human and Peoples’ Rights and the Maputo Protocol.

Respect for Life and Integrity of Person

4. There have been reports that the government or its agents committed extra-judicial killings.⁴ In the case of *Mabila and Another v Rex*,⁵ there was a case of murder by game rangers. Cases have been reported both in media articles and in State reports. For example, the US Department of State’s annual human rights report of 2011 noted that no action was taken in any of the 2008 or 2009 killings by security forces.⁶ Authorities claimed to have investigated these cases, but officers were either cleared of wrongdoing or results have not been reported. The US Department of State’s annual human rights report of 2017 noted the killing of a suspected poacher by a government game ranger despite the suspect being unarmed and raising his hands in the air. Again, no action seemed to have been taken against the game ranger.

¹ In April 2018, the King of Swaziland pronounced that the country’s name has been changed to Eswatini. There is some debate within the country on whether the correct name should be eSwatini. Since Legal Notice No. 80 of 2018, which effected the name change used “Eswatini”, that is spelling used in this document. The Notice states that in all documents where it states Kingdom of Swaziland, that should be read as Kingdom of Eswatini.

² According to 2016/17 Household Income and Expenditure Survey data, available from the Eswatini Central Statistical Office (CSO), Ministry of Economic Planning, “59 percent of the population is poor, and poverty is much higher amongst the elderly (74 percent) and children (69 percent). In rural areas, poverty is both more pervasive (70 percent) and intense, with the poverty gap index in rural areas at around 30 percent compared to 6 percent in urban areas.”

³ *The World Bank*, The World Bank in Eswatini (retrievable [here](#)) (last viewed 5 February 2020)

⁴ Stanley Khumalo, *Times of Swaziland*, 13 November 2019 (retrievable [here](#)) (last retrieved 5 February 2020); Khulekani Nene, *Times of Swaziland*, 1 July 2019, (retrievable [here](#)) (last retrieved 5 February 2020); *Allafrica.com*, “Swaziland: Swazi Police Shoot Dead Another Man” 3 July 2018 (retrievable [here](#)) the article refers to the fact that the “[p]olice in Swaziland have a long history of shooting suspects in unusual circumstances” (last retrieved 5 February 2020)

⁵ *Mabila and Another v Rex* (389/2017) [2018] SZHC 53 (14 February 2018) (retrievable [here](#)) (last retrieved 5 February 2020)

⁶ See Reliefweb, *Swaziland Human Rights Report* (retrievable [here](#)) (last retrieved 5 February 2020)

5. Section 41(1) of the Criminal Procedure and Evidence Act No. 67 of 1938 provides broad immunities to the police. If the police attempts to arrest a person, and that person “flees or resists and cannot be apprehended and prevented from escaping by other means than by such officer killing the person so fleeing or resisting, such killing shall be deemed in law to be justifiable homicide”.⁷ Further, section 15(4) of the Constitution provides that a person shall not be regarded as having been unlawfully deprived of life if the death results from use of force to such extent that is reasonably justifiable and proportionate in the circumstances of the case –
- a) “for the defence of any person from violence or for the defence of property;
 - b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
 - c) for the purpose of suppressing a riot, insurrection or mutiny; or
 - d) in order to prevent the commission by that person of a serious criminal offence.”

These provisions are concerning because they are overly broad, and they allow impunity for extra-judicial killings.

6. The Game Act No. 51 of 1953, as amended by the Game (Amendment) Act No. 4 of 1991, in section 23(3) absolves game rangers from liability in respect of any act or omission done in the exercise of their powers, including the use of force or arrest of a person.⁸ As a result, a number of persons have been shot and some killed by game rangers whose actions are often held to be justifiable under section 23(3) of the Game Act.⁹
7. Over the years, ritual killings have also been a frequent occurrence during election periods. Traditional healers are known to be paid to use the blood of parts of an alive body to confer power to candidates. In ritual killings women, children and persons with albinism are most often the victims.¹⁰
8. The death penalty remains in force, although there is a ‘de facto’ moratorium on the carrying out of the death penalty.¹¹

Recommendations

- A. The State should ratify the Second Optional Protocol to the ICCPR with a view to abolishing death penalty.**
- B. The State should repeal section 297 of the Criminal Procedure and Evidence Act of 1938 relating to the death penalty.**
- C. The State should repeal section 15(4) of the Constitution and section 41 of the Criminal Procedure and Evidence Act relating to extra-judicial killings.**
- D. The State should urgently implement measures to prevent ritual killings.**

⁷ Criminal Procedure and Evidence Act No. 67 of 1938, (retrievable [here](#)) (last retrieved 5 February 2020)

⁸ A copy of the amending Act can be retrieved [here](#); a consolidated copy of the Act can be found [here](#) (last retrieved 5 February 2020)

⁹ For example, Amnesty International Report 2017/2018: Eswatini.

¹⁰ *Swazi Observer*, “Ritual killings in the Kingdom of Eswatini” 14 June 2018 (retrievable [here](#)) (last retrieved 5 February 2020); *APANews*, “Eswatini: Security fears keep 250 pupils away from school” 26 June 2018, (retrievable [here](#)) (last retrieved 5 February 2020)

¹¹ Sandile Nkambule “Death penalty still in force – Qinsile” *Swazi Observer*, 23 June 2017 (retrievable [here](#)); *Swazi Media Commentary* “Death penalty available in Swaziland, but no plans to use it, Justice Minister says” 11 March 2019 (retrievable [here](#))

E. The State should amend section 23(3) of the Game Act of 1953 to make game rangers accountable for their actions.

Recognition of Legal Status

9. Children born from a Swazi mother and a foreign father are not automatically granted Swazi citizenship or the Swazi passport. However, those born to a Swazi father are granted those rights. This amounts to discrimination on the grounds of gender; and increases the risk of children being born stateless. Eswatini must take concrete legislative steps to prevent this, which would include amending section 43 of the Constitution.¹² The same is also required by the Maputo Protocol.¹³
10. There have also been anecdotal reports that when people get evicted, they no longer have a proof residence and as a result are unable to obtain a Swazi passport.

Recommendations

- A. The State should amend the Constitution and applicable legislation governing the right to citizenship to include provision for children born to Swazi mothers to acquire Swazi nationality, regardless of the nationality of the father.**
- B. The State should enforce a moratorium on evictions and ensure that people who have been evicted are provided with adequate housing so that they are able to prove their residence and access to all legal documents.**

¹² Section 43 of the Constitution of Swaziland provides:

- (1) A person born in Swaziland after the commencement of this Constitution is a citizen of Swaziland by birth if at the time of birth the father of that person was a citizen of Swaziland in terms of this Constitution.
- (2) A person born outside Swaziland after the commencement of this Constitution is a citizen of Swaziland if at the time of birth the father of that person was a citizen of Swaziland in terms of this Constitution.
- (3) A person born outside Swaziland who becomes a citizen by virtue of subsection (2) shall cease to be a citizen if the father of that person was also born outside Swaziland unless, within one year after attaining the age of majority (or within such extended time as the Board may allow) that person notifies the Board in writing of the desire to retain the citizenship of Swaziland.
- (4) 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 Swaziland, the child shall be a citizen of Swaziland by birth.
- (5) A child adopted, whether before or after the commencement of this Constitution, under the legislation relating to the adoption of children or under customary law, shall, if not already a citizen, be deemed to be a citizen of Swaziland by birth if, at the time of adoption the adoptive parent was a citizen of Swaziland or would have been a citizen if this Constitution were in force.”

¹³ *The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (The Maputo Protocol)*, Article 6(h) provides “a woman and a man shall have equal rights, with respect to the nationality of their children except where this is contrary to a provision in national legislation or is contrary to national security interests”. (retrievable [here](#)) (last retrieved 11 February 2020)

Liberty and Security of Person

11. We welcome the passing of the new Correctional Services Act No. 13 of 2017, which has important provisions that emphasise the need to treat prisoners with dignity and respect.¹⁴ The Act repeals the Prisons Act No. 40 of 1964. The Act also prohibits discrimination and requires that all prisoners be treated equally, irrespective of race, colour, gender, language, religion, political or other opinion, national or social origin, property, birth or any other status.¹⁵ The Act further emphasises that health services must be provided without discrimination.¹⁶ The Minister must also appoint an independent body for the inspection of Correctional Services facilities.¹⁷ Complaints can be taken to the Commissioner General and thereafter to the Correctional Services Commission.¹⁸
12. However, the Act is lean on detail in terms of the required standards for nutrition and conditions in detention and various other provisions are also too cursory to provide enough detail to implementing officers in the absence of additional regulations. The Act also has not properly integrated the provisions around children in conflict with the law, which are in the Children's Protection and Welfare Act No. 6 of 2012.¹⁹ The Act further classifies classes of offenders in a vague and arbitrary manner, including referring to 'ethnic offenders', 'drug offenders' and 'aged offenders'.²⁰
13. The Act has extensive provisions on the granting of parole. It would be important to monitor the extent to which mechanisms are put in place to ensure increased parole and community service for prisoners in terms of the new Act, and thereby to facilitate decongestion of prisons.
14. Concerns remain regarding the conditions in prisons. In September 2018, the prison population was estimated to be 3453 persons, with the official prison capacity estimated at 2838 persons and the occupancy level is 121.7%.²¹ There have been reports of lengthy pre-trial detention,²² regular beating of prisoners and prison remandees being locked up in cells for 24 hours a day.²³
15. Due to an inability for the majority of Civil Society Organisations (CSOs) to access prisons, it is difficult to verify reports on prison conditions. Although some international organisations have confirmed having had easy access to prisons, other reports, such as the United States Department of State's 2014 Country Report on Human Rights Practices states

¹⁴ A copy of the Act can be retrieved [here](#). A recent report from the Southern Africa Litigation Centre can be found [here](#) (*Southern Africa Litigation Centre Research Report, Alignment of Eswatini's Domestic Laws with Recommendations of United Nations Human Rights Mechanisms*, 2019) (last retrieved 5 February 2020).

¹⁵ Correctional Services Act 2017, s 6(3).

¹⁶ Correctional Services Act 2017, s 63.

¹⁷ Correctional Services Act 2017, s 123.

¹⁸ Correctional Services Act 2017, s 25.

¹⁹ Children's Protection and Welfare Act No. 6 of 2012 Part XIV. (retrievable [here](#)) (last retrieved 5 February 2020)

²⁰ Correctional Services Act 2017, s 93.

²¹ *World Prison Brief*, Swaziland/Eswatini (retrievable [here](#)) (last retrieved 5 February 2020)

²² *Swazi Media Commentary*, "Man 9 years in jail without trial" 26 April 2018 (retrievable [here](#)) (last retrieved 5 February 2020)

²³ *Swazi Media Commentary*, "Prisoners in Swaziland Jail Face Beatings and Humiliation From Warders, Former Inmate Reports" 8 May 2019 (retrievable [here](#))

that “the government permitted very limited monitoring of prison conditions”.²⁴ The report expands:

“Independent monitoring groups found it difficult to access prison facilities during the year, and none issued public reports. The government routinely denied prison access to local human rights organisations, African Union Special Rapporteur for Freedom of Expression Pansy Tlakula, and foreign diplomatic representatives. Authorities permitted international officials and nongovernmental organisations (NGOs) working on programs to fight HIV to enter prisons and detention centers, although sometimes with difficulty.

Authorities generally did not allow journalists inside prisons. On April 12 [2014], the HMCS denied visitation rights to six journalists from different media houses seeking to visit incarcerated Nation magazine editor Bheki Makhubu and stated visitors must obtain permission from the commissioner of correctional services. Several international NGOs attempted to obtain permission without response from the commissioner.”

16. According to the US Department of State’s 2018 Report, some NGOs such as the International Committee of the Red Cross reportedly had improved access to the prisons.²⁵ However, locals CSOs have informally reported that the access is granted only to selected organisations (usually charity and faith-based), with strong limitations that do not allow a comprehensive assessment of the standards of living of prisoners. In August 2018, Phumelela Project wrote a letter to the Correctional Commissioner requesting access to counsellors of the juvenile prison in Malkerns in an effort to share the challenges and issues faced by children in conflict with the law, including the importance of providing them with a birth certificate before being released. To date, no answer has been given to the request.
17. Anecdotal reports from ex-prisoners claim that children born in prison are not living in a satisfactory environment. Although internal psychologists are provided in prison, they are first and foremost a prison official before being a psychologist, with a less client-centred approach to treatment. Basic needs of prisoners (such as clothes and hygiene) are usually provided by charity organisations, even though that this should be the full responsibility of the correctional facilities. There have been anecdotal reports of corporal punishment, and isolation and denials of medication as punishment for misbehaving in places of detention.
18. Section 306 of the Criminal Procedure and Evidence Act No. 67 of 1938 still allows for a sentence of whipping against a male person over the age of 18 years. Section 307 of the Act allows for “moderate correction of whipping not exceeding 15 cuts with a light cane” where the male is younger than 18 years of age. Section 308 of the Act states that whipping is not an appropriate sentence in the case of a woman or in the case of a man over the age of 40 years. Although it is unclear whether these provisions are still being implemented, they ought to be removed from the Act.

²⁴ United States Bureau of Democracy, Human Rights and Labour, Country Reports on Human Rights Practices for 2014: Swaziland (retrievable [here](#)) (retrieved 5 February 2020)

²⁵ United States Bureau of Democracy, Human Rights and Labour, Country Reports on Human Rights Practices for 2018: Swaziland (retrievable [here](#)) (retrieved 5 February 2020)

19. Section 29(3) of the Constitution provides that a child may not be subjected to torture or cruel, inhuman or degrading treatment, but allows “lawful and moderate chastisement for purposes of correction”. However, the Children’s Protection and Welfare Act No. 6 of 2012 encourages restorative justice, diversion, family group conferences and victim-offender mediation in cases where a child is in conflict with the law.²⁶ The Act further states that “no sentence of corporal punishment or any form of punishment that is cruel, inhumane or degrading may be imposed on a child” and “corporal punishment and public humiliation shall not be elements of diversion”.²⁷
20. The Director of Social Welfare should be given access to correctional facilities, places of detention, probation hostels and approved schools, as per section 193 of the Children’s Protection and Welfare Act, to ensure that children in conflict with the law are not subjected to torture, cruel, inhuman or degrading punishment and treatment.
21. CSOs are concerned that girls in conflict with the law are at greater risk of sexual and other harassment in places of detention because there is no division between the older and younger girls in the institutions. Incidents have been reported of lack of sanitary pads, lack of appropriate health facilities, and rape.²⁸ There are several archaic detention provisions which remain in force. Section 163 of the Criminal Procedure and Evidence Act No. 67 of 1938 allows for a judicial officer to enquire into whether an accused is of “unsound mind” and incapable of making a defence and the officer is empowered to make an order for detention of the accused at his Majesty’s pleasure. Section 165(3) of the Criminal Procedure and Evidence Act of 1938 allows for detention at his Majesty’s pleasure of an accused person who raised the insanity defence during trial and was ordered by the court to be kept in custody as a ‘criminal lunatic’. It should be noted that the CRPD Committee, in its Guidelines on Article 14 of the CRPD (The right to liberty and security of persons with disabilities) has commented on these provisions: “As far as declarations that persons with disabilities are incapable of being found criminally responsible and the concomitant detention of such persons are concerned, the Committee notes that these practices are contrary to article 14, since they deprive the person of the right to due process and safeguards applicable to every accused person. State parties accordingly are enjoined to remove such declarations of criminal incapacity from their criminal justice systems.”
22. The Vagrancy Act No. 39 of 1963 allows for the detention of persons without a means of subsistence in prison, is contrary to the African Commission’s Principles on the Decriminalisation of Petty Offences.²⁹ The Act allows the police to arrest without a warrant any person who appears to be a vagrant.³⁰ The court can then order such person to be detained in a place of detention or to leave the area, leave the country, or order the person to return home.³¹ The Manzini, Matsapa and Mbabane prisons have been declared places of

²⁶ Children’s Protection and Welfare Act No. 6 of 2012 Part XIV. (retrievable [here](#)) (last retrieved 5 February 2020)

²⁷ Ibid, s 161(2), 126(5).

