



## U.S. DEPARTMENT of STATE

### Swaziland

#### Country Reports on Human Rights Practices - [2007](#)

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Swaziland is a modified traditional monarchy with executive and some legislative powers vested in King Mswati III. The constitution, which went into effect in February 2006 and replaced the 1973 Decree, confirms most of the king's powers, but provides for an independent judiciary. The king rules in conjunction with a prime minister, a partially elected parliament, and an accompanying structure of published laws and implementing agencies. The population was approximately 954,000. The most recent parliamentary elections, held in 2003, were not considered free and fair. Political power remained largely with the king and his circle of traditional advisors, including the queen mother. While the civilian authorities generally maintained effective control of the security forces, there were instances in which security forces committed abuses.

Government agents continued to commit or condone serious abuses. Human rights problems included: inability of citizens to change their government; unlawful killings by security forces; police use of torture, beatings, and excessive force; police impunity; arbitrary arrests and lengthy pretrial detention; infringement on citizens' privacy rights; limits on freedom of speech and of the press; restrictions on freedom of assembly and association; prohibitions on political activity and harassment of political activists; restrictions on freedom of movement; discrimination and violence against women; poor enforcement of women's rights; child abuse; trafficking in persons; societal discrimination against mixed race and white citizens; antiunion discrimination and child labor.

#### RESPECT FOR HUMAN RIGHTS

##### Section 1 Respect for the Integrity of the Person, Including Freedom From:

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

The government and its agents did not commit any politically motivated killings; however, there were credible reports that security forces committed unlawful killings. Security forces were responsible for a number of deaths during apprehension and in custody, some reportedly due to torture.

For example, on April 3, officers of the Royal Swaziland Police Force Service (RSPS) shot and killed Sikiza Mondlane, Celcolo Nkambule, Thula Mazibuko, and an unidentified suspect during their apprehension while stripping car parts from a stolen vehicle in Mhlume. The four were in possession of a toy gun and a pellet rifle. No known investigation into the incident was conducted.

On August 11, police shot and killed Ntokozo Ngozo, who they were attempting to arrest in connection with the shooting death of a police officer on June 22. Eyewitness reports stated that Ntokozo was unarmed and had his hands in the air when he was shot, after which he was interrogated for more than two hours by police at that location. Police subsequently took Ngozo to the hospital, where he was declared dead upon arrival. A post mortem report by an independent pathologist hired by Amnesty International stated that Ngozo was shot twice by police within close range. The prime minister promised to investigate the shooting, but no investigation had been conducted by year's end.

On August 28, along the eastern border separating Swaziland and South Africa, the Umbuto Swaziland Defense Force (USDF) shot and killed Wandile Ngwenya as he allegedly tried to smuggle a car into Swaziland. No investigation was conducted or action taken against the USDF members responsible for the killing.

There were no developments in the following 2006 cases: the January death of Fikile Mamba, wife of Mduzuzi Mamba, a member of the banned political organization People's United Democratic Movement (PUDEMO); the alleged beating to death by police of Mthokothoko Mamba in February; the February death of Muzi Ntshalintshali while in a correctional facility; or the September shooting to death by police of Mphikeleli Mabuza.

There were no developments in the 2005 reported killings of civilians by members of the USDF.

There were reports of mob killings during the year. On August 27, the *Times of Swaziland* reported that a mob beat Timothy Dlamini with bricks after he was caught breaking into a minibus in Manzini; he died of his injuries in a hospital four days later. There were unconfirmed reports that witnesses identified one member of the mob as an off-duty police officer. There were no further developments in the case by year's end.

On September 17, a mob in Mbabane beat an unidentified man to death after he was reportedly caught stealing a car radio. No action was taken in the case by year's end.

On October 12, a mob beat Nkosingiphile Dlamini to death after he stabbed an elderly neighbor. Four members of the mob, three relatives of the elderly neighbor, and a community police officer were arrested for the murder. The case was ongoing at year's end.

There were no developments in the 2006 or 2005 killings as a result of mob violence.

#### 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; however, the provision prohibiting law enforcement officials from engaging in torture is located in the "policy" section of the constitution and is not enforceable in any court or tribunal. The law does not specifically prohibit such practices. Security officials who engage in such practices may be punished, but no punishments were reported during the year. There were reports that government officials used torture during interrogation and assaulted citizens and used excessive force in carrying out their duties. However, unlike in the previous year, there were no reports that police used the "tube" style of interrogation, in which police suffocated suspects by using a rubber tube around the suspect's face and mouth.

In September a commission appointed to investigate the 2005 and 2006 allegations of torture by 17 members of political organizations who were arrested in connection with 2005 petrol bombings submitted a report to the prime minister's office; the findings had not been released to the public by year's end.

There were no developments in 2005 cases of security force abuse.

There were credible reports of mob violence during the year. On February 11, a mob in New Village in Manzini, armed with bushknives and sjamboks, assaulted Mandla Nhleko and doused him with petrol before setting him on fire and petrol bombing his house. The mob claimed Nhleko was performing witchcraft rituals. Nhleko was taken by police to the hospital for treatment; an investigation was ongoing at year's end.

On March 18, community police in Kwaluseni chained Mandla Mkhathshwa to a tree for allegedly threatening his former girlfriend with harm or death via witchcraft. Mkhathshwa was beaten until he confessed to making his girlfriend sick. He was fined \$143 (1,000 emalangeni) for her medical bills.

#### Prison and Detention Center Conditions

Government prisons and detention centers remained overcrowded, and conditions generally were poor. There were reports of abuse and torture by prison guards. Swaziland Coalition of Concerned Civic Organizations reported that the use of physical punishment is accepted as part of the culture and not seen as a human rights issue. Rape between prisoners contributed to the spread of HIV/AIDS.

