THE KINGDOM OF ESWATINI

ESWATINI'S REPORT SUBMITTED UNDER ARTICLE 19 OF THE UN CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (CAT)

INITIAL REPORT ON THE IMPLEMENTATION OF CAT

PART I – GENERAL INFORMATION

A. Introduction

1. The Kingdom of Eswatini acceded to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) in March 2004.

2. This is the initial report in accordance with Article 19 of the Convention, providing information on measures taken by the Kingdom of Eswatini to give effect to the undertakings provided under the Convention. The report was due within a year of coming into force of this Convention, however, due to a number of factors including the lack of a mechanism to coordinate treaty body reporting, the country was unable to fulfill its reporting obligation over the years. However, the Government established the National Mechanism for Reporting and Follow-Up (NMRF) which is progressively addressing the reporting backlog on the instruments ratified /acceded to by the Kingdom. Therefore, this report has been drafted under the auspices of the NMRF.

3. Regarding information on the general nature, political structure and the general legal frameworks within which human rights are protected, the Committee is referred to the Common Core Document of Eswatini.

Methodology

4. The NMRF Secretariat commenced the preparation of the report by requesting Law enforcement Agencies, the Attorney General, the Commission on Human Rights and Public Administration, the Directorate of Public Prosecutions and other government agencies[1] to provide information relating to the implementation of the Convention. In early February 2024, the Secretariat in collaboration with the Commonwealth Secretariat, UNDP and OHCHR organised a capacity-building session with relevant stakeholders[2] on the substantive provisions of the CAT as well as the requirements of the CAT reporting guidelines. Subsequently, a follow-up correspondence was sent to duty bearers and other

[1] List of government Ministries and departments attached as annexure 1
[2] List of stakeholders that participated attached as ”annexure 2”.

stakeholders requesting for further information to be incorporated on the CAT initial report. Using the responses received and through a desk review, the NMRF prepared a draft report.

5. On.....the NMRF Secretariat conducted a consultative meeting with stakeholders including Government Ministries and departments, Civil Society Organisations, and the Commission on Human Rights Public Administration for purposes of getting more information to improve the draft report. Final consultations were undertaken in …. and the inputs were incorporated into the CAT report.

6. The Eswatini's initial report on the implementation of the CAT was then submitted to Cabinet and thereafter deposited to the Committee against Torture (CAT).

B. GENERAL LEGAL FRAMEWORK UNDER WHICH TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT IS PROHIBITED

7. The Constitutional framework on the respect for, promotion, protection and fulfilment of all human rights and fundamental freedoms is provided under Chapter 3 (Bill of Rights) of the Constitution of Eswatini Act[3] ("the Constitution"). Section 18 explicitly prohibits the use of torture or inhuman and degrading treatment or punishment against any individual. Furthermore, law enforcement officials are mandated to uphold human dignity and safeguard the rights of all individuals while carrying out their duties. Section 57 (3) reinforces this by prohibiting law enforcement officials from engaging in, encouraging, or tolerating any form of torture or cruel, inhuman, or degrading treatment or punishment. This prohibition applies regardless of orders from superiors or any exceptional circumstances. Additionally, Section 38 (e) explicitly designates freedom from torture, cruel, inhuman, or degrading treatment or punishment as a non-derogable right.

8. The Constitutional provisions have been incorporated in the Police Service Act No. 22 of 2018[4], the Correctional Services Act No. 13 of 2017[5] and Umbutfo Eswatini Defence Force

[3] No. 01 of 2005.
[4] See section 10.
[5] See section 6.

Order No.10 of 1977 (as amended)[6]. These Acts expressly prohibit members of these Services from inflicting, instigating or tolerating any act of torture or other cruel, inhuman or degrading treatment or punishment. Further, the Correctional Services Act list the following acts as disciplinary offences; abusive or insulting language, wilfully injuring any person, deliberately provoking an offender, using force unnecessarily in dealing with an offender, brings discredit to the service.[7] In the same vein, the Police Act lists the following acts as disciplinary offences; bringing discredit to the service, using unjustifiable violence to a prisoner or a person, being bad-mannered to a member of the public, intentionally injuring any person, discharging a firearm without just cause.[8]

9. In relation to children, Section 14 of the Children Protection and Welfare Act No. 6 of 2012 (CPWA) provides for their protection from harmful and degrading treatment. In disciplining children, the Act provides that no discipline is justifiable if by reason of tender age or otherwise, the child is incapable of understanding the purpose of the discipline.

10. Eswatini acknowledges that there are gaps and inconsistencies in legislation such as the CPWA regarding the issue of corporal punishment in schools and in the criminal justice system where whipping forms part of sentences. However all these provisions[9] were outlawed by the Constitution and the Courts no longer issue such sentences in compliance with the Constitutional provisions. Further, in the Correctional Services context corporal punishment was abolished through the Commissioner General's Directive in 2000 and the equipment used to administer it was recalled.

11. The Government has put in place measures to stop corporal punishment in all sectors. In school settings, the Government introduced positive discipline since 2011. This is provided in the Education Sector Policy of 2011 revised in the 2018 Policy. The Ministry of Education conducts workshops for the Ministry's officials in the different management levels to champion the concept as well as teachers in the four regions as implementers. At first, the concept was hard to conceptualise and attracted a lot of debate within the teaching fraternity and parents who had differing views about the importance of corporal

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7 Section 44.
8 Section 49.
9 Section 306-309 of the CP&E

punishment. However, as the years progressed remarkable improvement towards the use of corporal punishment in schools is evident, as there are very few reported incidences of pupils being assaulted by teachers under the sphere of administering corporal punishment. Despite the intervention, corporal punishment is still used in some schools.

12. Currently the Government is revising the Education Act 1981 within which corporal punishment guidelines are provided. Extensive consultations have been conducted to inform the drafting of a revised Education Act.

13. In the context of the Criminal justice system, despite the availability of the legal provision in the Criminal Procedure and Evidence Act No. 67 of 1938[10] (CP & E) allowing Courts to impose a sentence of whipping on a convicted offender, Courts and the Correctional Services have refrained from utilising and administering this type of punishment on offenders. This shift in approach reflects a larger trend in contemporary legal and correctional practices towards alternative forms of punishment and rehabilitation.

14. Eswatini is party to regional and international treaties such as the African Charter on Human and Peoples' Rights and the International Covenant on Civil and Political Rights, which prohibit torture and other degrading treatment, irrespective of the status or motive of the person inflicting it. Eswatini uses a dualist system, which requires the domestication of International Instruments[11] before they can be invoked in domestic courts.

15. Despite the legal frameworks prohibiting torture, there is no law that specifically provides for its definition. Currently, cases of torture are treated as common assault, assault with intent to do grievous bodily harm and individuals who allege that they have been tortured have the right to institute legal proceedings in Courts for redress. The Constitution[12] enjoins the High Court of Eswatini as the court of first instance to enforce the rights contained in the Bill of Rights including the right not to be subjected to torture. Importantly, redress is available for a violation that has been or is being or likely to occur.

[10] Section 296 of CP & E Act

[11] Section 238 of the Constitution.

[12] Section 35.

16. With respect to the mechanisms for handling allegations of torture, Eswatini has not yet established an independent body to investigate cases of complaints of ill-treatment by law enforcement officials. Currently, such cases are investigated through the Internal Complaints and Investigations Units or Panels of Enquiries established by the National Commissioner of Police and the Commissioner General of Correctional Services in the respective institutions against which allegations have been made. Worth noting is that the National Commissioner and Commissioner General appoint officers from duty stations based outside the region in which the alleged offence or incident took place for impartiality purposes. In respect of the Army, complaints are dealt with through the military justice system which involves military prosecutors and the Court martial.