²⁸ Dan Moschenberg, “Swaziland Closes a Pregnancy to Prison Pipeline” 22 January 2013, (retrievable [here](#)) (last retrieved 5 February 2020)

²⁹ Principles on the Decriminalisation of Petty Offences in Africa, *African Commission on Human and Peoples’ Rights* (retrievable [here](#)) (last retrieved 5 February 2020)

³⁰ Vagrancy Act No. 39 of 1963 s 3.

³¹ Ibid, s 4.

detention under the Act.³² The Act continues to be enforced and has led to the detention of homeless persons in prison, despite not having committed a criminal offence.³³

23. Section 156 of the Children’s Protection and Welfare Act No. 6 of 2012 provides that when imposing a sentence of imprisonment, a court must be satisfied that it is a measure of last resort and for the shortest possible period. The Act allows for the imposition of a sentence of imprisonment of up to 5 years in the case of a child over 16 years of age, which sentence may be postponed or suspended. However, section 185(1) and section 313(1) and (2) of the Criminal Procedure and Evidence Act have not been amended yet to reflect that the Children’s Protection and Welfare Act recommends that children only be sentenced as last resort.
24. Limitations to freedom of movement have also been reported by social and political activists. In one instance prominent leaders of activist groups were kept under house arrest to prevent them from participating in the Workers’ Day celebrations.³⁴ In other instances, activists have been detained ahead of announced protests.³⁵ There have also been several other incidents where activists have been intimidated by the police.³⁶ During the 2016 Universal Periodic Review process, the Human Rights Council of the United Nations stated that the Suppression of Terrorism Act was being used to “counter political opposition and social protests instead of addressing legitimate terrorism threats”.³⁷ The Council raised concerns at reports of violence against unionists, human rights defenders, political opponents and members of the media.

Recommendations

- A. The State should repeal section 165(3) of the Criminal Procedure and Evidence Act of 1938 which allows for detention at his Majesty’s pleasure of a person found to be a ‘criminal lunatic’.**
- B. The State should address the challenges faced by the Correctional Services department, including shortage of professionals, lack of operational equipment, budgetary constraints and inadequate training.**
- C. The State should separate violent prisoners from the general prison population and address the increase in violence and gangsterism in prisons.**
- D. The Correctional Services Act No. 13 of 2017 contains some discriminatory provisions and ought to be reviewed in line with the Robben Island and Luanda Guidelines and the Children’s Protection and Welfare Act No. 6 of 2012.**
- E. Prisons need to be accessible to CSOs for prison visits and monitoring oversight.**
- F. The State should amend sections 185bis(1) and 313 of the Criminal Procedure and Evidence Act No. 67 of 1938 to reflect that that the mandatory sentence for rape does**

³² Declaration of Places of Detention, 6 October 1967.

³³ Sibusiso Shange, “Vagrancy Act Outdated – Lawyer” *Times of Swaziland*, 21 January 2019 (retrievable [here](#)) (last retrieved 5 February 2020)

³⁴ Welcome Dlamini, “TUCOSWA demands apology over house arrests” 3 May 2015 (retrievable [here](#)) (last retrieved 5 February 2020)

³⁵ Amnesty International, “Protests End Early In Swaziland Due to State Violence” (retrievable [here](#)) (last retrieved 5 February 2020)

³⁶ Jabulisa Dlamini, “Cops Arrest SRC, PUDEMO Presidents” 2 May 2014 (retrievable [here](#)) (last retrieved 5 February 2020) (note, PUDEMO stands for People’s United Democratic Movement and UNISWA is an acronym for the University of Swaziland)

³⁷ Human Rights Committee ‘Concluding Observations on Swaziland in Absence of a Report’ UN Doc CCPR/C/SWZ/CO/1 (2017), para 36 (retrievable [here](#)) (last retrieved 5 February 2020)

not apply in the case of a child offender and that children may only be sentenced to imprisonment as last resort.

- G. The State should implement section 123 of the Correctional Services Act No. 13 of 2017, which requires that the Minister should appoint and resource an independent body to inspect penal institutions and ensure that the rights of offenders are protected.
- H. The provisions allowing corporal punishment in the Criminal Procedure and Evidence Act No. 67 of 1938 should be repealed.
- I. The Vagrancy Act No. 39 of 1963 which allows for the detention of persons without subsistence in prisons should be repealed.
- J. The State should repeal the Sedition and Subversive Activities Act of 1938 and withdraw all criminal charges pending against persons based on the Act.
- K. The State should train all police officers on the Public Order Act of 2017 to ensure that unjustified restrictions are not applied to strikes and protests.

Freedom from Torture and Cruelty

- 25. CSOs are concerned that persons awaiting trial and prisoners are transported in chains outside the prison premises when attending court or hospital facilities, thus being exposed to the public without respect for their dignity.
- 26. There were reports of torture during interrogations by police in politically motivated cases.³⁸
- 27. CSOs are concerned by the excessive force Eswatini police have used in response to demonstrations and protests, and the difficulties experienced in trying to obtain information about persons detained following protests.
- 28. On 15 August 2019, tertiary students marched to the Ministry of Labour and Social Security to deliver a petition regarding the payment of allowances, scholarships for all admitted first year students and involvement of students in decision-making. Student leaders say police detained and tortured seven students after a protest march in Mbabane. Three others were injured and needed hospital treatment.³⁹ The Swaziland National Union of Students (SNUS) in a statement they released on social media in August 2019, stated: “Students ran helter-skelter around town and in the process, dozens were injured with three being rushed to the Mbabane Government Hospital. Seven students were detained for over four hours and tortured, assaulted and humiliated.”
- 29. In November 2019, there was a report that a student had been shot with a rubber bullet by police after student protests demanding release of their allowances.⁴⁰ SNUS issued a statement on social media alleging that on the following day, armed police invaded Kwaluseni campus and assaulted the students, forcing entry into their rooms. Numerous students were injured and about 4 were detained at Sgodvweni Police Station, however the

³⁸ Peter Kenworthy, “Swazi Activist Tortured and Left Sentenced to 15 Years Under Repressive Terror Laws” 3 March 2017 (retrievable [here](#)) (last retrieved 5 February 2020)

³⁹ *Swazi Media Commentary*, “Swaziland police hold and ‘torture’ students after protest march on Govt ministry” 15 August 2019 (retrievable [here](#)) (last retrieved 5 February 2020)

⁴⁰ *People’s Dispatch*, “Police in Swaziland violently repress student protest” 7 November 2019 (retrievable [here](#)) (last retrieved 5 February 2020)

police denied that they had any students in their custody. The students were later released and the real number of students who had been detained remains unknown.⁴¹

30. In October 2019, TUCOSWA submitted a list of protests where 18 workers were injured, from teargas inhalation, blackjacks, shots with rubber bullets, to the ILO Commission of Enquiry.⁴²
31. Even though the Police Services Act No. 22 of 2018⁴³ and Correctional Services Act No. 13 of 2017 prohibits torture, cruel, inhuman and degrading treatment by officers, there is no independent mechanism to investigate allegations of torture committed by police and correction officers.
32. Concerning the use of corporal punishment against children, the Education Act No. 9 of 1981 retains the subsidiary Education Rules of 1977 which permit corporal punishment.⁴⁴ The Ministry of Education and Training's Swaziland Education and Training Sector Policy of 2011 advocated for positive discipline, but did not mention (or thereby exclude the possibility of) corporal punishment.⁴⁵ More recent reports confirm that corporal punishment is still widespread. Tellingly, one such report states that:

“parents who have generally not received any briefings on ‘positive discipline’ consider it at an alien concept and do not support it. As a consequence of all of that, teachers appear to revert to corporal punishment even if they theoretically know they should not.”⁴⁶
33. Following several newspaper reports on corporal punishment in schools, including the death of a pupil, the Minister of Education, Phineas Magagula, in October 2015, announced that teachers who hit pupils should be reported to the ministry and will face disciplinary action.⁴⁷ There have however been continued reports of the use corporal punishment in schools since then.⁴⁸
34. The recommendations of the United Nations General Assembly Universal Periodic Review 2016 on corporal punishment were accepted in school and in relation to children in conflict with the law but not in relation to corporal punishment of children at home.⁴⁹
35. The National Education and Training Sector Policy of 2018 has also been developed by the Ministry of Education and Training to abolish the use of corporal punishment in schools and to reinforce the positive disciplinary program. However, cases are still often reported

⁴¹ The link to the Facebook page with the full statement can be found [here](#) (last retrieved 5 February 2020)

⁴² *Swazi Media Commentary*, “Swaziland workers to march and petition against police brutality” 28 October 2019 (retrievable [here](#))

⁴³ A copy of this Act can be found [here](#).

⁴⁴ A copy of this Act can be found [here](#).

⁴⁵ Ministry of Education and Training, *The Swaziland Education and Training Policy* (April 2011) page 28. (retrievable [here](#))

⁴⁶ Ministry of Education and Training, *The National Education and Training Improvement Programme 2018/19 to 2020/2021* (2018), p.54 (retrievable [here](#)) (last retrieved 5 February 2020)

⁴⁷ Joseph Zulu “Ministry to Punish Teachers for Corporal Punishment” *Times of Swaziland*, 9 October 2015; Eddie Abner “Ministry to Ban Corporal Punishment in Schools” *Swazi Observer*, 23 September 2015.

⁴⁸ Melisa Msweli “Pupil given 25 strokes, breaks fingers, *Times of Swaziland*, 29 March 2019 (retrievable [here](#))

⁴⁹ National Report submitted in accordance with paragraph 5 of the Annex to Human Rights Council Resolution 16/21, A/HRC/WG.6/25/SWZ/1, 8 March 2016, para 47 (retrievable [here](#)) (last retrieved 12 February 2020)

of grave abuses of school children by teachers, and substantial training would be required to ensure teachers are equipped to use positive discipline.⁵⁰

36. No explicit prohibition of corporal punishment is contained in the section 14(2) of the Children's Protection and Welfare Act No. 6 of 2012 that deals with the administration of discipline for children. Although sections 14(1) and (2) could be read to discourage corporal punishment in any setting, it is important that this is stated explicitly. No justification should be allowed under section 14 for parents, guardians, teachers or other persons to administer discipline with violence against children.
37. The Sexual Offences and Domestic Violence Act No. 15 of 2018 is an important piece of legislation that seeks to provide protection from gender-based violence and other cruel treatment for women and girls. However, the Act has not yet been translated into siSwati, nor has it been widely disseminated or adequately operationalised.

Recommendations

- A. The State should ensure that all public servants are trained on the provisions of the Sexual Offences and Domestic Violence Act of 2018.**
- B. The State should develop Regulations and Guidelines to support the full implementation of the Sexual Offences and Domestic Violence Act of 2018.**
- C. The State should ensure full functionality of the one-stop centres in all the regions and support the decentralized police posts and referral mechanisms.**
- D. The State should provide safe houses, especially for women and children who need to be immediately removed from an environment that is abusive.**
- E. The State should train police officers on the justifiable use of force when apprehending suspects, as well as investigate and punish police officers who use excessive force.**
- F. The State should ratify the Convention for the Protection of all Persons from Enforced Disappearances.**
- G. The State must accede to the Optional Protocol to the Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment. The State must further fully domesticate the Convention by ensuring that all acts of torture are offences under its criminal law and that the penalties reflect their grave nature.**
- H. The State should ensure that all police officers adhere to section 10(3) of the Police Service Act No. 22 of 2018 which prohibits the infliction, instigation or tolerance of acts of torture or other cruel, inhuman or degrading treatment, and ensure all officers alleged to have committed such acts are subjected to disciplinary and criminal processes.**
- I. The State should ensure that all correctional service members adhere to sections 6(2) and 6(3) of the Correctional Services Act No. 13 of 2017 which prohibit the infliction, instigation or tolerance of acts of torture or other cruel, inhuman or degrading treatment, and discrimination.**
- J. The State should provide for an independent mechanism to investigate allegations of torture committed by police and correctional service officers, and ensure all officers alleged to have committed such acts are subjected to disciplinary and criminal processes.**
- K. The State should repeal sections 306 and 307 of the Criminal Procedure and Evidence Act of 1938 which permits corporal punishment as a sentence.**

⁵⁰ *Swazi Observer*, "Govt Sued because of Violent Teachers" 11 October 2017 (retrievable [here](#)) (last retrieved 5 February 2020)

- L. Corporal punishment in schools remains rife, and the State should take urgent measures to discipline teachers and lay criminal charges where necessary.**
- M. The section 14(2) of the Children's Protection and Welfare Act No. 6 of 2012 which deals with the administration of discipline on children should be amended to explicitly prohibit corporal punishment. Provisions in other subsidiary legislation such as the Education Rules, which refer to corporal punishment, should be removed.**
- N. The Deputy Prime Minister, Ministry of Tinkhundla and Ministry of Education need to raise awareness and conduct training on positive discipline with an approach of holistically implementing the Children's Protection and Welfare Act.**

Access to Justice

- 38. There are clear problems with access to justice in Eswatini, particularly in relation to the independence of the judiciary.⁵¹
- 39. Over the years, the lack of judicial independence has often been flagged as a concern. For example, the International Commission of Jurists gave the following examples of lack of independence:⁵²
 - a) In 2002, a judicial crisis ensued when the government refused to honour two court orders and the Prime Minister sharply and publicly criticized the Court of Appeal;
 - b) In 2011, The Chief Justice issued a directive that effectively barred the filing of any lawsuits against corporations in which the King owns shares or has interests.⁵³
 - c) In 2011, the King, on the advice of the Judicial Service Commission, removed Justice Thomas Masuku from the bench for, among other things, allegedly criticizing him;⁵⁴ and
 - d) The Chief Justice has issued a practice directive entitling him, together with the Registrar, to allocate cases in the High Court. This directive allows the Chief Justice to allocate sensitive and political cases to some judges and not others.⁵⁵
- 40. CSOs are concerned that the appointment of judges does not always follow transparent recruitment process or constitutional provisions. Furthermore, the appointment of princes and chiefs in the Supreme Court is worrying. For instance, the current Attorney General is

⁵¹ See, generally, Maxine Langwenya, *Swaziland: Justice Sector and Rule of Law. A review by AfriMAP and the Open Society Initiative for Southern Africa* (March 2013) (retrievable [here](#)) (last retrieved 12 February 2020); International Bar Association, *Swaziland Law, Custom and Politics: Constitutional Crisis and the breakdown in the Rule of Law* (March 2003) (retrievable [here](#)) (last retrieved 12 February 2020); International Commission of Jurists, *Swaziland: Judges* (9 June 2014) (retrievable [here](#)) (last retrieved 12 February 2020)

⁵² International Commission of Jurists, *Swaziland: Judges* (9 June 2014) (retrievable [here](#)) (last retrieved 12 February 2020)

⁵³ A copy can be found [here](#) (last retrieved 12 February 2020)

⁵⁴ See, generally, International Commission of Jurists and SADC Lawyers Association, General Briefing on Judge Thomas Masuku's case (8 July 2011) (retrievable [here](#)) (last retrieved 12 February 2020)

⁵⁵ Maxine Langwenya, *Swaziland: Justice Sector and Rule of Law. A review by AfriMAP and the Open Society Initiative for Southern Africa* (March 2013) p.96 (retrievable [here](#)) (last retrieved 12 February 2020) "In practice, the Chief Justice appears to have extensive administrative powers over the functioning of the courts as well. When lawyers engaged in a prolonged boycott of the courts in 2011, the Chief Justice is reported to have convened a meeting with magistrates where he verbally instructed them to proceed with trials, with or without lawyers representing litigants."

also the Chief of the Ezulwini community, Judge Majahenkhaba Dlamini is the son of a former Chief in Nkhaba and Judge Phesheya Dlamini is also a former Attorney General, a Chief and Prince and they are both permanent judges of the Supreme Court.⁵⁶ The appointment of acting judges to the Supreme Court can affect perceptions of judicial independence.

