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Swaziland

Country Reports on Human Rights Practices - [2006](#)

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Swaziland is a modified traditional monarchy with executive and some legislative powers vested in the king (Mswati III). The constitution, which went into effect on February 8 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 partially elected parliament and an accompanying structure of published laws and implementing agencies. The population was approximately 1.1 million. 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.

The government's human rights record was poor, and government agents continued to commit serious abuses, including: inability of citizens to change their government; arbitrary killings by security forces; police use of torture, beatings, and excessive force; police impunity; arbitrary arrest 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 reports that security forces committed arbitrary killings.

Security forces were responsible for a number of deaths during apprehension and in custody, some reportedly due to torture. On January 4, Fikile Mamba, wife of member of the opposition People's United Democratic Movement (PUDEMO) and treason suspect Mduduzi Mamba, died in the hospital in Siteki after she was admitted complaining of shortness of breath and chest pains; Fikile had been detained for two hours of questioning about her husband's alleged involvement in throwing petrol bombs. A doctor's report stated that Fikile died of abdominal trauma.

On February 22, Mthokothoko Mamba died in Pigg's Peak Government Hospital, 11 days after officers of the Horo Police Post arrested Mamba and his two brothers on suspicion of theft. The three, all of whom claimed to have been beaten in detention, were released on February 13. On February 18, Mthokothoko's relatives took him to the hospital when his condition worsened. The results of a February 24 postmortem were not made public.

On February 23, officers from the Mdutshane Correctional Facility reported that Muzi Ntshalintshali had died in their custody while serving a nine month sentence for wounding his uncle. Journalists who saw the body reported that it bore injuries to the arms, chest, and stomach.

On June 27, Sandile Motsa, a soldier, and Sicelo Dlamini and Mfankhona Hlophe, both security guards, allegedly assaulted and tortured a man whom they suspected of intending to break into the royal residence at Goje township in Ezulwini, where the three were on guard. The man died the same day of the injuries. On June 28, the suspects were arrested and brought before a magistrate; their status was unknown at year's end.

On September 5, Mphikeleli Mabuzadied died in a hospital after police shot him at his homestead in the Mahlanya area. Police alleged that he was attempting to flee arrest for burglary; Mabuza's family, present during the incident, claimed that the police shot him in the back as he struggled with them.

In January the Mabuza family filed a lawsuit against the police for wrongful death in the May 2005 killing of Charles and Mfanzile Mabuza, who were killed during a police raid at their homestead. The Mabuza family cited a report by an independent forensic pathologist from South Africa that stated that the round of ammunition which killed Charles was characteristic of a rifle, refuting the police report that Mfanzile, armed with a handgun, had accidentally shot Charles.

There were no developments in the January 2005 beating to death of a South African murder suspect by members of the Umbutfo Swaziland Defense Force (USDF) or the April 2005 USDF shooting of two suspected smugglers, one of whom died from his injuries.

There were no developments in the May 2004 case of Mandla Mathousand Ngubeni, who died in police custody. In January 2005 an investigative magistrate released an inconclusive report, which stated that Ngubeni was subjected to "torture of sorts, possibly suffocation by police" but did not give a specific cause of death or assign responsibility for the death.

There were reports of mob killings during the year. On April 13, residents in Ludzeludze severely beat a burglar who had stolen a cell phone. He died in the hospital the following day. No arrests were made by year's end. The August 27 issue of 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 in a hospital four days later of his injuries. Witnesses identified one member of the mob as an off-duty police officer. No arrests were made by year's end.

There were no developments in the 2005 cases of vigilante or mob killings of suspected witches.

b. Disappearance

There were no reports of politically motivated disappearances.

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

The new 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, although under the Prisons Act correctional facility officers may be prosecuted if they engage in such procedures; however, government officials employed them. Security forces used torture during interrogation and abused their authority by assaulting citizens and using excessive force in carrying out their duties.

