

# SWAZILAND 2012 HUMAN RIGHTS REPORT

## EXECUTIVE SUMMARY

Swaziland is an absolute monarchy. King Mswati III and Queen Mother Ntombi, the king's mother who rules as his co-monarch, have ultimate authority over the cabinet, legislature, and judiciary. There is a prime minister and parliament comprised of appointed and elected members, but political power remained largely with the king and his traditional advisors. International observers concluded that parliamentary elections held in 2008 did not meet international standards. Security forces reported to civilian authorities.

Citizens remained unable to change their government. The three main human rights abuses were police use of excessive force, including use of torture, beatings, and unlawful killings; restrictions on freedoms of association, assembly, and speech; and discrimination and abuse of women and children.

Other human rights problems included arbitrary arrests and lengthy pretrial detention; arbitrary interference with privacy and home; prohibitions on political activity and harassment of political activists; trafficking in persons; societal discrimination against members of the lesbian, gay, bisexual, and transgender (LGBT) community and persons with albinism; harassment of labor leaders; child labor; mob violence; and restrictions on worker rights.

In general perpetrators acted with impunity, and the government took few or no steps to prosecute or punish officials who committed abuses.

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

#### **a. Arbitrary or Unlawful Deprivation of Life**

During the year there were reports that the government or its agents committed arbitrary or unlawful killings.

For example, on June 14, police shot and killed alleged serial rapist Bhekinkosi Masina as he fled to escape arrest. Police claimed they shot him in the thigh and he later died of injuries. News reports later alleged he had been shot multiple times, including in the head and back. Masina had evaded police capture for months and was the subject of a nationwide manhunt by the Royal Swaziland Police Service (RSPS). Local nongovernmental organizations (NGOs) and the

Council of Swaziland Churches called for an investigation into the incident, but none was conducted.

On May 29, police shot and killed a mentally ill man, Mduduzi Mngometulu, in his home at Lubulini. Mngometulu's parents had called police to the house requesting assistance in getting him to a hospital. RSPS spokesperson Superintendent Wendy Hleta stated Mngometulu was violent and had threatened the officers who shot him. The deceased's parents denied the claims and called the incident murder.

### **b. Disappearance**

There were no reports of politically motivated disappearances.

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

The constitution prohibits such practices. Security officials who engage in such practices may be punished, and some officers were brought to court on charges, but no convictions or punishments were reported during the year. Cases of torture were investigated, but findings were not made public. Security officers reportedly used torture during interrogation, assaulted citizens, and used excessive force in carrying out their duties. These practices led to death in at least one case. For example, on March 12, a local businessman and suspected cigarette smuggler, Lucky Monteiro, suffered severe injuries including a broken jaw when he confronted members of the Umbutfo Swaziland Defense Force (USDF) (the army) at a roadblock in Lugongolweni. Monteiro lost consciousness and later died of his injuries. According to the army's public relations officer, a fight ensued between Monteiro and soldiers after Monteiro attempted to disarm one of the soldiers. On September 27, police detained two Mhlabubovu Grade 7 pupils on suspicion of burglary. The students alleged they were tortured during interrogation by having a blood-drenched T-shirt stuffed into their mouths and by beatings with iron rods, sticks, and open hands.

Police forcibly dispersed demonstrators (see section 2.b.).

According to the RSPS, abuse and unlawful killing cases were investigated in line with the policy of investigating a case if a complaint is received and referred to the director of public prosecutions as appropriate. At year's end the RSPS reported several cases of police abuse were under investigation but provided no details on the nature of the abuses. No officers were prosecuted.

There were credible reports of use of excessive force by community police during the year. On May 27, the *Times of Swaziland* reported that community police joined a mob armed with bushknives and an axe that assaulted three alleged rapists.

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

Prison and detention center conditions were mixed. Overcrowding in some prisons was a problem, exposing inmates and corrections officers to diseases and infections such as tuberculosis, HIV/AIDS, and hepatitis. There were allegations that sexual violence, including rape, took place in prisons.

Physical Conditions: Statistics released by correctional services (His Majesty's Correctional Services--HMCS) in March indicated there were 2,792 sentenced inmates and an additional 619 awaiting trial. Female inmates constituted 2.6 percent of the adult prison population. Authorities detained women and men together at police stations after arrest, due to space constraints, but authorities kept pretrial detainees and convicted prisoners separate. Similarly, in pretrial detention juveniles and adults were separate, and in prisons women were separate from men, as were juveniles from adults.

Authorities provided potable water and food to prisoners. However, pretrial detainees depended on family members or friends to provide food. Facilities were of mixed quality. While some were old and dilapidated, others were newer and well maintained.

On multiple occasions during the year, detainees died under suspicious circumstances while in or recently released from police custody. Sihle Bhembe, a mentally challenged person of the Nkwalini neighborhood of Mbabane, died the weekend of June 9 while in police custody. Bhembe had been taken from his home and kept at the police station after his neighbors and relatives reported to police that he had been acting strangely. Police claimed that Bhembe accidentally banged his head on holding cell walls.

On June 7, Vamile Gumbi died at Mbabane Government Hospital after being questioned at Mbabane Police Station. Gumbi, an accountant for the national football association, had been taken in for questioning in connection with a theft at her office. In response to allegations that Gumbi died as a result of injuries sustained during interrogation, police spokeswoman Wendy Hleta stated the RSPS had initiated an internal investigation.

HMCS provided free formal education to juveniles while they were in jail. Adult inmates received training in agriculture, animal husbandry, construction, electrical work, plumbing, welding, tailoring, weaving, upholstery, and other trade skills.

Administration: HMCS kept adequate records, updated daily, on prisoners. Convicts who had committed minor offenses had free movement in terms of performing outdoor chores and the opportunity to play sports. There were no provisions for alternative sentencing of nonviolent offenders. HMCS used a committee structure, through its legal department, to receive and process complaints from inmates, the public, and HMCS staff. Authorities claimed to have investigated allegations of inhuman conditions and documented results of such investigations, but the reports were never made public. Prisoners and detainees had reasonable access to visitors. Authorities permitted Christian inmates religious observance.

Monitoring: The government permitted very limited monitoring of prison conditions. Independent monitoring groups found it difficult to secure access to prison facilities during the year, and none issued public reports during the year. The government permitted international officials and NGOs working on HIV programs entry to prisons and detention centers, although sometimes with difficulty. Authorities generally did not allow journalists inside prisons.

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

The constitution and law prohibit arbitrary arrest and detention; however, police arbitrarily arrested and detained numerous persons, primarily to prevent their participation in public protests. On July 6, authorities placed president of the proscribed People's United Democratic Movement (PUDEMO) Mario Masuku under house arrest in an attempt to prevent him from attending a protest march organized by the Swaziland National Association of Teachers. Police camped outside Masuku's house to ensure that he could not leave.

On July 12, police detained Simanga Shongwe and Basil Thwala, two members of the Swaziland Transportation and Allied Workers Union, for more than four hours for planning to march on government ministries to deliver a petition outlining grievances in the transport industry.

#### **Role of the Police and Security Apparatus**

The king is the commander in chief of the USDF, holds the position of minister of defense, and is the commander of the RSPS and HMCS. He presides over a civilian principal secretary of defense and a commanding general. Approximately 35 percent of the government's workforce had security-related functions.