41. Section 150(5) of the Constitution states that the Chief Justice shall designate in writing the most senior Judge of the High Court to be Principal Judge of the High Court to preside over and exercise such functions as may be stated in the designation. The current Chief Justice still plays a major role in determining which judges are allocated to cases in the High Court.
42. There are significant capacity constraints and administrative issues with the court system in Eswatini. Inadequate facilities for the judiciary and alleged poor management, result in the backlog of cases. Furthermore, the delays in criminal trials have a negative impact on prison overcrowding. Cases are sometimes also highly politicised and there is a systematic delay of political cases.⁵⁷ No cases against the King have been entertained by the courts on the basis of their interpretation of the immunity clause in the Constitution and a practice direction from the Chief Justice instructing the High Court to not entertain civil claims against the King.⁵⁸
43. Delays in judicial appointments have also affected judicial functioning. There is a lack of funds for the training of judges and other judicial officials.
44. The Government has developed a Legal Aid Bill in 2016 which provides for the establishment of the Legal Aid Board which will manage and oversee a publicly funded legal aid programme. Once passed into law, it will have the potential to increase access to justice in Eswatini substantially. However, the scope of the Legal Aid programme to cover direct court proceedings for violations of human rights under the Constitution may be limited. Section 31 of the Bill provides a non-exhaustive list of matters that may be covered by legal aid, which includes –

“(h) within its available resources, the Board may also progressively grant legal aid to persons to implement The Bill of Rights enshrined in Chapter III of the Constitution of Eswatini”.

45. Reference to ‘within its available resources’ appears as a caveat suggesting that constitutional matters would be deprioritised. The University of Eswatini’s Kwaluseni Campus introduced a Legal Aid programme under the Law Faculty. The Council of

⁵⁶ See International Commission of Jurists, *Swaziland: Judges*, 9 June 2014 (retrievable [here](#)) (last retrieved 12 February 2020); Mbongiseni Ndzimandze, “3 Acting Judges for Supreme Court” *Times of Swaziland*, 25 July 2018 (retrievable [here](#)) (last retrieved 12 February 2020)

⁵⁷ The case of *Maseko and Others v Prime Minister of Swaziland and Others* [2016] SZHC 180 (a copy of the majority judgment can be found [here](#)) is an example. Here several applicants obtained a High Court decision declaring provisions of the sedition and terrorism laws under which they were charged unconstitutional. The State appealed the High Court decision, but the appeal has never been heard. In the meantime, the State continues to prosecute people using these offences, and the applicants themselves continue to have charges hanging over their heads. (last retrieved 12 February 2020)

⁵⁸ Section 11 of the Constitution of Eswatini reads “The King and *iNgwenyama* shall be immune from (a) suit or legal process in any cause in respect of all things done or omitted to be done by him; and (b) being summoned to appear as a witness in any civil or criminal proceeding”.

Churches also runs a legal clinic on Mondays, under their Justice and Peace programme. It works mostly as a referral mechanism especially on child maintenance issues.

46. A key issue with the traditional courts system is that section 23 of the Swazi Courts Act No. 80 of 1950 prohibits legal representation, and legal practitioners may not appear or act for any party in any proceeding before these courts. The traditional courts system has come under heavy criticism for being discriminatory towards women.⁵⁹ In terms of Swazi law and custom, women are not allowed to preside in customary courts, with the presiding officers consisting of men thought to have high levels of knowledge in matters of custom.⁶⁰
47. Despite the occurrence of the above discriminatory practices, often traditional courts remain the only recourse for women in criminal and in civil matters alike. These courts are far more accessible for individuals seeking redress in civil matters than common law courts. In part, this is because traditional courts are located across the country, including in rural areas, as opposed to common law courts which are often limited to urban centres. Traditional courts are also cheaper than common law courts which require transport to urban centres where they are located and the cost of legal representation.
48. The Domestic Violence, Child Protection and Sexual Offences Unit, popularly known as DCS, receive quarterly training but there remain 6000 police officers who are not trained.⁶¹ In addition, under each chiefdom, there are several communities who only have access to community police who are not addressed by training programmes of government and are only occasionally reached by non-governmental programmes.

Recommendations

- A. The State should urgently finalise the Legal Aid Bill.**
- B. The State should ensure separation of powers and independence of the judiciary.**
- C. The process to align all laws, including Swazi law and custom, with the Constitution, should be fast-tracked.**
- D. The State must reform the traditional courts system.**
- E. The State must urgently allocate resources to the judiciary, including for the infrastructure and training.**
- F. Allocation of judges to hear a matter should be according to an impartial system.**
- G. New Supreme Court judges should be appointed, as acting appointments affect judicial independence.**

⁵⁹ Maxine Langwenya, *Swaziland: Justice Sector and Rule of Law. A review by AfriMAP and the Open Society Initiative for Southern Africa* (March 2013) p7 “the formal supremacy of the Constitution is challenged by the pre-eminent position of Swazi law and custom in everyday life of the majority of Swazis. By the same token, Swazi law and custom have more practical meaning in the lived realities of most Swazis than international human rights. Thus, for example, while Swaziland is a party to the CEDAW, **Swazi law and custom continue to discriminate against women as a matter of course.**” (emphasis ours)

⁶⁰ Ibid, p20 “The duality of ‘Western-style’ and traditional Swazi law virtually creates two separate legal systems which, in practice, do not offer equal legal protection to people. For example: while litigants in the former are entitled to legal representation, those appearing in Swazi and chiefs’ courts are not; a widow cannot participate in a case before the chief’s court while in mourning, whereas no such bar applies in the other courts; and, in chiefs’ courts, men are reportedly treated more leniently than women, especially in cases of domestic violence.”

⁶¹ Jabulile Phakathi, UNICEF, *Protection for sexual offense victims in Swaziland* (30 December 2008) (retrievable [here](#)) (last accessed 12 February 2020)

Freedom of Expression and Access to Information

49. Concerns around limitations to freedom of expression in Eswatini has frequently been raised at regional and international fora.
50. Protests on campuses in Eswatini are annual occurrences and met with disciplinary processes and private security interventions. It has been reported that student activists as well as leaders of student movement were expelled from national tertiary institutions due to their political opinions, this was the case with Wandile Dlodlu in 2006, Maxwell Dlamini in 2010 and Brian Sangweni in 2016.⁶² Students leading or participating in protests are usually not granted scholarships.
51. Journalists do not operate freely within the country, are effectively required to self-censor, and face intimidation. For example, on 7 February 2018, wardens from the correctional services reportedly intimidated a journalist who was taking pictures of the convoy of state vehicles; and on 12 February 2018, Ambrose Zwane, coordinator of the Swaziland Multimedia Community Network, was reportedly denied participation on a TV show focusing on World Radio Day on account of his political opinions. On the same day, he was also prevented from being interviewed on a Radio program sponsored by UNESCO, called “Letisematseni”. Many other activists and political figures are still barred from speaking on air by the Eswatini Broadcasting Information Service. On 19 June 2018 a social activist, Queen Shongwe, was banned from all live radio phone in programmes by the management of the Eswatini Broadcasting Services, after she challenged poor delivery of water services.⁶³ In August 2018 a journalist was reportedly attacked by police after covering a protest.⁶⁴
52. While the Swaziland Broadcasting Bill of 2016 is still under review, the Broadcasting Guidelines of 2017 were approved by Parliament in 2018. It is hoped that this will lead to the issuing of Broadcasting Licenses. However, according to Swaziland Multi-Media Community Radio, only the University of Swaziland was granted a 5-year license in July 2019. At least four other community radio stations, including the Lubombo Community Radio, are still waiting for a license despite being formally registered for the same.⁶⁵ The public process of opening applications for community and commercial radio stations has not started yet. Some community radio stations have also expressed concern about the potential controls on broadcasting content through conditions that will accompany the issuing of licences. These concerns are based on their experiences with temporary (one-day)

⁶² Sfiso Manzini, “Suspension of 25 UNISWA Students Lifted” 20 March 2018 (retrievable [here](#)) (last retrieved 7 February 2020); See also the Facebook post from the Swaziland National Union of Students, 28 September 2018 (retrievable [here](#)) (last retrieved 7 February 2020); See news about Maxwell Dlamini [here](#); Maxwell was only a few courses away from finishing his undergraduate degree that had been disrupted by prison sentences, withdrawal of his scholarship on political grounds and harsh bail conditions (last retrieved 7 February 2020); Rebone Tau-Bahati, *Is There Democracy in Swaziland: A Personal Perspective*, p 10 (retrievable [here](#)) explains that Mr. Wandile is also a former law student who was expelled from the University of Swaziland for his students’ pro-democracy activism. (last retrieved 7 February 2020)

⁶³ Kwanele Dlamini, “Radio Host Begs Queen to Stop Calling on Air” *Times of Swaziland*, 20 June 2018 (retrievable [here](#)) (last retrieved 7 February 2020)

⁶⁴ Media Institute of Southern Africa, “Security Agents Assault Journalist”, press statement, 5 September 2018 (retrievable [here](#)) (last retrieved 10 March 2020)

⁶⁵ “Swaziland: First Community Radio Station Registered in Swaziland after 19 Years Trying” 7 March 2019, *Swazi Media Commentary* (retrievable [here](#)) (last retrieved 7 February 2020)

broadcasting licenses, where content was analysed, and live programmes were refused by the regulating authority. The Guidelines specifically mention that entities that are not legally recognised should not be interviewed. Moreover, the fees required for the application and registration of radio stations might make it difficult for community radio stations to apply.

53. There remain a number of laws that impede freedom of expression.⁶⁶ The common law offence of publishing defamatory material (criminal defamation) has only one recognised defence – that the publication was true and for the public benefit.⁶⁷ This offence ought to be repealed on the basis that it is a disproportionate limitation of the right to freedom of expression, in that it has a chilling effect on expression, there is an existing civil remedy, and because of the severe impact of imprisonment. This would be consistent with the overall approach in several African and international jurisdictions.⁶⁸ It is an offence to display an image of the King in a disparaging manner⁶⁹ or to offend the dignity of the queen-mother. The latter crime can result in 12 years' imprisonment.⁷⁰
54. The lack of separation of powers makes it difficult to access information. The country does not have legislation to facilitate access to information. In December 2017, the government closed the Independent Swaziland Shopping Newspaper for not following requirements of the Books and Newspapers Act No. 20 of 1963, shortly after having published an article on corruption.⁷¹
55. Eswatini has introduced the compulsory registration of SIM cards called VELA,⁷² which includes submitting proof of residence, an identity document and having your picture taken. Though it is understood that the Communication Commission introduced the exercise as an effort to protect owners against security breaches, CSOs are concerned that this data may be misused or abused by the State to control human rights defenders and activists.
56. In 2016, the High Court declared the sedition offence unconstitutional for violating the right to freedom of expression.⁷³ The State filed an appeal contrary to the rules of the court, and a subsequent application for condonation by the State was not heard because the Supreme Court was unable to constitute a bench to hear the appeal. In May 2019, the State continued

⁶⁶ UNESCO, *Taking Stock of the State of Media Freedom in Swaziland* (retrievable [here](#)) (last retrieved 7 February 2020)

⁶⁷ Criminal Procedure and Evidence Code 1938 s 156.

⁶⁸ See for example the judgments of other courts in the region declaring the offence unconstitutional: *Peta v Minister of Law and Others* [2018] LSHC 3 (Constitutional Court of Lesotho) retrievable [here](#) (last accessed 7 February 2020), *Okuta and Another v Attorney General and Others* [2017] eKLR (High Court of Kenya) retrievable [here](#) (last accessed 7 February 2020), *Konate v Burkina Faso* Case No 004/2013 (African Court on Human and Peoples' Rights) (retrievable [here](#)) (last accessed 7 February 2020), *Chipenzi and Others v The People* (HPR/03/2014) [2014] ZMHC 112 (3 December 2014) (High Court of Zambia) (retrievable [here](#)) (last accessed 7 February 2020)

⁶⁹ Cinematograph Act No. 31 of 1920 s 6.

⁷⁰ Protection of the Person of the Ndlovukazi Act No. 23 of 1967 s 2.

⁷¹ *Swazi Media Commentary*, "Swazi Government Forces Newspaper to Close" 15 December 2017 (retrievable [here](#)) (last accessed 7 February 2020); *Swazi Media Commentary*, "Editor Flees After Death Threat" 7 January 2018 (retrievable [here](#)) (last accessed 7 February 2020). The Act itself is discussed here: *Swazi Observer*, "What the Books and Newspapers Act of 1963 Says", 15 December 2017 (retrievable [here](#)) (last retrieved 12 February 2020)

⁷² Information from a leading telecommunications company on VELA registration can be found [here](#) (last accessed 7 February 2020)

⁷³ *Maseko and Others v Prime Minister of Swaziland and Others* (2180/2009) [2016] SZHC 180 (16 September 2016) (retrievable [here](#)) (last accessed 7 February 2020)

to apply the offence of sedition when it arrested Goodwill Sibiya.⁷⁴ Subsequently, the High Court, in September 2019, explicitly stated that “to allow the prosecution to prosecute people on legislation that has been pronounced by the Courts to be inconsistent with the Constitution would be undermining the judgment of the Courts” and accused persons’ fair trial rights. The Court ordered the State to withdraw the sedition charges against Sibiya, although her remains in custody pending trial for belonging to an organisation designated to be a terrorist group.⁷⁵ Despite the High Court decision, police still used the Sedition and Subversive Activities Act as a basis on which to obtain search warrants against political activists in December 2019 to search for “seditious banners”.⁷⁶ The continued enforcement of the offence of sedition has a chilling effect on freedom of expression.

