

FOR CONSULTATION



KINGDOM OF ESWATINI

**COMMON CORE DOCUMENT FORMING PART OF THE REPORTS OF
THE KINGDOM OF ESWATINI**

DRAFT

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Introduction

1. The Common Core Document has been prepared in line with the harmonised guidelines of the Human Rights Committee regarding the form and content of periodic reports to be submitted by State Parties. It has been prepared by the National Mechanism for Reporting and Follow up and is the result of a participatory and collaborative process involving the relevant Ministries and departments, Civil Society Organisations, whilst taking into account inputs from the private sector as well as the National Human Rights institution.
2. The Common Core Document contains general information on the demographic, economic, social and cultural characteristics of the country as well as its Constitutional, political and legal structures.

I. General Information

The Land

3. The Kingdom of Eswatini is situated in the south east of the Southern African region. It is the smallest country in the region with a total geographical area of 17 364 square kilometres⁰⁵. Eswatini is completely landlocked, surrounded on the north, west and south by the Republic of South Africa (RSA) and bordered by Mozambique to the east, at a latitude of 31 degrees, 30 minutes east of Greenwich and a longitude of 26 degrees, 30 minutes south of the equator.
4. Eswatini encompasses beautiful mountain scenery with unique, ancient rock formations, which are a source of fascination to geologists, scholars and visitors. Within this small area each feature of Africa's terrain, apart from desert, is to be found. The Kingdom has four topographical and climatic areas ranging from 400 to 1800 metres above sea level, each with its own unique characteristics. The mountainous Highveld to the west features rivers, waterfalls and gorges and has a temperate climate of warm, wet summers and

dry winters when the temperatures can rise sharply during the day but with cold nights. Winter frost frequently occurs on the higher ground. This area is generally not suitable for agriculture although much of it is given over to forestry.

5. The subtropical Middleveld, at a lower altitude, is made up of lush, fertile valleys and has a warm climate that is ideal for cultivating a diversity of crops and it is where much of the country's agricultural activities occur.
6. Further to the east is the Lowveld which is the largest region covering about 40% of the country, and is also subtropical. While this area is drought prone, sugar is successfully grown commercially on a wide scale under irrigation. Cattle-farming is also extensively carried out here. Much of the area is typical African bush where a wonderful profusion of indigenous natural life, birds and flora are found in protected areas.
7. The smallest topographical and climate area is the Lubombo plateau, which borders Mozambique. This subtropical area is typified by mountainous scenery and supports abundant plant and animal life. Mixed farming is the main activity here.
8. The nearest harbour is at Maputo in Mozambique, which is about 235 kilometres from Mbabane, the administrative capital and 200 kilometres from Matsapha, the country's main industrial area.
9. The country's land tenure system consists of Eswatini Nation Land (ENL), Title Deed Land (TDL) and Crown Land. ENL is held in trust by the King on behalf of the Eswatini Nation and is administered on the King's behalf by Chiefs who are placed in charge of one or more demarcated areas. ENL is

accessed through the traditional¹ system of land allocation through family members who pledge allegiance to the Chief of the area. This land can be allocated for residential purposes as well as for subsistence farming. In recent years, small development and income generating activities by local community associations have been promoted. TDL and Crown land is privately owned, sold on the open market and is used for a wide variety of purposes.

The People and Traditions

10. During the fifteenth and sixteenth centuries, an African people of Nguni descent migrated southward from Central Africa and during the mid-eighteenth century, a group of them settled in the area which today is Eswatini. These people, the Nkosi Dlamini, became known as Emaswati, and today both names continue to be used. Nkosi means “king” and Dlamini is the surname of the royal family. The country derives its name from a later king, Mswati I but another name, Ngwane, is an alternative word for Eswatini. Emaswati are a proud but peaceful people with happy, easy-going and often humorous personalities which have earned the title of Latins of Africa.

11. Eswatini population is predominately homogenous, composed of ethnic Emaswati at 97.8 percent and 2.2 percent non- swati². The official languages are siSwati and English.

12. Eswatini traditions are observed and various ceremonies regularly take place to mark special occasions. The two main cultural ceremonies are the Umhlanga (Reed dance), and the Incwala, (First Fruits Ceremony) whose dates are selected by astrologers who monitor the moon phases to determine the ideal time. Umhlanga, which is held during August or September, is voluntarily

² Eswatini Population and Housing Census 2017

attended by maidens to gather reeds which are used to make screens around the royal kraal and it is from this custom that the ceremony derives its name. The event is always concluded by traditional dances.

13. The Incwala ceremony is a national prayer that takes place during the period of November to February where people voluntarily and actively participate in traditional dances to initiate the harvesting of first fruits.

14. Traditionally, Eswatini is a polygamous society and the men may take more than one wife. It is customary to pay a dowry, known as lobola, which normally entails presenting cattle – the cultural symbol of wealth – to the brides’ parents. However, monogamous marriages, performed in the western custom are frequent occurrences as Emaswati adapt to and adopt more aspects of the western lifestyle. However, the cultural heritage is deeply rooted with traditions carefully protected and sustained.

Population

2017 Census

15. Eswatini has a population of 1,093,238³ of this figure, 562,127 are females and 531,111 are males. This means that the population of Eswatini increased by 74,789 persons in the ten-year period 2007 to 2017. This represents an annual growth rate of 0.7 percent.

Population Trends and Annual Growth Rate: 2007-2017

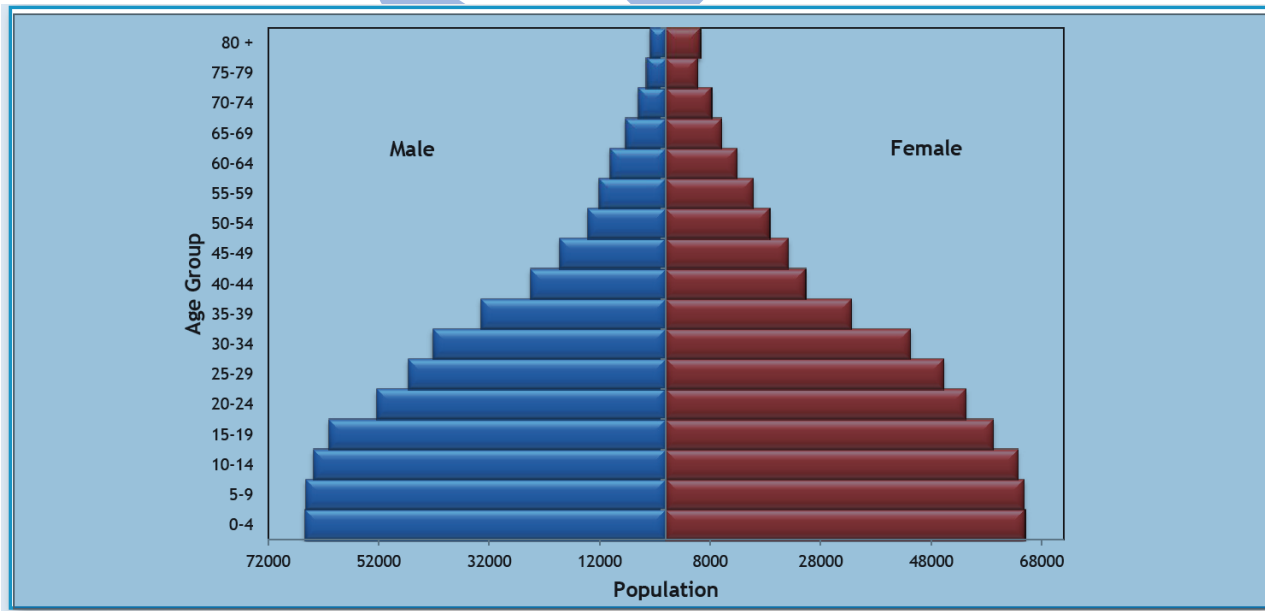
	Male	Female	Both Sexes	Absolute Population Increase	Annual Growth rate
2007	481428	537021	1018449	88731	0.9

³ Eswatini Population and Housing Census 2017

2017	531111	562127	1093238	74789	0.7
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Total Residency Population (de Jure) by Sex According to Age-Groups,2017

	Grand Total			Urban		Rural			
	Sex		Total	Sex		Total	Sex		Total
	Male	Female		Male	Female		Male	Female	
Total	531111	562127	1093238	128701	131065	259766	402410	431062	833472



16. In terms of regions, 32.6 percent of the country’s population resides in Manzini region while 29.3 percent were enumerated in Hhohho region, 19.4 percent resides in Lubombo and 18.7 percent resides in Shiselweni.