17. Further, the Commissions of Enquiry Act No. 35 of 1963 empowers Cabinet Ministers to appoint commissions or committees to carry out enquiries in respect of any phenomena or series of allegations. At the end of the enquiries, the members of the Commission prepare and submit reports to the appointing authority for consideration and action. On completion of the investigations, cases are referred to Internal Disciplinary Units or to the Director of Public Prosecution (DPP) for action. Upon conviction, dismissal from the forces may be imposed.

18. Disciplinary processes for officers in the Police and Correctional Services outlined in the Police Act 2018 and the Correctional Services Act 2017, generally follow a structured procedure. The legislation establishing the Royal Eswatini Police Service (REPS) and His Majesty's Correctional Services (HMCS) mandates the Government to establish the Police Service Commission and the Correctional Service Commission to exercise among other things disciplinary control over delinquent officers holding the ranks below Deputy National Commissioner and Deputy Commissioner General.[13]

19. These Commissions are to be impartial and independent from the Police and Correctional Service and their personnel is to be drawn from the Civil Service. However, due to resource constraints, these sectoral Commissions have not yet been established. disciplinary control is being exercised by the National Commissioner of Police and the Commissioner General

[13] Section 23 of the Police Act and Section 24 of the Correctional Services Act.

of Correctional Services through disciplinary or Administrative Boards in respect of Junior Officers and the Civil Service Commission in respect of Senior Officers.

20. In terms of the Military Discipline Code, the Army Commander may establish Boards of Enquiry to investigate allegations against the army personnel on misconduct including torture.

21. The process for conducting disciplinary processes against Correctional Services Officers, Police Officers and the Army is substantially the same. Below is an outline of the disciplinary processes:

    a. Complaint or allegation: A complaint or allegation of misconduct against an officer is filed either internally or by a member of the public.

    b. Preliminary Investigation: The complaint is investigated by a panel of enquiry established by the National Commissioner of Police or Commissioner General constituted by Senior Officers within the Department to determine its validity and seriousness. This may involve gathering evidence, interviewing witnesses, and reviewing relevant documents. After the enquiry, a comprehensive report with findings and recommendations is presented to the National Commissioner or Commissioner General by the panel of enquiry.

    c. Decision on Disciplinary Action: Based on the findings of the preliminary investigation, a decision is made whether to proceed with disciplinary action. If the allegation is deemed credible and serious, disciplinary proceedings are initiated by issuing a convening order appointing members of the disciplinary board and the initiator or prosecutor.

    d. Formal Disciplinary Proceedings: The officer facing disciplinary action is formally notified of the charges preferred against him/her and given an opportunity to respond. This may involve a disciplinary hearing or tribunal where evidence is presented and both parties are given a chance to present their case. Legal representation is allowed for officers being tried.

e. Decision and Appeal: Following the disciplinary proceedings, a decision is made regarding the officer's guilt or innocence, as well as any appropriate disciplinary measures. The officer has the right to appeal the decision if they disagree with the outcome.

f. Implementation of Disciplinary sanctions: If the officer is found guilty, disciplinary sanctions is implemented, which may include warnings, reprimands, fines, demotions, suspension, or dismissal, depending on the severity of the misconduct.

22. The disciplinary processes aim to ensure fairness, transparency, and accountability in dealing with allegations of misconduct among officers. It is important to note that the specific procedures and regulations governing disciplinary processes for members of the UEDF may be outlined in their respective military laws, regulations, and codes of conduct.

23. Further, the Commission on Human Rights and Public Administration (CHRPA) is mandated by the Constitution to investigate complaints concerning alleged violations of fundamental rights and freedoms, including the freedom from torture. In May/ June 2021, Eswatini experienced unprecedented civil unrest which resulted in the unfortunate loss of lives, personal injuries, and damage to private and public properties. The CHRPA conducted an independent preliminary assessment of the events surrounding the civil unrest. The Commission then issued its preliminary findings and recommendations to the Government. Amongst the issues were allegations of police brutality. Individuals who were affected during the unrest instituted legal proceedings against the Government for damages. (refer to the table,,,) include further investigations conducted by Human Rights Com. on allegations of torture.

PART II. INFORMATION IN RELATION TO EACH SUBSTANTIVE ARTICLE OF THE CONVENTION

Article 1- definition of torture

24. As indicated above, Eswatini has not enacted legislation that specifically defines torture. However, acts of torture are prohibited under the Constitution and other pieces of legislation mentioned above. In addition, the common law forbids certain conduct and defines them to be criminal such as assault common, assault with intent to do grievous bodily harm, *crimen injuria, contumelia,* and Murder. Insulting or abusive language is also criminalised by the Crimes Act No. 6 of 1889. It is conceded that the elements of the common law crimes do not align with the standards and elements set by the substantive definition provided in the Convention.

25. The fact that the Constitution as well as the referred legislation above prohibits torture, inhumane and/or degrading treatment or punishment without providing substantive definitions and penalties for violations, the Courts can purposively interpret and draw inspiration from international standards or jurisprudence set by the Convention, other instruments and other authoritative international bodies to define torture. However, such a mode of interpretation has not yet been used by the Courts to give meaning to torture and provide fitting punishment.

26. The closest instance in which the High Court made an attempt to define torture was in 2009[14] where it defined torture as "a very aggravated and prolonged form of assault" which falls short of the elements provided in CAT.

27. Further in 2013 and 2018, the High Court[15] and the Supreme Court[16] had the opportunity to establish a legal definition of torture in cases involving allegations of police torture. However, instead of providing a detailed explanation of what constitutes torture, the courts simply restated section 18 of the Constitution.

[14] *Robinson v The Attorney General* (1220 of 1998) [2009] SZHC 172 (23 June 2009) at para 21.
[15] *Nonhlanhla Simelane v The Commissioner of Police and The Attorney General* (2351/03) [2013] SZHC 135 (11 JULY 2013) at para 30.
[16] *Magagula v The Attorney General* (94 of 2016) [2018] SZSC 3 (11 April 2018) at para 17.

28. Eswatini's law enforcement Agencies are party to international and regional organisations that foster better cooperation and mutual assistance among its members, including upholding human rights in the exercise of their functions. For example, the Southern Africa Regional Police Chiefs Cooperation Organization (SARPCCO). The SARPCCO Constitution emphasises the observance of human rights, mutual respect and goodwill; hence a Code of Conduct for police officials was developed and adopted at the 6th Annual General Meeting of SARPCCO on 31 August 2001.

29. The SARPCCO Code of Conduct for Police officials emphasises that in the performance of their duty, law enforcement/police officials shall respect and protect human dignity and maintain and uphold the human rights of all persons as provided for under national and international law. Further, Article 4 of the Code provides that no police official, under any circumstances, shall inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment to any person.

30. Likewise, the Correctional Services is a member of the African Correctional Services Association (ACSA) which brings together Heads of Correctional and Prisons Services in the African Continent. It strives to uphold a human rights-based approach when dealing with inmates and is a platform where member states mentor each other to comply with human rights instruments such as the United Nations Standard Minimum Rules for the Treatment of Prisoners.

Article 2 – Measures to Prevent Acts of Torture

31. Eswatini's Law Enforcement Agencies are subject to the Constitution which guarantees several freedoms, one of which is the freedom against torture.

32. These agencies have put in place administrative directives aimed at preventing torture from occurring in their respective institutions. For instance, the Police Service and Correctional Services are guided by Force Standing Orders which are policing guidelines and organisational operational systems, inclusive of measures to prevent incidents of torture or early identification of torture. These are supplemented by periodic pronouncements from the heads of these institutions addressing specific administrative and operational issues

which are REPS Force and Correctional Services Standing Orders. The SARPCCO Code provides that Police officials shall ensure the protection of the health of persons in their custody and shall take immediate action to secure medical attention whenever required.[17]

33. The REPS develops five-year Strategic Plans that outline the vision for the REPS to be a professional, quality and people-oriented Law Enforcement Agency of Eswatini, with international approval. Currently, the agency has a Strategic Plan 2024-2028 which emphasise on professionalising the police service to ensure compliance with international standards and striving towards serving every individual impartially. The vision and mission is framed within the observance of human rights standards

34. In the performance of their duties, Commanding officers or in the absence of any officer in the position of authority procedurally expected to make sporadic, unannounced visits to detention cells as a measure to ensure the wellbeing of detainees. In addition, for every person who is detained in the cells, his/her physical condition is recorded at arrival and at the time of leaving the cells. There is a Register for Arrest and Remand (RSP 3) used for recording the entry and exit of the suspects. This is made to track any incidences of alleged acts of torture to a detainee[18].