57. The Public Service Act No. 5 of 2018 contains provisions which impermissibly limit freedom of expression for public officials.⁷⁷ Section 8(b) limits public officers from publishing information of a political or administrative nature and prohibits a public officer from being interviewed on a matter relating to public policy, security or strategic interests or resources. Section 49 of the Act defines as “misconduct” if a public officer expressed any view critical of or contrary to government policy. Teachers have also raised concern that some provisions in the Teaching Service Regulations of 1983 have been used to discourage expression.⁷⁸

Recommendations

- A. The State should pass the Access to Information Bill.**
- B. The State should review all laws which impact on freedom of expression and press freedom, including the Proscribed Publications Act No. 17 of 1968, the Books and Newspapers Act No. 20 of 1963, the Cinematograph Act No. 31 of 1920, the Protection of the Person of the Ndlovukazi Act No. 23 of 1967, and the Public Service Act No. 5 of 2018.**
- C. The State should abolish the common law offence of criminal defamation.**
- D. The State should repeal the Sedition and Subversive Activities Act No. 46 of 1938.**
- E. The State should ensure that the Media Complaints Commission has an adequate budget.**
- F. The State should finalise the Broadcasting Bill and remove vague provisions relating to decency, morality and good taste.**
- G. The Broadcasting Regulatory Authority should initiate the procedure for the granting long-term licences to community and commercial radio stations.**

⁷⁴ Anneke Meerkotter, “Questionable sedition charges quell freedom of expression in Eswatini” *Polity* 22 July 2019 (retrievable [here](#)) (last retrieved 12 February 2020)

⁷⁵ Anneke Meerkotter “Eswatini’s citizens condemn lavish spending by the monarchy at their peril” *Daily Maverick* 17 December 2019 (retrievable [here](#))

⁷⁶ SALC “Eswatini Government Rounds up Activists” press statement, 20 December 2019 (retrievable [here](#))

⁷⁷ A copy of this Act can be found [here](#) (last accessed 7 February 2020)

⁷⁸ The Teaching Service Regulations was enacted in terms of the Teaching Service Act No. 1 of 1982, at a time of significant political upheaval in the country. Section 15(1) of the Regulations states that misconduct includes: “(h) uses or attempts to use his position in the service to further the ends of a political party” and “(i) uses or attempts to use his position in the service to encourage hatred or contempt towards the Government of Swaziland.”

Freedom of Assembly

58. The Public Order Act No. 12 of 2017 replaced the Public Order Act No. 17 of 1963 and has been commended as a positive step towards ensuring the rights to freedom of expression, association and assembly.⁷⁹ It appears however, that the Act is at times implemented with cumbersome requirements to obtain permission before holding a meeting/activity and de facto restrictions with regards to obtaining authorisation to march in central routes and to access public buildings, i.e. to deliver petitions, especially for specific groups that are perceived as more confrontational (e.g. trade unions, political associations).
59. In November 2019, political parties were refused permission by the local municipality to hold a march⁸⁰ and in December 2019 civil society organisations were similarly prevented from organising and Human Rights parade.
60. The power of the police to intervene in a gathering in cases of danger to public order or safety, can lead to abuse if not clearly regulated. The police sometimes create measures in addition to the provisions in the Act, which limit the freedom of assembly, such as requesting last minute changes to authorised routes,⁸¹ requesting names of marshals before allowing a march to continue as planned, and unexpectedly visiting leaders at home during evening/night.
61. It has been reported that political activists are at times prevented from crossing the border based on “national security”.⁸²
62. Interference by the police in planned protest actions have been particularly acute in the period preceding the 2018 elections:
 - a. On 24 August 2018, the Swaziland National Association of Teachers (SNAT) held a meeting at the SNAT Centre to discuss the zero-increment of salaries offered by government. According to a petition delivered to the USA Embassy by SNAT and as reported in a newspaper article “...All of a sudden the police opened fire on unarmed teachers wherein one of them (Willy Dlamini) was wounded”.⁸³ Another teacher, Maxwell Myeni, reported to have approached and attempted to stop the police who were aiming guns with live rounds towards teachers. He was arrested the following day for “attacking the police officer holding a gun with live rounds” and charged with six counts under the Public

⁷⁹ A copy can be found [here](#) (last retrieved 7 February 2020)

⁸⁰ Eugene Dube, “Police stopped ‘Mswati must fall’ protest march” *Swaziland News* 14 November 2019 (retrievable [here](#))

⁸¹ For example, on 29 June 2018, a march by TUCOSWA members challenging increases in taxes and basic utilities, and forced evictions, was diverted and stopped after police fought with protesters, some of whom were injured. *Swazi Media Commentary* “Police Fire Stun Grenades at Protest” 29 June 2018 (retrievable [here](#))

⁸² SALC, “CSO Statement on the Situation of Human Rights in the Kingdom of Eswatini” 19 November 2018 (retrievable [here](#)) (last retrieved 7 February 2020). This details how on 11 May 2018, the Royal Eswatini Police stopped and turned back Mphandlana Shongwe and other activists from crossing the border to South Africa to participate in a march at the border demanding the release of political prisoners, organised by Congress of South African Trade Unions and its affiliates in partnership with the Peoples United Democratic Movement.

⁸³ Anish R M, “Swaziland teachers’ union accuses monarchical government of repressing workers’ struggle” *People’s Dispatch*, 23 November 2018 (retrievable [here](#)) (last retrieved 7 February 2020)

Order Act, offence of common assault, contravening section 11(1) read with section 122(1) and 122 (4) of the Road Traffic Act No. 6 of 2007. On 28 August 2018, a second teacher was arrested and charged with a series of charges, including the assault of the station commander while he was coming from the magistrate court in Manzini after the bail hearing of Maxwell Myeni.⁸⁴

- b. On 29 August 2018 nurses marching under the banner of Swaziland Democratic Nurses Union (SWADNU) were attacked by security forces when they tried to deliver a petition.⁸⁵
- c. On 30 August 2018, a Times of Swaziland journalist, Andile Nsibande, was attacked by the Eswatini royal police force for taking photos while covering a textile strike.⁸⁶
- d. Workers from different unions under the banner of TUCOSWA participated in a strike scheduled from 18 to 20 September 2018 in four towns. There were reports of confrontations with police in Manzini. On 19 September 2018 the National Commissioner of Police decided to stop the legally protected protest marches. This decision was subsequently taken on review to the High Court for being contrary to the provisions of the Public Order Act, but a year later the case has yet to be heard.
- e. On 21 September 2018, on the eve of the national elections, at Sigwe Inkundla in the Manzini Region, the Royal Police responded with force against community members who were protesting during the election period.⁸⁷
- f. On 23 September 2018, the Attorney General's Office took the Swaziland National Union of Teachers (SNAT) to the Industrial Court to interdict a strike that was scheduled from 25 to 27 September 2018. The judgment read from the Industrial Court Judge reported: "The strike proposed by SNAT, though lawful, is deferred to November 23, to give the new government a chance to deal with the demands of SNAT. Should it become necessary for SNAT to commence a strike action, we shall give the new government new dates after November 23".⁸⁸
- g. On 4 October 2018, Swaziland United Democratic Front (SUDF) reported that the police influenced the Mbabane City council to withdraw the routes permit granted to the Swaziland Unemployed Peoples' Movement (SUPMO) to deliver a petition to the Ministry of Labour and Social Security, Economic Planning Ministry and Swaziland Energy Regulatory Authority. The police then

⁸⁴ Jabulisa Dlamini And Sibusiso Zwane, "Teacher Arrested For Cop's Assault" *Times of Swaziland* 28 August 2018 (retrievable [here](#)) (last retrieved 7 February 2020)

⁸⁵ *Times of Swaziland*, "Cops 'Electro-Shock' Marching Nurses" 30 August 2018 (retrievable [here](#)) (last retrieved 7 February 2020)

⁸⁶ *Media Institute of Southern Africa*, "Misa Zimbabwe Regional Solidarity Statement: Third Eswatini Journalist Assaulted this Year" (retrievable [here](#)) (last retrieved 7 February 2020); *Observer on Saturday*, "MISA Condemns Attacks on Journalists" 8 September 2018 (retrievable [here](#)) (last retrieved 7 February 2020)

⁸⁷ *Swazi Media Commentary*, "Swaziland Police Fire Gunshots, Set Off Grenades and Rubber Bullets as Voters Protest During Election" 22 September 2018 (retrievable [here](#)) (last retrieved 7 February 2020)

⁸⁸ Sisho Magagula, "Teachers Strike Stopped by Court" *Swazi Observer*, 24 September 2018 (retrievable [here](#))

forcefully blocked the protest march under the guise of the Public Order Act of 2017.

63. Sections 8 and 10 of the Swazi Administration Act No. 70 of 1950 allow a chief to prohibit any act or conduct which might cause a riot or disturbance of the peace. Chiefs have used these provisions to prevent political parties from having meetings in communities. This interpretation is contrary to the right to assembly as provided for in the Constitution and the new Public Order Act.
64. CSOs have raised concerns that it is costly and time-consuming when they are forced to seek enforcement of their rights to expression, association and assembly in the courts.

Recommendations

- A. The State should ensure all police officers and the judiciary are trained on the Public Order Act of 2017, ensuring that the public officers do not apply unjustified restrictions and preventive limitations to strikes and protests and do not exercise any kind of intimidations, abuses and attacks against activists and human rights defenders.**
- B. The State should repeal section 15(3)(h) of the Public Order Act of 2017 which prohibits a person participating in a gathering from inciting hatred or contempt against the culture and traditional heritage of the Swazi Nation as this provision is overly broad.**

Freedom of Association

65. Several laws interfere with the right to freedom of association in Eswatini.
66. The Public Service Act No. 37 of 2018 provides that a public officer shall not hold office with a political formation or organisation.⁸⁹
67. Amendments to the Suppression of Terrorism Act in 2017 did not address concerns raised in the High Court judgment which declared previous provisions unconstitutional.⁹⁰ The various applicants in that case remain on restrictive bail conditions and the State continues to actively pursue the appeal. Some of these activists belong to the Peoples' United Democratic Movement (PUDEMO), which organisation was declared a terrorist organisation in 2008. Most recently, in May 2019, someone was charged under the Act for showing allegiance to PUDEMO.⁹¹ An act is excluded from being an act of terrorism if it is committed as part of an advocacy, protest, demonstration, dissent or industrial action and is not intended to result in any harm.⁹² That said, the Suppression of Terrorism Act is so loosely worded that it inhibits the right to freedom of expression, association and assembly. For example, where a legitimate protest or demonstration is organised by a designated terrorist group, a person who attends such an event could still potentially be guilty of the

⁸⁹ Public Service Act No. 37 of 2018, s 51.

⁹⁰ *Maseko and Others v Prime Minister of Swaziland and Others* (2180/2009) [2016] SZHC 180 (16 September 2016).

⁹¹ Anneke Meerkotter, "Questionable sedition charges quell freedom of expression in Eswatini" 22 July 2019 (retrievable [here](#)) (last retrieved 12 February 2020)

⁹² Suppression of Terrorism Act No. 3 of 2008 s 2(3)(b) (retrievable [here](#)) (last retrieved 12 February 2020); Suppression of Terrorism (Amendment) Act No. 11 of 2017.

offence of giving support to a terrorist group, even though no terrorist act is planned for or at the event, and risk 15 years' imprisonment.⁹³

68. The King's Proclamation of 1973, which disbanded the Constitution and prohibited political parties, continues to create a climate that stifles freedom of association. Even though the Constitution of 2005 which supersedes the Proclamation allows for freedom of association, there remains a perception that political parties are banned. This is reinforced by the designation of PUDEMO as a terrorist group and the continued arrest of persons for belonging to PUDEMO despite them not being involved in any terrorist activities.⁹⁴ Due to the perception that parties are banned, some political parties struggle to open bank accounts or convene meetings freely.
69. Several people who have been critical of the monarchy have struggled to obtain jobs, especially in the public sector and media, and have been prevented from appearing on national radio⁹⁵ or television. Affiliation to political parties can further result in discrimination in accessing communal land and marriage under traditional laws. These consequences of political party affiliation have a chilling effect on freedom of association and expression.
70. The Constitution provides for the right to freedom of association, yet section 79 has been interpreted to exclude political parties from the electoral process, although individual members of political parties are able to contest the elections in their personal capacities.⁹⁶ During the 2018 elections period, some political organisations have tried to persuade the government to at least allow individual candidates to express their affiliation to political parties during the election campaigning period in order to promote steps towards political plurality. A lack of political opposition in parliament means that there are limited checks on the powers of the executive. Lack of opposition also heightens the possibility that key legislative decisions, including decisions relating to the need to improve human rights, are taken with little debate. For example, in April 2019 the King announced a change in the country's names, using his purported prerogative powers and without consulting with the public. The courts have also used frivolous procedural arguments to dismiss such cases of public importance.⁹⁷
71. There is currently no law in place which provides for the registration of political parties and other associations that have objectives of conducting advocacy or democracy work or defend the rights of sex workers and LGBTQIA+ persons. In September 2019, the State formally rejected the registration of an LGBTQIA+ group, Eswatini Sexual and Gender Minorities, as a non-profit company, including on the basis that the organisation does not

⁹³ Suppression of Terrorism Act of 2008 s 11(a), s 20.

⁹⁴ Anneke Meerkotter, "Questionable sedition charges quell freedom of expression in Eswatini" 22 July 2019 (retrievable [here](#)) (last retrieved 12 February 2020)

⁹⁵ *Swazi Media Commentary* "Swaziland: First Community Radio Station Registered in Swaziland After 19 Years Trying" 7 March 2019 (retrievable [here](#))

⁹⁶ The Constitution of Swaziland, in section 79 provides that "[t]he system of government for Swaziland 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 25 provides, *inter alia*, that "A person has the right to freedom of peaceful assembly and association."

⁹⁷ *Shabangu and Others v Elections and Boundaries Commission and Others* (805/2018) [2018] SZHC 169 (31 July 2018) (retrievable [here](#)), which case sought to allow political parties to at least be able to associate themselves with certain candidates and for candidates in the election to express their political party affiliation, if any.

satisfy a “communal or group interest”, that it allegedly encourages same-sex relationships, and that the law does not prohibit discrimination based on sexual orientation.⁹⁸

72. All Swazi Nation land vests in the King and individuals do not have individual title to it. The position of citizens who fall into disfavour with the King or his chiefs are accordingly precarious. This explains the reluctance of citizens to freely express political opinions or affiliate with political parties, when doing so can result in significant sanctions including their eviction.

Recommendations

- A. The State should formally repeal the 1973 Proclamation which banned political parties.**
- B. The State should review the Suppression of Terrorism Act (as amended) to include provisions allowing organisations to challenge an order listing them as terrorist before such order is finalised, and to narrow provisions which infringe on freedom of expression and assembly.**
- C. The State should withdraw the existing designation of political parties as terrorist groups and withdraw charges faced by their members for simply being members of such parties.**
- D. The State should engage with political parties in a productive dialogue on the creation of a multi-party democracy.**
- E. The State should reform the Swazi Administration Act No. 79 of 1950.**
- F. The State should domesticate the AU Elections Protocol and the SADC Elections Protocol.**
- G. The State should attend to the concerns raised concerning the 2013 and 2018 elections, in the Commonwealth Elections Report of 2013⁹⁹ and the African Union Election Observation Mission Report of 2018.¹⁰⁰**
- H. The Register of Companies should register any association which meets the requirements set out in the law.**

Right to Education

73. The Primary School Net Enrolment rate is estimated at 95%, but the Secondary School Net Enrolment rate is only 46, 3%.¹⁰¹ Approximately 16% of the National Budget for 2019/2020 is earmarked for education.¹⁰²
74. The country’s formal education system needs more attention and resources. The continued requests from schools for learners to supplement fees contradict the principle of free primary education. The National Budget needs to prioritise education to make education free and

⁹⁸ *Mamba Online*, Luiz DaBarros, “Eswatini government officially rejects LGBTI group” 15 September 2019 (retrievable [here](#))

⁹⁹ Commonwealth Observer Mission to Swaziland National Elections (2013) (retrievable [here](#)) (last accessed 12 February 2020)

¹⁰⁰ Further information on this document can be retrieved [here](#) (last accessed 12 February 2020)

¹⁰¹ Budget Speech, 2019, presented to parliament by the Minister of Finance on 27 February 2019, pg. 24, (retrievable [here](#))

¹⁰² *Ibid.*

more accessible. The infrastructure of schools needs updating to accommodate increasing enrolment in schools and adequate teaching facilities. There is a trend for the number of classes per grade to reduce as the grades increase, resulting in high school classes with 60 students each and only 2 teachers for 7 subjects.