In Mawelawela, the sole women's detention facility, detainees were not held separately from convicts. In December the Correctional Service reported that 62 women lived in the facility and that 30 children had lived with their mothers in the facility during the year.

The government routinely permitted prison visits by diplomats, journalists, human rights monitors, and representatives of international organizations. On August 27, the government facilitated visits to prisons, including Mawelawela and the juvenile prison in Mdutjane, by a delegation from the UN Committee on the Rights of the Child from Geneva to assess prison living conditions. A press statement issued by the group stated that children were allowed to be with their mothers in prison and the treatment of prisoners was satisfactory, but that more should be done to address the issue of holding juveniles in prison without convictions.

#### d. Arbitrary Arrest or Detention

The constitution and law prohibit arbitrary arrest and detention; however, arbitrary arrest and lengthy pretrial detention were problems.

#### Role of the Police and Security Apparatus

The king is the commander-in-chief and also holds the position of minister of defense. He presides over a civilian principal secretary of defense and a commanding general.

The RSPS is responsible for maintaining internal security. The USDF is responsible for external security, but also has limited domestic security responsibilities. The RSPS is under the authority of the prime minister, while the USDF reports to the Ministry of Defense. The principal secretary of defense and the army commander are responsible for day-to-day operations of the USDF. The RSPS and the USDF were generally professional despite inadequate resources and bureaucratic inefficiency; however, both forces were susceptible to political pressure and corruption. The government generally failed to prosecute or otherwise discipline security officers accused of abuses. No independent body had the authority to investigate police abuses; however, an internal complaints and discipline unit investigated reports of human rights abuses by the police but did not release their results to the public. There were no reports of government action to reform the RSPS. The government provided training to community police in investigative skills and the appropriate use of force.

Traditional chiefs supervised rural community police who have the authority to arrest suspects and bring them before an inner council within the chiefdom for trial. Serious cases were handed over to the RSPS for further investigation. Several community police officers were accused of abuses.

On May 6, Phumlani Dlamini, a soldier, was whipped 80 times on the buttocks by eight members of the community police for allegedly assaulting a woman. There was no investigation into the case by year's end.

In July an unidentified man filed assault charges against the Logoba area community police for attacking him with sharp objects and leaving him for dead. There were no further developments in the case by year's end.

#### Arrest and Detention

The law requires warrants for arrests except when police observe a crime being committed or believe that a person is about to commit a crime. Detainees may consult with a lawyer of their choice, but the government pays for defense counsel only in cases in which the potential penalty is death or life imprisonment. Detainees must be charged with the violation of a statute within a reasonable time, usually 48 hours or, in remote areas, as soon as the judicial officer appears. In general, detainees were promptly informed of the charges against them, and their families had access to them. There is a functioning bail system and, except in cases of murder and rape, suspects can request bail at their first appearance in court, which by law must take place within 48 hours of arrest; however, arresting authorities did not always present detainees within that period.

Police dispersed demonstrations that they considered unauthorized or politically motivated and they sometimes briefly detained demonstrators without charge.

Police arrested demonstrators and opposition political organization members during the year.

On April 12, five members of PUDEMO were arrested in Siteki, charged with sedition, and held for two weeks; the government later changed the charges to jaywalking. The PUDEMO members were convicted of jaywalking and each sentenced to a fine of \$29 (200 emalangen) or three months in prison; the court then issued a two year suspension of sentence and the PUDEMO members were released.

Lengthy pretrial detention was common. In April the International Centre for Prison Studies found that 31 percent of the prison population of 2,719 were pretrial detainees. There were only 11 judges and 19 magistrates to try the approximately 1,500 detainees awaiting trial during the year. Police justified pretrial detention on the basis that they needed to collect evidence of the alleged crimes and that releasing the detainee would allow the person to influence witnesses. In some cases these claims resulted in repeated remands that lasted for years. For example, on March 16, four murder suspects were acquitted by the high court after spending three years in custody.

#### e. Denial of Fair Public Trial

The constitution and law provide for an independent judiciary. In April the judiciary began operating on a separate budget. The lack of trained manpower, inadequate salaries, poor casework management, and a significant backlog of cases remained problems for the judiciary.

Judicial powers are vested in a dual system: one based on Roman-Dutch law and the other based on a system of national courts that follows unwritten traditional law and custom. The Roman-Dutch-type judiciary consists of the Supreme Court, the High Court, and magistrate courts. The High Court has no jurisdiction in matters concerning the office of the king or queen mother, the regency, chieftancy, the Swazi National Council, or the traditional "regiments" system, as these are governed by national law and custom. The High Court interprets the constitution.

The government took steps during the year to address long-term vacancies in the court system. On March 9, the king appointed two new high court justices on a permanent basis. On May 25, the king appointed a new chief justice, a Malawian citizen, to the Supreme Court; the Supreme Court is composed entirely of foreign-born, primarily South African, judges.

A children's court handles cases in which children who were victims of sexual abuse or other crimes testify from a separate room, linked by closed-circuit television to the courtroom.

Most citizens who encountered the legal system did so through the 13 traditional or national courts, each with a president appointed by the king. Authorities may bring citizens to these courts for minor offenses and violations of traditional law and custom. In 2005 the *Swazi News* quoted the judicial commissioner as saying that some traditional court presidents imposed fines exceeding the legal limit of approximately \$15 (100 emalangeni); this practice continued during the year.

The public prosecutor has the legal authority to determine which court should hear a case, but in practice police usually made the determination. Persons convicted in the traditional courts may appeal to the High Court. Prolonged delays in trials in the magistrate courts and High Court were common.