The RSPS is responsible for maintaining internal security. The USDF is responsible for external security but also has domestic security responsibilities, including protecting members of the royal family. The prime minister oversees the RSPS, and the principal secretary of defense and the army commander are responsible for day-to-day USDF operations. HMCS is responsible for the protection, incarceration, and rehabilitation of convicted persons and keeping order within HMCS institutions. However, HMCS personnel routinely work alongside police during protests and demonstrations. The conduct of the RSPS, USDF, and HMCS was generally professional; however, members of all three forces were susceptible to political pressure and corruption. The government generally failed to prosecute or otherwise discipline security officers accused of abuses.

There is no independent body with authority to investigate police abuse. An internal RSPS complaints and discipline unit investigated reports of police abuse but did not release its findings to the public. Police academy training for new recruits includes human rights components in line with regional standards. Some officers also attend additional training programs that include a human rights component. Traditional chiefs supervise volunteer rural "community police," who have the authority to arrest suspects and bring them before an inner council within the chieftdom for trial for minor offenses. For serious offenses, community police are required to apprehend suspects and transfer them to the RSPS for further investigation; however, this did not always occur and, in cases when it did, it often happened after suspects were subjected to ill treatment.

### **Arrest Procedures and Treatment While in Detention**

The law requires warrants for arrests, except when police observe a crime being committed, believe that a person is about to commit a crime, or conclude that evidence will be lost if arrest is delayed. Detainees may consult with a lawyer of their choice, but the government pays for defense counsel only in cases in which the defendant is indigent and the potential penalty is death or life imprisonment. Detainees must be charged with the violation of a statute within a reasonable time, usually within 48 hours of arrest or, in remote areas, as soon as a judicial officer is present to assume responsibility; however, authorities did not always charge

detainees according to these norms. In general authorities allowed detainees to consult with lawyers of their choice. There is a functioning bail system, and suspects can request bail at their first appearance in court, except in the most serious cases such as murder and rape. There were no reports of detainees being held incommunicado or under house arrest.

Pretrial Detention: Lengthy pretrial detention was common. As of May there were 619 pretrial detainees, an estimated 18 percent of the prison population. Judicial inefficiency and staff shortages also contributed to the problem, as did the police practice of prolonging detention to collect evidence and prevent detainees from influencing witnesses.

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

The constitution and law provide for an independent judiciary; however, the king, on recommendation of the Judicial Services Commission, appoints the judiciary, limiting judicial independence. Judicial powers are based on two systems: Roman-Dutch law and a system of traditional courts that follows traditional law and custom. Neither the Supreme Court nor the High Court, which interprets the constitution, has jurisdiction in matters concerning the office of the king or queen mother, the regency, chieftaincies, the Swazi National Council, or the traditional regiments system. All of these institutions are governed by traditional law and custom.

Most citizens who encountered the legal system did so through the 13 traditional courts. Each has a president appointed by the king. Authorities may bring citizens to these courts for minor offenses and violations of traditional law and custom. Traditional courts are not supposed to try cases involving non-Swazis but in practice did so. Authorities generally respected court rulings.

The director of public prosecutions has the legal authority to determine which court should hear a case, and public prosecutors have delegated responsibility; however, police usually made the determination and often took cases not properly investigated to these traditional courts because the standard of evidence required for conviction was not as high as in the western-style courts. Persons convicted in the traditional courts may appeal to the High Court. Prolonged delays during trials in the magistrate courts and High Court were common.

Military courts are not allowed to try civilians and do not provide the same rights as civil criminal courts. For example, military courts may use confessions

obtained under duress as evidence and may convict defendants on the basis of hearsay.

The 2011 judicial crisis, sparked when Chief Justice Michael Ramodibedi (a Lesotho national) unilaterally suspended a high court judge over a judicial opinion, was largely resolved in 2012. Ramodibedi allegedly acted outside of his constitutional authority in suspending High Court Judge Thomas Masuku in June 2011. Ramodibedi accused Masuku of a number of counts of misconduct including insulting the king in a judicial opinion. Two months later Ramodibedi held a hearing on his charges against Masuku in which he acted as plaintiff, prosecutor, and judge. The constitution stipulates that, if a chief justice is party to a disciplinary action, he must recuse himself. Ramodibedi refused Masuku's requests that the hearing be public and he be allowed to present oral evidence or call witnesses. In protest private attorneys filed complaints against Ramodibedi with the Judicial Services Commission and initiated a four-month boycott of the courts. The lawyers called off the boycott in November after the Judicial Services Commission agreed to reverse several of the judicial and court procedural directives issued by Ramodibedi and to consider proposals for action against the chief justice. At the end of the year, however, Masuku had not been reinstated; Ramodibedi remained the top jurist, and the Judicial Services Commission had taken no action against him.

### **Trial Procedures**

Defendants enjoy a presumption of innocence. Defendants enjoy the right to be informed of charges promptly, in detail, and in a language that the defendant understands. The constitution provides for the right to a fair public trial without undue delay, except when exclusion of the public is deemed necessary in the "interests of defense, public safety, public order, justice, public morality, the welfare of persons under the age of 18 years, or the protection of the private lives of the persons concerned in the proceedings." The judiciary generally enforced this right in practice. There is no trial by jury. Court-appointed counsel is provided to indigent defendants at government expense in capital cases or if the crime is punishable by life imprisonment. Defendants and their attorneys have access to relevant government-held evidence, generally obtained during pretrial consultations from the Public Prosecutor's Office. Defendants may question witnesses against them and present witnesses and evidence on their own behalf. Defendants may not be compelled to testify or confess guilt. Defendants and prosecutors have the right of appeal up to the Supreme Court.

The traditional courts operate under traditional authorities, including local chiefs. In general, chiefs preside over traditional courts as court presidents. Traditional courts hear both civil and minor criminal matters and are authorized to impose fines of up to emalangeneni 240 (\$28) and prison sentences of up to 12 months. However, there were reported cases in which traditional courts imposed sentences exceeding these limits.

Traditional courts are empowered to administer customary law only “insofar as it is not repugnant to natural justice or morality” or inconsistent with the provisions of any civil law in force; however, some traditional laws and practices violate civil laws, particularly those involving women’s and children’s rights. Defendants in traditional courts are not permitted formal legal counsel but may speak on their own behalf, call witnesses, and be assisted by informal advisors. Traditional law and custom provide for an appeals process. Judicial commissioners within the traditional legal system may adjudicate appeals or refer appeals to a court within the civil judicial system on their own volition or if desired by plaintiffs or defendants.

### **Political Prisoners and Detainees**

There were no reports of political prisoners during the year.

### **Civil Judicial Procedures and Remedies**

The judiciary tries civil as well as criminal cases, including suits for damages against government agents. Administrative remedies are available under civil service rules and regulations. Government respected domestic court decisions. Individuals and organizations can seek civil remedies for human rights violations, including appeal to international courts or bodies.