There were credible reports that police beat criminal suspects and occasionally used the "tube" style of interrogation, in which police suffocate a suspect by using a rubber tube around a suspect's face and mouth. Unlike last year, there were no media reports of police using the "Kentucky" method of interrogation, in which the arms and legs of a suspect are tied together and then the person is beaten. The government took no action against police or soldiers accused of abuse.

Between December 2005 and February, 17 persons were arrested and charged with treason, sedition, and attempted murder in connection with the 2005 petrol bombings of government offices and residences; the 17 were members of the political organization PUDEMO and its youth wing, the Swaziland Youth Congress (SWAYOCO), banned under the lapsed 1973 Decree. On February 7, one of the suspects pled guilty and was fined and released. On March 7, during a three-day bail hearing for the remaining 16 suspects, the defense claimed that police and prison wardens had tortured nine of the suspects on January 20. On the judge's order, a medical exam was conducted on one of the defendants who claimed he was tortured; however, the report was deemed inadmissible due to a technical error. On March 9, prison wardens allegedly beat 16 of the subjects after ordering them to strip naked. Also on March 9, one of the detainees arrived at the hearing with a bleeding ear and told the court that prison wardens at the Sidwashini remand center had assaulted him and two other suspects; the wardens claimed that they had only strip-searched the three detainees. The court ordered that the detainee be taken to a hospital, where a doctor reportedly found no signs of assault. On March 10, the 16 suspects were granted bail and subsequently released. On March 13, the prime minister reportedly informed parliament that an investigation into the claims of torture and mistreatment would be conducted. On October 30, the prime minister named two members of the commission; however, the members had not been sworn in a month later. In November the suspects told the press that they would not cooperate with the commission unless it expanded its investigation to include family members and friends also allegedly tortured by the police. At year's end the commission had not begun its investigation.

There were no developments in the following 2005 cases of security force abuse: the May alleged squeezing by police of a student's testicles; the June attack by a USDF member on Majaha Dlamini; the August alleged attempted suffocation by police of Stephen Thwala; or the September 2005 beating by community police of two suspected thieves.

There were credible reports that members of the community beat suspects before handing them over to police.

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

Prison and Detention Center Conditions

Government prisons and detention centers remained overcrowded, and conditions generally were poor. There were reports of torture and that a lack of basic hygiene and unsafe sexual practices, including forced sexual intercourse between prisoners, were spreading HIV/AIDS among the prisoners. Newspapers reported in September 2005 that the government's draft multisectoral HIV and AIDS policy would provide for the release of prisoners in the last stages of AIDS; however, when the policy was issued in April, it did not contain that provision.

Unlike in the previous year, there were no reports of prison riots over warden negligence.

In Mawelawela, the sole women's detention facility, detainees were not held separately from convicts. On August 28, the Swazi Observer reported that seven children under the age of two were living with their convict mothers in the facility.

The government routinely permitted prison visits by diplomats, journalists, human rights monitors, and representatives of international organizations. During the year the local Red Cross visited several prisons.

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 police maintain internal security. The army is responsible for external security but also has domestic security responsibilities. Police are under the authority of the prime minister, while the USDF reports to the Ministry of Foreign Affairs.

The Royal Swaziland Police Service (RSPS), a nationwide police force, was generally professional despite inadequate resources and bureaucratic inefficiency. There were credible allegations that the force was susceptible to political pressure. The government generally failed to prosecute or otherwise discipline police officers for 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 results to the public. There were no government actions, including training, to reform the RSPS. However, the government provided training to community police in investigative skills and the appropriate use of force.

Traditional chiefs had their own community police who could arrest suspects and bring them before an inner council within the chiefdom for a trial. Some community police were accused of abuses.

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 penalty is potentially 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.

When police dispersed demonstrations that they considered unauthorized or politically motivated, they sometimes briefly detained demonstrators without charge (see section 2.b.).

The government arrested opposition members during the year on charges arising from a series of 2005 petrol bombings. The opposition members alleged that they were tortured (see section 1.c.).