Military courts are not allowed to try civilians.

#### Trial Procedures

The constitution provides for the right to a fair public trial except when exclusion of the public is 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," and the independent judiciary generally enforced this right. In practice, cases involving child victims are closed to the public. Defendants enjoy a presumption of innocence. Juries are not used. Court-appointed counsel is provided at government expense in capital cases or when the crime is punishable by life imprisonment. Otherwise, defendants in superior and magistrate courts are entitled to hire counsel at their own expense. Defendants can question witnesses against them and present witnesses in their own behalf. Defendants and their attorneys have access to relevant government-held evidence, generally obtained during pretrial consultations with the public prosecutor's office. Defendants and prosecutors have the right of appeal, up to the Supreme Court.

In traditional courts defendants are not permitted formal legal counsel but may speak on their own behalf, call witnesses, and be assisted by informal advisors. Sentences are subject to review by traditional authorities and can be appealed to the High Court.

The king appoints traditional chiefs. The traditional courts serve the chiefs and have limited civil and criminal jurisdiction. They are authorized to impose fines up to approximately \$15 (100 emalangeni) and prison sentences of up to 12 months. However, 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 law in force.

#### Political Prisoners and Detainees

There were no reports of political prisoners or detainees.

#### Civil Judicial Procedures and Remedies

There is an independent and impartial judiciary, which tries civil as well as criminal cases, including suits for damages against government agents. For example, in June Gerald Dlamini won a law suit against the RSPS for unlawful arrest and emotional shock.

In September the industrial court ordered the government to pay \$27,000 (200,000 emalangeni) to the former director of public prosecutions, Lincoln Ngarua, a Kenyan, as compensation for unfair dismissal in 2003.

#### 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." The government generally respected these provisions; however, there were reported instances of abuse.

The law requires police to obtain a warrant from a magistrate before searching homes or other premises. Police officers with the rank of subinspector or higher have the authority to conduct a search without a warrant if they believe that evidence might be lost through the delay in obtaining a warrant. In July there were allegations that a deputy sheriff confiscated property without a court order and without conducting an inventory.

There were no developments in the 2005 arrest of 13 persons in a warrantless raid.

There were instances in which police conducted physical surveillance on members of labor unions and political groups.

On October 10, RSPS officers attempted to stop an international youth group meeting where the secretary general of the Swaziland Federation of Trade Unions (SFTU) was scheduled to speak and politics were to be discussed. A youth group organizer was summoned to appear before the minister of regional development and youth affairs, where she was informed that the ministry wanted to stop the meeting because the group did not receive cabinet approval before hosting international delegates. The organizer claimed she was told to let the police sit in on the conference, cancel the SFTU speaker, and apologize; she acquiesced to the demand in order for the meeting to proceed. The ministry subsequently publicly denied tampering with the guest speaker list.

On occasion police reportedly presented themselves to union leadership and asked to attend union meetings; the leadership permitted them to do so.

There were no developments in the November 2006 request to the king by Chiefs Mliba Fakudze and Mtfuso Dlamini for compensation for their property. Their eviction, along with 200 other residents of two chiefdoms in 2000, sparked the 2002 rule of law crisis.

## Section 2 Respect for Civil Liberties, Including:

### a. Freedom of Speech and Press

The constitution provides for freedom of speech and of the press; however, the government limited these rights in practice. Journalists practiced self-censorship. Citizens criticized the government without fear of reprisal but generally did not criticize the royal family.

There were two daily newspapers--the independent *Times of Swaziland* and the *Swazi Observer*, which was owned by the king's investment company, Tibiyo Taka Ngwane. Both newspapers covered a wide variety of sensitive topics and criticized government corruption, inefficiency, and waste. The weekly government periodical *Swaziland Today* falls under the Ministry of Public Service and Information. The prime minister hosted monthly "media breakfasts" to which he invited journalists of both newspapers. Reporting in the independent paper was somewhat less critical of the government than in previous years, and the paper provided more coverage of government functions and royal events.

Private companies and church groups owned several newsletters and magazines.

There was one government-owned radio station and one independent radio station, which only broadcast religious programs. There was a privately owned television station, which was officially independent; however, the owner's mother was the daughter of the previous king, Sobhuza II, and its reporting favored the monarchy. The government-owned Swaziland Television Authority and radio stations, the most influential media in reaching the public, generally followed official policy positions. Government broadcast facilities retransmitted Voice of America and BBC news programs in their entirety.

International news and other magazines were widely available. Consumers freely purchased and used satellite dishes to receive signals and programming from independent South African and other international service providers.

There were reports of harassment of journalists during the year. On July 4, parliament found *Sunday Times* editor Mbongeni Mbingo guilty of lack of objectivity and knowledge of parliamentary procedure after he wrote an editorial that criticized Speaker of the House Prince Guduza. Speaker Guduza had reportedly blocked a motion by a member of parliament (MP) that challenged an alleged secret move by the cabinet and the traditional body, the Swaziland National Council Standing Committee (SNNC), to amend a clause in the constitution. The editorial alleged Prince Guduza and the SNNC sought to lower the qualifications of the chief electoral officer to allow for the incumbent to remain in his current position.

There were reports of government restrictions on media content. On June 27, the Minister of Health and Social Welfare,

Njabulo W. Mabuza, barred journalists from government hospitals and banned government hospital staff from talking to the media following an article in the *Times of Swaziland* that attributed the death of a four-year-old-girl with rabies to the hospital's inadequate supply of drugs.

There were reports of self-censorship during the year. A source in the Media Institute of Southern Africa stated that on a few occasions journalists received anonymous telephone calls advising them not to pursue a particular story, and that the journalists complied.