17. The maximum exponential growth of 1.3 percent was recorded in the Hhohho region during 2007-2017. The national capital is located in the Hhohho region

and better infrastructural facilities accompanied by more employment and economic opportunities could be the reasons for faster growth of Hhohho region. Manzini closely followed Hhohho, registering a growth of 1.1 percent. Manzini is both a commercial and industrial hub of the country and therefore, high growth of population was also expected in Manzini. Both Hhohho and Manzini recorded growth rates more than the national average of 0.7 percent. Lubombo recorded growth of 0.2 percent during the past decade while Shiselweni registered a negative growth of -0.2 percent. Out of a total increase of 74,789 during 2007-2017 the contribution of Hhohho was 37,917 persons followed by Manzini (36,415) and Lubombo (4,800). Shiselweni showed a decline in population by 4,343.

Population growth rates by regions, Census 2017.

Census	Region				
	Hhohho	Manzini	Shiselweni	Lubombo	Eswatini
2007	1.01	1.29	0.47	0.68	0.9
2017	1.3	1.1	-0.2	0.2	0.7

18. The reasons for change in population could be due to interplay of factors like fertility, mortality and migration responsible for demographic transition.

19. Eswatini has a total area of 17 349.98 square kilometres and the population census shows the population density to be at 63 persons per square kilometres of land area showing a slight increase from 58.7 persons per square kilometres in 2007.

Density coverage, Census 2017.

Area	Density	
	2007	2017

National	59	63
Hhohho	78	89
Manzini	78	87
Shiselweni	55	54
Lubombo	36	36

Dependency ratio

Census Year	Dependency Ratio			
	Residence	Young	Old	Overall
2007	rural	74.52	7.98	82.50
	urban	44.38	2.51	46.89
2017	Rural	67.97	9.18	77.15
		37.79	3.17	40.97

20. Eswatini has a young population with an overall dependency ratio at 40.97 with a large youth dependency ratio at 37.9. Consequently, this implies the potential effects of changes in population age dependency ratio for social and economic development hence indicating trends in social support needs. A high dependency ratio indicates that the economically active population and the overall economy face a greater burden to support and provide the social services needed by children and older persons who are often economically dependent. A high youth dependency ratio, implies that higher investments need to be made in schooling and child-care.

Life Expectancy level at birth by sex for Eswatini according to Urban-Rural ,2017

Area of Residents	Life expectancy at birth			
	Male		Female	
	2007	2017	2007	2017

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National	42.22	58.85	43.13	63.52
Urban	57.19	69.82	57.59	68.21
Rural	37.86	56.03	39.29	61.21

Mortality and Fertility Trends:

		2007	2017
Infant Mortality rate			
	Urban	105	44
	Rural	108	57
	National	107	53
Child mortality rates			
	Urban		14
	Rural		24
	National		21
Under-Age Mortality rate			
	Urban		58
	Rural		81
	National		74
Maternal Mortality ratio			
	Urban		382
	Rural		478
	National		452
Total Fertility rate		3.9	3.2

Rural and Urban Dispersion

21. The population of Eswatini is predominantly rural; out of the total population figure of 1,093,238, the rural population accounted for 76.2 percent while 23.8 percent is the urban population. In 2007 the urban population decreased marginally to 22.1 percent and in 2017 grew by 1.7 percent. These patterns of settlement are primarily determined by the availability of land, water sources, employment opportunities etc.

Population housing census 2017 (Rural and Urban Dispersion)

	National			Urban			Rural		
	Sex		Total	Sex		Total	Sex		Total
	Male	Female		Male	Female		Male	Female	
Total	531111	562127	1093238	128701	131065	259766	402410	431062	833472

Religion

22. Section 23 (1) of the Constitution expresses the freedom of conscience or religion. It provides that: “Every person shall be entitled to, and except with his own consent, shall not be hindered in his enjoyment of, freedom of conscience, including freedom of thought and of religion, freedom to change his religion or belief and freedom, either alone or in community with others, and both in public and in private, to manifest and propagate his religion or belief in worship, teaching, practice and observance”. In accordance with Section 23(3), every religious community shall be entitled to manage any of its educational institutions.

23. The Kingdom of Eswatini is characterized by a diversity of religious beliefs and practices which includes but not limited to: Christianity, Islam, Hindu, Baha’i Faith, Traditionalist, Judaism, Other Religion and No Religion.⁴ The

⁴ The Population and Housing Census Volume 3 (Eswatini) 2017- Chapter 3, Page 19,20

distribution of the population by religious affiliation is presented in Table 3.2.1 both in absolute and percentage terms.

24. As reflected in the table, the country is predominantly Christian with all other religions accounting for about ten percent. Among the religious groups it is only the Christians which has more females than males.

Table 3.2.1 Distribution of the population by Religious Affiliation, 2017

Denomination	Sex		Total	Percentage
	Male	Female		
Christian	453249	522508	975757	89.25
Islam	2188	1438	3626	0.33
Hindu	150	94	244	0.02
Bahai Faith	235	195	430	0.04
Traditionalist	3523	1346	4869	0.45
Judaism	93	70	163	0.01
Other	2050	1313	3363	0.31
No religion	57463	23398	80861	7.40
Not Stated	12160	11765	23925	2.19
Total	531111	562127	1093238	100.00

Economic landscape

25. The Kingdom of Eswatini has a small export-oriented economy, the growth of which is highly dependent on world and regional markets and trends. The World Bank classifies Eswatini as a lower-middle-income country. The major economic sectors are - agriculture, manufacturing, tourism and public enterprise.

26. Eswatini's GDP per capita was SZL 56,132 in 2016, and increased to SZL 65,432 in 2020. There was an economic growth from 2016 with 1.1 % to 2.6%

in 2019, but a decline to - 1.9% was realised in 2020. Underpinning the decline in growth was a slump in economic activity in the primary and tertiary sectors of the economy. Furthermore, the continued government's fiscal challenges which constrained public expenditure, coupled with the adverse climate change conditions predominantly resulted in the poor performance of these sectors. Further, with the global outbreak of the novel coronavirus disease of 2019 (COVID-19), the country's economic growth significantly contracted in 2020 as anticipated.

27. On domestic price development, inflation declined from 4.8 percent in 2018 to 2.6 percent in 2019 promising improvements towards macroeconomic stability and consolidation. Declines in inflation occurred in the following categories - communication, transportation, as well as housing and utilities underpinning moderation in the general price level. The price moderation afforded the Central Bank of Eswatini (CBE) the opportunity to adopt an accommodative monetary policy stance to cushion economic activity.
28. The headline inflation rate in January 2021 (i.e. the annual percentage change in the Consumer Price Index (CPI) in January 2021 compared with that of January 2020) for the country is 4.3%. This annual rate is 0.3 percentage points lower than the corresponding annual rate of 4.6% observed in December 2020.
29. Eswatini's GINI Coefficient stood at 49.305 showing a fairly huge dispersion of the population from the mean/average income distribution. Over the same period Eswatini's Per Capita Income stood at SZL (1,651), whilst on the other side Consumption per capita stood at SZL(1,074).
30. The Lilangeni which is anchored to the RSA rand, depreciated against all three major currencies and in particular against the US dollar, it averaged E14.40 in 2019 compared with E13.20 in 2018. The country's major trading destination in terms of exports and imports remains the SACU region.

31. Eswatini is a member of the Southern African Customs Union (SACU) which includes Botswana, Lesotho, Namibia and South Africa, allowing for free movement of goods internally within the Union and distribution of customs and excise taxes among the membership. The Government of Eswatini depends on custom duties from SACU to finance almost half of its budget. However, SACU's expansionary fiscal policies and low revenues have widened the budget deficit to an annual average of 9% of GDP.
32. The overall balance deficit amounted to -7.9% GDP in 2019 and is projected to remain high in 2020 (-6.6%) and 2021 (-7.2%) (IMF). The deficits are financed by central bank loans, levies on reserves and external and domestic borrowing. The deficit has pushed up public debt, which reached 40.9% GDP in 2019 and is expected to continue to increase in 2020 (42.5%) and 2021 (45.1%), raising concerns about its sustainability (IMF).
33. The decline in economic growth has contributed to an increase in the rate of unemployment which is presently 33.3 percent of the population. Of this number 33.9 percent of the unemployed are women while 32.7 percent the youth. Unemployment is also skewed against the rural population with 63.3 percent of the unemployed being based in the rural areas whereas the unemployment rate is at 36.7.

Unemployment rate by sex, region and age groups⁶

Sex			
	Male	Female	Both Sexes
Region			
Hhohho	30.0	31.0	30.5
Manzini	39.2	40.6	39.9
Shiselweni	30.8	29.4	30.0
Lubombo	25.6	27.0	26.3
All Regions	32.7	33.9	33.3

Trend of unemployment by region

Region	2007	2010	2013	2016	2021
Hhohho	27.2	23.2	29.0	20.2	30.5
Manzini	27.1	22.9	25.3	21.7	39.9
Shiselweni	30.0	25.4	37.5	24.5	30.0
Lubombo	31.8	24.3	24.8	28.6	26.3
All Regions	28.2	28.5	28.1	23.0	33.3

Youth unemployment statistics

Sex			
	Male	Female	Both Sexes
Region			
Hhohho	49.4	57.3	52.9
Manzini	59.3	63.4	61.4
Shiselweni	45.6	80.3	64.7
Lubombo	57.6	54.7	56.2
All Regions	54.7	61.8	58.2

34. The table above depicts an unemployment rate of 58.2 percent for the age 15 - 24 years, where 61.8 are females and 54.7 are males.