35. The Correctional Services inmate's admission procedure goes to the extent of assigning a qualified medical practitioner to assess the health and physical state of arriving inmates[19]. If there are signs of torture or health anomaly, that information is noted on the inmate's records and a follow-up is made to address the observations noted. There are instances where the accused persons are not in good health due to injuries sustained as a result of incidents such as mob justice. In such cases, the accused person is not admitted to the Correctional facility and is referred first to a hospital for medical attention. On discharge, the inmates are further examined to determine their health and physical state of well-being[20].

[17] Article 5
[18] Standing Order 602
[19] Correctional Services Regulation 26
[20] Regulation 30

36. Section 16 of the Constitution specifically addresses the rights of individuals in police custody, outlining their entitlements while under arrest, detention, and trial. According to this provision, a person in custody must be promptly informed, in a language they understand, about the reasons for their arrest or detention and their right to choose a legal representative. Furthermore, to prevent unjustified long-term detention, law enforcement agencies are required to present arrested individuals before a court within 48 hours. Any detention exceeding this period must be authorized by the Courts. In ensuring compliance with this Section, Station Commanders conducts morning inspections in Police cells by checking the Register for Arrest and Remand (RSP 3).

37. Upon detention of an individual, it is mandated that their next of kin be promptly notified and permitted to visit.[21] Furthermore, the detained person is entitled to visits from their legal representative or doctor and should have reasonable access to medical treatment. Section 21 of the Constitution also provides the same guarantees for a person deprived of liberty. In interpreting Section 16 (6) of the Constitution, the High Court held that the list of persons authorised to visit an inmate is not exhaustive, even "friends" can visit, the court further held that section 93 (1) of the CP & E is complementary to the Constitutional provision.[22]

38. As mentioned in para 33 above, the Force Standing Orders provide that all accused persons who are under Police custody are treated with dignity and are regularly checked to ensure they are in good health. A detainee/ suspect who reports illness is taken for medical attention and his/her family is also notified. In Correctional facilities, such assessments are made during the morning unlock, midday count, final lock up, consultation with correctional services medical services providers, consultation with welfare officers amongst others. In order to address prolonged pre-trial detention, the Correctional Services assign Legal / Social Welfare Officers to provide in-house legal clinics to the newly admitted inmates which would facilitate speedy trials. They also follow-up with the DPP's Office and the Courts in order to ensure that pre-trial detainees are promptly brought before courts.

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[21] Section 16 (6) of the Constitution.

[22] *Dlamini and Others v The Commissioner of His Majesty's Correctional Services and Another* (4548 of 2008) [2009] SZHC 125 (1 April 2009) at paras 12 & 13.

39. Section 38 of the Constitution provides for the prohibition of certain derogations from the enjoyment of rights and freedoms including the freedom from torture, and cruel, inhuman or degrading treatment. Despite having this provision guaranteeing that freedom from torture is non-derogable, there have been allegations made against law enforcement agencies whereby detainees allege that they were tortured or ill-treated in detention centres as a form of punishment or to get confessions. To address these allegations, the Government is currently intensifying capacity building on public order management to all stakeholders.

40. Regarding superior orders, the Constitution, the Police Act, and the Correctional Services Act explicitly abolish the defence of superior orders, as earlier referenced in paragraphs 7 and 8 above. Subordinates are generally required to obey the lawful orders of their superiors. However, if a subordinate receives an order that they believe to be unreasonable or unlawful, they may report it to another supervisor for intervention. The concept of due obedience to superior orders defence is no longer applicable.

41. In respect of the Army, the Military Discipline Code makes it an offence to disobey lawful commands or orders. This has been interpreted by the Courts to mean that disobeying unlawful orders is not an offence and that a member of a disciplined force cannot hide behind orders when charged for committing an offence including torture.[23]

Challenges

42. Eswatini does not have an Independent Complaints Body to deal with allegations of torture from security forces. Currently, cases of torture are handled by the respective institutions against whom the allegations have been made.

[23] *Fakudze v Commissioner of Police and Others* [2002] SZHC 75 (9 September 2002) at page 20; *King v Makhubu and Others* (381 of 2012) [2018] SZHC 104 (31 January 2018) at para 21.

Article 3. Extradition

43. There are measures that Eswatini has in place to ensure that no one is expelled or extradited to a country where he or she is at risk of being subjected to torture or ill-treatment found in the Extradition Act No. 13 of 1968. This legislation provides for extradition of persons accused or convicted of certain offences. Section 5 of the Act deals with the general restrictions on surrender and provides that a person shall not be extradited to any state if it appears to the court of committal or to the High court on the application for *habeaus corpus* that the offence committed is of a political character, for prosecuting or punishment on account of his race, religion, nationality or political opinions, may be prejudiced at his trial. Extradition of a person to a country has to be based on an extradition agreement with Eswatini and Requesting/Receiving State. Eswatini has bilateral extradition agreements with the Republic of South Africa and Mozambique.

44. The practice adopted by the court of committal is to conduct an inquiry as per Section 9 of the Extradition Act. In determining an extradition application, the court takes into account the Constitutional Bill of Rights Provisions and closely considers the provisions of the Extradition Act, with specific attention given to section 5, which outlines the general restrictions on surrender.

45. During the extradition process, the person to be extradited has the right to challenge the application by way of appeal or review to the High Court and even to the Supreme Court. The court dealing with the review or appeal can suspend the order by the lower Court pending the determination of the matter. Judicial oversight is designed to ensure that persons to be extradited will be treated fairly and that their extradition is based on proper legal grounds.

46. The Extradition Act does not expressly list acts of torture as a restriction to process the extradition application. However, the grounds listed in section 5 of the Extradition Act can be construed to include acts of torture.

47. Furthermore, Eswatini Extradition and Mutual Legal Assistance Agreements provide that extradition may be refused unless the Requesting Party undertakes or gives such assurances as considered sufficient by the Requested Party that the person sought will not be detained without trial, tortured in any way; or treated or punished in a cruel, inhumane or degrading way. The same shall apply to an attempt to commit torture and to an act by any person that constitutes complicity or participation in torture.

48. Eswatini is a State party to the Southern African Development Community (SADC) Protocol on Extradition. Under Article 4 (f) of the Protocol, Eswatini has a mandatory obligation to refuse extradition of a person to a State Party if that person has been, or would be subjected to torture or cruel, inhuman or degrading treatment or punishment in that State Party.

49. Eswatini is also party to the SADC Protocol on Mutual Legal Assistance in Criminal Matters which provides a legal basis for SADC Member States to provide each other with possible measures of mutual legal assistance in criminal matters.

50. The Prime Minister's Office, the Ministry of Foreign Affairs and the Office of the Director of Prosecutions (DPP) are the authorities that determine the extradition, expulsion or removal of a person. These institutions are also responsible for all incoming and outgoing extradition requests. The detailed processes for dealing with applications for extradition is that the requesting state through diplomatic channels will submit the extradition request. Once received, the Ministry of Foreign Affairs will transmit it to the Ministry of Justice for the attention of the DPP office as the competent authority to consider the request and determine issues of compliance. If the request is acceded to, the DPP will make an application before the court of committal for a determination in accordance with Section 9 of the Act. After the Court of committal has granted the order for extradition, the Prime Minister's Office will facilitate the transfer of the fugitive.