Lengthy pretrial detention was common. In July the Correctional Services Public Relations Office reported that 1,304 of the 2,672 inmates in the country's 12 prisons were awaiting trial. On October 13, the Minister of Justice and Constitutional Affairs announced that there were only 22 judges and magistrates available to try the approximately 1,500 detainees awaiting trial. Police justified pretrial detention on the basis that they were collecting evidence of the crime 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 June 22, a woman in custody since September 2001 for the murder of her child pled guilty to culpable homicide; the judge sentenced her to five years imprisonment with three years suspended, and released her.

e. Denial of Fair Public Trial

The constitution and law provide for an independent judiciary. The lack of an independent court budget and trained manpower, inadequate levels of salary remuneration, and poor casework management 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, mandated by the new constitution to replace the Court of Appeal as the highest judicial body, composed entirely of foreign, usually South African, judges; the High Court; and Magistrate Courts. The constitution states that the High Court has no jurisdiction in any matter concerning the office of the king or queen mother, regency, chieftancy, the Swazi National Council, or the traditional "regiments" system, as these are governed by national law and custom. The constitution states that the High Court will interpret the constitution.

In March 2005 the government launched a children's court to try cases in which children were victims of sexual abuse or other crimes. Children 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 residents to these courts for minor offenses and violations of traditional law and custom. In October 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).

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 Court and High Court were common.

Trial Procedures

The constitution provides for public trials 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 eighteen years or the protection of the private lives of the persons concerned in the proceedings." In practice, cases have been closed to the public to protect child crime victims. 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 enjoy a presumption of innocence. 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 have limited civil and criminal jurisdiction and 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 January, the family of Charles Mabuza, allegedly shot and killed by police in May 2005, filed suit demanding \$67,000 (500,000 emalangeni) for wrongful death and emotional shock (see section 1.a.). In a separate case, a judge in July ordered the government to pay \$27,000 (200,000 emalangeni) to a man as compensation for unlawful detention. The man was arrested in October 2003 for possession of marijuana and posted bail, but the government continued to hold him for 64 days.

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

The new 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 instances of abuse.

The law requires police to obtain a warrant from a magistrate before searching homes or other premises, but at times police did not respect this requirement. 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. Unlike the previous year, there were no reports that searches without warrants occurred.

There were no developments in the October 2005 arrest of 13 persons in a warrantless and random raid following a series of burglaries of the houses of Duze primary school teachers.

There were instances in which police conducted physical surveillance on members of labor unions and political groups. On occasion police reportedly presented themselves to the leadership of a union and asked to attend union meetings; the leadership frequently permitted them to do so.

In November Chiefs Mliba Fakudze and Mfuso Dlamini, whose eviction along with 200 other residents of two chiefdoms in 2000 sparked the 2002 rule of law crisis, asked the king for compensation for their property, which had deteriorated or been stolen while the men were in self-imposed exile in South Africa. On November 15, the two men were called to the Ludzidzini royal residence and told to "stop disrespecting the late Prince Magagula's council."

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. Citizens criticized the government without fear of reprisal but generally did not criticize the royal family. Journalists practiced self censorship. Police monitored some meetings (see section 1.f.).

There were two daily newspapers--one independent and one owned by Tibiyo Taka Ngwane, the king's investment company. Both

newspapers covered a wide variety of sensitive topics and criticized government corruption, inefficiency, and waste. Unlike in the previous year, the government placed some advertising in the independently owned daily newspaper. The prime minister hosted monthly "media breakfasts" to which he invited journalists of both newspapers. Reporting in the independent paper, the Times of Swaziland, was somewhat less critical of the government than in 2005, and the paper provided more coverage of government functions and royal events.

There was one government owned radio station and one independent radio station, which broadcast only 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 television 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.

Private companies and church groups owned several newsletters and magazines.

There were reports of harassment of journalists and 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 continue to pursue a particular story, and that the journalists complied.

On December 16, local journalists launched a Media Union to discuss labor issues and bargaining power.