35. Further the unemployment rate for persons with disabilities stands at 26.6%, where 29% are female and 23.3% are male.

⁶ Labour Force Survey, 2021

36. The country's GNI per capita in 2017 was 7,840 , in 2018 was 8130, 2019 was 8110 and in 2020 it stood at 7,980.

Proportion of population under Poverty line

37. According to Eswatini Household and Income and Expenditure Survey report (ESHIES, 2017), out of the population of 1,093,238, 58.9% are living below the poverty line from 63% in 2010. According to the report, poverty is most pronounced in rural areas at 70.2% than urban areas 19.6%, highest in the Lubombo and Shiselweni regions at 71.5% and 67.3% respectively.

38. Poverty is one of the main development challenges affecting the Kingdom. Policies and strategies have been developed to eradicate it and further reduce the disparities between rural and urban areas. These include

- Poverty Reduction Strategy and Action Programmes 2005 which was tailor-made to end Poverty by 2015. This strategy's recommendations resulted in the establishment of Poverty Reduction Fund, Regional Development Fund, Youth Enterprise Fund and the social grants for the elderly, PWD, OVCs.
- Strategic Roadmap 2018/9 to 2022/3 which provides for policy direction and range of interventions for economic recovery and inclusive growth.
- The Financial Inclusion Strategy to strengthen access to finance for Small Micro Medium Enterprises development.
- National Development Plan 2019 – 2022 which has six outcomes and Outcome 3 -Enhanced Social and Human Capital Development, gives direction on how the socio-economic rights are to be achieved.
- Strategy for Sustainable Development and Inclusive Growth (SSDIG), 2018: A national development strategic framework which was an expansion of the NDS (National Development Strategy) to incorporate sustainable development as per Agenda 2030. This National strategic framework set national targets and priorities for pursuit towards a prosperous Eswatini by 2030. The SSDIG articulates the vision of the

country for the year 2022 and beyond and further maps the development path for Eswatini.

- Post COVID 19 Kingdom of Eswatini Economic Recovery Plan 2020; aims at mitigating the impact of the COVID-19 crisis and at saving the economy and livelihoods. The Plan will facilitate creation of opportunities for income generation and wealth creation in priority areas of the economy.
- National Youth Policy (NYP) 2020; This Policy builds on the previous NYP through deliberately identifying and facilitating the attainment of positive youth development outcomes. It embraces new thinking on development, specifically youth development, which takes into cognizance the significance of population dynamics and the principles of sustainable development. The vision of this policy is “All young people in Eswatini have the capabilities and platforms as well as opportunities to facilitate their own development and that of their communities”.
- Eswatini endorsed and domesticated the Sustainable Development Agenda 2030 and further prioritized SDG 2 in an effort to end hunger among its citizens in line with the Global Zero Hunger Challenge. The Government collaborated with key sectors to develop the Eswatini Zero Hunger Strategic Review (EZHSR) 2019 in an effort to inform the implementation of SDGs 1 and 2, in an endeavour to fight hunger and achieve food security,
- National Gender Policy 2010 (currently being reviewed) – to guide national gender mainstreaming agenda.
- Social Development Policy
- National Children’s Policy
- National Disability Policy, National Disability Action Plan 2018 - 2022

Education

39. Eswatini has an overall literacy rate of 89.1 percent in the general population. The literacy rates among those aged between 15-24 years is at 95.3 percent. However, the country has not reached gender parity in literacy among this age

group with males at 92.1 percent being disadvantaged compared to girls at 95.3 percent.

Literacy rate by sex over two censuses

Year	Total	Male	Female
2007	81.3	82.6	80.2
2017	96.0	96.5	95.6

40. The net enrolment rate at primary school level reached gender parity at 89 percent for both boys and girls in 2014 following the introduction of Free Primary Education (FPE) in 2010. The net enrolment rates were at 34.3 percent for girls, 23.7 percent for boys at lower secondary and 14.7 percent girls and 9.9 percent boys at senior secondary level.⁷ Generally, enrolment in tertiary education seems to favour males over females with gender parity status of 0.96 percent. It has been observed that the enrolment rate is higher for girls at lower and senior secondary level yet at tertiary, the enrolment rate favours males. This can be attributed to social barriers such as child headed families (wherein the girls assume the role of taking care of families), lack of scholarships and the fact that females go for softer programmes.

Health

41. Eswatini’s health facilities have increased over the years to 327, 85% of these facilities are within the radius of 8km in the communities and of those facilities at least 52% are youth friendly⁸ .

⁷ Annual Education Census Report, 2014.

⁸ Ministry of Health study of 2017

42. The Kingdom of Eswatini is committed to expand health care programmes in the country despite the burden of diseases; the combination of long-established infectious diseases, with a rapidly growing new epidemic of chronic Non-Communicable Diseases (NCDs). Risk factors such as raised blood pressure, 12 cholesterol, tobacco use, excess alcohol consumption and obesity, has not spared the population of Eswatini as 90% of adults aged 30 and above are at more risk to develop an NCD.

43. Eswatini has observed a steady downward trend in Tuberculosis (TB) incidence (363/100 000 population) and TB notifications, TB related mortality and TB/HIV co-infection rates. As of December 2020, TB incidence was 363/100 000 from above 1000/100 000 population before 2016. The country notified 2,259 TB cases from 4,190 in 2016, successfully treated 86% of drug susceptible TB (DS-TB) patients from 79% in 2016, and 81% of drug resistant TB (DR-TB) patients from 70% in 2016.

44. Mortality declined from 12% in 2016 to 8% in 2020 for DS-TB patients and from 18% to 11% for DRTB patients. TB/HIV co-infection rate declined from 70% in 2016 to 64% in 2020 for DS-TB, and from 79 % to 69% for DR-TB patients. 59. Interventions such as intensified TB screening in health care settings and communities, use of rapid molecular TB diagnostic tests, strengthening TB treatment adherence system, scaling up of HIV testing and treatment services in TB settings and commencing TB patients living with HIV on antiretroviral treatment (from 92% in 2016 to 98% in 2020), scaling up of TB preventive services among vulnerable populations such as screening People Living with HIV (PLHIV) for TB and initiating them on TB Preventive treatment (from 1% in 2017 to 65% in 2020) as well as capacity building of healthcare workers have contributed to the observed reductions in TB cases and better treatment outcomes.

Major causes of death⁹

2009 (top 10)	2019 (top 10)
-HIV/ AIDS	-HIV/ AIDS
-TB	-Lower Respiratory Infections
-Lower Respiratory Infections	-Diabetes
-Diarrheal Diseases	-TB
-Diabetes	-Stroke
-Stroke	-Ischemic Heart Disease
-Neonatal Disorders	-Diarrheal Diseases
-Ischemic Heart Disease	-Neonatal Disorders
-Road Injuries	-Road Injuries
-Chronic Kidney Disease	-Chronic Kidney Disease

Statistical data for demographic, social, economic and cultural indicators

Variable	Value (Proportion/ Ratio/ Numbers		Data Source and page
	Variant 1	Variant 2	

⁹ Global Health Metrics – Volume 396, issue 10258, page 1204-1222, October 17 of 2020. See also CDC in Eswatini Fact Sheet 2020.