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

The constitution and law prohibit such actions except “in the interest of defense, public safety, public order, public morality, public health, town and country planning, use of mineral resources, and development of land in the public benefit”; however, the government did not always respect these prohibitions and broadly construed exceptions to the law. The law requires police to obtain a warrant from a magistrate before searching homes or other premises; however, police officers with the rank of subinspector or higher have the authority to conduct a search without a warrant if they believe delay might cause evidence to be lost. During the

year police conducted random checks for irregular immigrants, weapons, stolen vehicles, and evidence of other criminal activities through roadblocks and searches in homes. Police also entered homes and businesses and conducted searches without judicial authorization. Police conducted physical surveillance of members of labor unions, political groups, religious groups, and others.

There were reports that the government monitored e-mail, Facebook, and Internet chat rooms and that police bugged certain individuals' telephones. For example, in June plainclothes police visited the workplace of the father of a local youth leader and activist who was out of the country on a democracy-related program. The officers demanded details about the trip, including the nature of the visit and who had sponsored it. Police also visited the father's home looking for the youth leader.

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

### **a. Freedom of Speech and Press**

The constitution provides for freedom of speech and press, but the king may deny these rights at his discretion, and the government restricted these rights during the year. Officials impeded press freedom. Although no law bans criticism of the monarchy, the prime minister and other officials warned journalists that publishing such criticism could be construed as an act of sedition or treason, and media organizations were threatened with closure for criticizing the monarchy.

Freedom of Speech: The king may suspend the constitutional right to free expression at his discretion, and the government severely restricted freedom of expression, especially regarding political issues or the royal family. Individuals who criticized the monarchy risked exclusion from the traditional regiments' (chiefdom-based groupings of males dedicated to serving the king) patronage system that distributed scholarships, land, and other benefits. This would also prejudice the interests of their family members.

Freedom of Press: The law empowers the government to ban publications if they are deemed "prejudicial or potentially prejudicial to the interests of defense, public safety, public order, public morality, or public health." Most journalists practiced self-censorship.

Daily newspapers criticized government corruption and inefficiency but generally avoided criticizing the royal family.

The broadcast media remained firmly under state control. There were two state-owned radio stations and one private station, owned by a Christian group. The majority of Swazis received their news from radio broadcasts. There were two television stations, one of which was state owned. Despite invitations issued by the existing regulator for parties to apply for licenses, no new licenses awarded during the year. Stations practiced self-censorship; for example, they refused to broadcast anything that was perceived as critical of the government or the monarchy.

*Swazi Observer* Chief Editor Musa Ndlangamandla was fired in early January after publishing a series of interviews with opposition leaders. Ndlangamandla fled to South Africa in February after police searched his office and confiscated his computer. His firing was also linked to a series of stories he wrote about senior politicians, including the prime minister; he accused them of fraudulently acquiring land at discounted rates.

In mid-March Senator Themba Msibi raised a motion requesting that the prime minister order an investigation to identify the author of an anonymous editorial published in the *Times of Swaziland* in November 2011 and, once identified, that he have the author prosecuted. The editorial, entitled “A Peek behind the Mirror,” questioned whether members of parliament knew they were accountable to their constituencies and not solely to the king. According to Msibi, the commentary should have been considered criminal because it “undermin[ed] the dignity” of the parliament.

Violence and Harassment: Journalists continued to be harassed during the year. For example, on April 11, police detained two South African journalists who had come to the country to cover a Swaziland National Association of Teachers’ protest march. Police officials said they detained the journalists because they were not accredited to cover the event.

### **Internet Freedom**

There were no official government restrictions on access to the Internet. For the most part, individuals and groups could engage in the peaceful expression of views via the Internet, including by e-mail. Nevertheless, there were reports that the government monitored e-mail, Facebook, and Internet chat rooms and that police were bugging certain individuals’ telephones. According to the International

Telecommunications Union, in 2011 there were 0.22 broadband subscriptions per 100 inhabitants and 18.1 percent of the population used the Internet.

On March 23, the *Times of Swaziland* reported that a number of senators asked that the government take legal action against individuals who criticized King Mswati III on social networking sites. Minister of Justice Mgwagwa Gamedze backed the calls and said he would look for “international laws” that could be used to charge offenders.

### **Academic Freedom and Cultural Events**

Restrictions on political gatherings and the practice of self-censorship affected academic freedom by limiting the content and frequency of academic meetings, writings, and discourse on political topics. There were no government restrictions on cultural events.

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

#### **Freedom of Assembly**

The constitution provides for freedom of assembly; however, the government severely restricted this right in practice. The law requires police consent and a permit from the municipal council to hold political meetings, marches, or demonstrations in a public place. Authorities routinely attempted to prevent meetings and demonstrations by withholding consent or taking civil society leaders to court. On several occasions the Industrial Court upheld the right to freedom of assembly and allowed demonstrations to take place. However, when demonstrations did take place, security officials were deployed in force, on occasion outnumbering protesters. Political activists claimed that their telephone calls were monitored by authorities.

For example, on April 12, armed security forces prevented a planned march by the delisted Trade Union Congress of Swaziland (TUCOSWA) and detained two members of the TUCOSWA leadership who were preparing to march to deliver a petition to government ministries to reregister their union.

On February 10, Rose Fakudze collapsed after being shot with a rubber bullet at close range by a police officer during a march staged by street vendors and transport operators. According to newspaper reports, Fakudze was shot from a distance of less than seven feet and suffered injury to her hand.

On February 25, police prevented a political rally of the African United Democratic Party (AUDP) from taking place at Mhlaleni.

On July 11, a peaceful march organized by the National Public Service and Allied Workers Union (NAPSAWU) was met with disproportionate police violence. Police refused to permit some protesters to leave the public park where they were gathered. When protesters attempted to push through police lines, police responded with tear gas, batons, and rubber bullets. The Mbabane Government Hospital treated thirteen of the protesters for minor injuries; police did not charge them.

### **Freedom of Association**

The constitution provides for freedom of association, but the government restricted this right in practice. The constitution does not address the formation or role of political parties. While officials argue the 1973 ban on political parties is no longer valid, having been replaced and superseded by the constitution, there is no legal mechanism for parties to register or contest elections.

On May 1, during a May Day celebration in Manzini, police violently disrupted workers and also confiscated banners that stated that the government had deregistered TUCOSWA. At the same event, police detained and beat two union members who were later released without charge.

On May 8, police approached Wandile Ndlela, a teacher, at a Manzini bus station and temporarily detained him for carrying a bag inscribed TUCOSWA. After a lengthy interrogation, police released Ndlela and filed no formal charges against him. The government harassed and detained opposition members and conducted surveillance on members of labor unions, political groups, and groups considered potentially political.

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

See the Department of State's *International Religious Freedom Report* at [www.state.gov/j/drl/irf/rpt](http://www.state.gov/j/drl/irf/rpt).

### **d. Freedom of Movement, Internally Displaced Persons, Protection of Refugees, and Stateless Persons**

The constitution provides for freedom of internal movement, foreign travel, emigration, and repatriation, and the government generally respected these rights in practice. It also states that provisions of law and custom that impose restrictions on the freedom of any person to reside in the country shall not contravene the freedom granted by the constitution.

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

Nonethnic Swazis sometimes experienced lengthy processing delays when seeking passports and citizenship documents, in part due to the country's history when mixed-race and white persons were not considered legitimate citizens.