#### Internet Freedom

There were no government restrictions on access to the Internet or reports that the government monitored e-mail or Internet chatrooms. Individuals and groups could engage in the peaceful expression of views via the Internet, including by e-mail. Most citizens lived in rural areas without access to the Internet. Internet cafes existed in larger urban areas, but bandwidth was limited. A single Internet provider held a government-approved monopoly.

#### Academic Freedom and Cultural Events

Restrictions on political gatherings and the practice of self-censorship restricted academic freedom by limiting academic meetings, writings, and discussion on political topics. On April 4, a public debate organized by University of Swaziland (UNISWA) students to discuss the political crisis in Zimbabwe was cancelled at the last minute by university authorities claiming that they were not given adequate advance notice. The debate was held at a hotel paid for by the students.

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 restricted this right in practice. The law requires those wishing to hold meetings of a political nature, marches, or demonstrations in a public place to first obtain the consent of the police commissioner. Authorities routinely withheld permission to hold most such meetings.

Police forcibly dispersed several demonstrations and meetings and arrested demonstrators and participants. On April 12, during a protest march organized by the PUDEMO, police officers reportedly choked one of the protesters, and 21 protesters claimed they were driven in a police van to Ezulwini satellite police station, located on the outskirts of Mbabane, and abandoned. No investigation was conducted.

No action was taken against security forces who forcibly dispersed demonstrations in 2006 and 2005.

##### Freedom of Association

The constitution provides for freedom of association; however, the government restricted this right in practice. The constitution does not address the formation or role of political parties but states that candidates for public office shall compete on their individual merit. The 1973 decree which banned political parties lapsed with the 2006 implementation of the constitution; however, a June 2006 petition by the African United Democratic Party (AUDP) to compel the government to register it as a political party was denied. The AUDP appealed to the High Court; an October 2006 hearing was postponed due to the resignation of a judge and there were no further developments by year's end. Some political organizations continued to operate without calling themselves parties.

There were incidents of action taken against persons who were associated with political organizations. On August 6, 15 students from Madlangempisi High School were suspended for making political statements indicating they were affiliated with PUDEMO in honor of the death of the deputy head teacher, who was a member of PUDEMO. After apologizing and receiving a warning not to associate with political parties, the students were allowed to return to school.

#### c. Freedom of Religion

The constitution provides for freedom of religion, and the government generally respected this right in practice.

New religious groups or churches are expected to register with the government. There is no law that describes the organizational requirements of a religious group or church. All religions were recognized unofficially. Religious groups were registered routinely, and there were no reports that any groups were denied registration during the year.

Government permission was required for the construction of new religious buildings. Non-Christian groups sometimes experienced minor delays in obtaining permits from the government. The government-owned television and radio stations did not permit non-Christian religious groups to broadcast.

#### Societal Abuses and Discrimination

The relationships among religious groups were generally amicable. The Jewish community comprised less than 1 percent of the population, and there were no reports of anti-Semitic acts.

For a more detailed discussion, see the [2007 International Religious Freedom Report](#).

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

The new constitution provides for freedom of movement within the country, foreign travel, emigration, and repatriation; it also states that provisions of law and custom which impose restrictions on the freedom of any person to reside in the country shall not contravene the freedom granted by the constitution.

Non-ethnic Swazis sometimes experienced lengthy processing delays when seeking passports and citizenship documents, in part due to the prejudice that mixed-race and white persons were not considered legitimate citizens.

The government treated several thousand ethnic Swazis living across the border in South Africa who were not Swaziland citizens as indistinguishable from citizens and routinely granted them travel and citizenship documents.

The law prohibits forced exile, and the government did not use it.

#### Protection of Refugees

The law provides for the granting of asylum or refugee status in accordance with the 1951 UN Convention relating to the Status of Refugees and to the 1967 Protocol, and the government has established a system for providing protection to refugees. In practice the government provided protection against "refoulement", the return of persons to a country where there is reason to believe they feared persecution, and granted refugee status or asylum. The government cooperated with the Office of the UN High Commissioner for Refugees (UNHCR) and other humanitarian organizations in providing protection and assistance to refugees and asylum seekers.

The government accepted refugees for permanent resettlement; citizenship is available to refugees who have lived in Swaziland more than five years. Most refugees, however, only apply after extended periods of time living in the country due to lack of information regarding their immigration status. In September 2006 the government began registering refugees in accordance with UNHCR Conclusion 91. The government currently assists refugees living in camps by providing free transportation twice a week for the refugees to transport vegetables and wares to local markets in order to make a living.

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

Citizens are not able to change their government peacefully. The king retains ultimate executive and legislative authority, and parliament has limited authority. Legislation passed by parliament requires the king's assent to become law. Under the constitution, the king chooses the prime minister, the cabinet, two-thirds of the Senate, 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 the members of the parliament; at least half of the ministers must be elected members of the House of Assembly. The king makes other appointments on the advice of a minister, the Judicial Service Commission, Civil Service Commission, or other commissions established by the constitution. The constitution states that when the king is required to consult with any person or authority before exercising a function; he can, after the consultation, choose whether to exercise that function.

In February 2006 the new constitution went into effect. The government declared that the 1973 Emergency Decree, under which the king was able to rule by decree, lapsed when the constitution took effect. Civic organizations criticized the government for the way it drafted the constitution, specifically for not allowing nongovernmental groups to contribute to the process. In addition civic groups charged that the constitution would not enable citizens to change executive government officials peacefully. In August 2006 the National Constituency Assembly (NCA), a group of civic organizations, petitioned the High Court to declare the constitution null and void on several grounds, including non-compliance with the constitutional drafting process set down in the 1973 Decree, which required extensive consultation with citizens. In a September 2006 hearing on the motion, the NCA demanded access to the records of the Constitutional Drafting Committee and the Constitutional Review Committee. The government attorney replied that the decree establishing these two committees provided that the public would have no right of access to the committees' records. On August 28, a full bench of the High Court heard arguments brought by the NCA; on November 7, the High Court ruled against the NCA, who

stated that it plans to appeal.