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Average household size	4.6% (SDHS 2007) 4.3% (MICS 2010)	4.0% MICS 2014 4.2% Household Income and Expenditure (HIES) 2017	SDHS (page 11) 2010 (page 8) 2014 (page iii) HIES 2017 (page xiv)
Proportion of single-parent households		23.2% HIES 2017	HIES 2017 (page xiv)
Proportion of Women headed Households		49.4% HIES 2017	HIES 2017 (page xiv)
Share of (household) consumption expenditures on food, housing, health and education		E4, 242.00	HEIS 2017 (page xxii)
Proportion of population below the national poverty line		58.90% HIES 2017	HIES 2017 (page xxi)
Proportion of population below the minimum level of dietary consumption			
Gini coefficient (relating to distribution of income or household consumption expenditure)		49.3% HIES 2017	HIES 2017 (page xxi)
Prevalence of underweight children under five years of age	Severe to moderate – 5.8%	Severe to Moderate – 5.8% Severe – 1.6%	MICS 2010 (page iv) MICS 2014 (page iv)

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	Severe – 1.0%		
Infant mortality rate	79/ 1000 live births – MICS 2010	50/ 1000 live births – MICS 2014 53/ 1000 live births – Census 2017	MICS 2010 (page 10) MICS 2014 (page) Census 2017, Vol 4, pg 30
Maternal mortality rates	593/ 100 000 population	452/ 100 000 population	Census 2017, Vol 4, pg 31
Percentage of women of child/bearing age using contraception or whose partner is using contraception	65.2%	66.1%	MICS 2010 (page v) MICS 2014 (page v)
Life Expectancy		2017 58.85% males 63.52% females	Census 2017, Vol 4, pg 31
Total Fertility Rate	4.0% (2007)	3.2% (2014 and 2017)	MICS 2014 Census 2017
Medical terminations of pregnancy as a proportion of live births	No Data	No Data	No source
HIV Prevalence of infection of HIV/AIDS	SHIMS1 2010 31% overall 23% Males 38% Females	SHIMS2 2016 27% overall 20.4% males 32.5% Females	SHIMS1 2010 (page 21) SHIMS2 2016 (page 15)
HIV Incident rate	SHIMS1 2010 2.4% general	SHIMS 2016 1.36% general	SHIMS1 2010 (page 7)

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	1.7% males 2.45 females	1.02% males 1.70% females	SHIMS2 2016 (page 15)
HIV/ AIDS death rate			
Prevalence of major communicable diseases		54% (WHO NCD Summary 2016)	WHO Eswatini NCD Summary 2016
Prevalence of major non-communicable diseases		13% Cardio-vascular 10% Injuries 6% Cancers 6% Diabetes 3% Chronic Respiratory diseases 10% Other NCDS	WHO Eswatini NCD Summary 2016

CONSTITUTIONAL, POLITICAL AND LEGAL STRUCTURE OF THE STATE

System of governance

45. The System of Government for the Kingdom of Eswatini is a democratic, participatory, tinkhundla based system which emphasizes devolution of state power from central government to tinkhundla areas and individual merit as a basis for election or appointment to public office as envisaged by Section 79 of the Constitution Act 1/2005. Eswatini is therefore a no-party State.
46. In terms of Section 80. (1) of the Constitution, for purposes of political organisation and popular representation of the people in Parliament, Eswatini is divided into 59 Tinkhundla. The number of Tinkhundla has increased over the years from 40 (forty) in 1978, to 59 (fifty-nine) in 2018. The increase in the Tinkhundla centres means the representation of the people in the House of Assembly has increased.
47. The term “Inkhundla” or “Tinkhundla” (in plural) is a siSwati name for a constituency. Section 80 (1) of the Constitution provides for the division of Eswatini into several areas covering all of the country’s regions for purposes of political organisation and popular representation of the people in Parliament. “Inkhundla” or “Tinkhundla” is, among other things, also used as a constituency for the election of the elected members of the House (the secondary level elections) and also underpins the political organisation and decentralisation state power.
48. Tinkhundla Centres also serve as focal units for the provision of Government/social services to communities, in line with the country’s decentralization policy. Also, key is that they are the engine of the country’s system of political organization including the pursuit for socio-economic development.

49. The Tinkhundla political system borrows useful and acceptable modern/western political ideas, practices and institutions such as stakeholder engagement, elections, representation, social inclusion, universal suffrage (which is at the core of electoral democracy) and electoral campaigns as well as electoral dispute resolution mechanisms.

50. In a nutshell the Tinkhundla system:

- Accords with the norms and values of Eswatini because it is home grown, non – partisan but constituency based;
- Gives prominence for people to serve on the basis of their being known in their communities;
- Encourages active participation at all levels of governance;
- Supports devolution of functions and power to the people by encouraging people to best manage and direct their own affairs at grassroots level, thereby supporting access to service delivery, development and empowerment from grassroots levels;
- Is non-discriminatory in that all Eswatini regardless of any social standing or class are free to participate (to vote or be voted for) in the elections, subject to meeting the qualifications stipulated in Section 88 of the Constitution;
- Provides for individuals to be elected directly into public office and having been elected, become the direct representatives of the people who voted for them.
- The Tinkhundla political system exhibits an inclusive, collective or consultative decision-making process and respect for the will of the people. It encourages the active participation of all citizens at all levels in the governance of the country. The highest decision-making body is Sibaya or (the people's Parliament), which is the deliberative component of Eswatini's political tradition. Sibaya offers an

opportunity for people to exercise influence over national affairs. Sibaya is a democratic institution founded on the principle of popular or direct democracy.

51. Administratively, the country is divided into four regions, namely, Hhohho, Manzini, Lubombo and Shiselweni. Each region is headed by a Regional Administrator appointed by the King. The policy framework for local government administration is provided for by the Constitution and the Decentralisation Policy of 2005.
52. Urban areas are governed by the Urban Government Act No. of ... which places them under the Administration of the Ministry of Housing and Urban Development. Urban areas are further managed by Municipal Councils, Town Boards and City Councils. Currently, there are 2 Municipal Councils; 3 Town Councils and 7 Town Boards.
53. On the other hand, local administration is through iNkhundla (constituencies) by Bucopho Committees (Inner Councils). Regional distribution is that Hhohho region has 14, Manzini 16, Lubombo 11 and 14 in Shiselweni.
54. Each iNkhundla is constituted by a number of chiefdoms, each Chiefdom is represented in the Constituency Committee by a democratic elected representative called Bucopho(inner council).
55. Heading the iNkhundla (constituency) Committee is Indvuna yeNkhundla who is also elected . The iNdvunayeNkhundla and the Bucopho constitute the iNkhundla Committee, which is the executive council of that particular iNkhundla (constituency) and responsible for local development. The local Member of Parliament sits on the iNkhundla Committee as an ex officio member.

Legislature

56. National elections take place every 5 years for Parliamentarians, Tindvuna te Tinkhundla and Bucopho. Members of Parliament are elected through Tinkhundla (constituencies) which are local constituency areas comprising a number of chiefdoms and the process entails nominations of candidates at Chiefdom level who then compete at Inkhundla(constituency) level for membership of Parliament.

The first election held after the 2005 Constitutional dispensation was conducted in 2008 and subsequently in 2013 and 2018 respectively. In 2008, the office of *Indvuna Yenkhundla* and *Bucopho* became an elective office under the secret ballot mechanism.

57. In 2013, the country enacted six pieces of legislation which govern the different stages of the electoral process. These are the Elections and Boundaries Commission Act 3/2013, the Voters Registration Act 4/2013, the Elections Expenses act 5/2013, the Elections Act 6/2013, the Senate (Elections) Act 7/2013, Parliament (Petitions) Act 8/2013 and the Election of Women Members to the House of Assembly Act 9/2018.

58. Every five years the Kingdom of Eswatini undergoes a democratic election process in conformity with the elections cycle which includes pre-election, election and post -election stages. The elections are conducted by the Elections and Boundaries Commission (EBC) established by Section 90 of the Constitution to ensure free and fair elections in the country.

59. The election is by secret ballot at both primary and secondary level in accordance with the “first-past-the-post” system whereby a person receiving the highest number of votes is declared a winner.

60. The elected Members of Parliament from the Tinkhundla form part of the legislative arm of Government which comprises of the House of Assembly and Senate. The House of Assembly has 69 members of which 10 are appointed by the King. Senate consists of 30 members of which 20 are appointed by the King and 10 are elected by the House of Assembly.

61. In the event after the general election, it appears that female Members of Parliament would not constitute 30% of the total membership of Parliament, then four women are elected by the House of Assembly from the four administrative regions¹⁰. In the 11th Parliament a proportion of 22 percent are women Legislators from both Chambers.

62. The eligible population for voting was about 650 000 in 2018¹¹ and a total of 547 426 (84 percent) of the eligible voter population registered to participate in the election process. Out of the registered people 53 percent were females and 47 percent were males. Further, 54 percent of the registered voters were youth (18 - 35 years), 35 percent were adult population (36 - 59 years), 11 percent represented senior citizens population (60 years and above). The voter turnout for primary (331 422) and secondary elections (330 785) were 61 percent.

63. There were one hundred and twenty-seven (127) complaints that were reported to EBC during the 2018 Elections. The complaints were of different categories such as:

- Allegations of the inclusion of non-resident voters in a voters' roll of a particular polling division;
- Non-appearance of voters in a voters' roll;
- Conflicted staff in some polling divisions;
- Bribery of the electorate by some aspiring candidates;

¹⁰Section 86 of the Constitution and the Elections of women into House of Assembly Act 9 2018

¹¹ National Elections Report 2018, Elections Boundaries Commission.

- Unauthorised transportation of voters by some candidates;
- Canvassing for votes outside the stipulated campaigning period;
- The non-acceptance of election results by some candidates and the electorate in some instances.

64. The Manzini region recorded the highest number of complaints which were sixty-four (64). The region was followed by Lubombo, Hhohho and Shiselweni regions with twenty-eight (28), nineteen (19) and sixteen (16) complaints respectively.