51. In 2023, Eswatini received recognition from the UN International Residual Mechanism for Criminal Tribunals (IRMCT) for excellent cooperation and the role played by the country in the apprehension of a fugitive who was involved in the Rwanda Genocide.

52. The country is also party to regional and international instruments such as the UN Convention Against Transnational Organised Crimes and its protocols. From time to time these bodies overseeing the implementation of these instruments provide training for officers from the member states. Some officers under the Extradition and Mutual Legal Assistance Unit have been trained on the implementation of the protocol.

53. The Refugees Act 15 of 2017, ascribes to the principle of non-refoulment. Section 11 of the Refugee Act provides that an individual cannot be denied entry, deported, or extradited if it would force them to return to a country where they may face persecution or danger to their life, safety, or freedom. The Ministry of Home Affairs, through the Department of Refugees, ensures the protection and assistance of asylum seekers and refugees, acting together with its partner, the United Nations High Commissioner for Refugees (UNHCR).

54. The Department of Refugees ensures that asylum seekers have access to refugee status determination procedures from the point of entry. Persons who claim asylum at the border are screened and then cleared by an immigration officer before they are moved to the reception centre where they submit their asylum applications.

55. The Department conducts … training workshops for border officials and the principle of non-refoulement is emphasised.

56. 34. The Immigration Department also carries out border monitoring exercises to ensure that no persons of concern are being denied entry and that the human rights of asylum seekers are protected.

57. Challenges:

    a. Outdated extradition Act

    b. Limited capacity-building initiatives

    c. Absence of information management system to track progress and activities

Article 4 – legislation criminalising torture

58. As indicated above, there is no law criminalising torture in Eswatini and all acts of torture or cruel, inhuman or degrading treatment or punishment are considered common-law offences. The severity of the punishment will depend on the gravity of the act and the discretion of the Presiding Officer.

59. As indicated in paragraph 33 above, the Police Act, Correctional Services Act as well as the Umbutfo Eswatini Defense Force (as amended), makes provision for administrative or regulatory provisions relating to the prohibition of torture. There are disciplinary sanctions imposed on perpetrators of torture in the Police[24], Correctional Services[25] and the Umbutfo Eswatini Defence Force[26]. These include reprimand, severe reprimand, fine, reduction in rank, suspension or dismissal.

60. Section 94 of the Police Act provides for the general penalty and makes it an offence to contravene any provision of the Police Service: hence acts of torture carried out by Police officers can also be prosecuted in terms of the Police Service Act and under the common law. The courts have the discretion to sentence a person convicted of these Common Law offences to a term of imprisonment or a fine.

61. Section 20 of the CP & E provides for a prescriptive period of twenty years for all offences save for murder which does not have a prescriptive period.

62. Example of relevant judgements …

63. Individuals who allege that they have been tortured have the right to institute legal proceedings in courts for redress. This is demonstrated by the case of *The Eswatini Government v Aaron Ngomane*[27]. In this case, the Respondent defecated in the open near the International border gate at Lomahasha and was ordered by a soldier who was patrolling

[24] Sections 45, 59 of the Police Service Act.
[25] Section 38, 40, 41 and 53 of the Correctional Services Act.
[26] …….
[27] 25/2013 SZSC 73 (29 November 2013)

the borderlines to pick up the faeces and remove it. The soldier further ordered the Respondent to do some push-ups. The court *a quo* awarded the Plaintiff the sum of Fifty thousand Emalangeni (E50, 000.00) as damages for injuria and *contumelia*. The Court on appeal held that there was a material misdirection in the award process, warranting interference. Therefore, the award of E50,000.00 was set aside and replaced with Thirty thousand Emalangeni (E30,000.00) as damages for the injuria and *contumelia.*

Article 5, 6, 7 - Jurisdiction over crimes, investigation on fugitives

64. Eswatini has jurisdiction over offences considered a crime committed within the territory, whether the alleged offender or victim is a national. The Constitution[28] provides that the Judiciary shall have jurisdiction over all issues of a judicial nature and shall have the authority to decide whether an issue is within its competence as defined by the law.

65. An offender who is present in Eswatini cannot be prosecuted for offences committed outside the country's jurisdiction and there has been no case that came up for determination by the Courts. However, the Extradition Act will come into effect for the surrender of offenders under Article 4, provided a request is made by the foreign country to that effect.

66. If a person alleged to have committed an offence referred to in Article 4 is found in Eswatini and is claimed by another country the matter will be dealt with according to Eswatini's extradition law.

67. Further discussions on the establishment of jurisdiction, investigations and prosecution on fugitives, refer to Article 9.

Article 8 – Recognition of torture as an extraditable offence

68. In terms of the Extradition Act, extraditions are subject to bilateral agreements between the requesting state and Eswatini.[29] Since the Extradition Act predates the Convention, it does not make the Convention the legal basis for extradition in respect of offences related to

[28] Section 62
[29] Section 3(1) of the Extradition Act.

torture. The Extradition Act does not explicitly include torture as an extraditable offence. However, it generally considers offences under the laws of the requesting party that carry a maximum sentence of imprisonment for six months or more, or a more severe penalty.[30] Eswatini, does not need to make separate bilateral agreements on extradition with SADC member states as the SADC Protocol is used as a legal basis for extradition in respect of offences related to torture.[31]

- Cases where the reporting State granted the extradition of persons alleged to have committed any of the offences referred to above.

Article 9 Mutual Judicial Assistance

69. Eswatini is also party to the SADC Protocol on Mutual Legal Assistance in Criminal Matters which provides a legal basis for SADC Member States to provide each other with possible measures of mutual legal assistance in criminal matters.

70. The Criminal Matters (Mutual Assistance) Act No. 7 of 2001 provides detailed procedures on how Eswatini has to handle requests for international assistance in criminal matters. The spirit of this legislation is aligned with or gives effect to the provisions of the SADC Protocol on Mutual Legal Assistance in Criminal Matters.

71. The mutual legal assistance may be at the instance of Eswatini or the requesting state. When requesting assistance, it should be written and should include details about the needed assistance, any deadlines, and relevant information. In situations of emergencies, the request may be verbal followed by a written request. For criminal proceedings, additional details are required, including court information, offence details, and the stage of the proceedings. If there are no criminal proceedings, the request should specify the alleged offence and include a summary of known facts. The nature of assistance that may be requested by either party under the Mutual Matters Act includes; Assistance in

[30] Section 4 of the Extradition Act.
[31] Article 19 of the SADC Protocol on Extradition.

- obtaining evidence
- identifying and locating persons
- obtaining articles or things by search and seizure
- arranging attendance of witnesses
- securing the transfer of prisoners
- serving documents
- production of judicial and official records
- tracing proceeds of serious offences.

72. The request from a requesting state may be refused if the criminal matter in question involves conduct that would not be considered an offence under the laws of Eswatini, persecution on account of prohibited grounds of discrimination, or if it relates to political proceedings.[32] Additionally, the Minister may refuse to comply with a request if doing so would violate Eswatini's laws, threaten its security or international relations, or if the necessary actions cannot be taken under Swaziland's laws.

73. Eswatini is a member of the International Police Organisation (Interpol). This membership ensures thorough and extensive international cooperation for the prevention, detection, and suppression of crimes. Such collaboration allows for the sharing of information, resources, and expertise to tackle crime on a global scale.

Cases involving the offence of torture in which mutual assistance was requested by or from the reporting State, including the result of the request

Article 10 - Training of law enforcement personnel, judicial officials and medical personnel or other persons involved in custody or interrogation or treatment of persons under official control

[32] Section 18 of Criminal Matters Act.