#### Elections and Political Participation

The most recent parliamentary elections took place in 2003; however, commonwealth observers concluded they were not free and fair. Election procedures generally were carried out in an orderly fashion, but police arrested several persons for using forged voter registration certificates and for trying to vote more than once.

The new constitution provides that a five person Electoral and Boundaries Commission, chosen by the king on the recommendation of the Judicial Services Commission, will oversee future elections. The EBC commissioners will sit for 12 years and will draw district boundaries, commission civic education and voter registration programs, and publish post-election reports. As of year's end, no commissioners had been named.

When the new constitution took effect, the 1973 Decree which banned political parties lapsed. The constitution provides for freedom of association but does not address political parties, and the government has not acted on the requests for registration by several self-declared political parties and movements.

In August 2006, at the prime minister's monthly meeting with journalists, the minister of justice and constitutional affairs stated that political organizations could hold meetings at "tinkhundla" (local government) centers, but first they would have to obtain the permission of the regional administrator, and allow a police officer to attend the meeting.

Chiefs are custodians of traditional law and custom, and are responsible for the day-to-day running of their chiefdom and for maintaining law and order. Chiefs act as overseers or guardians of families within the communities. They are an integral part of society and traditionally report directly to the king. Local custom mandates that chieftaincy is hereditary. However, the new 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."

The 65-member House of Assembly is constituted according to the law that was in effect when its members were elected in 2003. Under this law 55 seats in the House are popularly contested, and the king appoints the remaining 10 members. The constitution calls for a House of Assembly composed of up to 76 elected members, including 10 members appointed by the king. Five of the 10 must be women, and the other five must represent "interests, including marginalized groups not already adequately represented in the House." The House must also include one woman from each of the four regions, nominated by the elected house members from that region.

The king appoints 20 members of the 30-seat Senate, and the House of Assembly elects the other 10. The new constitution provides that eight of the king's nominees and five of the House of Assembly's nominees be women. The constitution also states that candidates for public office must compete on their individual merit, thereby blocking competition based on political party affiliation.

Women generally had full legal rights to participate in the political process; however, in accordance with societal norms and practice, widows in mourning (for periods that can vary from one to three years) are prevented from appearing in certain public places and in close proximity to the king. As a result, widows are effectively excluded from voting or running for office. Seven women were in the 65-member House of Assembly, 12 women in the 30-member Senate, and three female ministers in the cabinet, including the deputy prime minister. Four women served as principal secretaries, the most senior civil service rank in the ministries.

There were three members of minorities in the Senate, one white and two of mixed race. There were no minority members in the House of Assembly or cabinet.

#### Government Corruption and Transparency

On February 1, the Prevention of Corruption Act, which provides criminal penalties for official corruption came into effect; however, the government did not implement the law effectively, and officials often engaged in corrupt practices with impunity. The World Bank's worldwide governance indicators reflect that corruption was a serious problem.

There were credible reports that unqualified businesses were awarded contracts due to the owners' relationship with government officials. The government took some steps during the year to fight corruption. On January 15, a commission established in June 2006 by the prime minister to investigate how the government spent approximately \$7 million (50 million emalangeni) on a business training exercise for which it had allocated only \$1.5 million (10 million emalangeni), submitted its findings, which recommended the prosecution of nine persons for their involvement in the scandal. From January 19-21, the nine suspects, including the former principal secretary of the minister of finance and other individuals that were closely associated with the king, were arrested and charged with corruption and defrauding the government. The suspects were released on bail and were awaiting trial at year's end.

The constitution prohibits government officials from assuming positions in which their personal interest is likely to conflict with their official duties. These officials are required to declare their assets and liabilities to the Integrity Commission within six months of its establishment; however, the Integrity Commission is subsumed under the Commission on Human Rights and Public Administration, which had not been established by year's end.

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 too little to combat it.

The press reported that some MPs engaged in fraud, kickbacks, and scams. In March the parliament portfolio committee assigned to investigate allegations of government corruption in the procurement of medicine produced a report; however, in June the House of Assembly resolved to reject the report for containing unsubstantiated claims of corruption. In a separate case, MP Mfomfo Nkambule was under investigation for corruption relating to the employment contract of the chief executive officer of the Swaziland Electricity Board while Nkambule was minister of natural resources and energy. Nkambule retained his seat in the House of Assembly and was never charged with a crime.

In August the former clerk of parliament and an MP were cleared of fraud allegations.

In 2006 the government commissioned Pricewaterhouse Coopers to conduct a forensic investigation of the Department of Customs and Excise and the Department of Income Tax. The investigation report found that the computer user identifications of seven customs officials had been used to manipulate data to undercharge importers by approximately \$4 million (28.5 million emalangen). The report recommended disciplinary hearings for several Department of Income Tax employees and the banning of several companies from eligibility for government tenders. No action had been taken on the recommendations by year's end.

Government operations lacked transparency. There is no law permitting public access to government documents, and public documents were difficult to access. During the year, the government argued in court that the public had no right of access to the records of the Constitutional Drafting Commission. On November 7, the High Court ruled that unions and political organizations had no legal basis to access the records.