The Executive

65. The King as Head of State is vested with executive authority to exercise such authority either directly or through the Cabinet or a Minister¹². The Prime Minister is the Head of Government appointed in terms of section 67 of the Constitution.

66. The Executive is comprised of the following Government Ministries:

- a) Prime Minister's Office
- b) Deputy Prime Minister's Office
- c) Ministry of Agriculture
- d) Ministry of Commerce, Trade and Industry
- e) Ministry of Economic Planning and Development
- f) Ministry of Education and Training
- g) Ministry of Finance
- h) Ministry of Foreign Affairs and International Relations
- i) Ministry of Health
- j) Ministry of Home Affairs
- k) Ministry of Information, Communications and Technology
- l) Ministry of Justice and Constitutional Affairs
- m) Ministry of Labour and Social Security

¹² Section 64 of the Constitution

- n) Ministry of Housing and Urban Development
- o) Ministry of Natural Resources and Energy
- p) Ministry of Public Service
- q) Ministry of Public Works and Transport
- r) Ministry of Sports, Culture and Youth Affairs
- s) Ministry of Tourism and Environmental Affairs
- t) Ministry of Tinkhundla Administration and Development
- u) Ministry of Defence

The Judiciary

67. The judicial system of Eswatini is based on the Anglo-American common law adversarial system and comprises of Superior Courts and Subordinate courts. The Superior Courts has two divisions, being the Supreme Court and The High Court. The Supreme Court has appellate and reviewing jurisdiction whereas the High Court has unlimited original jurisdiction, that is, the Court of first instance in civil and criminal proceedings, the appellate jurisdiction (to hear and determine civil & criminal appeals from decisions of the subordinate courts). Further, the High Court has a designated bench for Commercial Cases and Constitutional matters.

68. The Judges of the superior courts (Supreme and High Courts) are appointed by the King on the advice of the Judicial Service Commission (JSC) and Magistrates by the JSC.

69. The Industrial Court and Industrial Court of Appeal serves as specialised Courts to hear and determine labour related cases. These Courts are established by the Industrial Relations Act No. 01 of 2000. The Conciliation, Mediation and Arbitration Commission (CMAC) serves as an alternate dispute resolution mechanism for labour matters.

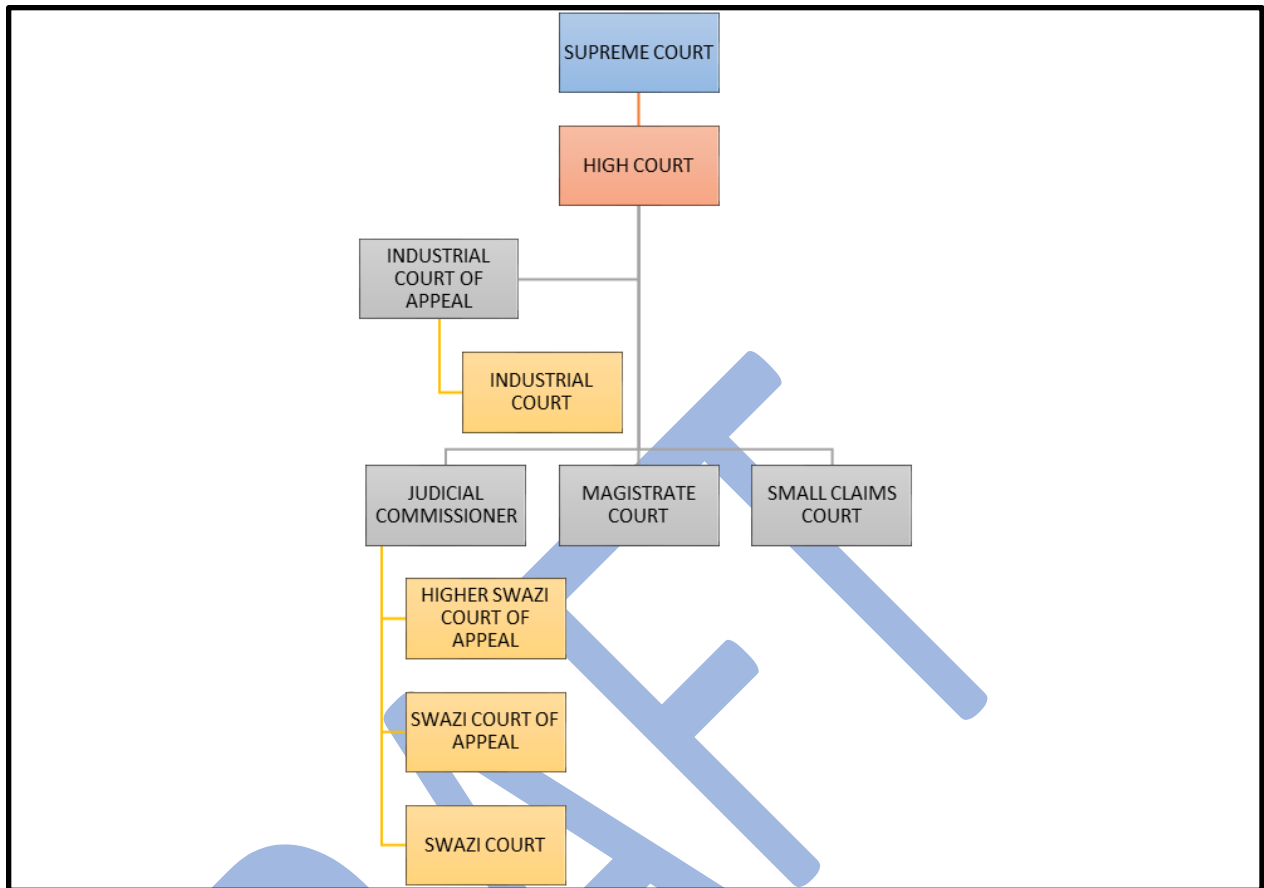
70. The subordinate courts include the Magistrates Courts (classified as Ordinary, Senior and Principal) as well as Swazi National Courts. The Magistrates Courts are established in terms of the Magistrates Courts Act of No. 66 of 1938, while Swazi National Courts are established by the Swazi Courts Act No. 80 of 1950.

71. In 2021, Small Claims Courts were established in all the regions of the Country.¹³ The operationalisation of these courts will improve the ease of doing business on the enforcement of contracts, as well as affording cheaper means of resolving commercial and financial disputes up to twenty thousand Emalangeni (E20, 000) for Small and Medium Enterprises and individuals.

72. The structure of the Judiciary is outlined below:

Court Structure

¹³ Established in terms of Small Claims Act No. 06 of 2011 (as amended)



Eswatini's Legal System

73. Eswatini has a dual legal system which consists of two distinct sets of legal norms, though separate yet co-existing. "The general law – comprises Roman-Dutch common law and statute which was incorporated as the general law of Eswatini in 1907. The General law has jurisdiction over all persons within the territory of Eswatini.

74. The operation of the general law system was retained after independence in 1968 and continues to date, with the Constitution confirming its operation in Section 252(1) as follows: 'Subject to the provisions of this Constitution or any other written law, the principles and rules that formed, immediately before the 6th September, 1968 (Independence Day), the principles and rules of the Roman Dutch Common Law as applicable to Eswatini since 22nd February 1907 are confirmed and shall be applied and enforced as the common law of

Eswatini except where and to the extent that those principles or rules are inconsistent with this Constitution or a statute.’

75. The customary law of Eswatini comprises the traditions and customs of the Swazi people as practised and passed on over the generations. Section 252(2) of the Constitution recognizes the operation of Swazi customary law, subject to the provisions of the Constitution, the principles of Swazi customary law (Swazi law and custom) are hereby recognized and adopted and shall be applied and enforced as part of the law of Eswatini.

76. The Constitution is the supreme law of Eswatini and if any other law is inconsistent with the Constitution that other law shall, to the extent of the inconsistency, be void¹⁴.

77. Section 268 further entrenches the supremacy of the Constitution in its relation to existing law. The section provides the following:

(1) The existing law, after the commencement of this Constitution, shall as far as possible be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring it into conformity with this Constitution.

(2) For the purposes of this section, the expression “existing law” means the written and unwritten law including customary law of Eswatini as existing immediately before the commencement of this Constitution, including any Act of Parliament or subordinate legislation enacted or made before that date which is to come into force on or after that date.

Recognition of Non-Governmental Organisations (NGOs)

78. NGOs are registered in terms of the Companies Act of 2009 under section 17 as charitable organisations or non-profit making organisations, subjecting

¹⁴ Section 2 of the Constitution

them to be regulated. However, efforts are underway to develop a legal framework that will comprehensively provide for and regulate matters concerning NGOs.

79. Non – Government Organisations are regulated through the Ministry of Home Affairs. Government recognizes NGOs as equal partners in development. The Coordinating Assembly of Non-Governmental Organisations (CANGO), is an umbrella body of NGOs which is membership-based and was established in 1983.