Unlike in the previous year, the government did not discourage critical news coverage of the royal family.

In July the Ministry of Public Service and Information launched a Journalism Center of Excellence to train practitioners in the media industry.

In November 2005 the cabinet approved a media policy drafted by the Minister of Public Information and Public Service that calls for reviewing outdated legislation; however, by year's end no legislation had been reviewed, and many government documents remained unavailable to the public.

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 freely engage in peaceful expression of views via the Internet, including by electronic 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

The practice of self censorship and the prohibition on political gatherings restricted academic freedom by limiting academic meetings, writings, and discussion on political topics. There were no government restrictions on cultural events.

b. Freedom of Peaceful Assembly and Association

Freedom of Assembly

The new 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, processions, or demonstrations in a public place to first obtain the consent of the police commissioner. Authorities routinely withheld permission to hold most such meetings.

On March 18, police in Manzini temporarily detained five PUDEMO leaders to prevent a planned demonstration.

During the year police forcibly dispersed several demonstrations and meetings and arrested demonstrators.

On August 5, police in the Msunduzi neighborhood of Mbabane used live ammunition and teargas to disperse a demonstration by SWAYOCO; one demonstrator reportedly suffered a minor gunshot wound, and several others were treated for minor injuries.

On September 7, students from the University of Swaziland (UNISWA) marched peacefully to the Ministry of Education and delivered a petition on scholarships. The group then proceeded to the prime minister's office, although their permit did not include a march to that office. When the police prevented them from approaching the prime minister's office, some persons with the students threw stones at the police, who detained two marchers and beat other marchers with police clubs (see section 1.c.).

On December 2, in Manzini, several PUDEMO and SWAYOCO members were injured in a clash with police after the two sides failed to agree on a march route. Police allegedly beat unconscious PUDEMO member Mphandlana Shongwe and dropped him at a hospital. After receiving medical treatment, Shongwe returned to the police station to file a complaint, but police refused to take his affidavit. Police charged eight PUDEMO members with jaywalking in connection with the clash; on December 4, the court found them guilty and imposed small fines.

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

Unlike in the previous year, there were no reports that police harassed and disrupted the meetings of prodemocracy activists and members of the opposition.

Freedom of Association

The constitution provides for freedom of association; however, the government restricted this right in practice. The constitution does not address political parties; however, it states that candidates for public office shall compete on their individual merit. The decree which banned political parties lapsed with the implementation of the constitution; however, the government did not act on the requests of several groups which tried to register as political parties or movements (see section 3). Some political organizations continued to operate without calling themselves parties.

c. Freedom of Religion

The new 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. 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.

In November 2005 the Court of Appeal ordered a chief to return five cows that he had seized in 2003 from a member of Jehovah's Witnesses who refused to allow his daughters to wear the virginity tassels ordered by the king. The chief returned the cows and three offspring, but in March he attempted unsuccessfully to seize the cattle again.

Societal Abuses and Discrimination

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

For a more detailed discussion, see the [2006 International Religious Freedom Report](#).

d. Freedom of Movement Within the Country, Foreign Travel, Emigration, and Repatriation

The new constitution provides for these rights; however, it also states that provisions of law and custom which impose restrictions on the freedom of any person to reside in the country do not contravene the freedom granted by the constitution. The constitution grants women equality before the law and, unlike in previous years, women can now obtain passports without a male relative's permission. Nonethnic 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 real citizens (see section 5).

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

The government blocked overseas employment agencies from obtaining or transferring foreign currency, which was necessary to make arrangements for jobs abroad. This effectively stopped citizens from being able to gain employment in another country.

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 its 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 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 assisting refugees and asylum seekers. The government did not accept refugees for resettlement. On September 13, the government began a registration of refugees in accordance with UNHCR Conclusion 91.

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 no real authority. Legislation passed by parliament requires the king's assent to become law, which he is not obliged to give. 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 is to appoint 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 is to make 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.