### **Protection of Refugees**

Access to Asylum: Laws provide for the granting of asylum or refugee status, and the government has established a system for providing protection to refugees. In practice the government provided protection against the expulsion or return of refugees to countries where their lives or freedom would be threatened. The government cooperated with the Office of the UN High Commissioner for refugees and other humanitarian organizations in providing protection and minimal assistance to refugees and asylum seekers. The country hosted an estimated 800 refugees, the majority from the Great Lakes region and Somalia.

Durable Solutions: The government accepted refugees for permanent resettlement, allowed them to compete for jobs, and granted them work permits and temporary residence permits. The government also provided refugees with free transportation twice a week to buy and sell food in local markets. Refugees who lived in the country more than five years were eligible for citizenship; however, many waited longer to acquire citizenship, sometimes more than 10 years, due to bureaucratic inefficiency and onerous requirements that delayed the process.

### **Section 3. Respect for Political Rights: The Right of Citizens to Change Their Government**

Citizens could not change their government peacefully, and political parties remained unable to register, contest elections, or otherwise participate in the formation of a government. The king is an absolute monarch with ultimate decision-making authority. In 2011 the attorney general, Majahenkhamba Dlamini,

dismissed claims that parties were “banned.” He stated that the 1973 decree that banned political parties was superseded by the kingdom’s 2006 constitution, and that political parties could exist because there was no law specifically banning their existence. Legislation passed by parliament requires the king’s consent to become law. Under the constitution the king selects the prime minister, cabinet, two-thirds of the senate, 10 of 65 members of the house, many senior civil servants, the chief justice and other justices of the superior courts, members of commissions established by the constitution, and the heads of government offices. On the advice of the prime minister, the king appoints the cabinet from among members of parliament.

### **Elections and Political Participation**

Recent Elections: In September 2008 parliamentary elections were held, the first since the constitution went into effect in 2006; the king appointed a government in October 2008. International observers concluded the elections did not meet international standards. Political parties were not allowed to register or sponsor candidates of their choice. Ballots were cast in secrecy but could be traced by registration number to individual voters; some ballot boxes were not properly protected. Accusations of bribery were reported. There were widespread reports that citizens were advised that if they did not register to vote, they would no longer receive government services.

During the year the Elections and Boundaries Commission, whose mandate is to “ensure that elections are properly managed on behalf of the electorate,” began preparations for the next round of elections, scheduled to be held in 2013.

Political Parties: The constitution provides for freedom of association but does not address how political parties can operate. There is no legal mechanism under which political parties can register or contest elections. The constitution also states that candidates for public office must compete on their individual merit, thereby effectively blocking competition based on political party affiliation.

The government harassed and detained opposition members. For example, on February 25, at Mhlabeni, police stopped a rally organized by the AUDP, confiscated a party banner, and escorted members of the group to a remote place and dropped them off.

On June 2, PUDEMO President Mario Masuku’s home was “accidentally riddled with bullets” when members of the USDF drove by and opened fire. The soldiers

claimed they were firing at criminals speeding away in a stolen car and that Masuku's home was sprayed with stray bullets. However, Masuku's house is 330 yards from the road.

Participation in the traditional sphere of governance and politics is predominantly done through chiefdoms. Chiefs are custodians of traditional law and custom, report directly to the king, and are responsible for the day-to-day running of their chiefdoms and maintaining law and order. Local custom mandates that chieftaincy is hereditary. However, the constitution, while recognizing that chieftaincy is "usually hereditary and is regulated by Swazi law and custom," also states that the king "can appoint any person to be chief over any area." As a result many chieftaincies were nonhereditary appointments, a fact that provoked land disputes, especially at the time of burials.

Participation of Women and Minorities: The constitution provides that 55 of the 65 seats in the House of Assembly be popularly contested and that the king appoint the remaining 10 members. Five of the 10 must be women, and the other five must represent "interests, including marginalized groups not already adequately represented in the house." In 2008 the king appointed only two women to the House of Assembly instead of the required five, a constitutional violation that remained unrectified during the year. The constitution also provides for an additional woman from each of the four regions if women do not constitute a third of the total members nominated by the elected house members from each region. The house had not nominated these members by year's end.

The king appoints 20 members of the 30-seat Senate, and the House of Assembly elects the other 10. The constitution provides that at least eight of the king's nominees and five of the House of Assembly's nominees to the Senate be women. While house members elected the required five female members, the king appointed only seven female senators. The king had not corrected this constitutional violation by year's end. Women held 20 percent, rather than the mandatory 30 percent, of parliamentary seats. The king appointed five women as cabinet ministers out of 20 ministerial positions.

Authorities prevented widows in mourning (for periods that can vary from one to three years) from appearing in certain public places or from being in close proximity to the king. As a result, the action effectively excludes widows from voting or running for office during those periods.

There were almost no ethnic minority members in the government. Most officials were from the royal Dlamini family or connected with royalty.

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

The law provides criminal penalties for official corruption; however, the government did not implement the law effectively, and officials sometimes engaged in corrupt practices with impunity. There was a widespread public perception of corruption in the executive and legislative branches of government and a general consensus that the government was doing little to combat it. Officials are required to declare their assets and liabilities to the Commission on Human Rights and Public Administration. The constitution prohibits government officials from assuming positions in which their personal interest is likely to conflict with their official duties. According to the commission, the majority of those required to declare assets and liabilities did so. However, the commission suspected underreporting in some cases. The commission did not make this information public, and it was unclear whether it is required to do so.

The Anticorruption Commission (ACC), funded by the Ministry of Justice, is charged with fighting corruption by carrying out education and prevention programs as well as by investigating cases. On the enforcement side, it has the power to investigate cases, gather evidence, and arrest individuals for failure to respond to ACC requests. During the year the ACC received 78 complaints of alleged corruption, six of which it referred to the director of public prosecutions and 24 it investigated. At year's end 11 current and old cases were in the court system.

During the year the ACC conceded that it was making little progress in curbing corruption. According to the ACC's 2010 National Perception Survey, 94 percent of survey respondents said that corruption was a major problem in the country, and almost half of respondents said that corruption was a problem in public administration and defense. Sixty percent of respondents said that government was not committed to fighting corruption. Citizens continued to refer to Minister of Finance Majozi Sithole's 2011 statement that an estimated emalangenzi 80 million (\$10 million) in potential government revenue was lost each month due to corruption.

On the prevention and education side, the ACC conducted dozens of sensitization workshops and meetings around the country, provided educational materials for schools, and participated in numerous radio and television shows. ACC

representatives acknowledged a widespread public perception that the ACC was ineffective and described the commission as being in “start up” mode despite being established in 2008, a fact largely attributable to a lack of financial and human resources and the general backlog of cases in the court system.

Principals and teachers routinely demanded bribes to admit students. Credible reports continued that the government awarded business contracts, government appointments, military recruitment, and school admissions on the basis of a person’s relationship with government officials. Authorities rarely took action regarding nepotism charges.

On March 28, the *Swazi Observer* reported that community police of Big Bend were charging a fee of emalangeni 40 (\$5) to members of the public before acting on reported cases. The *Swazi Observer* on September 20 reported that the government lost more than emalangeni 4.3 million (\$507,000) through payment of “ghost” elderly grants that were collected using false personal identity numbers. There is no law permitting public access to government documents, and public documents were difficult to access.