80. Currently there is a National NGO policy 2005 which provides for registration and application for subvention processes of Non-Governmental Organization in the country. This policy further establishes the coordinating machinery to facilitate easy communication between Government and NGO's.

81. The policy also contains guidelines for NGOs to monitor financial accounting and service delivery to donor organisations that require thorough records to ensure their assistance is properly used. Currently the country is considering the development of a legal framework that will regulate the affairs of NGO's.

Administration of Justice

Indicators on crime and the administration of justice

Reporting States should provide information on the following, covering at least the last five years and disaggregated by sex, age, and main population groups:

Incidence of violent death and life-threatening crimes reported per 100,000 persons

Number of persons and rate (per 100,000 persons) who were arrested/brought before a court\convicted\sentenced\incarcerated for violent or other serious crimes (such as homicide, robbery, assault and trafficking)

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Number of reported cases of sexually motivated violence (such as rape, female genital mutilation, honour crimes and acid attacks)

Maximum and average time of pre-trial detention

Prison population with breakdown by offence and length of sentence

Incidence of death in custody

Number of persons executed under the death penalty per year

Average backlog of cases per judge at different levels of the judicial system

Number of police\security personnel per 100,000 persons

Number of prosecutors and judges per 100,000 persons

Share of public expenditure on police\security and judiciary

Of the accused and detained persons who apply for free legal aid, the proportion of those who receive it

Proportion of victims compensated after adjudication, by type of crime

II. GENERAL FRAMEWORK FOR THE PROTECTION AND PROMOTION OF HUMAN RIGHTS

Acceptance of international human Rights norms

Eswatini has ratified, or acceded to the following international instruments:

- The International Covenant on Civil and Political Rights;
- The International Covenant on Economic, Social and Cultural Rights;
- The Convention on the Elimination of All Forms of Discrimination against Women;
- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT);
- The International Convention on the Elimination of All Forms of Racial Discrimination;
- The Convention on the Rights of the Child;
- The Convention on the Rights of Persons with Disabilities; The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict;
- The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography; and
- The Optional Protocol to the Convention on the Rights of Persons with Disabilities.

Eswatini has ratified, or acceded to, the following regional instruments:

- African Charter on Human and Peoples Rights (African Charter);
- The African Charter on the Rights and Welfare of the Child;
- The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (the Maputo Protocol);
- The African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa;
- The OAU Convention Governing the Specific Aspects of Refugee Problems in Africa;

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- The African Youth Charter.

On international forum, Eswatini has not ratified the following instruments:

- The International Convention for the Protection of all Persons from Enforced Disappearance;
- The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families;
- The First Optional Protocol to the International Covenant on Civil and Political Rights;
- The Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty;
- The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights; and
- The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
- Optional Protocol to the Convention on the Elimination of Discrimination against Women

Regional instruments which Eswatini has not ratified are as follows:

- The Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights;
- The African Charter on Democracy, Elections and Governance;
- The African Union Convention on Preventing and Combating Corruption.
- The Protocol to the African Charter on Human and People's Right on the Rights of Persons with Disabilities: and
- The Protocol to the African Charter on Human and People's Right on the Rights of Older Persons.

82. Eswatini has ratified / acceded to a number of major human rights treaties, regionally and internationally. The Kingdom of Eswatini continues to engage in internal debates and consultations with relevant stakeholders to inform the right course of action to take on the unratified/ un-ceded treaties.

Legal framework for the protection of human rights at the national level

83. Eswatini's Constitutional framework on the respect for, promotion, protection and fulfilment of human rights is provided for under Chapter 3 (Bill of Rights) of the Constitution. The underlying principle of the Bill of Rights chapter is equality and non- discrimination captured in section 20.

84. The Constitution enjoins the High Court of Eswatini as the Court of first instance (original jurisdiction) to enforce the rights contained in the Bill of Rights.¹⁵ Importantly, redress is available for a violation that has been or is being or likely to occur. Further, there is a Commission on Human Rights and Public Administration established by the Constitution that also provides remedies or redress to people whose rights have been violated.

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

¹⁵ Section 35.

- The Sexual Offences and Domestic Violence (SODV) Act of 2018 and operational Regulations adopted in 2021.
- The Persons with Disabilities Act of 2018.
- Children Protection and Welfare Act 2012.
- The Election of Women Members to the House of Assembly Act of 2018.
- The Police Service Act No. 22 of 2018.
- The Correctional Services Act No. 13 of 2017.
- The Suppression of Terrorism Act No. 03 of 2008.
- The Public Order Act of 2017,
- The Code of Practice for Industrial and Protest Action of 2015,
- The Code of Practice on Gatherings of 2017,
- The amendment of the Industrial Relations Act in 2014.

86. Further to these legislative advancements, the Kingdom has established a Law Reform Unit to improve the efficiency of domesticating international instruments and harmonising laws with our Constitution.

Institutional framework within which human rights are promoted at the national level

87. The following institutions have been established to promote, protect and fulfil human rights at national level;

The Ministry of Justice and Constitutional Affairs

88. This institution is responsible for the administration of justice through its various departments to ensure the promotion, protection and compliance with human rights on behalf of the Government. It coordinates the National Mechanism for Reporting and Follow up which drafts all the state reports on the various human rights instruments.

The Courts

89. The Constitution gives the superior courts the important functions of maintaining checks and balances between the two other organs of State. Furthermore, it ensures the protection of the rights of individuals as provided for in the Bill of Rights. As such, a number of judgements have been issued upholding the rights of individuals or groups.

Judicial precedents of human rights cases

Equality and Non-Discrimination

Case	Legal issue	Decision
<i>The Attorney-General v Mary Joyce Doo Aphane</i> ¹⁶	Constitutional challenge of the Deeds Registry Act, which prohibited women married in community of property from registering the property in their own names or in the joint names of themselves and their husbands; on the ground that the law violated the right to equality guaranteed by Section 20 of the Constitution.	In this case, the Court struck down legislation (the Deeds Registry Act), which prohibited women married in community of property from registering property in their own names or in the joint names of themselves and their husbands; on the ground that the law violated the right to equality guaranteed by Section 20 of the Constitution. The Court ordered Parliament to enact remedial legislation within 1 year from the date of its order. In compliance with the court order, the Section 16 of the Deeds Registry Act has been amended to comply with section 20 of the Constitution and went a step

¹⁶ *The Attorney-General v Mary Joyce Doo Aphane* Appeal Case No. 12/2010.

		further to require a spousal consent when one of the spouses wants to encumber or dispose of the property.
<i>Sihlongonyane and others v Sihlongonyane</i> ¹⁷	Constitutional challenge to the common law concept of marital power insofar as and to the extent that it barred a married woman from suing and being sued without the assistance of their husbands.	The common law rule that married women had no capacity to litigate without the assistance of their husbands was declared inconsistent with the constitutional right to equality by the High Court, thereby effectively abolishing the doctrine of marital power insofar as it barred married women to litigate unassisted. The Court declared the principle to be inconsistent with section 20 and 28 of the Constitution and that the invalidity was with effect from “25 March 2013 from which date all married women subject to the marital power of their husbands shall have the right to sue and to be sued in their own names.”
<i>Makhosazane Eunice Sacolo (nee Dlamini) and Another vs. Jukhi Justice Sacolo and 2 Others (1403/16)</i>	A constitutional challenge of the common law principle of marital power of the husband as to whether it infringes the right to equality and dignity	The Court held that the common law doctrine of marital power is discriminatory against married women and offends against the constitutional right to equality before the law and the right to dignity, and therefore declared invalid. The Court further declared that spouses married

¹⁷ *Sihlongonyane and others v Sihlongonyane* [2013] SZHC 144

<p>[2019] SZHC (166) 30th August 2019.</p>	<p>for married (in community of property) women.</p> <p>Further, an order was sought to declare that sections 24 and 25 of the Marriage Act of 1964 to be unconstitutional and invalid in that they are inconsistent with sections 20 and 28 of the Constitution of Eswatini. The basis for seeking such order was that the word “African” in the two sections of the Marriage Act was discriminatory on the basis of race in that it imposes upon African spouses the customary consequences of marriage while non-African spouses automatically have the benefit of common law consequences.</p>	<p>in terms of the Marriage Act 1964 and in Community of Property have equal capacity and authority to administer marital property.</p> <p>Held, further: Section 24 of The Marriage Act is declared invalid, save for the first portion which reads as follows: - “The consequences flowing from a marriage in terms of this Act shall be in accordance with the common law as varied from time to time by any law”.</p> <p>Held, further: Section 25 of The Marriage Act is declared invalid in its entirety.</p> <p>The Court in reaching its decision to invalidate part of section 24 and entire section 25 noted that that the word “African” is not defined in the Act. The Act defines only one word, “Minister”. Period. It takes no ingenuity to know that there are indigenous Africans and non-indigenous Africans on this continent. North Africa is dominated by indigenous Africans of Muslim culture and who, in all probability, have no inkling what is entailed in Eswatini customary practices. Unavoidably, we are bound to</p>
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		speculate that “African” was probably intended to mean “indigenous Eswatini”.
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Freedom of Conscience or Religion