#### Section 4 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 the active groups were the Swaziland Action Group Against Abuse (SWAGAA), Lawyers for Human Rights of Swaziland, and Women and Law in Southern Africa. 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 nongovernmental organizations (NGOs); however, this provision falls within the "policy" section, which the constitution states is to guide all agencies of the government, but cannot be enforced in any court or tribunal.

The government permitted a visit by representatives of the UN Committee on the Rights of the Child.

The constitution provides for the establishment of a Commission on Human Rights and Public Administration within a year of its implementation; however, the commission may not investigate "a matter relating to the exercise of any royal prerogative by the Crown." The government had not established the Commission by year's end.

#### Section 5 Discrimination, Societal Abuses, and Trafficking in Persons

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

##### Women

The law criminalizes rape, including spousal rape; however, rape was common, and the government did not always enforce the law effectively. The RSPS Domestic Violence, Child Protection, and Sexual Offenses Unit handled approximately 350 rape cases. SWAGGA reports counseling 262 persons, mostly women, for sexual violence in 2006 and 2007. Rape was regarded by many men as a minor offense despite being against the law, and a sense of shame and helplessness often inhibited women from reporting such crimes, particularly when incest was involved. In the Roman-Dutch legal system, the acquittal rate for rape was high, and sentences were generally lenient. On April 16, however, the High Court sentenced a 46-year-old man to 20 years' imprisonment for raping a minor girl and infecting her with HIV/AIDS.

In April 2006 the acting chief justice of the Court of Appeal issued a letter directing all magistrate courts to send rape cases to the High Court for sentencing, since magistrate courts could only impose a maximum sentence of seven years (or nine years in a principal magistrate's court). The letter also directed magistrates to refer to the High Court for trial all rape cases in which the victim was 16 years old or younger.

Domestic violence against women, particularly wife beating, was common despite traditional restrictions against this practice. Women have the right to charge their husbands with assault under both the Roman-Dutch and the 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 against a woman, not involving rape, depended on the court's discretion. Rural women often had no relief if family intervention did not succeed, because the traditional courts were at times unsympathetic to "unruly" or "disobedient" women and were less likely than the modern courts to convict men for spousal abuse. The Roman-Dutch legal system often gave light sentences in cases of abuse against women. For example, a man was convicted and given the option of seven months' imprisonment or a \$7 (50 emalangeni) fine by the National Court for assaulting his girlfriend after she insisted they use a condom during sexual intercourse. In most similar cases, the fine was paid and the perpetrator set free.

In November the Office of the Director of Public Prosecutions petitioned the High Court to reopen a case in which Thokozani Bongani Mthembu pled guilty to raping a 13 year old girl and was given the option of eight months in prison or a \$114 (800 emalangeni) fine. Mthembu chose to pay the fine; however, the sentence was suspended for two years probation. The office felt the sentence was too light, and the petition to the High Court was pending at year's end.

SWAGAA recorded an increase in reports of spousal abuse, including an increase in the number of men complaining of abuse from their wives or girlfriends.

Prostitution is illegal, and police continued to enforce the law.

The law provides some protection from sexual harassment, but its provisions were vague and largely ineffective. There were occasional reports of sexual harassment, most often of female students by teachers.

Women occupied a subordinate role in society. The dualistic nature of the legal system complicated 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 were unclear and changed according to where and by whom they were interpreted. Couples often married in both civil and traditional ceremonies, creating problems in determining which set of rules applied to the marriage and to subsequent questions of child custody and inheritance in the event of divorce or death. Under the constitution children derive citizenship from the father and not from the mother unless the birth occurred outside marriage and the father does not claim the child. A foreign woman who marries a citizen can become a citizen by lodging a declaration with the proper authorities.

In traditional marriages a man may 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 sometimes was 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. Inheritances are passed through male children only.

With the implementation of the February 2006 constitution, women can open bank accounts, obtain passports, and take jobs without the permission of a male relative. Women routinely executed contracts and entered into a variety of transactions in their own names; however, banks still refused personal loans to women without a male guarantor. The constitution provides for equal access to land; however, in practice this right was not enforced. The law requires equal pay for equal work; however, the average wage rates for men by skill category usually exceeded those of women. Several existing acts reportedly require amendments to bring them into line with the constitution, including the Marriage Act, the Administration of Estates Act, the Deeds Registry Act, and others.

Mourning customs resulted in inequalities for women, and the high incidence of HIV/AIDS exacerbated this inequality. The constitution states that "a woman shall not be compelled to undergo or uphold any custom to which she is in conscience opposed"; however, traditional family practices may treat a woman as an outcast if she refuses to undergo the mourning rite. When the husband dies, his widow must remain in strict mourning for one month, during which she cannot leave the house, and the husband's family can move into the homestead and take control of its operations. The mourning period can extend as long as three years, during which the widow's actions are extremely restricted. For example, she cannot participate in the chief's "kraal", a traditional place of gathering where persons take their problems.

The Ministry of Home Affairs is responsible for coordinating women's issues but took no notable actions during the year. The UNISWA Senate had a subcommittee that encouraged students and faculty to hold seminars and workshops on gender issues. Several NGOs provided support for victims of abuse or discrimination.

Children

The government took steps to protect children's rights and welfare, and these rights are provided for in the new constitution. However, the growing number of orphans and vulnerable children (OVC)--an estimated 130,000 according to a recent report--challenged that commitment.

During the year the government did not provide free, compulsory education for children. The country had a 70 percent primary school enrollment rate. Children were required to start attending school at the age of six. The public school system ends at grade 12. Most students reached grade seven, the last year of primary school, and many went on to finish grade 10. In rural areas families favored boys over girls if they did not have enough money to send all their children to school.