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

A number of domestic and international human rights groups generally operated without government restriction, investigating and publishing their findings on human rights cases; however, government officials were rarely responsive to their views. Among active groups were the Swaziland Action Group Against Abuse, Lawyers for Human Rights of Swaziland, The Center for Human Rights and Development, Human Rights Watch, the Council of Swaziland Churches, and the Roman Catholic Church. Human rights groups spoke out on a number of occasions, criticizing the lack of accountability and transparency in the government.

The constitution provides for the independence of human rights NGOs; however, this provision falls within the “policy” section, which cannot be enforced in any court or tribunal.

UN and Other International Bodies: The government generally cooperated with international organizations and permitted visits by UN representatives. In February the regional program coordinator of the UN Office on Drugs and Crime visited the country to discuss health issues including HIV awareness campaigns for

HMCS officers and inmates and the training of nurses. The government routinely worked with the International Labor Organization.

Government Human Rights Bodies: In 2009 the government established the Commission on Human Rights and Public Administration. Since its establishment, the commission has received 56 complaints. The majority of complaints were deemed misdirected – mainly consisting of labor issues and chieftaincy disputes – and were referred to the appropriate judicial or governmental body. By the end of the year, 18 remained pending before the commission. The commission remained nearly powerless due to lack of funding and enabling legislation. The commission consisted of one acting commissioner (who has been acting since 2010) and four deputy commissioners. It had no full time staff or secretariat. Therefore, management and administration fell to the deputy commissioners. The commission is precluded from investigating any matter “relating to the exercise of any royal prerogative by the Crown.” A number of local NGOs expressed concern regarding the location of the commission’s offices in the vicinity of royal residences, an area in which women in mourning attire or wearing pants are prohibited from entering, according to custom and tradition.

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

The constitution prohibits discrimination based on race, gender, disability, age, ethnicity, religion, political opinion, or social status; however, the government did not consistently enforce the law.

### **Women**

Rape and Domestic Violence: The law criminalizes rape; however, there is no law that specifically addresses spousal rape. Rape was common, and the government did not always enforce the law effectively. According to the Swaziland Action Group Against Abuse (SWAGAA), one in three girls and women between the ages of 13 and 24 has been the victim of sexual violence. Many men regarded rape as a minor offense, despite it being against the law. According to the 2011 RSPS annual report, 546 rape cases were reported that year. There were no data available on the number of prosecutions, convictions, or punishment measures taken. The number of reported cases was likely far lower than the actual number of cases. A sense of shame and helplessness often inhibited women from reporting such crimes, particularly when incest was involved. The maximum sentence for aggravated rape is 15 years; however, the acquittal rate for rape was high, and sentences were generally lenient.

Domestic violence, if charged as assault, is illegal. There is no legislation or law dealing specifically with domestic violence and sexual abuse. Domestic violence against women, particularly wife beating, was common and sometimes resulted in death. Police efforts to combat the crime were inadequate. A bill addressing domestic violence and sexual abuse passed in the House of Assembly during the year.

Women have the right to charge their husbands with assault under both the Roman-Dutch and traditional legal systems, and urban women frequently did so, usually in extreme cases when intervention by extended family members failed to end such violence. Penalties for men found guilty of assault not involving rape against a woman depended on the court's discretion. Rural women often had no relief if family intervention did not succeed, because traditional courts were unsympathetic to "unruly" or "disobedient" women and were less likely than modern courts, which use Roman-Dutch-based law, to convict men of spousal abuse. The Roman-Dutch legal system often gave light sentences in cases of conviction for abuse against women. SWAGAA had hotlines and shelters to assist victims of abuse.

Sexual Harassment: Legal provisions against sexual harassment were vague, and government enforcement was ineffective; no cases have ever been brought to court. There were frequent reports of sexual harassment, most often of female students by teachers. Numerous teachers and some principals were either fired or suspended during the year for inappropriate sexual conduct with students. Some teachers threatened students with poor grades if they did not provide sexual favors to them.

Reproductive Rights: The government upheld the basic right of couples and individuals to decide freely and responsibly the number, spacing, and timing of their children and to have the information and means to do so free from discrimination, coercion, and violence. There was wide access to contraception, including at public restrooms, clinics, and workplaces throughout the country. Ninety-seven percent of women had access to prenatal care, 82 percent of births were attended by skilled personnel, and 69 percent of mothers received obstetric and postpartum care overall, but access to care was lower in rural than in urban areas.

A 2012 UN report indicated the maternal mortality rate was 320 deaths per 100,000 live births in 2010, and the proportion of AIDS-related indirect maternal deaths was 67 percent. An estimated 63 percent of girls and women ages 15 to 49 used a modern method of contraception in 2010. According to the Swaziland

Multiple Indicator Cluster Survey of 2010 (MICS), three-quarters of all maternal deaths occurred during delivery and in the immediate postpartum period.

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

The constitution provides that women can open bank accounts, obtain passports, and take jobs without the permission of a male relative; however, these constitutional rights often conflict with customary law, which classifies women as minors. Women routinely executed contracts and entered into a variety of transactions in their own names; however, banks still refused personal loans to married women without a male guarantor. The constitution provides for equal access to land; however, customary law forbids women from registering property in their own names. The law requires equal pay for equal work; however, the average wage rates for men by skill category usually exceeded those of women. Legal experts acknowledged that some civil law is inconsistent with the constitution, which stipulates that "women have the right to equal treatment with men and that right shall include equal opportunities in political, economic, and social activities." For example, the civil law defines married women as subordinate to their husbands.

In February 2010 the High Court overturned section 16(3) of the Deeds Registry Act, which prohibited women from registering property in their own names. In May 2010 the Supreme Court amended the High Court's ruling but maintained its finding that the law was unconstitutional and stated that parliament needed to enact appropriate legislation within 12 months. In June the government issued a legal instrument amending the Deeds Registry Act to allow women to register and administer property in their own names.

Traditional customary law allows a man to take more than one wife. A man who marries a woman under civil law may not legally have more than one wife, although in practice this restriction was sometimes ignored. Traditional marriages consider children to belong to the father and his family if the couple divorce. Children born out of wedlock are viewed as belonging to the mother, unless the

father claims paternity. Inheritances are passed to and through male children only. Traditional authorities continued to exercise the right to fine women for wearing pants in their constituencies.

The constitution states that “a woman shall not be compelled to undergo or uphold any custom to which she is in conscience opposed”; however, adherents of traditional family practices may treat a woman as an outcast if she refuses to undergo the mourning rite, and a widow who does not participate may lose her home and inheritance. When the husband dies, tradition dictates that the widow must remain at her husband’s family’s residence in observance of a strict mourning period for one month, during which time she cannot leave the house, and the husband’s family can move into the homestead and take control of its operations. During the year the media reported that widows and children heading households sometimes became homeless as a result of the custom of the husband’s family taking control of the homestead and were forced to seek public assistance. Women in mourning attire are generally not allowed to participate in public events and are barred from interacting with royalty or entering royal premises. In some cases the mourning period can last up to three years.