Case	Facts	Decision
1. <i>The Senate of University of Eswatini v Maziya</i> (51/2004) [2005] SZSC 10 (24 June 2005)	The respondent is a Christian and a devout member of the Seventh Day Adventist Church. The University’s examination timetable caused a conflict with his religion as he was required to write his exam on Saturdays. He wrote to the University requesting that his exam be rescheduled, and the University declined, as follows: “It is therefore unfortunate that you will indeed have to choose between writing the examination and complying with your ten commandments.”	The Court found that the University's decision to deny the student in <i>casu</i> any relief was procedurally flawed, arbitrary, misdirected and grossly unreasonable

Case	Facts	Decision
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<p><i>Sithole NO and Others v The Prime Minister and others, SC 50/2008</i></p>	<p>Applicants approached the court Subsequent to arrests of activists and the use of the Suppression of Terrorism Act against political parties.</p>	<p>In this case, the Supreme Court pronounced that political parties were not allowed to field candidates; however, members of such parties could participate based on individual merit. This position is in line with the interpretation of section 79 by the Supreme Court</p>
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Right to Education

Case	Fact & issues	Decision
<p><i>Eswatini National Ex-mine Workers Association</i> case number 335/09.</p>	<p>On 29 January 2009, The Eswatini National Ex-mine workers association (applicant) against Eswatini Government (respondent) instituted an application under case number 335/09 against the Eswatini government for a mandatory order that the government is liable in terms of section 29 (6) and 60 (8) of the Constitution of 2005 Act No1 of 2005 to make free education available in public schools for every child. On March 2009 the High court</p>	<p>In the judgement of 16th March 2009 (335/09) the court did say that the constitutional responsibility cannot be suspended or be abdicated for whatever reason or excuse including lack of funds, shortage of teachers etc.,</p> <p>The applicant was granted the order they were seeking. It was the courts` view that the provision of Free Primary Education was not dependent on the availability of funds since</p>

	<p>suiting the applicant and granted a declaratory order which did not award the remedy.</p> <p>On the 23rd July 2009, The Eswatini National Ex-Mine Workers again instituted legal proceedings against the government under case number 2168/09, seeking a mandatory order as an appropriate relief for an alleged violation of section 29 (6) and Section 60 (8) of the Constitution of 2005. Respondent opposed the same application. They raised points of law which include the following: The prayer for a mandatory order was a claim for the same thing on the same ground against the party yet such a claim was adjudicated upon by the court of competent jurisdiction. The respondent argued that in so far as the present application seeks to enforce the order made under case number 335/09, that application was misconceived. A court is enforced through contempt of court proceedings</p>	<p>that was not stated in the constitution. To implement the court order, the government enacted the Free Primary Education (FPE) Act 2010 which was deemed to have come to force on the 1st January 2009. They implemented the order by first paying for the first and second grade. To date, the FPE has been gradually rolled out to grade 7.</p>
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	and not by a fresh application against the same party.	
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Commission on Human Right and Public Administration

90. Commission on Human Rights and Public Administration/Integrity (CHRPA) is the country's National Human Rights Institution (NHRI). The CHRPA is established by the Constitution and has a three-prong mandate to promote and protect human rights, investigate alleged human rights violations and abuse of power and serves as an Integrity Commission¹⁸. The CHRPA is constituted by a maximum of five Commissioners and serviced by a Secretariat.

91. The CHRPA may take appropriate actions for the remedying, correction or reversal of instances determined to have violated human rights:

- publicising the findings and recommendations of the Commission;
- negotiation and compromise between the parties concerned;
- causing the complaint and the findings of the Commission on that complaint to be reported to the superior of an offending person or institution;
- referring matters to the Director of Public Prosecutions or the Attorney-General for appropriate action to secure the termination of the offending action or conduct, or the abandonment or alteration of the offending procedures; and
- bringing proceedings to restrain the enforcement of any legislation or regulation by challenging the validity of that legislation or regulation where the offending action or conduct is sought to be justified by reference to that legislation or regulation.

¹⁸ Constitution of Eswatini, Section 164 and 243

The Election and Boundaries Commission

92. The Election and Boundaries Commission (EBC), is established by Section 90 of the Constitution and the Elections and Boundaries Commission Act No. 3 of 2013, which stipulates its mandate and composition. The EBC's functions include: overseeing and supervising the registration of voters; ensuring fair and free elections; and reviewing the boundaries of tinkhundla areas (constituencies), for purposes of elections. The EBC also facilitates civic or voter education in between elections. The EBC is constituted by a maximum of five Commissioners and serviced by a Secretariat.

Anti-Corruption Commission

93. The Anti-Corruption Commission is a statutory body established by the Prevention of Corruption Act, 2006 (POCA). The Act mandates the Commission to prevent and eradicate corruption and further guarantees and protects its independence. The Commission consists of a Commissioner, two Deputy Commissioners and officers to assist the Commission in the performance of its functions.

Anti-Human Trafficking Task Force

94. The People Trafficking and People Smuggling Act, 2009 establishes a Task Force for the Prevention of People Trafficking and People Smuggling (the "Task Force"). This Task Force is composed of representatives from multiple government and law enforcement agencies, representatives from non-governmental organisations or other relevant organisations having appropriate experience, knowledge and expertise in problems and on issues relating to people trafficking or people smuggling including the protection and support of trafficked or smuggled persons. To effectively execute the mandate the Task Force is supplemented by a full-time Secretariat dedicated to fight against Trafficking in Persons (TIP) and an Emergency Response Team (ERT)

composed of front-line practitioners who are mandated to attend to individual TIP cases.

95. The Task Force is mandated to coordinate the implementation of the Act, formulating policies and programmes to prevent and suppress people trafficking or people smuggling including programmes in rendering assistance to trafficked or smuggled persons, formulating protective programmes for trafficked or smuggled persons and initiating education programmes to increase public awareness of the causes and consequences of the act of people trafficking or people smuggling.

Department of Gender and Family Issues

96. The Kingdom of Eswatini established a Gender Coordination Unit in 1997 for the purpose of coordinating all gender-related activities in the country. In 2014, this unit was converted into a Department of Gender and Family Issues and is currently located in the Deputy Prime Minister's office. Gender mainstreaming is the core mandate of the Department of Gender and Family Issues. A number of initiatives have been undertaken by this department in a bid to execute its mandate. As a result, capacity building training has been conducted for central government ministries, gender focal points and planners in all government ministries on Gender Responsive Planning and Budgeting.

National Children Services Department

97. The National Children Services Department was established in 2016 with a mandate to promote the protection of children's rights and services in the country. The Department has submitted State Party Reports on the country's implementation of the African Charter on the Rights and Welfare of the Child and the UN Convention on the Rights of the Child.

National Disability Unit

98. The country established a National Disability Unit under the Deputy Prime Minister's Office to ensure political support to realise the development of all relevant disability legislative frameworks that create an enabling environment to mainstream issues of disability across Government machinery. This includes the development of policies, regulations and proactive strategies that address issues of disabilities.
99. In 2018, Eswatini enacted the Persons with Disabilities Act, 2018 which provides for the protection of the rights and welfare of Persons with Disabilities (PWD). This legislation expressly prohibits discrimination of persons with disabilities in all spheres and provides for equal enjoyment of all human rights and freedom.
100. Persons with disabilities have access to financial, material assistance and a range of quality social services and support programs, which ensures them access to opportunities and choices available to the rest of society, and enjoy an adequate standard of living, as documented in article 28 of the United Nations Convention on the Rights of Persons with Disability (CRPD).
101. The Government works with the relevant Organisations for Persons with Disabilities to inform them about mobility aids, devices and assistive technologies, including new technologies and software applications, and other forms of assistance, support services and facilities. The Government of ESwatini provides quarterly benefits as social safety nets to ensure that old people with disabilities are able to meet their needs.

Department of Social Welfare

102. The mandate of the Department of Social Welfare, as articulated in the National Social Development Policy of 2010, shall be to provide social assistance to individuals, families and communities and provide technical assistance to government line ministries and departments, development teams/units, non-government organisations, community based organisations, the church and interest groups in effectively implementing programs, projects and services that will alleviate poverty and empower disadvantaged individuals, families and communities for an improved quality of life as well as implement statutory and specialised programs, which are directly lodged with the Office as mandated by the Child Protection and Welfare Act of 2012 (CPWA). This mandate will be largely fulfilled by the Regional Social Welfare Offices through their respective Sub-Regional and Tinkhundla level Offices.