75. Moreover, the teachers are not always competent to educate on certain subjects (including Information and Computer Technology) and there is a general shortage of teachers.¹⁰³ As reported by the Swaziland National Association of Teachers, students in urban areas have statistically better results than students in rural areas and it is alleged that this is related to lower quality of infrastructure, equipment, qualified teachers and services in rural areas. Rural schools/families cannot afford all support staff, such as security, cooks and cleaners, and as a result teachers are required to carry out some of these duties or the students are requested to contribute to cleaning, reducing the time dedicated to learning. SNAT further reports that there are constant food shortages especially in rural schools.¹⁰⁴ Even when a meal a day is provided, it is not quality food (only beans and maize porridge/rice). Schools must fund their own transport to get food for the feeding scheme every day. Furthermore, some schools in rural areas do not have access to electricity or water.
76. The school curriculum is outdated. Children are not comprehensively taught about gender-affirmative and sexual and reproductive health rights. Section 28(3) of the Constitution and the Children's Protection and Welfare Act allows children the right not to participate in cultural activities or practices they are not comfortable with, yet schools continue to place an emphasis on culture and participation in cultural activities.
77. Youth in conflict with the law, after successful completion of secondary school, should be given access to tertiary or vocational training facilities.
78. Children with disabilities including psycho-social disabilities should be reasonably accommodated to ensure they are able to access to the same quality of education. The resources allocated to protect children with disabilities are always strained.
79. The government should provide more resources to protect orphans and child-headed households. Children in such situations should be provided with psychosocial support and specific care programmes. The Neighbourhood Care Points promoted by UNICEF proved to be an effective strategy and should be emulated throughout Eswatini.¹⁰⁵
80. A child who has been abused at home, should be hosted in a safe house, and police should take the necessary steps to open a file and to take the child to a hospital and one-stop centre.
81. Sections 156 to 172 of SODV Act provides for various measures to protect witnesses. The Act states that a child should not be cross-examined at a preliminary hearing except in very limited circumstances. A court must take note of the age, gender, health, nature of crime, and other factors, and if needed shall take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses. The court can declare someone a vulnerable witness, in which case protective measures can be

¹⁰³ Khulekani Nene "Kamkhweli pupils riot over shortage of teachers" *Times of Swaziland*, 12 March 2020 (retrievable [here](#))

¹⁰⁴ Khulekani Nene "Food shortages hits schools again" *Times of Swaziland*, 7 August 2017 (retrievable [here](#))

¹⁰⁵ UNICEF, *Neighbourhood Care Points: Making orphaned and vulnerable children visible* (2006) (retrievable [here](#)) (last accessed 12 February 2020)

applied when the witness testifies. In the case of a child giving evidence about a sexual offence, the court must exclude all persons from the room, other than essential persons. A child who gives evidence is further entitled to have a support person close to the child and in the child's sight while the child gives evidence. Whilst these measures are welcomed, much needs to be done to ensure that staff at courts are trained to properly implement these measures.

82. For children in conflict with the law, the police should adhere to the Children's Protection and Welfare Act.¹⁰⁶
83. Forced evictions severely affect the education of a child. The displacement causes them to lose access to their school where they were attending or travel long distances, increasing financial strain on the child's family.
84. The lack of access to sanitary pads often take girls away from school for several days each month. In child-headed households, the girl or young woman must take care of her siblings, affecting her participation in class. Stereotypes and patriarchal socialization further narrow girls' choice in educational courses to ones that are aligned to stereotypical female roles.
85. Only girls are expelled for pregnancy, which is often the result of rape. Male teachers who have sexual relations with girls are seldom disciplined and reprimands are very lenient against the teachers. The new Sexual Offences and Domestic Violence Act should form part of the curriculum, especially for career guidance and counselling classes.¹⁰⁷ In addition, all teachers should receive training on gender issues, as prescribed in section 191 of the Sexual Offences and Domestic Violence Act.
86. Access to tertiary education is not always guaranteed due to lack of scholarships for all students. The lack of access is compounded by the limited courses covered by the scholarships, awarding of scholarships only after students' admission, which leads to a high number of dropouts, the need to have applications endorsed by Chiefs, and discriminatory application procedures.
87. Service providers designated by the University to provide learning materials do not offer competitive and affordable prices. The quality of education at tertiary level is also compromised by a shortage of facilities, lecturers and equipment. This limitation to accessing educational opportunities is exacerbated by the closing down of vocational colleges, especially in rural areas.

Recommendations

- A. The Ministry of Education must increase the capacity of principals and teachers in all subjects.**
- B. The Ministry of Education should review the Free Primary Education system, monitor allocation of grants, and develop a policy which prevents schools asking for top up fees, to ensure that children not to be removed from school due to non-payment.¹⁰⁸**

¹⁰⁶ Part XII (sections 93-105).

¹⁰⁷ See [here](#) for a copy of the Act (last accessed 12 February 2020)

¹⁰⁸ Section 3 of the Free Primary Education Act, No. 1 of 2010, states that a pupil may not be excluded from school because the government did not pay the required school fees. The same should apply to top-up fees.

- C. The education system must be inclusive and take into consideration the specific needs of vulnerable children, including children in conflict with law, children with disabilities and orphans.**
- D. The State should ensure the distribution of free sanitary products for women in schools and improve the quality and sustainability of feeding schemes.**
- E. The Ministry of Education should review the education curriculum to ensure subjects are relevant to the needs of the country.**
- F. The State should ensure the standardisation of education for rural and urban schools by reviewing the teacher-student ratio, as well as infrastructure and teaching facilities.**
- G. The Ministry of Education should allow pregnant girls to stay in school.**
- H. The Education Sector Policy should ensure the re-entry of girls in school after pregnancy, including by increasing provision of day-care centres, especially in rural areas.**
- I. The State should build adult rural educational centres to allow women who dropped out of school due to early marriages to receive an education.**
- J. The State should adopt the SADC Model Law on Child Marriage and amend the Marriage Act to prohibit child marriages to protect the right to education for girls and reduce dropouts.**
- K. Comprehensive Gender affirmative and Sexual and Reproductive Health Education programmes must be included in the curricula of schools to prevent early pregnancies and to reduce the associated stigma. The State must introduce CSOs' comprehensive sexual education manuals to the curriculum.**
- L. The State should build youth-friendly health centres for easy access to reproductive health services.**
- M. The State should enact regulations to ensure implementation of the Children's Protection and Welfare Act of 2012, including children's right to not participate in cultural activities or practices they are not comfortable with.**
- N. The State should review the National Children's Policy of 2009 to be in line with the Children's Protection and Welfare Act of 2012.**
- O. The State must ensure adequate infrastructure, teachers and teaching equipment at primary, secondary and tertiary levels, and appropriate vocational training in rural areas.**
- P. Scholarship policies at University level should be transparent, equitable and non-discriminatory.**

Right to Health

88. The government seeks to attain Universal Health Coverage – where every person will have access to equitable, affordable and quality health care, irrespective of age, gender, and socio-economic status.¹⁰⁹ The World Health Organisation, in its assessment of Eswatini's ability to achieve Universal Health Coverage, noted important areas to improve, including: declining national immunisation coverage; an inadequate workforce and retention of skilled staff; urban bias in provision of services; gaps in the implementation of the Essential Health Care Package; insufficient government spending on health, and weak health financing monitoring.¹¹⁰ The national health budget for the 2019/2020 financial year, is estimated to

¹⁰⁹ Budget Speech, 2019 pg. 25.

¹¹⁰ World Health Organisation "Swaziland: Universal Health Coverage - Leaving No One Behind in the Kingdom of Eswatini" 13 February 2019 (retrievable [here](#)) (last retrieved 10 February 2020)

be E2.2bn, which fails to meet the 15% budget allocation threshold for health as required by the Abuja Declaration on HIV, Tuberculosis and Other Related Infectious Diseases.¹¹¹

89. Frequent medicine shortages are reported. For example, in October 2017, the Ministry of Health's Chief Pharmacist noted distribution challenges which resulted in a shortage of medicines in hospitals including antiretroviral treatment to prevent mother-to-child transmission of HIV. Medicine shortages have reportedly been due to a range of factors, including constraints in the health budget, failure to pay suppliers, breakdown in communication between health facilities and the Central Medical Stores.¹¹²
90. Eswatini still has the highest HIV prevalence in the world.¹¹³ HIV prevalence is estimated at 27.4% of the adult population.¹¹⁴ It is estimated that 85% of people living with HIV are on antiretroviral treatment.¹¹⁵ Although increased access to publicly funded antiretroviral treatment helped, the stigma attached to the HIV pandemic remains high and serves as a barrier to HIV treatment and testing. Knowledge about HIV prevention among young people also remains low.¹¹⁶ The widespread effects of HIV need to be addressed with adequate budgetary allocations to assist those affected.
91. While much attention has been given by sub-Saharan governments, including Eswatini, to communicable diseases such as HIV, other diseases, such as diarrhoeal diseases, malaria and TB and non-communicable diseases (NCDs), have remained neglected for many decades. Many studies note an unnoticed, unrecorded and unabated increase in non-communicable conditions mainly diabetes mellitus, cardiovascular disease, hypertension, respiratory problems and HIV-related cancers like Kaposi's sarcoma. The associated major risk factors are alcohol and tobacco consumption, physical inactivity and unhealthy diet. It is concluded that a rise in non-communicable conditions in the country requires an intersectoral approach to ensure effective and sustainable prevention and control.¹¹⁷ Despite this, the pattern in the last years has remained unchanged.¹¹⁸
92. In particular, the country has experienced a growing number of cases of cervical cancer linked to the high rates of HIV prevalence.¹¹⁹ The country's National Health Policy noted

¹¹¹ Budget Speech, 2019 pg. 25. Abuja Declaration on HIV/AIDS, Tuberculosis and Other Related Infectious Diseases, adopted at African Summit on HIV/AIDS, Tuberculosis and Other Related Infectious Diseases, Abuja, Nigeria, 24-27 April 2001, OAU/SPS/ABUJA/3, (retrievable [here](#)) (last retrieved 10 February 2020)

¹¹² Reported in *Sunday Observer* 22 October 2017 and referred to in "Shortage of HIV Drugs for Babies" *Swazi Media Commentary* 24 October 2017 (retrievable [here](#)) (last retrieved 10 February 2020)

¹¹³ Chepkemai, Joyce "Countries With the Highest Rates of HIV/AIDS" *WorldAtlas*, 21 January 2019, (retrievable [here](#)) (last retrieved 10 February 2020)

¹¹⁴ UNAIDS "Country Factsheets: Eswatini, 2017" (retrievable [here](#)) (last retrieved 10 February 2020). Men aged 15-49 years have an estimated HIV prevalence rate of 19.3%, whilst women are estimated to have a prevalence rate of 35%.

¹¹⁵ Ibid.

¹¹⁶ Ibid. Knowledge about HIV prevention among young people aged 15-24 is estimated at 49.53%, based on MICS data of 2014.

¹¹⁷ WHO, "Addressing key determinants of non-communicable diseases using an intersectoral approach: the Swaziland experience" 2013 (retrievable [here](#)) (last retrieved 10 February 2020)

¹¹⁸ World Health Organisation, "Non-communicable Diseases (NCD) Country Profiles, 2018" (retrievable [here](#)) (last retrieved 10 February 2020)

¹¹⁹ James Howlett "Swaziland to Use IAEA Recommendations to Address its Growing Cancer Burden" International Atomic Energy Agency, 2017 (retrievable [here](#)) (last retrieved 10 February 2020)

that cervical cancer accounts for 43.1% of all cancer among women.¹²⁰ However, treatment including chemotherapy and radiotherapy are not available, and hysterectomies for cervical cancer can only be performed in a handful of public hospitals.¹²¹ This reiterates the need to make treatment available in private and public hospitals.¹²²

93. Comprehensive sexual education is not provided for in schools. Women are not allowed to make decisions in a marriage about whether to have children and are supposed to always be accompanied by their husband or a male family member to medical visits when concerning sexual and reproductive health issues.
94. Because abortions are illegal in most of the circumstances, it is difficult to say accurately how many unsafe abortions are performed in the country. There is also the risk of being arrested in the event one attempts or succeeds to have an abortion.¹²³ In August 2018 the Times of Swaziland reported that every month, nurses at the Raleigh Fitkin Memorial Hospital in Manzini attended more than 100 cases of young women who had committed illegal abortions. Many of the deaths were the result of haemorrhaging, while others resulted from the patient's delay in seeking medical treatment for other complications stemming from illegal terminations. However, even in medical cases which are permitted by law, it is very difficult to access abortion services as the medical staff is afraid of the charges, as performing, receiving or participating in an abortion carries a maximum sentence of life imprisonment. While section 15(5) of the Constitution permits abortions on medical and therapeutic grounds, and in cases where the pregnancy resulted from rape, there are no formal regulations in place. Doctors still risk criminalisation in practicing medical abortions in those cases.
95. The quality of health services in Eswatini is inadequate, including capacity of medical staff, emergency medical services and equipment, especially in rural areas. One-stop centres for victims of gender-based violence have been established, but they still need to be properly equipped (rape kits) and supported with adequately trained doctors and nurses to ensure the SODV Act's implementation. No other psycho-social services for rape survivors are provided at a decentralised level. There is a lack of health facilities which are accessible and equipped for persons with disabilities (i.e. no ramps to access buildings, no Braille printed material, no sign-language interpreters). Traditional healers remain unregulated.
96. The provision of health care services to LGBTQIA+ individuals is very scarce, which is a result of stigma and discrimination. The reproductive health rights of LGBTQIA+ persons are not respected as the health service is gender binary based. Trans-diverse people are not recognised and not included in the National Health Policy; they cannot access medical supplements/ hormones. Lesbian women do not have access to dental dams amongst other

¹²⁰ Kingdom of Eswatini, Ministry of Health and Social Welfare, *Swaziland National Health Policy* pg. 8. (retrievable [here](#)) (last retrieved 10 February 2020)

¹²¹ Howlett J "Swaziland to Use IAEA Recommendations to Address its Growing Cancer Burden" International Atomic Energy Agency, 2017 (retrievable [here](#)) (last retrieved 10 February 2020). See also Malambo N "It Would have been Better if I had Never Known: Why Swazi Women Avoid Cancer Screening" International Development Research Centre, 2017 (retrievable [here](#)) (last retrieved 10 February 2020); Medicins Sans Frontieres, "International Activity Report, 2018" (retrievable [here](#))

¹²² Southern Africa Litigation Centre *Tackling Cervical Cancer Services for Women in Southern Africa*, October 2012 (retrievable [here](#)) (last retrieved 10 February 2020)

¹²³ *Swazi Media Commentary* "Swaziland: Kingdom's Confused Law on Abortions" 27 March 2018 (retrievable [here](#)) (last retrieved 10 February 2020)

things as the Government only provides condoms. The country needs to create an environment that allows gender-affirming healthcare.¹²⁴

97. Sex workers continue to be harassed and arrested for carrying condoms at night and are discriminated against when accessing health care services.