On February 8, 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 groups to contribute to the document. In addition civic groups charged that the constitution would not enable citizens to change executive government officials peacefully. In August 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 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 November 10, the High Court informed the NCA that it could not muster a full bench due to the imminent expiration of the employment contracts of several justices, and that the case was postponed. The case was pending at year's end.

Elections and Political Participation

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 next elections for the house, due in 2008, will presumably be held under the terms of the new constitution.

The constitution calls for a House of Assembly composed of up to 60 elected members to include ten members appointed by the king, of whom half must be women and the others representing "interests, including marginalized groups not already adequately represented in the House," and 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; 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 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.

On February 8, the new constitution took effect and 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. The African United Democratic Party filed a court case in June to compel the government to register it as a political party; the case had not been heard by year's end. On August 3, at the prime minister's monthly meeting with journalists, the Minister of Justice and Constitutional Affairs stated that political parties could hold meetings at tinkhundla (local government) centers, but that they first would have to obtain the permission of the regional administrator, and allow a police officer to attend the meeting. The constitution states that candidates for public office must compete on their individual merit, thereby blocking competition based on political party affiliation.

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 are an integral part of society and act as overseers or guardians of families within the communities 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."

Women generally had full legal rights to participate in the political process; however, in accordance with societal 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, they can be excluded from voting or running for office. There were seven women 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. Three women served as principal secretaries, the most senior civil service rank in the ministries.

There were three members of minorities in the Senate. There were no minority members in the House of Assembly or cabinet.

Government Corruption and Transparency

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. On July 11, the king assented to the Prevention of Corruption Act passed by parliament; however, by year's end the minister of justice and constitutional affairs had not published the effective date of the legislation. On July 20, Senior Parliamentary Counsel Sabelo Matsebula stated that passage or amendment of several other pieces of legislation was required before the law would be effective. On August 9 and 10, the government held a National Anti-Corruption Summit to publicize the Prevention of Corruption Act and rally broad support for anti-corruption. The constitution prohibits government officials from assuming positions in which their personal interest is likely to conflict with their official duties. Such 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 were credible reports that unqualified businesses were awarded contracts due to the owners' relationship with government officials. In

June the prime minister established a commission 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). The commission's hearings were characterized by official assertions of ignorance, disappearing files, and revelations of payments to businesses, some with connections to government officials or civil servants, which were unqualified to conduct such training. The commission had not delivered its report to the prime minister by year's end.

During the year 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, parts of which were made public in October, 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 emalangeni). 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.

The press reported that some members of parliament (MPs) engaged in fraud, kickbacks, and scams. An investigation was pending at year's end into allegations of government corruption in the procurement of medicine, and MP Mfomfo Nkambule was under investigation for corruption relating to the employment contract of the CEO of the Swaziland Electricity Board while Nkambule was Minister of Natural Resources and Energy. Nkambule retained his seat in the House of Assembly.

There is no law permitting public access to government documents, and public documents were difficult to access. For example, the government argued in court that the public had no right of access to the records of the Constitutional Drafting Commission.

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. 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. Government officials were generally receptive but unresponsive to their views. Human rights groups spoke out on a number of occasions, criticizing the lack of accountability and transparency in the government.

In July 2005 the African Commission on Human and People's Rights released a report stating that the 1973 decree, which outlawed political parties and allowed the king to intervene in the judiciary, violates Article 13 of the African Charter. The government declared in February that the decree lapsed when the constitution went into effect on February 8.

The new 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 new 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.

The government permitted visits by international organizations and facilitated a delegation from the International Labor Organization (ILO) in June.

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 enforce the law. The labor law forbids employers from discriminating on the basis of race, sex, or political affiliation.

Women

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 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 could be 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 sometimes handed out light sentences in cases of abuse against women. For example, on April 11, a High Court judge sentenced a man who had stoned his wife to death to eight years' imprisonment, but suspended four years of the sentence. 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.