Department of Refugees

103. The Ministry of Home Affairs has the department of Refugees which has the mandate of protecting Refugees and asylum seekers in the country in terms of the Refugees Act No. 15 of 2017. Refugees' protection and subsequent provision of basic services that are required by refugees and asylum seekers are executed through a systematic program designed to be a one-stop-shop for all those that would need assistance.

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

105. There are two refugee camps in Eswatini, Malindza Refugee Reception Centre and Ndzevane. Most refugees reside at Malindza Refugee reception centre wherein they receive emergency food and medical aid until it is safe to return to their homes or until they are retrieved by other people outside the camps. The staff at the Refugee Section (both Headquarters and Malindza) offer counselling services to the refugees in need, given the inherent traumatic effect of refugee flight and also provide psychological support.

106. The population of Asylum seekers is 968 and Refugees is 1,317, of this population 1465 are males and 820 are females.¹⁹

Reporting process at the national level

107. In early 2019, Eswatini established the NMRF through a Cabinet resolution. Members of the NMRF were appointed and gazetted under Legal Notice No. 220 of 2020, and comprises representatives of all the Government Ministries, the Judiciary and Parliament to facilitate treaty implementation and reporting processes.

108. The Chairperson of the NMRF is the Ministry of Justice and Constitutional Affairs, and its Deputies are the Deputy Prime Minister's Office and the Ministry of Foreign Affairs and International Cooperation respectively. The body works with a Secretariat that comprises twelve members from the Deputy Prime Minister's Office, Ministry of Justice and Ministry of Foreign Affairs and International Cooperation. To supplement the operations of the NMRF a fulltime Secretariat was established in 2021 under the Ministry of Justice.

109. In preparation of treaty specific reports the NMRF collaborates with stakeholders ranging from all government ministries, Academia and Civil Society Organisations, Faith Based Organisations, NGO's amongst others.

¹⁹ As at 25 November 2021.

110. The process of compiling reports involves a desk review of relevant reports, legislation, policies as well as administrative measures to produce a zero draft. The zero draft document is then used as a springboard document for the national multisectoral consultations which are undertaken to inform the report. The stages that are observed when preparing reports are; Planning and organising, identifying key issues, collecting information and data, analysing data and drafting the report, coordinating with relevant stakeholders, finalising and endorsing the reports by Cabinet for onward submission to the human rights mechanisms.

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III. Information on non-discrimination and equality.

111. Eswatini is state party to numerous international frameworks that promotes and protects human rights particularly on equality and non- discrimination. Laws applicable in Eswatini safeguard against discrimination and inequality for all. In the constitution of Eswatini the underlying principle of the Bill of Rights (chapter 3) is equality and non- discrimination captured in section 20. Section 20 provides for equality before and under the law, emphasizing that a person shall not be discriminated on the grounds of sex, race, disability...

112. In terms of the Constitution, discrimination means to give different treatment to different persons attributable only or mainly to their respective descriptions by gender, race, colour, ethnic origin, birth, tribe, creed or religion, or social or economic standing, political opinion, age or disability. The Constitution explicitly prohibit Parliament from enacting law that is discriminatory either of itself or in its effect. Similarly, Section 32 of the Constitution provides for equal pay for equal work without discrimination.

113. Section 20 of the Constitution, enjoins the High Court of Eswatini as the court of first instance (original jurisdiction) to enforce the rights contained in the Bill of Rights as informed by various human rights instruments. Further, the Constitution establishes an independent Commission on Human Rights and Public Administration²⁰ (CHRPA), whose mandate is to advocate, protect and promote fundamental rights and freedoms.

Factual information on measures taken to eliminate discrimination in all its forms and on all grounds and to promote equality

114. The country continues to engage in consultations and sensitization workshops with stakeholders including traditional authorities and Civil Society

organizations on the promotion of equality and the elimination of discrimination in all its forms and on all grounds. These workshops are further complemented with public civic education campaigns on human rights advancement undertaken by the government and various human rights organisations.

115. On the representation of women in governance and the equal participation of women in political life, Section 86 provides for a quota system in the representation of women. The section as elaborated on below states that: -

- 86. (1) *Where at the first meeting of the House after any general election it appears that female members of Parliament will not constitute at least thirty per cent of the total membership of Parliament, then, and only then, the provisions of this section shall apply.*
- (2) *For the purposes of this section, the House shall form itself into an electoral college and elect not more than four women on a regional basis to the House in accordance with the provisions of section 95(3)²¹.*

116. To give effect to the Constitutional provisions above, the country enacted the “Election of Women Members to the House of Assembly Act of 2018” Act to provide for a process and mode of nomination of women members in the House of Assembly ;and for the election of women members to the House of Assembly where, after any general election, it appears that the female members

²¹ Section 95(3) provides that The members elected on a regional basis, under subsection (1)(c), shall continue to be so elected, whenever the provisions of section 86 (1) are true, in terms of the following paragraphs – (a) at the instance of the Chairman of the Elections and Boundaries Commission, the elected members from each Region shall on their first meeting nominate not less than three and not more than five women from each Region qualified to be members of Parliament; (b) the list of nominated candidates shall be published in at least two local newspapers and the electronic media on at least three consecutive days; and 52 53 (c) after ten days from the date of last publication the House shall meet to vote for one woman from each of the Regions, taking into consideration any relevant in-put in terms of paragraph (b).

of Parliament will not constitute thirty per cent of the total membership of Parliament; monitoring of the election of women to the house of Assembly.

117. Abolishment of Marital Power: The High Court of Eswatini declared the common law doctrine of marital power invalid in that it is discriminatory against married women and offends against the Constitutional right to equality before the law and the right to dignity.

Criminal law provisions preventing and combating discrimination

118. To ensure that discrimination in all its forms and on all grounds is prevented and combated in practice, the SODVA makes an exception to hearsay evidence in cases where the victims have a visual, hearing or speech impairment or mentally impaired to be admissible.²² The relief afforded to PWD by SODVA is in sharp contrast to the previously existing position of the law as provided for by the Criminal Procedure and Evidence Act No.67 of 1938,²³ which provides that no evidence which is in the nature of hearsay evidence shall be admissible in²⁴ any case.

119. Principles of evidence in Sexual Offences: Section 51 (d), credibility, character, antecedents or predisposition to sexual availability of a victim or witness cannot be inferred by reason of the sexual nature of the prior or subsequent conduct of a victim or witness.

120. The SODVA²⁵ directs Courts not to treat evidence of a witness in criminal proceedings before it with caution and shall not call for corroboration of evidence solely on account of the fact that the witness is the complainant of a sexual offence; or a child.

²² Section 55 (2) (c) and (d).

²³ Section 4

²⁴ Section 223 of Criminal Procedure and Evidence Act .

²⁵ Section 49

General information regarding the human rights situation of persons belonging to specific vulnerable groups in the population.

121. Eswatini has in place policies and programmes which seek to address the economic, social and geographical disparities. These include the availability of social protection programmes targeted at the most vulnerable groups.

122. List of social protection programmes in Eswatini²⁶ includes the following:

- Elderly grants
- Ex-Service (uMsizi) Military pension
- Industrial and vocational training programme for Persons with Disabilities
- Orphan and Vulnerable Children(OVC) Education Grant
- Free Primary Education
- Special Education Needs
- Phalala Medical Referral Fund
- Free ARV's for Persons Living with HIV
- Free complementary healthcare services for the elderly
- OVC feeding at Neighbourhood Care points (NCPs)
- Cash bases transfers for Crises responses
- Community Micro Projects

123. Eswatini undertakes a number of advocacy campaigns to raise awareness and educate the public on the rights of different categories of vulnerable groups. The campaigns include the commemoration of specific regional and international days, media programmes, as well as community sensitization programmes by various stakeholders.

²⁶ Eswatini Fiscal Space Inception Report, 2021

Effective Remedies

124. The country currently does not have a Legal Aid system in place, however, there are initiatives that provides free legal services to vulnerable groups of society such as the following:

- The Legal Aid Clinic at the University of Eswatini, whereby law students under the supervision of Lecturers and Practising Attorneys provide legal aid services to indigent members of the society, paying special attention to vulnerable groups such as children and women.
- Non- Governmental Organisations (NGOs) working in the areas of human rights have, through their trained paralegals, been providing legal advice and support to indigent members of the society.
- Private Legal Practitioners also provide pro bono services to indigent members and vulnerable groups of society at no cost. With regards to accused persons charged with capital offences, it is mandatory for the state to provide legal counsel. With the support of the Law Society of Eswatini, the government has developed a Legal Practitioners Bill that seeks to compel Legal Practitioners and Candidate Attorneys to provide legal aid services to disadvantaged members of society.

Conclusion

The Kingdom of Eswatini continues to make efforts to advance the enjoyment of fundamental rights and freedoms by all its citizens through collaborated efforts by Government Ministries (duty bearers), Commission on Human Rights, Civil Society Organisations as well as Development partners.