74. Eswatini has made numerous efforts to train law enforcement agencies, in particular on issues related to torture. Law enforcement agencies including the REPS, HMCS and UEDF are institutions that are directly involved in the custody, interrogation or treatment of persons under their official control. However, it must be noted that members of the Military cannot interrogate suspects in terms of the law as this remains the prerogative of the Police force.

75. Officers from the law enforcement agents in the country are capacitated on how to use force and firearms in their training curriculum during the recruitment period and on refresher courses internally and outside the country. The use of force and firearms including lethal force is governed by the CP&E Act, which permits law enforcement officers to use lethal force as a measure of last resort after certain conditions have been satisfied.

Nature and frequency of training programs

76. The REPS conducts training on issues of torture at the entry-level (recruitment) of newly admitted police recruits, even though the content of the training is generally about human rights. Further, the recruits are sensitised to the principles and values of the Police Service as well as the applicable code of conduct which includes aspects that prohibit the practice of torture. To date, there are continuous workshops that cover different modules on torture and public order policing for police officers.

77. The basic recruitment programme and in-service training offer a module on Criminal Procedure and Evidence (CP&E) and statute law which include topics on Human Rights. The course covers the Constitution of Eswatini with a focus amongst others on the following issues; the rights of all individuals, international Human Rights Standards, the right to protection of the law and the prohibition against torture.

78. During these trainings, police officers are taught how to interact with arrested individuals, as well as the prohibition against torturing suspects. It is made clear that the Service does not tolerate the ill-treatment of suspects and that appropriate punitive action will be taken against perpetrators if the mistreatment is proven. Lectures are also provided in all

formations, and during pre-deployment for internal and external operations, an emphasis on human rights is placed.

79. The courses offered are geared towards ensuring that police officers respect the rights of a suspect and/or accused person from the time of arrest to the time the suspect is brought to trial in a court of law.

80. Similarly, the structure and content of the HMCS is more or less the same as that of REPS, save for that it focuses mainly on the treatment and safe custody of offenders. The entry-level training for Correctional Officers covers general human rights principles and international standards in crime prevention and criminal justice. It also includes training on prison management and non-custodial measures, as well as international guidance on treatment of offenders. This encompasses the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), the Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules), and WHO guidance on Prisons and Health (2014).These instruments strictly prohibit the use of torture or other cruel, inhuman or degrading treatment or punishment.

81. In addition to the foundational training provided to Correctional Services officers, they undergo regular courses that specifically focus on upholding the human rights of individuals and the appropriate treatment of offenders. In the period spanning from 2018 to 2023, with the support of Development Partners and the CHRPA, the REPS and HMCS conducted comprehensive training sessions for a significant number of officers. These trainings specifically emphasised the implementation of a human rights-based approach in their interactions with offenders.

82. The Umbutfo Eswatini Defence Force (UEDF) offers training to its members on the subject of torture during Basic Military Training. There are other courses offered during entry level into the Force including those that relate to Internal Security operations. Further, during

operations in the UEDF, the Rules of engagement relating to humane treatment of civilians apply.

83. The Judiciary is committed to upholding the principles of human rights and ensuring that its judicial officers are well-equipped to enforce these standards. As part of this commitment, the Judiciary has implemented regular training programs for judicial officers in both superior and subordinate courts. These programs are designed to foster a human rights-based approach to judicial proceedings, with a particular focus on the prohibition of torture.

84. Judicial officers in Eswatini undergo training at … intervals. These programs cover various aspects of human rights law and emphasise the prohibition of torture. These training sessions are designed to enhance the capacity of judicial officers.

85. Despite these capacity-building initiatives for the judiciary, there are still more training programs needed to build capacity for enabling judicial officers to properly define torture as provided by the CAT. The training can assist judicial officers in effectively detecting torture.

86. These training programs are integral to ensuring that judicial proceedings are conducted fairly and that the rights of all individuals are protected. By equipping judicial officers with the knowledge and skills to detect and prevent torture, Eswatini is taking significant steps towards eliminating this abhorrent practice and promoting justice and accountability within its judicial system.

Training for medical personnel

87. Healthcare workers, including professional nurses, receive pre-service training on managing cases of common assault. The Ministry of Health regularly enhances the skills of professionals to handle various forms of abuse, such as physical violence, sexual, and intimate partner violence (GBV), or common assault. These trainings are conducted quarterly in all health facilities, including the 16 major hospitals in the country and occasionally private ones, depending on the availability of resources. Mission and government hospitals consistently participate in these annual activities. If resources are

limited, trainings occur once or twice a year. When training, doctors from hospitals and health centres are included, while regional coverage is reserved for nurses. Out of 215 officials, 176 have been trained. However, high staff turnover as a result of a majority of nurses leaving the country for better opportunities, poses a challenge, necessitating periodic training.

Over and above this, more info or statistics on the number and frequency of these trainings is needed.

Article 11 - State's obligation to review interrogation rules, methods and practices

88. Eswatini's Constitution[33] guarantees the rights of persons deprived of their liberty by law enforcement agencies. For the Police Service, the interrogation of suspects is governed by the CP&E Act, the Judges Rules, the Police Act, the SARPCCO Code of Conduct of 2001, Force Standing Orders and Force Orders. Furthermore, where there are allegations of torture during arrest or investigation, the courts are empowered to conduct a trial within a trial to ascertain the veracity of the allegations.

89. Under the Correctional Services, the internal investigations of offenders is governed by the Correctional Services Act, Correctional Services Regulations, Standing Orders, Mandela Rules and Directives issued from time to time. In relation to the Umbutfo Eswatini Defence Force, investigations of persons under their custody are governed by the Umbutfo Eswatini Defence Force Order and Military Disciplinary Code.

90. The Constitution and the CP&E Act guarantee several rights for suspects, which are intended to minimise the incidence of torture. Section 16 of the Constitution provides that a person shall not be deprived of liberty except as may be authorised by law. The section further provides that any person who is arrested or detained shall be informed as soon as reasonably practicable, in a language that the person understands, of the reasons for the

[33] Section 16

arrest and detention. The police are required without undue delay to bring the person arrested or detained before a court of law.

91. If the person detained is not tried within a reasonable time the person must be released either unconditionally or upon reasonable conditions in particular such conditions are reasonably necessary to ensure that that person appears at a later due date for trial. Any person who is unlawfully arrested or detained is entitled to sue for compensation in a court of law.

92. The Constitutional provisions are reinforced by the CP&E Act. Section 30 of the CP&E Act requires a police officer making an arrest without a warrant to take or send the person arrested before a magistrate having jurisdiction in the case or to the nearest police station without unnecessary delay.

93. Thus where a person is arrested without a warrant, the police are required to produce that person before a court within 48 hours of arrest, unless the circumstances make that impractical, for example, where the person is arrested on a Friday night or during a holiday. Part VIII of the CP&E Act regulates the granting of bail and prohibits the setting of excessive bail.

94. It is clear from the provisions that both the Constitution and the CP&E Act require that any person taken into custody should be brought before an independent and impartial court of law within the shortest period possible (48 hours). Moreover those arrested and charged are entitled to be released on bail except where the interests of justice does not permit.

95. Freedom from torture is non–derogable, even a state of emergency cannot justify a derogation from this absolute prohibition. This is stipulated in Section 38 of the Constitution which prohibits derogations from certain fundamental rights and freedoms when the nation is at war or when a state of emergency is in force.

96. Under the Police Service, the Force Standing Orders outline the guidelines on the prompt notification of and access to lawyers, doctors, family members and in the case of foreign nationals, consular notification. Furthermore, the Police Act and Force Standing Order have

domesticated the critical parts of the international instruments and are applied in respect of persons under interrogation and detention.

97. The HMCS adheres to the dictates of the Nelson Mandela Rules and conscientiously observes Human Rights Principles and Guidelines in the execution of its duties on a daily basis. The Nelson Mandela Rules, which apply universally to all prisoners, have fundamental principles that guide their treatment. First and foremost, every prisoner must be treated with the utmost respect, recognizing their inherent dignity and value as human beings. This means that regardless of their offences or circumstances, prisoners deserve humane treatment during their incarceration period as stated in Section 6 (1) of the Correctional Services Act.