## **Children**

During the year the government made great strides with respect to child protection with the passage of the Children’s Protection and Welfare Act. Among other things, the new law fixes the age of majority at 18; defines child abuse and imposes penalties for abuse; details children’s legal rights and the responsibility of the state, in particular with respect to orphans and other vulnerable children (OVC); establishes structures and guidelines for restorative justice; defines child labor and exploitative child labor; and sets minimum wages for various types of child labor.

Birth Registration: Under the constitution children derive citizenship from the father, unless the birth occurred outside marriage and the father does not claim paternity, in which case the baby acquires the mother’s citizenship. A foreign woman who marries a citizen can become a citizen by lodging a declaration with the proper authorities. If a Swazi woman marries a foreign man, however, even if he has become a naturalized citizen, their children are assumed to carry the father’s birth citizenship.

The law mandates compulsory registration of births. According to the MICS, 50 percent of children less than five years of age were registered and 30 percent had

birth certificates. Lack of birth registration can result in denial of public services. For example, a child needs a birth certificate in order to enter school or to obtain a passport.

Education: Despite a constitutional mandate that children be provided tuition-free primary education by 2009, the government had not completely complied. In addition students' families must pay for uniforms and other supplies. The government claimed it could not afford to enact tuition-free primary education immediately; however, after a 2009 lawsuit brought by the Ex-Miners' Association to obtain the benefit on behalf of the country's children, the government began to implement the mandate gradually. During the year it was offering tuition-free primary education up through grade four. The Office of the Deputy Prime Minister received an annual budget allocation to pay school fees for OVCs in primary and secondary school; however, some schools complained of delayed payment and expelled OVCs if the office had not provided payment. Individual schools sometimes needed to raise supplemental money for building maintenance, including of teachers' housing. Rural families favored boys over girls if they could not send all their children to school. Principals and teachers routinely demanded bribes to admit students.

Child Abuse: Child abuse, including rape of children and incest, was a serious problem, but the crime was rarely reported, the government seldom punished perpetrators of abuse, and penalties seldom matched the crime. According to UNICEF, approximately one in three girls experienced some form of sexual violence; one in four experienced physical violence; and three in 10 experienced emotional abuse. According to the MICS, 12 percent of children were subjected to "severe physical punishment." Children with disabilities, children out of school, and orphans were at particular risk. According to a report released by the National Children's Coordination Unit in the Office of the Deputy Prime Minister, there were 4,556 reported cases of abuse between January and June 2011. Corporal punishment by teachers and principals is legal and routinely practiced. School regulations state a teacher can administer a maximum of four strokes with a stick on the buttocks to a student younger than 16 years old, and six strokes to students older than 16; however, teachers often exceeded these limits with impunity.

On April 18, three male grade 5 pupils of Tshanini Primary School were rushed to a clinic with swollen hands after being beaten. The students received 132, 81, and 72 strokes with a switch for making noise and disturbing other classes at the school. A Lubombo Central school boy was unable to walk due to severe beatings

administered on his buttocks by a police officer after the school administration accused him of stealing a cell phone. In February 2011 a 10-year-old female pupil was blinded in one eye during administration of punishment when a splinter from the teacher's stick flew into the child's eye. A local NGO attempted to pursue the case in court; at the end of the year the case remained pending.

Child Marriage: The legal age of marriage is 18 years for both boys and girls. However, with parental consent and approval from the minister of justice, girls can marry at 16. The government recognizes two types of marriage, civil marriage and marriage under traditional law and custom. Under traditional law marriages can be with girls as young as 13 years old. Although the deputy prime minister has spoken out against this practice, civil law was generally not enforced to prevent it. According to the Children's Protection and Welfare Act, however, "A child has the right to refuse to be compelled to undergo or uphold any custom or practices that are likely to negatively affect the child's life, health, welfare, dignity or physical, emotional, psychological, mental and intellectual development." According to the MICS, 10.9 percent of girls and 1.7 percent of boys married before the age of 18.

Sexual Exploitation of Children: Girls were victims of sex trafficking and, in particular OVCs, of commercial sexual exploitation at truck stops and in bars and brothels. The Children's Protection and Welfare Act includes a specific provisions criminalizing, "ill-treatment, neglect, abandonment or exposure of children to abuse." Offenders convicted under these provisions are liable to imprisonment for a term of not less than five years, while persons convicted of violating the child labor provisions of the law are liable to a fine of not less than emalangeni 15,000 (\$1,768), a prison term of not less than two years, or both. There are also provisions of earlier law that address child prostitution as "defilement of a ward" or "unlawful carnal connection with a girl" and pornography under "obscene publications." The law sets the age of sexual consent at 16 years old. The penalties for statutory rape and prostituting a girl are up to six years' imprisonment, up to 24 lashes with a whip, and a fine of emalangeni 1,000 (\$118). Penalties for child pornography are up to six months' imprisonment and a fine of emalangeni 100 (\$12).

A large and increasing number of HIV/AIDS orphans were cared for by relatives or neighbors, or they struggled to survive in child-headed households. Some lost their property to adult relatives. Various governmental, international, and religious organizations and NGOs provided some assistance to HIV/AIDS orphans. However, the government failed to pay school fees on time for orphans and vulnerable children, resulting in expulsion of orphans from schools.

With more than 45 percent of children orphaned or vulnerable, international development organizations, including UNICEF, the World Food Program, and the Global Fund, supported school feeding programs, operated a number of neighborhood care points, and provided nutritional support to children weakened by AIDS.

International Child Abductions: The country is not a party to the 1980 Hague Convention on the Civil Aspects of International Child Abduction.

### **Anti-Semitism**

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

### **Trafficking in Persons**

See the Department of State's *Trafficking in Persons Report* at [www.state.gov/j/tip](http://www.state.gov/j/tip).

### **Persons with Disabilities**

The constitution provides for the rights of persons with disabilities but does not differentiate between physical, sensory, intellectual, and mental disabilities and requires parliament to enact relevant implementing legislation, which parliament has not done. The Office of the Deputy Prime Minister is responsible for upholding the law and for protecting the rights of persons with disabilities. However, parliament had not passed laws to prohibit discrimination against persons with disabilities in employment or to provide access to health care or other state services by year's end. Persons with disabilities complained of government neglect. There are no laws that mandate accessibility for persons with disabilities to buildings, transportation (including air travel), information, communications, or public services, although government buildings under construction included some improvements for those with disabilities, including access ramps. Public transportation was not user-friendly for disabled persons, and the government did not provide any means of alternative accessible transport.

There is one school for the deaf and one special education alternative school for children with physical or mental disabilities. The hospital for persons with mental disabilities, located in Manzini, was overcrowded and understaffed.

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

The constitution forbids discrimination on the grounds of race, color, ethnic origin, tribe, or birth; however, governmental and societal discrimination was practiced against nonethnic Swazis, generally white persons and persons of mixed race. Although there were no official statistics, an estimated 2 percent of the population was nonethnic Swazi. Nonethnic Swazis experienced difficulty in obtaining official documents, including passports, and suffered from other forms of governmental and societal discrimination, such as needing special permits or stamps to buy a car or house, delays in receiving building permits for houses, and difficulties in applying for a bank loan.