The government paid teachers' salaries and textbook costs for first through seventh grade students, while the student paid varying school fees and contributed to the building fund. The government set per-child and per-school limits on the amounts it paid for OVC tuition and school fees, but some schools complained of delayed payment, and expulsion of OVCs for nonpayment of fees increased. Supplemental money sometimes had to be raised for building maintenance, including teachers' housing.

Medical care for children generally was inadequate and characterized by long waits, poor nursing care in public hospitals, and overcrowded and understaffed hospitals. Boys and girls had equal access to state-provided medical care.

Child abuse, including rape of children and incest, was a serious problem, and the government did not make specific efforts to end such abuse.

Corporal punishment by teachers is legal and routinely practiced. School regulations state that a teacher can administer a maximum of four strokes on the buttocks to a student less than 16-years-old and not to exceed six strokes.

Abandonment of newborn babies often by unwed mothers was a problem, but no official statistics were available.

The legal age of marriage is 18 for both men and women. However, with parental consent and approval from the minister of justice, girls age 16 can marry. The government recognized two types of marriage: civil marriages and marriages under law and custom. Traditional marriages under law and custom can be with girls as young as 14. Critics of the royal family said the king's many wives and young fiancées, some of whom were 16, set a poor example in a country with a 26 percent HIV/AIDS prevalence rate.

The law prohibits prostitution and child pornography, provides protection to children under 16 years of age from sexual exploitation, and sets the age of sexual consent at 16 years. There were reports that girls worked as prostitutes, including many children orphaned by HIV/AIDS. Children, including street children, were increasingly vulnerable to sexual exploitation.

There were growing numbers of street children in Mbabane and Manzini. A large and increasing number of HIV/AIDS orphans were cared for by aging relatives or neighbors, or they struggled to survive in child-headed households. Some lost their property to adult relatives. The National Emergency Response Committee on HIV and AIDS, a private group partly funded by the government and by international donors, and other NGOs assisted some AIDS orphans.

With more than 10 percent of households headed by children, the UN Children's Fund supported school feeding programs, established a number of neighborhood care points, and provided nutritional support to children weakened by AIDS.

#### Trafficking in Persons

The law does not prohibit trafficking in persons; however, existing statutes against crimes such as kidnapping, forced and compulsory labor, aiding and abetting "prohibited immigrants" to enter the country, brothel keeping, and procurement for prostitution could be used to prosecute traffickers. The existence of a significant human trafficking problem was suspected but not substantiated by reliable reporting. There were reports of trafficking, including small numbers of women and girls. Anecdotal evidence indicated children were trafficked internally for commercial sexual exploitation in cities, for domestic servitude in the homes of wealthy families, as well as to South Africa for domestic servitude and possibly also for commercial sexual exploitation.

There were no known investigations or prosecutions of trafficking cases during the year. No government agency is specifically responsible for combating trafficking in persons or maintaining records distinguishing trafficked persons from other illegal immigrants or refugees.

On June 4, the *Times of Swaziland* reported that a 14-year-old girl was abducted by a South African man and forced to remain in South Africa as a sex slave.

#### Persons with Disabilities

The constitution provides protection for persons with disabilities and requires parliament to enact relevant implementing legislation. 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 have complained of government neglect. There are no laws that mandate accessibility for persons with disabilities to buildings, transportation, or government services, although government buildings under construction included some improvements for those with disabilities, including accessibility ramps.

There was no secondary school or special educational alternative for children with physical or mental disabilities. In July 2006 the Foundation of Disabled Persons in Swaziland complained that there were no schools for approximately 900 visually impaired children of school age. In August 2006 the minister for enterprise and employment told the Swaziland Association of Visually Impaired People that he was shocked to learn that of the 10,600 visually impaired persons in the country, only three were employed. The minister promised to introduce a bill compelling employers to create specific jobs for the visually impaired; however, no bill had been introduced by year's end. In November 2006 the Ministry of Health and Social Welfare, which is responsible for the rights of persons with disabilities, released a report which found that 49 percent of interviewed persons with disabilities had not completed primary school, 19 percent went beyond primary school, and 25 percent were employed, mostly in the private sector. The hospital for persons with mental disabilities 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 non-ethnic Swazis, generally white persons and persons of mixed race. Although there were no official statistics, an estimated 2 percent of the population was non-ethnic Swazi. Non-ethnic Swazis experienced difficulty in obtaining official documents, including passports. Non-ethnic Swazis also 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.

#### Other Societal Abuses and Discrimination

Societal discrimination against homosexuals was prevalent, and homosexuals often concealed their sexual preferences. There was a social stigma associated with being HIV positive, and this discouraged persons from being tested. For example, on May 5, the *Times of Swaziland* reported that an HIV positive couple was kicked out of their home by relatives after discovering the couple was infected with HIV. Education was slowly eroding this cultural stigma and prejudice.

#### Section 6 Worker Rights

##### a. The Right of Association

The constitution and law provide for the right to form associations, including trade unions, and workers exercised this right in practice with some exceptions. Workers in essential services, such as security forces, may not form unions. 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. Approximately 80 percent of the formal private sector was unionized.

The law prohibits antiunion discrimination; however, such discrimination continued to occur. In the case of unfair dismissal, the court can order reinstatement and compensation for the employee as well as fine the employer. Union leaders made credible charges that private sector management in various industries dismissed workers for union activity. Other concerns identified by unions were undefined hours of work and pay days, frequent 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. The allegations of antiunion discrimination were most common in the mostly foreign-owned garment sector.

There were reports that the government restricted union membership and participation during the year. In February members of the Correctional Services attempted to form a union; however, the government filed a motion opposing the union's registration, arguing that the law which forbids disciplinary forces to unionize includes correctional services. The case was pending at year's end. In August police stopped correctional services union members from protesting at an international conference of correctional services commissioners.