98. Below is information on the measures provided by the Correctional Services Regulations which domesticate human rights principles, the Nelson Mandela Rules and other international standards set on the treatment of offenders. The rules and principles are fully reflected in the domestic legislation and the principles in these instruments are practiced. While in the custody of the Correctional Services, the offenders access uninterrupted legal consultations, medical services, family relations and consular notifications.[34]

99. The Correctional Services Regulations[35] incorporate holistically the Nelson Mandela Rules into the guiding law of the HMCS, as well as some parts of the international protocols relating to the persons under detention and/or custody.

100. The HMCS set up internal disciplinary bodies to deal with officers who are alleged to have violated offenders' rights in any way and if found guilty of committing a disciplinary offence can be punished with disciplinary measures listed in paragraph 22 above.

[34] Regulation 84, 101
[35] Part 2 – 8

Independent monitoring of detention facilities

101. To ensure that the rights of inmates are observed and that their treatment is not below the minimum standards set by the Mandela Rules and other instruments, the Correctional Services Act empowers Cabinet Ministers, CHRPA, Judicial officers, International Bodies, and Diplomats amongst others to be official visitors.[36] The role of official visitors is to assess the conditions of correctional facilities and the treatment of offenders with a view to making recommendations for reforms.

102. The Minister for Justice and Constitutional Affairs is also empowered to appoint an Independent Inspection Body tasked to oversee the management of penal institutions.[37] This oversight ensures that these institutions adhere to all laws, regulations, policies, and procedures. The primary goal is to achieve the objectives of correctional services while also safeguarding the rights of offenders.

103. Incommunicado detention is prohibited in the Kingdom. The conduct of law enforcement officers can be reviewed by the courts through a complaint by the detainee during a remand session. In terms of Section 102 of CP&E, a detainee is expected to make weekly remand in order to ascertain their condition. For example, their health or whether they have been tortured or not. There are a total of twelve correctional centres, twenty-four police facilities (comprising posts and stations) and one military detention centre designated as officially recognised detention facilities.

Article 12 - Impartial investigations on suspected acts of torture

104. Eswatini does not have an independent oversight body with a specific mandate to investigate allegations of torture or ill-treatment by its officers. However, as earlier referenced in paragraph 16 above there are pieces of legislation, policies and procedures that exist in the country to ensure that proper investigations for torture allegations and other crimes are carried out in such instances.

[36] Section 122 of the Correctional Services Act.
[37] Section 123 of the Correctional Services Act.

105. The Police Service Act mandates the REPS to protect life and property as well as to investigate and detect crime, amongst other functions.[38] A victim of an alleged act of common assault, assault with intent to cause grievous bodily harm, *crimen injuria, contumelia,* or any crime that has elements of torture can approach the police authorities which will start an investigation as soon as the matter is reported. During the course of these investigations, the Police conduct unbiased and transparent investigations into allegations of torture. At the end of an investigation, a docket is usually opened and transmitted to the office of the DPP which works in close partnership with the police regarding the investigations, warrants and summons execution.

106. The Complaints and Discipline Unit (CDU) is a specialized structure established within the REPS to address allegations of misconduct or ill-treatment against police officers by members of the public. This unit is responsible for thoroughly investigating complaints lodged against police personnel, ensuring that due process is followed. In cases where complaints involve severe allegations such as torture or other criminal conduct, the matter is referred to the Criminal Investigation Department (CID) within the Police Service for further investigation and legal action if necessary. It is crucial to emphasise that all procedures and investigations adhere to the fundamental principle that police officers are obligated to uphold the law and are not exempt from accountability for their actions.

107. Further, the CHRPA is mandated by the Constitution to investigate allegations of human rights violations and injustice, corruption, abuse of power and unfair treatment by a public officer, and to investigate complaints regarding the functioning of any public service. It is responsible for investigating any cases relating to ill-treatment, including alleged acts of torture. In this regard, a victim can lodge a complaint with CHRPA which is expected to conduct the investigations in a transparent and impartial manner.

108. In addition to the bodies discussed above, the Inquests Act, No. 59 of 1954 empowers the Coroner appointed by the Prime Minister to investigate deaths and ensures transparency in the process. This legislation provides detailed procedures on how cases of death in

[38] Section 9 (1) (b)

custody have to be investigated and handled in order to make the persons responsible accountable. Between 2010 and 2024, there have been three reported cases of deaths occurring in police custody. These incidents were thoroughly investigated by the coroner in accordance with the provisions outlined in the Inquests Act. All three victims were male: two were adult Swazis, and the third was an adult Mozambican.

109. In 2021 there were allegations that a university student Mr. Thabani Nkomonye was killed by the police. Subsequently, the Coroner conducted a comprehensive inquiry into the death of Mr. Thabani Nkomonye, in 2021 and 2022. The findings revealed that Mr. Nkomonye's demise resulted from a motor vehicle accident, and the police were not responsible for causing it.

110. The allegations on the industrial action (bus incident) …

Article 13 - Remedies for victims subjected to acts of torture

111. An individual who alleges to have been subjected to torture or other forms of cruel, inhuman, or degrading treatment has the right to file a complaint initiating thorough criminal investigation of the claims by the Police. If compelling evidence is uncovered, it is then presented to the DPP for further legal action. Furthermore, as previously highlighted in paragraph 15, the victim of torture retains the option to initiate legal proceedings directly against the Army Commander, National Commissioner, Commissioner General, or Head of Department. This can be based on the principle of vicarious liability in order to seek damages.

112. The victim can also initiate administrative disciplinary processes against the perpetrating officials by lodging a formal complaint to the Army Commander, National Commissioner, Commissioner General, or Head of Department.

113. In case these competent authorities refuse to investigate the complaint, the complainant, has an option to refer the matter to the CHRPA. The Constitution mandates the CHRPA to investigate complaints of constitutional rights violations, injustice, corruption, abuse of power and unfair treatment by public officials. Where there is a reasonable suspicion that

torture may have occurred, the CHRPA will *mero motu* investigate the matter. The Commission is also expected to prepare reports on its findings.

114. The CP& E Act[39] makes provision for the award of compensation to victims of crime, who have suffered damages because of the criminal conduct of an accused. It provides as follows:

"*if any person has been convicted of an offence which has caused personal injury to some other person, or damage to or loss of property belonging to some other person, the court trying the case may, after recording the conviction and upon an application made by or on behalf of the injured party, forthwith award him compensation for such injury, damage or loss: Provided that the amount so awarded shall not exceed the civil jurisdiction of such court".*

115. Civil claims on allegations of torture or other cruel, inhumane or degrading treatment or punishment by the Law Enforcement Officials have been lodged by individuals over the years. In the last five years, the claims were as follows:

Civil Claims on Assault and Torture (REPS)

Case	Year					
	2019	**2020**	**2021**	**2022**	**2023**	**GRAND TOTAL**
Assault and torture	29	38	28	68	30	193

116. Victims of torture may sue for compensatory damages under the common law for assault, pain and suffering, insult, loss of the amenities of life, past medical expenses and future medical expenses. To provide assistance to indigent members of society, the Legal Aid Office has been established to ensure equal access to justice[40].

117. To ensure that cases of violence against women are effectively handled, a department of Domestic Violence, Child and Sexual Offences with specially trained officers was established in all Police stations in Eswatini. Other steps taken to combat violence against women and girls include regular trainings for Prosecutors, Police Officers, Judicial

[39] Section 321
[40] Sction 20 of the Constitution.