Recommendations

- A. The State must ensure adequate quantity and quality of health services, including emergency medical services and equipment, both in public and private facilities, health services and facilities in prisons and in the clinics of rural areas.**
- B. The State should amend all legislation in the health and employment sectors to include provisions prohibiting discrimination against persons based on health status, disability, gender identity or sexual orientation.**
- C. Health facilities and services should be easily accessible to people with disabilities.**
- D. The State should amend the existing training manual that is used by the ministry of health to train clinicians about Key Populations, to reflect the LGBTQIA+ community in full, and should permit and provide access to gender affirming health services and medicinal products for all genders.**
- E. The State should take adequate action to address the risk factors for non-communicable diseases and their determinants and make cervical cancer treatment available.**
- F. The State should adhere to the Swaziland National Multisectoral HIV and AIDS Health Strategic Framework of 2018-2023.**
- G. The State should decriminalise abortion and provide safe abortion and post-abortion care services. As a temporary measure, the State should guarantee safe medical abortions in the cases contemplated in the Constitution and provide guidelines for doctors on the procedures for abortions.**
- H. The State should ensure the decentralisation of maternity services to rural clinics and improve the quality of maternity services.**
- I. The State should properly equip one-stop centres and decentralise other psycho-social services for rape survivors and ensure that police posts function properly as GBV referral mechanisms.**
- J. The State should ensure that there are no stock outs in clinics of essential medicines and antiretroviral medication.**
- K. The government must provide access to sex education, including access to information and tools for sexual reproductive health rights and ensure respect the rights of women and girls to make autonomous decisions concerning their health and their bodies. The State should create youth friendly health centres for easy access to such services.**
- L. Traditional medicine practices need to be regulated and controlled to avoid malpractices and abuse.**

¹²⁴ There is an existing training manual that is used by the Ministry of Health to train clinicians about Key Populations, however there is a need to revise the language, so that it is reflective of the LGBTQIA+ community in full.

Right to Housing, Property and Security of Tenure

98. There is a need to re-evaluate Eswatini's existing land laws. Despite constitutional protections and international standards, many citizens are at risk of arbitrary eviction. Women are especially vulnerable.
99. After independence, the land tenure system has become dual, with a third of the land being Title Deed Land that can be held by private owners by freehold title or by concession. The other two thirds are Swazi Nation Land (SNL), that is communal land held in trust for the nation by the King through Chiefs who allocate usufruct rights to individual Swazi families or registered in the name of a particular branch of the government.
100. Despite sections 20 and 28 of the Constitution that guarantees women equal rights and protections against discrimination,¹²⁵ Swazi law and custom limits the right to land for cultivation and residence to the male head of a household and he can pass this land use on to his sons, while daughters have no claim to inheritance. Women may be allowed to stay on the property, but they can be evicted by their husbands, family members or chiefs for allegations such as witchcraft or adultery and be sent to her family home. Moreover, if the women are single, they cannot get land, and if they live with the family, they can be asked to leave the house if they fall pregnant outside of wedlock.
101. By allowing customary discriminatory practices to remain in effect, Eswatini is violating section 252(2) and (3) of the Constitution which provide, read together, that customary law is valid only to the extent that it is consistent, inter alia, with the Constitution¹²⁶ and its international commitments, in particular the Maputo Protocol which provides for equality in marriage and inheritance.¹²⁷
102. The Chiefs have the power to allocate and evict individuals and families from communal land: allocation of land can be changed from one family to another and cattle can be confiscated. The lack of formal documentation in the assignment of the communal land and demarcation of boundaries of properties under the kukhonta system makes it difficult for individual evictions to be challenged. This situation is exacerbated when it comes to LGBTQIA+ identifying individuals who can be evicted by Chiefs upon realisation of their sexual orientation or gender identity/expression or political affiliation.

¹²⁵ Article 20(2) states "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". Article 28 concerns the "rights and freedoms of women" and provides as follows: "(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"

¹²⁶ Article 252(2) and (3) of the Constitution provide as follows: "(2) **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; (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." (emphasis ours)

¹²⁷ Articles 20 on widow's rights and 21(1) on the right to inheritance, provides that: "a widow shall have the right to continue to live in the matrimonial house. In case of remarriage, she shall retain this right if the house belongs to her or she has inherited it."

103. Lack of transparency in the allocation of title deed land and concessions have meant that communities who lived on the land for many years believing that it is Swazi Nation land, can be evicted if such land is subsequently allocated through title deed to others. Many of the large-scale evictions that have taken place are accordingly at the instance of agricultural and other companies of communities from former Swazi Nation Land.¹²⁸
104. Further, despite the requirements in section 211(3) of the Constitution requiring due process and compensation, there continues to be evictions without compensation and alternative accommodation being provided.¹²⁹
105. In a recent development, sixty-one people (including children) were forcibly evicted from their homes at a farming area in Embatjeni to give way to a privately owned development.¹³⁰ The settlements in which the families lived for fifty-seven years were demolished in the presence of representatives of the company that allegedly owns the property, the Sheriff of the High Court and armed police officers.¹³¹ Reportedly, the people affected were not given adequate notice before the eviction took place and they were not provided with alternative housing.¹³² Women are suffering a disproportionate impact, given their difficulties in accessing alternative land, housing and economic resources and the burden of the care for the children.
106. Civil society has recommended that the Prime Minister declares a nationwide moratorium on all evictions until adequate legal and procedural safeguards are in place to ensure that all evictions comply with international and regional human rights standards. This should include a public announcement and immediate measures that the government should take to ensure that those under threat of eviction are protected. Civil society has also urged the Prime Minister to immediately provide access to effective remedies and compensation and reparation for forcibly evicted families in the Malkerns and Nokwane areas.
107. Intellectual property rights are recognised by the Copyright and Neighbouring Rights Act No. 4 of 2018 but no regulations have been put in place to implement it.¹³³ The law is important to protect the intellectual property rights of writers, musicians, artists and performers in Eswatini. The Eswatini Intellectual Property Tribunal Act No. 18 of 2018 is tasked with hearing all disputes relating to intellectual property rights.

Recommendations

A. The State should amend the laws governing the land tenure system to confer security of land ownership and protect communities from unlawful evictions.

¹²⁸ The nature and impact of such recent evictions in Malkerns and Nokwane are detailed in a recent report by Amnesty International. Amnesty International, *"They Don't See Us as People": Security of Tenure and Forced Evictions in Eswatini*, 30 August 2018 (retrievable [here](#)) (last retrieved 10 February 2020)

¹²⁹ Section 211(3) of the Constitution provides "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."

¹³⁰ See Amnesty International "Swaziland: housing demolitions leave dozens homeless" 10 April 2018 (retrievable [here](#)) (last retrieved 10 February 2020)

¹³¹ Ibid.

¹³² Ibid.

¹³³ A copy of part of that Act can be retrieved [here](#) (last retrieved 12 February 2020)

- B. The State must speed up and finalise the law reform processes relating to the Administration of Estates Bill, Marriages Bill and draft Land Policy.**
- C. The State should agree to sign a moratorium on forced evictions until adequate legal and procedural safeguards are in place to ensure that all evictions comply with international and regional human rights standards.**
- D. The State should provide support to persons who have been evicted immediately by providing access to effective remedies and reparations.**
- E. The State should enact regulations for the Copyright and Neighbouring Rights Act of 2018 to defend intellectual property rights.**

Right to Work Under Just and Equitable Conditions

108. Workers are still at risk of exploitation and many protests have been taking place in recent years to demand an increase in the minimum wage.¹³⁴
109. Citizens face administrative barriers and lack of information, which limits business development and hinders progress from the informal to the formal economy, especially for youth and women.
110. Target 8.7 of the Sustainable Development Goals (SDGs) calls on governments to: Take immediate and effective measures to eradicate forced labour and secure the prohibition and elimination of the worst forms of child labour. In 2014, the ILO adopted the Forced Labour (Supplementary Measures) Recommendation, which in section 3(d) requires member states to address child labour, protect children from forced labour and promote educational opportunities for children.
111. In 2017, the ILO Committee requested that the State's finalises the Employment Bill, which had already been in progress since 2009, and that the Bill includes provisions on the prohibition of the worst forms of child labour, including penalties.¹³⁵ The Committee further urged that the Bill sets out the types of hazardous work prohibited for children. The ILO Committee was particularly concerned that children were involved in a range of labour practices, including cotton picking, sugarcane harvesting, herding, domestic work, hazardous agricultural work and work in transport services, but that there was no data kept on the number of children involved in such labour practices and the State's interventions to address such practices.
112. Workers who are requested to provide labour for the monarchy system are not compensated (they are often only given food and alcohol) nor do they work in safe conditions. In some cases, people that refuse to work for the monarchy or chiefs are subjected to fines or eviction. The judiciary does not provide recourse in these matters which are deemed to fall outside the jurisdiction of civil courts because the relate to Swazi law and custom.

¹³⁴ *Peoples Dispatch* "Hundreds protest in Swaziland demanding an end to corruption and anti-worker policies" 6 July 2018 (retrievable [here](#)); *AFP* "Eswatini workers clash with police in salary protests" 2 October 2019 (retrievable [here](#))

¹³⁵ *Worst Forms of Child Labour Convention, 1999 (No. 182) - Eswatini Observation* (CEACR) - adopted 2016, published 106th ILC session (2017)

113. In 2017, the ILO Committee again drew the State's attention to the nonconformity of the Swazi Administration Order No. 6 of 1998, which required Swazis to engage in compulsory work, with the Convention.¹³⁶ Although the Order had been declared null and void by the Court, the forced labour practices were rooted in the customary practice of "Kuhlehla" (rendering services to the local chief or king) without there being a text regulating the nature of this work or rules determining the conditions under which such work is required or organized and which emphasises the voluntary nature of the request.
114. The government often requests artists to perform at cultural events without formal contracts and adequate compensation and the sector is generally not regulated.
115. Women make up about 59% of those in self-employment and about 70% of small business owners in the country. However, women have fewer economic opportunities than men.
116. In 2019, the ILO repeated its call to the State to amend section 96 of the Employment Act of 1980 which provides for "equal pay for equal work", by defining "work of equal value" as provided for under the Equal Remuneration Convention in order to tackle gender segregation in the labour market.¹³⁷ The ILO Committee requested the State to adopt the Employment Bill and that the Bill reflect the principle of equal remuneration for men and women for work of equal value enshrined in the Convention, allowing for the comparison not only of work that involves similar or substantially similar qualifications, skills, effort, responsibilities and conditions of work but also of work of equal value.
117. Most women work in the manufacturing industry or form part of the informal working environment such as domestic work or street vending. Economically they are not stable because of low wages, which affects their access to education, health, clean water and sanitation.
118. There is a need for government to enforce legislation and policy in favour of women in the labour environment. The working spaces must have nursing rooms for one-hour nursing, and all working spaces must respect safety and security of the staff with adequate protective measures and standards. The fabrics in industrial sites are harmful when inhaled by women and affect their health including their menstrual cycles.
119. Cross-border traders are often harassed at the border posts by officers requesting payment for amounts not due by the tax laws. The government should carry out positive actions to reach the street vendors and cross-border vendors to prevent exploitation. Informal traders, especially women, must pay for licenses, access to public toilets, and access to water, and experience increased security risks.
120. There are no proper health and safety inspections to ensure the safety of workers. This is worse for the residential halls that are provided by companies, such as the Simunye Domestic Workers Halls, which are seldom inspected.

¹³⁶ *Forced Labour Convention, 1930 (No. 29) - Eswatini Observation* (CEACR) - adopted 2016, published 106th ILC session (2017)

¹³⁷ *Equal Remuneration Convention, 1951 (No. 100) - Eswatini Observation* (CEACR) - adopted 2019, published 109th ILC session (2020)

121. The Employment Act No. 5 of 1980 makes specific provision for domestic employees, stating specifically that they may not work for more than 8 hours a day, are entitled to breaks and adequate rest periods, and payment for overtime work.¹³⁸ The Regulation of Wages (Domestic Employees) Order of 2016 builds on this and provides for hours of work, overtime, paid public holidays, sick leave, maternity leave, compassionate leave, uniforms and protective clothing, and a basic minimum wage.¹³⁹ In practice these provisions are not enforced and few employees are aware of or abide by these provisions.
122. The Employment Act No. 5 of 1980 contains some positive provisions which require wider publication. The Act prohibits discrimination and termination of employment on grounds of “race, colour, religion, marital status, sex, national origin, tribal or clan extraction, political affiliation or social status.”¹⁴⁰ In 2019, the ILO Committee asked the State to take steps to adopt the Employment Bill, which would complement section 29 of the Employment Act of 1980 by providing for additional grounds of discrimination, such as gender, family responsibilities, ethnic origin, pregnancy or intended pregnancy, sexual orientation, political opinion, social origin, health status, real or perceived HIV status, age or disability, conscience and belief.¹⁴¹
123. The Employment Act’s provisions on maternity leave require improvement. Whilst a woman is allowed at least 12 weeks’ maternity leave and a nursing break at work, only two weeks are full pay and there is no additional payment obligation on employers.¹⁴² The Act prohibits dismissal on the ground of pregnancy.¹⁴³
124. A recent study by the Swaziland Economic Policy Analysis and Research Centre (SERPAC) showed that 16.2% of employees in the private sector experienced sexual harassment, and 17.6% in the NGO sector.¹⁴⁴ According to the study about 15.5% of employees in the private sector witnessed colleagues experiencing sexual harassment, and another 12.3% witnessed harassment in the NGO sector.¹⁴⁵ The study also revealed that there were many incidents where sexual harassment was not reported.¹⁴⁶ According to the study, a large factor behind the low rates of reporting is that employees are unaware of the structures and procedures to follow and most victims only have circumstantial evidence to support their claim, making it very difficult to prove when there are no witnesses.¹⁴⁷ The study also revealed that many employees have little knowledge about sexual harassment.¹⁴⁸ The study recommended law

¹³⁸ Employment Act No. 5 of 1980 s 108. A copy of the Act can be found [here](#) (last accessed 10 February 2020)

¹³⁹ Legal Notice No. 186 of 2016.

¹⁴⁰ Employment Act 1980 s 29, s 35.

¹⁴¹ *Discrimination (Employment and Occupation) Convention, 1958 (No. 111) - Eswatini Observation* (CEACR) - adopted 2019, published 109th ILC session (2020)

¹⁴² Employment Act 1980 s 102, s 103, s 107.

¹⁴³ Employment Act 1980 s 105.

¹⁴⁴ Swaziland Economic and Policy Analysis Research Centre *Sexual Harassment in the Workplace in Swaziland: A Focus on the Private Sector and Non-Governmental Organisations* 30 January 2018 (retrievable [here](#)) (last retrieved 10 February 2020) pg. v.

¹⁴⁵ Ibid.

¹⁴⁶ Ibid, pg. vi.

¹⁴⁷ Ibid.

¹⁴⁸ About 50% of employees recognise verbal comments or physical abuse as elements of sexual harassment, less than 30% showed any understanding about how such actions can lead to a hostile work environment and few recognised more subtle displays of sexual harassment such as displaying indecent photos in the workplace. The study found “that if the sexual harassment behaviour is not directly invasive to the person’s body, or verbally derogating to the person, employees tend to ignore, pardon or entirely dismiss all other behaviours as not qualifying as sexual harassment. Ibid, pg. 46.

reform and the establishment of an independent institution to manage cases and reports of sexual harassment.¹⁴⁹ The research report reiterated the need for Eswatini to take legislative steps to address sexual harassment in the workplace. Sexual harassment has since been included as an offence in section 48 of the Sexual Offences and Domestic Violence Act, and there is a need to create awareness on this provision.

125. For domestic workers, public awareness needs to be conducted on sexual harassment. The social dialogue with regards to domestic workers is currently housed in the Ministry of Labour, and instead should be moved to the Deputy Prime Minister's office. CSOs should be included in the list of stakeholders who currently sit on this platform.