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

Societal discrimination against the LGBT community was prevalent, and LGBT persons generally concealed their sexual orientation and gender identity. Colonial-era legislation against sodomy remains on the books; however, it has not been used to arrest gay men and lesbians. Gay men and lesbians who were open about their sexual orientation and relationships faced censure and exclusion from the chieftom-based patronage system, which could result in eviction from one's home. Chiefs, pastors, and members of government criticized same-sex sexual conduct as neither Swazi nor Christian. Societal discrimination existed against gay men and lesbians, and LGBT advocacy organizations had trouble registering with the government. One such organization, House of Pride, was housed within another organization dealing with HIV/AIDS. It was difficult to know the extent of employment discrimination based on sexual orientation because victims were not likely to come forward, and most gay men and lesbians were not open about their sexual orientation.

### **Other Societal Violence or Discrimination**

There was social stigma associated with being HIV-positive, a fact that discouraged persons from being tested. Nevertheless, there were often long lines, especially of young persons, waiting to be tested during prevention campaigns. The armed forces encouraged testing and did not discriminate against those testing positive.

There was social stigma attached to albinism. Several people with albinism stated they were discriminated against, called names, and were at risk of being killed for ritual purposes. The government condemned such acts but took no further action. Belief in witchcraft was common, and those accused of witchcraft were at risk of being assaulted or killed.

Vigilante violence continued and in some cases resulted in deaths.

On September 29, Mpendulo Mbonambi of Makhevu assaulted his 76-year-old grandmother, Hlengiwe Mhlarah, accusing her of killing his father through witchcraft. Police arrested Mpendulo, charged him with assault, convicted and sentenced him to 12 months' imprisonment or a fine of emalangenani 600 (\$71).

## **Section 7. Worker Rights**

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

The laws provide that workers have the right to form and join independent unions, conduct legal strikes, and bargain collectively. However, these rights were either restricted or strictly regulated. The law explicitly provides for the registration of unions and federations but grants far-reaching powers to the labor commissioner with respect to determining eligibility for registration. Unions must represent at least 50 percent of employees in a work place to be automatically recognized; otherwise, recognition is left to the discretion of employers. According to the Industrial Relations Act of 2000, as amended, employees who are not engaged in "essential services" have the right to undertake peaceful protest actions to "promote or defend socioeconomic interests" of workers. The act, however, defines "socioeconomic interest" as including "solutions to economic and social policy questions and problems which are of direct concern to the workers but shall not include matters of a purely political nature." Employees in essential services, which included police and security forces, HMCS, firefighting, health, and many civil service positions, may not form unions. There were extensive provisions allowing workers to seek redress for alleged wrongful dismissal.

While the laws allow unions to conduct their activities without government interference and prohibit antiunion discrimination, certain laws allow broad government discretion to intervene and interfere with unions' activities.

The law permits strikes; however, the right to strike was strictly regulated. Strikes and lock-outs are prohibited in essential services, while the minister has the power to modify the list of these essential services, which provides for broad prohibition on strikes in nonessential sectors, including posts, telephone, telegraph, radio, and

teaching. The procedure for announcing a protest action requires advance notice of at least 14 days. The law details the steps to be followed when disputes arise and provides penalties for employers who conduct unauthorized lockouts. When disputes arose with civil servant unions, the government often intervened to reduce the chances of a protest action, which may not be called legally until all avenues of negotiation have been exhausted and a secret ballot of union members has been conducted. The law imposes disproportionately harsh sanctions for damages caused by strike actions. For example, the trade union faces civil liability and criminal liability for any damage caused and other “unlawful behavior” during strikes.

The constitution and law provide for the right to organize and bargain collectively; however, the right is subject to various legal restrictions. The law gives employers discretion as to whether or not to recognize a labor organization as a collective employee representative in the case where less than 50 percent of the employees are members of the organization. In a case where an employer agrees to recognize the organization as the workers’ representative, it is granted the ability to set out the conditions under which it agrees to such recognition. The law provides for the registration of collective agreements by the Industrial Court, which is empowered to refuse registration if an agreement conflicts with the Industrial Relations Act or any other law, provides terms and conditions of employment “less favorable to employees than those provided by any law, discriminates against any person, or requires membership or nonmembership in an organization as a condition for employment. The law also provides for the establishment of a conciliation, mediation, and arbitration commission for dispute resolution, but the law confers on the commissioner of labor the power to “intervene” in labor disputes before being reported to the commission, if she or he has reason to believe that such disputes could have serious consequences for the employers, the workers, or the economy.

The government did not effectively enforce these laws. While generally protected by law, freedom of association and the right to collective bargaining were not consistently respected in practice. In certain cases workers who attempted to exercise the rights to organize and bargain collectively faced difficulties or risks due to a harsh legal environment imposed by provisions in the labor and the security laws. HMCS staff continued to be denied the right to collective bargaining, and there were reportedly problems in the banking sector with respect to such right. While there were no worker organizations that were controlled by the government or employers, trade unions and other worker organizations may be prohibited from engaging in certain activities when those activities are deemed

“political” in nature. In addition, the logistical requirements involved in registering a legal strike made striking difficult in practice. There were unconfirmed reports of acts of antiunion discrimination in the textile sector. Government interference in union affairs has consistently been an issue under examination by the International Labor Organization (ILO), particularly those unions in the public service.

At issue was continued government action to disrupt or repress trade unions’ lawful and peaceful activities. Certain laws, including the 2008 Suppression of Terrorism Act and the 1963 Public Order Act, continued to be used to interfere with trade unions’ affairs, especially gatherings or other activities that were viewed as “political.” The International Trade Union Confederation reported that trade union activities continued to be repressed. Arbitrary arrests, detentions, intimidation, and physical violence were reportedly used to silence activists. On January 19, police attempted to stop a TUCOSWA-organized meeting set up to discuss the government’s plan to introduce a value-added tax. Shoving and pushing occurred, but the police backed down when the organizers refused to disperse.

On February 25, police prevented a political rally of the AUDP from taking place at Mhlaleni.

On April 5, the government deregistered the newly formed labor federation TUCOSWA. Just weeks after the country’s labor commissioner signed its certificate of registration and the minister of labor and social security recognized it, the attorney general declared that TUCOSWA had been “erroneously registered” under the kingdom’s Industrial Relations Act, which governs all labor-related activity. Despite the fact that labor federations have operated for decades, the attorney general argued that the law actually provides only for the registration of “organizations” and not “federations.” Government officials removed TUCOSWA from the list of registered organizations but promised to amend the Industrial Relations Act to provide for the registration of federations. The deregistration occurred just days after TUCOSWA announced that it would support a boycott of the 2013 legislative elections. At year’s end the Industrial Relations Act had not yet been amended, and TUCOSWA remained an unrecognized entity. On May 21, the minister of labor and social security warned workers in the kingdom that local unions cannot invite trade unionists from other countries without permission from the government; unionists from the United Kingdom and the Netherlands visited the country in the weeks following the deregistration of TUCOSWA.

On July 11, peaceful protest actions by NAPSAWU, the Swaziland Transport and Allied Workers' Union (STAWU), and the SNAT were met with police teargas, batons, and rubber bullets. The NAPSAWU president was arrested while he was on his way to support the teachers' strike.