Officers, traditional authorities and the general public on women's rights and available remedies on the violations thereto. Specifically Prosecutors, Magistrates, Master of High Court, National (Swazi) Courts officials were trained on the application of international Instruments on human rights in their various roles. Police Officers in all police stations are continuously trained on GBV and every station has a designated GBV Focal Person. Government, Development partners and CSOs, provide on-going support, and training to health officers including Rural Health motivators during their sessions.

118. The rolling out of One Stop centres is in progress and is being integrated into hospitals. Currently, there are three operational centres in Mbabane, Raleigh Fitkin Memorial Hospital in the Manzini region and Lubombo Referral Hospital. It is anticipated that another one will be established in the Shiselweni region. A number of privately owned shelters also cater for women, children and orphanages that have experienced gender-based violence. In general, the Government has financial constraints but resources are allocated to support victims of domestic violence and most often there is assistance from donors in that regard.

119. Further, victims of domestic violence currently receive free counselling and medical treatment. The Gender and Family Issues Department in collaboration with Civil Society Organisations has regular interactions and educational sessions with traditional leaders on gender equality and human rights as well as conducts continuous advocacy programmes including campaigns to sensitise and disseminate information to the public on violence, and reporting structures.

Mechanisms for Witness Protection

120. Eswatini bears the primary responsibility for safeguarding victims, witnesses, and other cooperating individuals. The protection of complainants and witnesses against intimidation or ill-treatment in Eswatini is catered for by the Witness Protection Act No. 10 of 2018. However, there have been challenges (attributable to resource constraints) in the operationalization of this legislation as a result no institutional framework has been established to fully administer it. Despite these challenges, there have been cases where the

witness protection programme has been implemented to protect witnesses from intimidation or ill-treatment.

121. Further, bail conditions state that the accused shall not interfere with the complainant and/or witnesses and the terms contained in the bail recognisance forms. The presiding officer will then warn the accused persons must not contact or interfere with the complainant or witnesses of the case. The accused is further warned that failure to adhere to these bail conditions, the person will be charged with contempt of court and if found guilty, the bail will be revoked.

Article 14 - Right to redress, fair and adequate compensation and rehabilitation for victims of torture

122. The Common Law principle of vicarious liability makes the Government liable for acts done by Government officials within the course and scope of employment.[41] Claims of compensation for victims of torture can be recovered by instituting legal proceedings against the Government as earlier highlighted above. In terms of the Limitation of Legal Proceedings against the Government Act No. 21 of 1972, any person claiming compensation from the Government has to submit a written demand to the Attorney General within 24 months of the claim becoming due.[42] In cases where the claim or demand for compensation is not submitted within the stipulated 24 months, the claimant or victim of torture must apply for a special leave to institute proceedings before the High Court.[43]

123. The basis for directing the claims to the Attorney General is based on the fact that the office is the principal legal advisor and legal representative of the Government.[44] Upon receiving the letter of Demand, the Attorney General will consult the relevant Government Department to decide on the appropriate course of action. The Government must respond to the claim within 90 working days from the date of receipt. If the Government fails to do

[41] *Albertina Mthupha N.O. and 4 Other v Phineas Malinga and 5 Others*, High Court Case No. 4437/08 at para 13.
[42] Section 2 of the Limitation Act.
[43] Section 4 of the Limitation Act.
[44] Section 77 (3) (a) of the Constitution.

so, the claimant or victim of torture has the right to initiate legal proceedings against the Government for damages resulting from torture committed by public officials.

124. There are no specific rehabilitation programmes or formal schemes that target victims of torture. However, the victims may approach health facilities for assistance in general health, physiotherapy or any other special care.

125. In criminal context, if a person is convicted of an offense causing injury or damage, the court may, upon application by the injured party, award compensation, not exceeding the court's civil jurisdiction.[45] The court can determine compensation based on trial evidence or an agreement between the convicted person and the injured party.

126. Insert case …. on derivative vicarious liability.

127. In terms of judicial measures undertaken by Eswatini, a victim of torture can obtain redress and has an enforceable right to fair and adequate compensation. The High Court may make such order, issue such writs and give such direction as it may consider appropriate. There are a number of cases where the court awarded compensation to victims of torture as cases of such nature are ultimately addressed by the courts.

128. In the case of *Mandla Mngometulu v The Commissioner of Police and Another* [46], the Plaintiff instituted legal proceedings for damages arising from unlawful arrest and detention against the Defendants. Pursuant to action proceedings instituted, the appellant alleged that he was detained for four days without reasonable cause. The Court held that the detention was unreasonable in terms of the law as Plaintiff was detained in excess of four hours from the maximum of forty-eight hours and that constituted a violation of his right to personal liberty. The Court awarded the Plaintiff the sum of Seventy thousand Emalangeni (E70, 000.00) in respect of the loss of liberty and freedom, discomfort and *contumelia*. The court further awarded the Plaintiff the sum of One hundred and fifty thousand Emalangeni (E150 000.00) in respect of pain and suffering.

[45] Section 321 of the CP & E Act.
46 SZHC 2553/01 (15 June 2004)

129. In *Duma Dlamini v Commissioner of Police and Another*[47] the Plaintiff sued the Commissioner of Police for damages in the sum of One hundred and forty-seven thousand Emalangeni (E147, 000.00) arising from wrongful arrest and detention. The Plaintiff was claiming for loss of dignity, reputation and good name, loss of amenities of life, loss of freedom and *contumelia*. In this case, the Plaintiff was detained for a number of days in police cells and later released without being prosecuted. Court entered judgment in favour of the plaintiff for the sum of Seventy thousand Emalangeni (E70,000.00) where it considered the unfortunate circumstances under which the plaintiff was arrested and detained, his age and standing in his society, the treatment meted out to him while under detention and the humiliation he suffered which prompted a change of employment even after he was released.

130. In *Mavimbela v Commissioner of Police and Others*[48]**,** the Plaintiff instituted legal proceedings against the Commissioner of Police for the sum of One hundred thousand Emalangeni (E100, 000.00) in respect of hospital and medical expenses as well as pain and suffering arising from an assault by Police Officers. The Court was satisfied on a balance of probability that the Plaintiff incurred injuries observed by the Doctor at the hands of the Police Officers. The Court held that the Government was vicariously liable for the acts of the police officers in assaulting the Plaintiff and awarded an amount of thirty thousand Emalangeni (E 30, 000.00) as damages.

131. In *Nomsa Maphalala v The National Commissioner of Police and Another*[49], the Plaintiff instituted legal proceedings against the National Commissioner of Police for damages in the sum of Three hundred and fifty thousand Emalangeni (E350, 000.00) arising from assault and unlawful detention at the hands of Police officers. The Court held in favour of the Plaintiff and the Defendant was liable to the Plaintiff for E70 000.00.

132. Muzi Mhlanga v Natcom[50] *…*

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[47] 3237 of 2001 SZHC 169 (19 June 2009)
[48] 2542 of 1999) [2004] SZHC 130 (12 October 2004),
[49] (1838/2015) SZHC 159 (16th August 2019)
[50] ….

133. In an effort to deter law enforcement agencies from resorting to the use of torture, cruel, inhuman and degrading treatment in their line of duty, a Directive is in place to the effect that disciplinary action will be taken against officers committing acts of torture, to recover money spent by the state to compensate torture victims. In the event that the plaintiff who seeks damages for torture dies the courts provide for the compensation to be received by the surviving beneficiaries.

Article 15 - Prohibition of using statements obtained as a result of torture (The exclusionary rule)

134. The CP&E prohibits the admissibility of confession statements into evidence if it is determined that the statement was not freely and voluntarily made.[51] This Section makes it clear that statements made as a result of coercion will not be accepted as evidence against the accused person. During the confession process, suspects are presented before a Magistrate to make a statement which is recorded in writing by the Magistrate. Prior to the confession process, the Magistrate has to conduct a preparatory examination to caution the suspect that s/he is not obliged to make any self-incriminating statement that may be used against him/her as evidence during trial.