Recommendations

- A. The State should remove structural barriers (lack of education, access to resources, financial support, and information) that prevent women and youth from participating in the formal economic arena.**
- B. The State should take measures to address child labour, including by supporting children to remain in school.**
- C. The State should monitor and fast track the finalisation and the implementation of the Citizens Economic Empowerment Bill.**
- D. The State must guarantee safe trading places for women with clear and adequate information for cross-border and informal traders and develop a policy that will promote women in business, regulate support measures for women in business and call for improvement of trading investment policies in Eswatini to include women, including setting up business grants for women.**
- E. The State should review the Employment Act of 1993 to enhance maternity leave provisions.**
- F. The State should ensure that existing employment protections in the law are properly enforced and should ensure that there are enough inspectors to monitor compliance.**
- G. The State should ensure that the minimum wage is able to meet the adequate standard of living.**
- H. Workers who are requested to provide labour for the monarchy or chiefs should be free to choose to participate and be fairly compensated for their labour.**
- I. There is need of an Arts and Culture Act to formalise the working conditions for the sector and avoid exploitation.**
- J. The State must ratify the ILO Convention on Domestic Workers on decent work. Domestic workers must be covered under the workmen's compensation scheme. The State must carry out information and sensitisation campaigns to prevent exploitation and abuse of domestic workers.**
- K. Working spaces should be responsive to the needs of women including in the provision of nursing rooms and toilets.**
- L. The Public Order Act must be applied in a manner that recognises the right of workers to strike.**
- M. The State should implement the recommendations of the ILO Committee in relation to the Employment Bill, to ensure that the country is compliant with ILO Conventions.**

¹⁴⁹ Ibid, pg. 49.

Right to Development

126. In a country where extreme poverty affects more than 63% of the population, youth unemployment rate (15-24 years) accelerated to 54.78% in 2017 from 52.96% in 2008 and HIV is still estimated at 27%, affecting the population between ages 15-49,¹⁵⁰ the national budget has been criticised by the CSOs for not being pro-poor, equitable, or focused on job creation, health and the social needs of the people.
127. CSOs are concerned that the exploitation of natural resources by companies is not well regulated and monitored by the government in the interests of the local communities. For example, the building of water infrastructure to supply the sugar plantations and the restriction of access to water for communities; or the biosafety and productivity risks associated with the introduction of genetically modified organisms (**GMO**). The promotion of GMO by the State falls short of achieving food security for the subsistence farmers since production costs are high and GMOs are not environmentally friendly. Biodiversity is threatened when the eco-system must yield to the benefit of farmers. Exploitation of natural resources and huge infrastructure and development programmes are not carried out according to the right to Free, Prior and Informed Consent (**FPIC**) of local communities.
128. Local communities are often vulnerable to agreements with sugar companies that link commercial agreements with the promise of bringing water. The State must ensure that a certain number of hectares is allocated for maize and legume production to feed the families whose land was allocated to sugar cane plantation and that the Sugar Cane Association takes care of the major maintenance for the potable water supply schemes.
129. The economic benefit achieved from the exploitation of natural resources and private investments is not transparent and the King maintains high shares in the major economic interventions.¹⁵¹ Although the Auditor General Audits SNT accounts each year, its report is not made public.¹⁵² Citizen consultation on the budget is limited and guided by already-defined priorities.
130. With more than 70% of the population living on subsistence farming, poverty is closely tied to food insecurity. Citizens are vulnerable to drought, exacerbated by climate change, and tension between formal and informal markets.¹⁵³ The government should strengthen the small-scale farmers with business opportunities and market links as opposed to facilitating import of food that can be made available locally. Agriculture extension service providers of the Ministry of Agriculture are not structured and equipped enough in comparison with other state agents such as the National Marketing Board and National Maize Corporation.

¹⁵⁰ Nokuthala Mamba, “Eswatini Faces a Youth Unemployment Crisis” 29 January 2019 (retrievable [here](#)) (last retrieved 10 February 2020); World Food Programme, “Eswatini Country Brief” May 2018 (retrievable [here](#)) (last retrieved 10 February 2020)

¹⁵¹ Nellie Bowles, “Swaziland’s Ngwenya mine extracts its ore and exacts its price” *Mail and Guardian*, 31 August 2012 (retrievable [here](#)) (last retrieved 10 February 2020)

¹⁵² It is reported that E1 billion was the entire budget for the royal households allocated for the financial year 2018 – 2019. The sum compares to the E2 billion budgeted for health; E1.5 billion for Defence and E1.4 billion for Agriculture. *Swazi Media Commentary*, “Swaziland people pay E1 billion for absolute King’s upkeep, but it’s kept a secret” 25 March 2019 (retrievable [here](#)) (last retrieved 10 February 2020)

¹⁵³ World Food Programme, “Eswatini Country Brief” May 2018 (retrievable [here](#)) (last retrieved 10 February 2020)

This leaves small holder farmers to fend for themselves and make uninformed decisions as a result of inadequate information flow and extension provision.

131. There is a huge gap in terms of supporting women to farm, for instance, for domestic use and family basic income. Women are generally not given preference when it comes to land acquisition, which hampers their ability to feed their families.
132. Where the land is given to families to farm, there is no access to water in rural areas, and the rivers that families rely on have run dry because of climate change. The government must give priority to creating water harvesting systems and water treatment plants. The impact of lack of access to water is disproportionately on women and children, who must walk long distances to fetch water. The government should strengthen the mandate of the Rural Water Supply Branch to provide potable water in rural areas and peri-urban areas. The Rural Water Supply Branch plays a vital role in water access in rural areas or communities but lacks recognition and budget allocations (equipment, vehicles, Human Resources). In many rural communities Rural Water Supply Branch has limited resources to bring water, while the Water Service Corporation has been allowed to construct water infrastructure but their services are not affordable for the majority of the population (in addition to fixed charges, consumption rate and connection fee, the beneficiaries are still responsible for purchasing all the materials from the main line to the household).

Recommendations

- A. The State must ensure a human rights-based approach to every development policy, programme, regulation and agreement and promote supportive measures for the implementation of the Constitution and international human rights mechanisms in the development of the country. It shall guarantee that private investments are not detrimental to the right to food, water, adequate housing and healthy environment of the local communities.**
- B. The State must fulfil the Sustainable Development Goals 2030 and all development targets, respecting the Abuja Declaration signed in 2001 by allocating at least 15% of the annual budget to health, Maputo Declaration on agriculture and food security by allocating 10% to agriculture development, the 2003 UNESCO Convention for safeguarding and promotion of intangible cultural heritage to protect and promote arts, the SADC protocols allocating resources to eliminate gender barriers in public and private sectors, and ratified ILO conventions, providing equal and equitable remuneration.**
- C. The National Budget should be pro-poor, equitable, focus on job creation, fight discrimination, and meet the health and social needs of the people.**
- D. The State should urgently develop policies for increased access to and sustainable use of water resources, including the strengthening of the mandate of the Rural Water Supply Branch to provide potable water in rural areas and peri-urban areas.**
- E. The National Budget should prioritise food security programmes and small holder farmers support, giving priority to local products and markets and reinforcing the extension services of the Ministry of Agriculture**
- F. The State should adhere to the right to Free, Prior and Informed Consent (FPIC) of local communities for the exploitation of natural resources and in reference to the right to development.**
- G. Development programmes should be promoting gender equality and women's economic empowerment. The State must ensure the removal of the structural barriers that prevent**

women from participating in the economic arena: ensure access to land and property rights, ensure access to training and educational facilities and decentralise services in rural areas, promote favourable financial service agreements with finance institutions, give priority to women for seed grant business programmes, ensure access to information in rural areas for registering businesses, accessing grants, scholarships and other market opportunities.

Right to a Healthy and Sustainable Environment

133. Many common social practices in Eswatini like littering, dumping or burning of waste and uncontrolled fires are harmful to the environment and health. Environmental education is not included in school curricula and no public sensitisation programmes are carried out in rural and urban communities on the effect of pollution on health and climate change.
134. The waste collection and disposal system are limited.
135. The Environment Management Act No. 5 of 2002 imposes low fines, resulting in companies violating the law because the fine is not a deterrent.¹⁵⁴ Similarly, the violation for commencing a project without the requisite environmental approval is E100,000.00, which lacks deterrent effect.¹⁵⁵
136. There is very little evidence available on environmental degradation due to the absence of investigative journalism and media freedom in the country as well as a general lack of environmental consciousness of the local communities. However, some cases come to the attention of the public, for example in relation to harmful practices related to use of chemicals by distillers that have been repeatedly denounced in the past ten years.¹⁵⁶ There has also been reports of improper and harmful clean-ups of asbestos mines.¹⁵⁷

Recommendations

- A. The State should impose harsher penalties in the Environment Management Act of 2002 and should ensure implementation of the provisions of the law, including the provisions relating to access to information.**
- B. The State must include environmental education in the curricula in schools and training programmes in rural and urban communities on the effect of pollution on health and climate change and encourage correct behaviours on waste disposal and recycling.**
- C. Endangered species must be adequately protected.**

¹⁵⁴ Section 69. A copy of the Act can be retrieved [here](#)

¹⁵⁵ Ibid, section 32(2)

¹⁵⁶ James Hall, "Swaziland Stands Up to Polluters" 28 October 2002 (retrievable [here](#)) (last retrieved 10 February 2020). Another molasse spillage happened in 2014. Ackel Zwane, "We're not to blame for molasses" *Observer on Saturday*, 1 November 2014 (retrievable [here](#)) (last retrieved 10 February 2020)

¹⁵⁷ An article published in the *Observer* in January 2019 exposed a dumping in the river that killed fishes which children in the nearby communities were eating. Sizwe Dlamini "Poison Kills Hundreds of Fish in Mlumati" 9 January 2019 (retrievable [here](#)) (last retrieved 10 February 2020)

Elimination of Harmful Practices

137. Civil Society acknowledges the legislative measures taken such as the prohibition against harmful cultural practices in sections 10 and 42 of the Sexual Offences and Domestic Violence Act and sections 14 and 15 of the Children's Protection and Welfare Act.
138. However, there has been insufficient efforts to train all citizens and civil servants on the provisions in these laws. The laws have further not resulted in a change in attitudes or increased respect for the rights of women, children and LGBTQIA+ persons.
139. For rural women and young women and girls, patriarchy has not been specifically addressed. There should be increased public awareness about the harmful practices perpetrated against women and girls in traditional institutions and platforms. There are strong messages that continue to perpetuate the myth that the Sexual Offences and Domestic Act was enacted to erode traditional Swazi culture. An additional group who are subject to harmful practices are sex workers, who are continually subjected to police harassment and discrimination in health services.
140. There is a need to eliminate harmful practices, especially for sexual and gender minorities who are more at risk of mental health issues. There is a need to adequately train the staff of the one-stop-centres in each region to be able to support victims and survivors of assaults, irrespective of their occupation, sexual orientation or gender identity. Counselling and psychological services need to be ensured to treat distress caused by various forms of abuse, violence and discrimination perpetrated against girls and women and LGBTQIA+ individuals. Currently, only one free counselling service has been established for survivors of gender-based violence at the one-stop centre in Mbabane, and the service is mainly provided by CSOs due to insufficient State budget.
141. Women and LGBTQIA+ persons enjoy the culture of Eswatini but do not enjoy the harmful practices associated with the culture, for instance the lack of consent from the female during the process of "arranged marriages" or "Kutekwa", where the family instructs your late husband's brother to be your husband in the guise of protecting the brother's assets including the wife and children, as well as "Kungenwa", where a last born child is not allowed to leave the family when they marry. An unmarried woman in a family is not allowed to have a voice in the family. If a child is born out of wedlock, the mother must pay a price for the child to be buried in the family cemetery, however a father can bury the child without paying.
142. When it comes to HIV, some men believe in harmful and degrading practices and myths in relation to the spread of the virus. There is a cultural norm of men demanding sexual intercourse immediately after childbirth to which the spouse cannot oppose. The issue of marital rape – clearly addressed in section 151 of the SODV Act - is still very contentious in the country. Traditional authorities are not assisting to educate men on the SODV Act, when they say that men who have paid lobola (the price given to the woman's family to marry) have supreme powers over the women.
143. Harmful practices against people with albinism also continue, particularly during elections times. There is a need to strengthen protection measures for people living with albinism

because of harmful practices that lead to their killing and the high levels of discrimination faced by them. Investigating and prosecuting murders of persons with albinism must be prioritised.

Recommendations

- A. The State should actively discourage harmful practices, including harmful cultural practices and discriminatory practices, with awareness actions at all levels, including public statements, dialogues with traditional structures, media campaigns and revision of educational curricula.**
- B. The State should budget for training of all public servants on the provisions of the Sexual Offences and Domestic Violence Act and the Children’s Protection and Welfare Act.**
- C. The State should increase access to non-discriminatory psycho-social services for survivors of gender-based violence.**
- D. The State should ensure legal protection from hate crimes, particularly against persons with albinism and LGBTIQIA+, through operationalising section 20 of the Constitution.**

Rights Relating to Marriage

- 144. Under Swazi customary law, children under the age of 18 can be forced into ‘arranged marriages’ (“kutekwa”). Even though section 37 of the Sexual Offences and Domestic Violence Act, and section 15 of the Children’s Protection and Welfare Act indirectly prohibit forced marriages especially of children, the customary practice is still in effect. There is an urgent need to finalise the Marriages Bill to clearly prohibit child marriages.
- 145. Women do not enjoy the same rights as men to seek separation, divorce or annulment of marriage under Swazi Law and Custom. Currently it is complicated to divorce or to annul a customary marriage, and it is further incongruent with the section 20 of the Constitution which prohibits discrimination based on gender. The abolition of marital power by the High Court is a step in the right direction,¹⁵⁸ however, Swazi law and custom still creates a patriarchal dynamic e.g. if a man dies the woman needs the consent of the deceased husband’s family to re-marry, whilst a man can take a wife as he pleases. Moreover, in case of separation, divorce or annulment of marriage, women and men do not have reciprocal rights and responsibilities towards their children, as the children “belong” to the father according to Swazi Customary Law, in contradiction with the Children Protection and Welfare Act which ascribed duties to both parents equally.
- 146. Because Swazi Law and Customary law is not codified, it proves impossible to monitor and regulate the interrelation (equality and respect) between men and women, and subsequently leaves women open to abuse. Codification will assist to bring customary law in line with the Constitution and will help resolve the many issues relating to the divorce and annulment, as well as the estate sharing. Section 34 of the Constitution specifically requires that parliament, as soon as possible, enact legislation regulating the property rights of spouses.

¹⁵⁸ *Sacolo and Another v Sacolo* (1403/16) [2019] SZHC 166, 30 August 2019 (retrievable [here](#)) (last retrieved 11 February 2020). This case held that the common law doctrine of marital power discriminates against married women and offends their constitutional rights to dignity and equality. A summary of this case can be found [here](#): Southern African Litigation Centre, “Press Statement: Eswatini High Court Declares Doctrine Of Marital Power Unconstitutional” 30 August 2019 (last retrieved 12 February 2020)

Section 252 of the Constitution further notes that only Swazi customary law which is not repugnant to natural justice or morality is recognised as valid law in the country.