In February members of the RSPS filed suit to register as a union. The government filed a motion indicating their intention to oppose the registration, stating the Industrial Act of 2000 guaranteeing the right to form unions does not apply to the RSPS; the lawsuit was pending at year's end. In December the RSPS planned a demonstration and strike, but the police commissioner prohibited both events.

There were reports that labor leaders were targeted for harassment and that their civil liberties were restricted during the year. On April 3, executive members of the National Public Service and Allied Workers Union (NAPSAWU) clashed with

police when they arrived at the prime minister's office and requested a meeting. Police assaulted NAPSAWU president Quinton Dlamini, forced him out of the office, and drove him around Mbabane before leaving him in a remote area.

In April Secretary General of NAPSAWU Vincent Dlamini received a letter from the principal secretary of the Ministry of Public Works and Transport demanding that Dlamini resign from his government job or resign from his political post in PUDEMO. In August the principal secretary sent another letter declaring that government regulations forbid government employees from engaging in political activities. Dlamini responded to the letter, stating that the regulations were inconsistent with the Employment Act, the Industrial Relations Act, and the constitution. At year's end Dlamini was still employed by the Ministry of Public Works and Transport.

In October the police union's secretary general and the union's treasurer were ordered to surrender their travel documents to their superiors after they attended a meeting in South Africa.

There were credible reports that 17 police union members were transferred to remote locations. Some officers challenged their transfers in the High Court; the cases were pending at year's end.

There were credible reports that correctional officers who engaged in union activities were targeted for punishment. In July the correctional services union vice president was fired after taking a day off of work to attend the union's court hearing.

#### b. The Right to Organize and Bargain Collectively

The new constitution and law provide for the right to organize and bargain collectively, and the government generally respected this right in practice. However, employer interference with representatives of workers' councils to negotiate rules and terms of conditions of work contributed to the failure of some trade unions to negotiate or promote collective bargaining agreements. There are no export processing zones.

The law does not specifically permit strikes, but it allows employees who are not engaged in essential services to participate in peaceful protest action to promote their socioeconomic interests. However, the procedure for announcing a protest requires an advance notice of at least 14 days. Employees in essential services, which included police and security forces, correctional services, fire fighting, health, and many civil service positions, were precluded from striking. 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.

#### c. Prohibition of Forced or Compulsory Labor

The constitution and law prohibit forced or compulsory labor, including by children; however, there were reports that such practices occurred. The Swaziland Federation of Trade Unions characterized the 1998 Administrative Order as a form of forced labor, noting that it reinforced the tradition of residents performing uncompensated tasks for chiefs who could penalize those that did not participate.

#### d. Prohibition of Child Labor and Minimum Age for Employment

The constitution and law prohibit child labor, but child labor was a problem. The minimum age of employment is 15 years old. The law prohibits hiring a child below the age of 15 in an industrial undertaking except in cases where only family members were employed in the firm or in technical schools where children worked under supervision. The law limits conditions under which persons under age 15 can be employed; however, children were vulnerable to joining the workforce early to survive or support their families, and the law does not provide for compulsory primary school education. The law limits the number of night hours that children may work on schooldays to six and the overall hours per week to 33.

Employment of children in the formal sector was not common, but children were found doing unpaid labor for someone other than a family member and often exposed to harsh conditions of work. In rural areas children below the minimum age frequently were employed in the agricultural sector, particularly in the eastern cotton-growing region, and were employed as domestic workers and as herd boys. Children reportedly worked in towns as traders, hawkers, porters, car wash attendants, bus drivers, and conductors. Children were victims of prostitution and trafficking.

The Ministry of Enterprise and Employment's Department of Labor was responsible for enforcement, but its effectiveness was limited by personnel shortages and other resource constraints.

#### e. Acceptable Conditions of Work

The Ministry of Enterprise and Employment sets wage scales for each industry. There was a legally mandated sliding

scale of minimum wages depending on the type of work performed. The minimum monthly wage for a domestic worker was approximately \$45 (300 emalangeni), for an unskilled worker \$63 (420 emalangeni), and for a skilled worker \$90 (600 emalangeni). In October the government agreed to a \$20 million (140 million emalangeni) pay increase backdated to April for civil servants, to include a 4.5 percent increase in living allowances and a 225 percent increase in housing allowances, the latter representing an increase of \$14 (100 emalangeni) to \$93 (650 emalangeni). These minimum wages still did not provide a decent standard of living for a worker and family. Migrant workers were not covered under minimum wage laws. Wage arrears, particularly in the garment industry, were a problem.

There was a standard 48-hour work week for most workers, a maximum 48-hour workweek in the industrial sector, and a 72-hour work week for security guards. 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; however, 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. These standards do not apply to foreign and migrant workers. The labor commissioner conducted inspections in the formal sector; however, these inspections generally did not result in enforcement of the law. There were allegations from at least two unions that women who tried to take maternity leave were dismissed, that employers paid employees at casual or probationary wage scales regardless of their position or length of service, and that some supervisors harassed, intimidated, and physically abused employees. There were no developments in the January 2006 case before the Industrial Court of a pregnant employee of the Singapore Butchery being illegally dismissed.

The constitution calls on parliament to enact new laws to protect a worker's right to satisfactory, safe, and healthy employment conditions; however, the parliament had not enacted any new laws by year's end. The current 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; however, the labor commissioner's office conducted few safety inspections because of staffing deficiencies and an alleged desire not to "scare off foreign investors." 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.

There were extensive provisions allowing workers to seek redress for alleged wrongful dismissal, and these provisions frequently were invoked during the year.