135. The CP&E Act further goes to the extent of protecting witnesses in any criminal proceeding from being compelled to answer any question if their response might lead to their exposure to any form of punishment, penalty, forfeiture, criminal charges, or damage to their character.[52]

136. In giving effect to the principle that a statement made as a result of torture shall not be invoked as evidence in any proceedings, Police officers in Eswatini administer a caution to suspects before effecting an arrest or during an interrogation.

[51] Section 226 of the CP & E Act.
[52] Section 254 of the CP & E Act.

137. This in practice is referred to as a caution in terms of the "Judge's rules" where a police officer first cautions a suspect before asking any further questions, as the case may be. When suspects are formally charged, they are cautioned and informed that they have the right to remain silent and that anything they say can be used as evidence against them. They are also told that they can choose not to say anything and that they are not obligated to point out any evidence to the police.

138. Examples of cases in which such provisions were applied are discussed below:

- In the case of *R v Dlamini & Another*[53] the High Court found an accused person facing a charge of murder in count not guilty and accordingly acquitted him of the charge. In this case, the accused person recorded a confession before a Magistrate where he was revealed to have been schooled by the police officer on what to say, fearing the reprisals of further torture. The court found evidence from a police officer that an admission made by the accused person of how he killed the deceased was inadmissible as the confession made was not governed by Section 226 of the Criminal Procedure and Evidence Act (CP&E). The court held further that the Crown bears the onus to discharge that such confession was made freely and voluntarily in terms of the said Section. It found that in the case before it, no effort whatsoever was made by the Crown to prove that such a confession was made in terms of the Section.

- In Eswatini, derivative evidence is inadmissible. In the case of *Mhlongo and Others v Rex*[54] the court held that the derivative evidence is inadmissible. The court held that the evidence of the pointing out in the context of the circumstances in which they were made, was evidence of confessions in the guise of pointing out and were not proved to have been made freely and voluntarily.

- In *Phinda E. Mavuso v Rex*[55] the court held that derivative evidence is inadmissible. The court found that the evidence of a confession made to a Police Officer by an accused person cannot be admissible as the person to whom it was made was the

[53] 41/2000 SZHC 7 (2002)
[54] 185 of 1992 [1993] SZSC 1
[55] 42 of 2014 [2015] SZSC 10

investigator and also a person in authority over the accused. It was held further that the confession was not reduced to writing and confirmed before a judicial officer as dictated by section 226 (1) of the Criminal Procedure and Evidence Act 67 of 1938.

Article 16 - Obligation to prohibit acts of cruel, inhuman or degrading treatment or punishment

Cruel, Inhuman or degrading treatment or punishment

139. The Constitution provides protection from cruel, inhuman or degrading treatment or punishment and further proclaims that the dignity of every person is inviolable.[56] Further Section 57(3) of the Constitution prohibits law enforcement officials from inflicting, instigating, or tolerating any form of torture, cruel, inhuman, or degrading treatment. They are not allowed to use superior orders or exceptional circumstances as a justification for such actions. In part, these provisions are duplicated in the Police Service Act of 2018 as well as the Correctional Services Act of 2017.

140. The Children Protection and Welfare Act prohibits certain forms of punishment such as corporal punishment in cases involving children as a sentence for a crime. In particular, the Act provides that no sentence of corporal punishment or any form of punishment that is cruel, inhumane or degrading may be imposed on a child.[57]

141. Further, the Ministry of Education also rolled out a program on Positive discipline. Hence, the National Education and Training Policy of Eswatini provides that the goal of positive discipline is to replace all forms of corporal punishment.

142. In addition to these pieces of legislation, the prosecution of Common Law offences discussed above in paragraph 23 extends the same protection to individuals from any cruel, inhuman or degrading treatment or punishment.

143. To discourage acts of cruel, inhuman or degrading treatment or punishment, the REPS introduced a course on human rights in the police training curriculum both pre-service and

[56] Section 18.
[57] Section 161 (2) of the CPWA.

in-service training as discussed in article 10 above. This is one of the many ways in which REPS seeks to sensitise the Police on issues of cruel, inhuman or degrading treatment or punishment. Thus, law enforcement officers who have committed such offences are liable to disciplinary action.

Living conditions in detention centres

144. The Correctional Services Act aligns with the Mandela Rules. Part IV of the Correctional Service Regulations provides the standards to be observed when accommodating inmates, it is worth noting that the Regulations emphasise that, juvenile, male and female offenders should be separated. It further strengthens the rehabilitation programmes administered to inmates and introduces measures aimed at improving the conditions of detention of offenders. Offenders are provided with needs-based programs and interventions to facilitate their rehabilitation and enable their social reintegration. Every offender at Correctional Service centres is given an opportunity to enrol for formal basic education, informal education, or vocational education.

145. With regard to health care, inmates receive free medical treatment in the Correctional Centres' clinics. The medical team renders comprehensive health care services that include amongst others; curative health services, HIV/AIDS management, tuberculosis management and makes referrals to other hospitals and specialists should there be a necessity.

146. Inmates are given three meals a day and penal diets are no longer enforced in observance of the country's commitment to promote, observe, protect and promote human rights. The Correctional Service has permanent officers that are Nutritionists and Environmental Health and Safety Officers who visit all centres at frequent intervals to inspect the conditions of the kitchens and food. Further, these experts equip Correctional Officers and inmates responsible for cooking with skills and knowledge of best practices and acceptable standards of handling food and management of cooking facilities.

147. Overcrowding in prisons remains a huge challenge, as a measure to mitigate this challenge alternative sentencing methods such as community services, Extramural Penal Employment, and release of inmates through King's amnesty are explored.

Correctional Centre's carrying capacity as at June 2024

Correctional Centres		**Carrying Capacity**	**Current Capacity**
1.	Criminal Mental Health Centre	20	25
2.	Matsapha Correctional Centre	400	1184
3.	Malkerns Young Persons Centre	150	123
4.	Mawelawela Correctional Centre	120	192
5.	Manzini Remand Centre	350	482
6.	Mankayane Correctional Centre	50	51
7.	Mbabane Correctional Centre	400	400
8.	Piggs Peak Correctional Centre	400	374
9.	Vulamasango Primary and High School	200	231
10.	Big Bend Correctional Centre	350	483
11.	Bhalekane Correctional Centre	350	368
12.	Nhlangano Correctional Centre	200	414
GRAND TOTAL		**2990**	**4327**

148. The HMCS have a total of 12 detention centres distributed across all four regions of the country. The categories of women, men, young persons and mentally disturbed that are incarcerated are kept in different establishments, separate from one another. The Mawelawela Correctional Centre is an institution specifically designed for females and the adults are segregated from juveniles. Nursing mothers are kept separate from other inmates.

149. The Malkerns Young Persons Centre is a centre specifically for juvenile criminals. The Criminal Lunatic Asylum was established for mentally ill offenders. The Juvenile Industrial

School also referred to as Vulamasango Correctional School was established to equip students with essential life – skills so that they develop desirable attitudes and behaviour towards the environment or society. The school serves as a program of education, formal and non – formal under extension services. Of note is that the school does not only enrol children who are in conflict with the law but everyone.

150. Include information on sanitary conditions…

151. In police detention centres, the Station Commander and Occurrence bookkeeper are required to check the police cells daily to ensure they are kept clean and to monitor the well-being of detained persons[58]. Additionally, the Force Standing Order mandates the Occurrence Bookkeeper to visit detained persons in the cells at least every half an hour to check on their well-being. If any detained person is found to be unwell, the Occurrence Bookkeeper must report it to the Station Commander or Supervisor so that the individual can be taken to the hospital.

152. Overcrowding in police cells is not an issue because suspects are only kept in the cells for a short period of time, not exceeding 48 hours as per the dictates of the Constitution. There are no specifically designed cells for women and minors, however women and men are kept in separate cells.

[58] Force Standing Order 95