147. According to common law and Swazi customary law, the wife must follow the domicile of the husband, contrary to the Maputo Protocol.¹⁵⁹
148. Women and men do not have equal rights with respect to the nationality of their children as required in the Maputo Protocol, as Swazi women are passing nationality to the children only if not married, otherwise it is always only the husband who determines the nationality.¹⁶⁰
149. According to Swazi law and custom, separation or divorce is always biased, men can initiate divorce when the woman has committed adultery or if she is said to have been practicing witchcraft, but a woman cannot initiate divorce. Matters relating to Swazi law and custom are not admissible in the High Court unless the parties exhausted the traditional structures which tend to be biased towards men and takes time.
150. When a woman is in mourning, and wearing a garment specific to mourning, she is excluded from entering specific government spaces. Widows are treated differently, especially in public offices. A woman who lost her husband is considered unclean and often asked to leave her job. Harmful practices of property grabbing and “kungenwa” by the in-laws increase the vulnerability of women and children.
151. When the house is in a matrimonial extended family place, the house does not belong to the deceased husband but his father. When a widow re-marries, she is not entitled to assets of her previous marriage. Where the sister is married, her share is disputed at family level by brothers. The argument is that she cannot take assets to people who do not belong to the family by blood. Her inheritance is where she married.
152. The Marriage Bill, if enacted, would allow a good extent of protection for women and children in coherence with the Maputo Protocol. However some current formulations of the Bill need to be amended to clearly prohibit child or forced marriage in all marriages, recognised or not, with attendant consequences (e.g. voiding, criminal sanctions); avoid any undue burden/restriction on widows/widowers on the right to remarry; and regulate the matrimonial property regime both for civil and customary law marriages.

Recommendations

- A. The State should expedite the finalisation of and consultation on the Marriages Bill and Matrimonial Property Bill. These laws should be aligned with the Constitution and Maputo Protocol.**
- B. The State should finalise amendments to the Administration of Estates Act.**
- C. There is a need for the customary marriage process to be codified, so that it is aligned with legislative protections and the Constitution.**

¹⁵⁹ *The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (The Maputo Protocol)*, Article 6(e) provides “the husband and wife shall, **by mutual agreement**, choose their matrimonial regime and place of residence” (emphasis ours) (retrievable [here](#)) (last retrieved 11 February 2020)

¹⁶⁰ Ibid. Article 6(g) reads “a woman shall have the right to retain her nationality or to acquire the nationality of her husband”.

- D. The State should identify court judgments (precedents) in favour of women in the dissolution of marriages (under traditional and common laws) forming part of instruments to be considered in the administration of estates even when cases appear before traditional courts.**
- E. The rights and assets of all women in polygamous marriages should be protected.**

Protection of Older Persons

- 153. Older persons are particularly vulnerable due to the lack of a proper welfare system that guarantees the protection of their rights and the quality of life.
- 154. Older women face difficulties in accessing social security, a minimum wage and formal sector employment. The available institutions such as Sebenta and vocational trainings are limited and have been increasingly reduced in rural areas.¹⁶¹ There are several reports of harassment in families and older women being raped.

Recommendations

- A. The State should ratify the African Charter on the Rights of Older Persons in Africa.**
- B. The State should ensure that the provisions of the National Pension Fund Bill are adequate to guarantee the welfare rights of older persons.**
- C. The State should provide welfare systems that will secure and improve the living standards of older persons.**
- D. The adult education institutions such as Sebenta and vocational trainings should be improved to improve the skills that are needed in the current work environment for older women.**

Protection of Persons with Disabilities

- 155. In July 2015, the country published a National Disability Plan of Action for 2015-2020, following the adoption of the National Policy on Disability in 2013.¹⁶² The Plan of Action is in line with the Convention on the Rights of Persons with Disabilities (CRPD), which the country ratified in 2012.
- 156. The new Persons with Disabilities Act No. 16 of 2018¹⁶³ includes important new definitions which show a shift in thinking around persons with disabilities,¹⁶⁴ including “universal

¹⁶¹ This organisation is described online as follows “Sebenta National Institute is a non-profit making organisation (public enterprise) that provides a variety of services to enable people to achieve personal goals through Adult Basic Literacy and Non-formal Education.” See Ministry of Education and Training, “Sebenta” (retrievable [here](#)) (last retrieved 12 February 2020)

¹⁶² Office of the Deputy Prime Minister, *Swaziland National Disability Plan of Action (NDPA): 2015-2020* July 2015 (retrievable [here](#)) (last retrieved 11 February 2020)

¹⁶³ A copy of the Act can be retrieved [here](#).

¹⁶⁴ The Act defines, in section 2, “persons with disabilities” as “those who have long term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.”

design”,¹⁶⁵ “independent living”,¹⁶⁶ “reasonable accommodation”,¹⁶⁷ and “rehabilitation”.¹⁶⁸ The Act is not a full domestication of the CRPD and fails to articulate legal capacity rights. The Act’s provisions recognising rights to healthcare¹⁶⁹ and education¹⁷⁰ on an equal basis with others are, however, an important development.

157. There were several reports of women with disabilities having been raped and their cases not being investigated. Children with disabilities do not have adequate assistance at home and in schools, resulting in discrimination when accessing education, and official documents do not have Braille for visually impaired persons. When public information is being developed it should take into consideration the needs of persons with disabilities.
158. The provision of mental health care services is of concern. The Persons with Disabilities Act No. 16 of 2018 does not appear to repeal the Mental Health Order No. 20 of 1978, which defines a “mental illness” as “any disorder or disability of the mind, and includes any mental disease, any arrested or incomplete development of the mind, and any psychopathic disorder” and “mentally ill person” as “a person who by reasons of some mental illness is incapable of managing himself or his affairs, or who requires care, supervision and control for his own protection or for the protection of others”.
159. The Mental Health Order has some positive provisions which are not implemented – the Order allows for Board visits to inspect institutions,¹⁷¹ and prohibits any staff member in an institution from ill-treating or neglecting patients.¹⁷² Problematically, the Mental Health Order does not allow for the institution of civil proceedings against any person unless it is proved that the person acted in bad faith or without reasonable care, and further requires any action to be launched within 6 months from the date of the action complained of, or from the date of release of the person from the institution.¹⁷³ All mental health laws should be reviewed to ensure that they are in line with the principles and provisions of the Convention on the Rights of Persons with Disabilities.
160. Eswatini has only one National Psychiatric Centre, and there are frequent reports of overcrowding, medicine shortages and lack of ablution facilities at the Centre.¹⁷⁴

¹⁶⁵ “Universal design” refers to the “design of products, environments, programmes and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialised design and shall include assistive devices for particular groups of persons with disabilities where this is needed.” (Ibid, section 2)

¹⁶⁶ “Independent living” refers to “a philosophy which postulate that persons with disabilities have the right to control their lives by making informed choices that enable them to actively participate in all aspects of society.” (Ibid, section 2)

¹⁶⁷ “Reasonable accommodation” refers of “necessary and appropriate modifications and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise of the quality of life and wellbeing on an equal basis with persons without disabilities.” (Ibid, section 2)

¹⁶⁸ “Rehabilitation” refers to “a process aimed at enabling persons with disabilities to attain and maintain their full physical, mental, social and vocational ability and full inclusion and participation in all aspects of life.” (Ibid, section 2)

¹⁶⁹ Ibid, s 33.

¹⁷⁰ Ibid, s 34.

¹⁷¹ Mental Health Order of 1978 s 9. A copy of this Order can be found [here](#) (last accessed 11 February 2020)

¹⁷² Ibid, s 16.

¹⁷³ Ibid, s 21.

¹⁷⁴ *APA News* “Eswatini: Over 100 mental patients break out of psychiatric centre” 15 February 2020 (retrievable [here](#)); Mel Frykberg, “Eswatini psychiatric nurses threaten to release patients as drugs shortage bites” *African News Agency*, 21 June 2019 (retrievable [here](#))

Recommendations

- A. Disseminate and fully implement the Disability Act of 2018.**
- B. The Curriculum should include sign language and sign language should be recognised as an official language.**
- C. The State should ensure that persons with disabilities are able to access education, land and other financial resources to enable them to enjoy independent livelihoods.**
- D. The Ministry of Health should develop sign language and other assisted devices for health practitioners to be able to assist people with disabilities.**
- E. The Ministry of Economic Planning should lead the National budget drafting team in the incorporation of the findings of the SDG Index 2016 in the development of the 2020/2021 National Budget in an effort to identify and acknowledge the gap in resources in conducting data collection and correctly design and implement a gender responsive national budget.**
- F. The State should improve access to facilities (schools, health care centres, police stations) for people with disabilities.**
- G. The State should reform the Mental Health Order Act.**
- H. The State should ratify and operationalise the African Protocol on the Rights of Persons with Disabilities.**
- I. The State should ensure adequate funding for mental health services, including mental health facilities, to address overcrowding and ensure that they are compliant with the CRPD and have enough medication.**

Discrimination against LGBTQIA+ persons

- 161. Studies in the region confirm that institutionalised criminalization of consensual same-sex sexual acts reinforces stigma and produces exclusion and marginalisation of LGBTQIA+ persons in families, churches, educational, health care and employment contexts. Such criminalisation further results in low self-esteem, higher suicide rates, substance abuse, mental illness, anxiety and stress.¹⁷⁵ Stigma and discrimination expose LGBTQIA+ people in the region to violence and abuse at all levels.¹⁷⁶
- 162. In 2019, the Eswatini Gender and Sexual Minorities Association was denied registration, as the mission of their association was considered to encourage the common law offence of sodomy.
- 163. According to the Southern Africa Trans Diverse Situational Analysis,¹⁷⁷ it is a common but inaccurate belief in Eswatini that trans-diverse people do not exist. This belief has resulted

¹⁷⁵ Müller, A., Daskilewicz, K. and the Southern and East African Research Collective on Health (2019) “‘Are we doing alright?’ Realities of violence, mental health, and access to healthcare related to sexual orientation and gender identity and expression in Eswatini: Research report based on a community-led study in nine countries” Amsterdam: COC Netherlands (retrievable [here](#)) (last retrieved 11 February 2020)

¹⁷⁶ See “What Is the Data Telling Us?” in *Rights, Evidence and Action: Human Rights Violation*, Annual Report KP Reach (2016), p6 (retrievable [here](#)) (last retrieved 10 February 2020)

¹⁷⁷ *AIDS Accountability*, “Southern Africa Trans Diverse Situational Analysis Accountability to reduce barriers to accessing health-care” (2016) (retrievable [here](#)) (last retrieved 10 February 2020).

in abuse against the community going unnoticed. There is stigma, discrimination, abuse, and violence, both structurally and through individual acts.¹⁷⁸ Trans-diverse people are often stigmatised and discriminated against especially in the health care setting, this stigma results in a fear to seek medical attention when needed. They cannot access medical treatment or hormones as their health needs are not recognised by the Government. The inability to change gender markers on identity documents also makes it difficult for trans-diverse individuals when they face harassment and ill-treatment anywhere such documents have to be presented, including, but not limited to school registration, filing police reports, seeking employment, and applying for housing. These human rights abuses usually go unreported.

Recommendations

- A. The State should decriminalise the common law offence of sodomy, which prohibits consensual same-sex sexual acts among adults. The definition of rape in the new Sexual Offences and Domestic Violence Act includes anal rape and the law is accordingly sufficient to deal with non-consensual cases.**
- B. The State should take measures to reduce discrimination against LGBTQIA+ persons and ensure the punishment of the perpetrators of abuse and discrimination.**
- C. The State should facilitate a legal change of the gender marker on identity documents of transgender persons.**
- D. The State should ensure that LGBTQIA+ persons are able to register associations.**
- E. The State shall create an environment and regulations that allows gender affirming healthcare, including correct language in the training manuals used by the Ministry of Health.**

Discrimination against Sex Workers

- 164. Eswatini's laws relating to sex work follow the abolitionist approach ('partial criminalisation'). The Sexual Offences and Domestic Violence Act does not criminalise sex workers or clients. The Act focuses on third parties who seek to benefit from the exchange of sexual acts between a sex worker and client and creates the following offences: Commercial sexual exploitation; Procuring prostitution; Benefitting from prostitution; and Living off the earnings of prostitution. The aim of these offences is to protect people from being forced into sex work, and to prevent sex workers from being exploited.
- 165. These offences do not apply to sex workers themselves or to their dependents, however public officials often declare in the media that sex work is a crime according the SODV Act, thus perpetuating confusion and discrimination.
- 166. An outdated piece of law, the Crimes Act of 1889 is often used against sex workers.¹⁷⁹ This law does not criminalise sex workers, but criminalises the act of loitering in public for the

¹⁷⁸ Kayla Glover, a young lesbian woman, was murdered with an axe outside a club on 15 March 2015. Jabu Pereira, "Anti-gay attacks on the rise in Swaziland", *Mail and Guardian*, 20 March 2015 (retrievable [here](#)) (last retrieved 10 February 2020); Convicting the accused, the Chief Justice concluded "it is apparent from the evidence that the attack and assault upon the deceased was not provoked, and the accused was not acting in self-defence. It was a brutal attack on an innocent defenceless woman by a bully who has no regard for the right and sanctity of life." The conviction was affirmed on appeal. *Mamba v Rex* (02/2017) [2018] SZSC 12 (9 May 2018).

¹⁷⁹ A copy of the Act can be found [here](#) (last retrieved 12 February 2020)

purpose of prostitution.¹⁸⁰ This offence is contrary to the African Commission’s Principles on the Decriminalisation of Petty Offences.¹⁸¹ This offence further violates sex workers’ rights because it places the responsibility on a person accused of loitering to explain what they are doing. This creates a reverse onus which is against the constitutional right, in article 21(2)(a) of the Constitution of Eswatini, to be presumed innocent.

167. Traditional courts can deal with the offence, which often means that the accused person’s right to a fair hearing is not respected and that the person is denied legal representation. In 2017, it was alleged that 30 sex workers were arrested in Manzini, their lawyer was denied access to them and they were coercively advised by the police to opt to go to the traditional court rather than appearing before the magistrates’ court.¹⁸²
168. There are consistent reports of sex workers being targeted by the police. This is not limited to forced removals from particular areas. It extends to violence committed by the police, with multiple corroborating reports of sex workers who were raped by police officers in uniform.¹⁸³
169. As a result of this environment, sex workers face discrimination and abuse when approaching health services and the police. Sexual abuse and harassment by police officers are commonly reported by sex workers. Their children are also highly discriminated in communities and schools.

Recommendations

- A. The State should repeal section 49 of the Crimes Act of 1889.**
- B. The State should ensure equality of sex workers before the law, including by training and sensitising police officers and prosecuting persons who violate sex workers’ rights through corruption, harassment, violence and abuse.**
- C. The State should ensure equal access to health services, including training of personnel.**
- D. The State should promote a human rights-based approach to the interpretation of the SODV Act and train public officers on the protective measures provided in the SODV Act and their equal application to sex workers.**

¹⁸⁰ Ibid, section 49.

¹⁸¹ In the African Commission on Human and Peoples’ Rights’ Principles on the Decriminalisation of Petty Offences, “petty offences” are defined as “minor offences for which the punishment is prescribed by law to carry a warning, community service, a low-value fine or short term of imprisonment, often for failure to pay the fine. Examples include, but are not limited to, offences such as being a rogue and vagabond, being an idle or disorderly person, **loitering** [...]” (emphasis ours)

¹⁸² Jabulisa Dlamini and Sibusiso Zwane, “Thirty Sex Workers Arrested” *Times of Swaziland* 3 August 2017 (retrievable [here](#)) (last retrieved 10 February 2020)

¹⁸³ Alec Lushaba, “Swaziland: The Deadly Link Between Police, Sex Work and HIV” *AllAfrica* 7 December 2010 (retrievable [here](#)) (last retrieved 10 February 2020); *Swazi Media Commentary*, “Swaziland: Four in Ten Sex Workers in Swaziland ‘Raped By Uniformed Police Officers’” *AllAfrica* 1 November 2018 (retrievable [here](#)) (last retrieved 10 February 2020)