During the first week of August, the government fired more than 100 teachers in retaliation for the educators' six-week strike action to demand a 4.5 percent pay increase. According to government the teachers had participated in illegal strike actions and were therefore subject to dismissal. According to lawyers representing the teachers, the firings did not proceed in accordance with the law and were therefore illegal themselves. On August 3, the Industrial Court issued a temporary halt to the firings, and after an August 6-11 "sibaya" (national gathering) at which King Mswati III's speech was interpreted as meaning that the teachers should go back to work, the educators were reinstated. At year's end the teachers had not yet received a pay increase.

During the year there were allegations that employers used labor brokers to hire individuals on contracts to avoid hiring those who would normally be entitled to collective bargaining rights. There are no laws governing the operation of labor brokers.

Other concerns identified by unions were undefined hours of work and pay days; assaults on workers by supervisors; surveillance by hired security officers of trade union activity, both at the workplace and outside; and the use of workers' councils stacked with employer-picked representatives to prevent genuine worker representation.

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

The laws prohibit forced or compulsory labor. However, the law also provides that residents are required to perform uncompensated tasks for chiefs, who could penalize those who did not participate. Although the High Court had declared that order null and void, the government did not officially repeal it as recommended by the ILO, stating the order was automatically overridden by the constitution. There were reports that such practices occurred. Victims of forced labor included women and children forced into domestic servitude, agricultural labor, herding livestock, portering, and market vending.

Also see the Department of State's *Trafficking in Persons Report* at [www.state.gov/j/tip](http://www.state.gov/j/tip).

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

The laws prohibit child labor. The minimum age for employment is 15 years, and the minimum age for employment in night work is 16 years. The law also prohibits children from engaging in any form of hazardous employment and defines work as "hazardous when it poses a danger to the morals, health, safety, and development of a person." The law also limits the number of night hours children may work on school days to six and the overall hours per week to 33. Such laws were effectively enforced in the formal sector. The Ministry of Labor, the Office of the Deputy Prime Minister through the National Children's Coordination Unit and Department of Social Welfare, and the RSPS are responsible for enforcement of laws relating to child labor. The government's effectiveness in combating child labor was limited, however, due to a lack of baseline information about the scope of the problem and a lack of dedicated resources for identifying and punishing violators. The government supported programs to promote access to schooling. Free primary schooling is offered in grades one, two, three, and four. Through the Office of the Deputy Prime Minister, the government pays school fees for orphans and vulnerable children to provide additional social support and keep these children from engaging in child labor.

In the informal sector, however, children continued to be employed, particularly in agricultural pursuits. In agriculture children picked cotton, harvested sugarcane, and herded livestock. This work may involve activities that put at risk their health and safety, such as using dangerous machinery and tools, carrying heavy loads, applying harmful pesticides, and working alone in remote areas. Children also worked as porters, bus attendants, taxi conductors, and street vendors. Children working on the streets risked a variety of dangers, such as severe weather and automobile accidents; they also were vulnerable to exploitation by criminals. Child domestic servitude was also believed to be prevalent. Such work could involve long hours of work and may expose children to physical and sexual exploitation by their employer. Children's exploitation in illicit activities was a problem. Children served alcohol in liquor outlets and grew, manufactured, and sold drugs.

Also see the Department of Labor's *Findings on the Worst Forms of Child Labor* at [www.dol.gov/ilab/programs/ocft/tda.htm](http://www.dol.gov/ilab/programs/ocft/tda.htm).

#### **d. Acceptable Conditions of Work**

There is no national minimum wage. The Ministry of Labor and Social Security sets wage scales for each industry. There was a legally mandated sliding scale of minimum wages depending on the type of work performed. For example, the minimum monthly wage for a domestic worker was emalangeni 531 (\$63), for a semiskilled worker in the handcraft industry emalangeni 657 emalangeni (\$77), for a skilled worker in the handcraft industry emalangeni 713 (\$84), for a semiskilled worker in the forestry industry emalangeni 528 (\$62), and for a skilled worker in forestry emalangeni 656 (\$77). Approximately 60 percent of the population lived below the poverty lines of emalangeni 57 (\$7) and emalangeni 104 (\$12) per month for rural and urban areas, respectively.

There was a standard 48-hour workweek for most workers and a 72-hour workweek for security guards. It was not clear whether there were specific exceptions for female workers. The law permits all workers at least one day of rest per week and provides for premium pay for overtime. Most workers received a minimum of 12 days of annual leave. Workers receive 14 days of sick leave with full pay and 14 days with half pay after three months of continuous service; these provisions apply only once per calendar year. No sick leave is granted if an injury results from an employee's own negligence or misconduct.

The law provides for some protection of workers' health and safety. The government set safety standards for industrial operations and encouraged private companies to develop accident prevention programs. Workers have no legal right to remove themselves from dangerous workplaces without jeopardizing their continued employment, and collective bargaining agreements do not address the matter. All workers in the formal sector, including migrant workers, are covered by the wage laws.

The constitution calls on parliament to enact new laws to protect a worker's right to satisfactory, safe, and healthy employment conditions; however, parliament had not enacted any such laws by year end. The Ministry of Labor and Social Security is responsible for enforcement of labor laws but faced significant resource challenges, including a lack of motor vehicles and inability to hire additional staff. There were only an estimated 20 labor inspectors serving the entire country, and while the Labor Commissioner's Office conducted inspections in the formal sector, it was not resourced to conduct inspections in the informal sector. The government also undertook an initial review of the status of labor brokers, in response to growing complaints that the lack of regulation of labor brokers facilitated the

exploitation of workers. The labor minister spoke out repeatedly on the subject, and the government reviewed existing portions of the labor law that could be amended to regulate brokers. The government continued to enforce its Occupational Safety and Health Act, which lays out the rights and responsibilities of employers, employees, and the government with respect to occupational health and safety. In September the global union federation Building and Wood Worker's International, in conjunction with the government and unionists, launched a campaign to increase awareness on health and safety standards.

Wage arrears, particularly in the garment industry, were a problem. In December workers at one factory went on strike when the firm said it could not pay current month salaries. In general, working conditions in the industry were good, although workers complained that wages were low and that procedures for getting sick leave approved were cumbersome in some factories. The minimum monthly wage for a skilled employee in the industry – including sewing machinists and quality checkers – was emalangenani 1,128 (\$133). Minimum wage laws did not apply to the informal sector, where many workers were employed.

Public transportation workers complained that they were required to work 12 hours a day or more without any overtime compensation and that they were not entitled to pensions and other benefits. Nurses engaged in strikes and work slow-downs during the year to advocate for higher wages and to protest what they said were unsafe working conditions in local hospitals and clinics. Some facilities lacked proper ventilation systems, water, and sanitation supplies. Workers in the informal sector, particularly foreign migrant workers, children, and women, risked facing hazardous and exploitative conditions.

Although policies exist regarding maternity leave, women often believed they were compelled to keep working from economic need, which sometimes resulted in giving birth in unsafe environments, for example, on the way to work. A significant number of workers were in the informal sector, but credible data was not available. Credible data on workplace fatalities and accidents were not available.