Rape also was common and regarded by many men as a minor offense. Rape is against the law; however, 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 was high and sentences were generally lenient. However, on April 13, 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. On September 19, a High Court judge sentenced a man to 30 years imprisonment for raping two teenage girls, in contrast to the seven-year term issued by the Magistrate's Court, which the man had decided to appeal.

The October 8 Times of Swaziland stated that the acting director of public prosecution withdrew the case against three persons suspected of raping and sexually assaulting a student in September 2004 for wearing a miniskirt, stating that the evidence was weak, and witnesses refused to testify.

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.

Several NGOs provided support for victims of abuse or discrimination. Despite the law's requirement for equal pay for equal work, average wage rates for men by skill category usually exceeded those of women.

Women occupied a subordinate role in society. With the implementation of the February 8 constitution, women are able to 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. On July 31, the coordinator of Women in Law in Southern Africa told journalists that she had been told that most of the constitutional benefits for women will be delayed until several existing acts are amended to bring them into line with the constitution, including the Marriage Act, the Administration of Estates Act, the Deeds Registry Act, and others.

The dualistic nature of the legal system complicated the issue of women's rights. Since unwritten law and custom govern traditional marriage, 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.

In traditional marriages a man may take more than one wife. A man who marries a woman under civil law legally may not 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.

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 families 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 (see section 3).

A foreign woman who marries a citizen can become a citizen by lodging a declaration with the proper authorities.

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.

Children

The government made efforts 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 120,000 according to the UN Children's Fund--challenged that commitment.

The constitution states that within three years of the constitution's entering into effect, every child will have the right to free primary education. During the year the government did not provide free, compulsory education for children; the government paid teachers' salaries, while the student paid fees for books 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 non-payment of fees increased. Supplemental money sometimes had to be raised for building maintenance, including teachers' housing. The country had a 70 percent primary school enrollment rate. Children were required to start attending school at the age of six. Most students reached grade 7, the last year of primary school, and many went on to finish grade 10. The public school system ends at grade 12. In rural areas families favor boys over girls if they do not have enough money to send all their children to school. A government task force continued to educate the public on children's issues.

Medical care for children generally was inadequate and characterized by long waits, poor nursing care in public hospitals, and overcrowded and understaffed hospitals. Most prescription drugs were available in urban facilities, but rural clinics had inadequate supplies of certain drugs.

Child abuse was a serious problem, and the government did not make specific efforts to end such abuse. Rape of children was also a serious problem, with media reports of rapes of children one year old and younger. Teachers sometimes beat children. In July Machawe Malinga, a primary school pupil, suffered fractures in his right hand and arm when his teacher allegedly beat him with a stick for being a slow writer. There were no reports of action against the teacher by year's end.

Abandoning newborn babies 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 married. 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 for behavior change in a country with the highest HIV/AIDS prevalence rate in the world.

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. Nevertheless, female children sometimes suffered sexual abuse, including by family members. There were reports that Swazi girls worked as prostitutes in the country (see section 5, Trafficking). Children, including street children, were increasingly vulnerable to sexual exploitation.

Child labor was a problem (see section 6.d.).

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 aid, 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, and there were reports of trafficking, including small numbers of women and girls. Swazi girls reportedly worked as prostitutes in the country or were trafficked to South Africa for domestic servitude or commercial sexual exploitation. There were no known investigations or prosecutions of trafficking cases during the year. There is no government agency specifically responsible for combating trafficking.

Persons with Disabilities

The new constitution provides protection for persons with disabilities and requires parliament to enact implementing legislation. However, parliament had not passed laws prohibiting discrimination against persons with disabilities in employment, access to health care, or in the provision of 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, or government services, although government buildings under construction included some improvements for those with disabilities, including accessibility ramps.

There was no secondary school for deaf children. In July the Foundation of Disabled Persons in Swaziland complained that there were no schools for approximately 900 visually impaired children of school age. In August 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. The hospital for persons with mental disabilities in Manzini was overcrowded and understaffed, and the government's only psychiatrist announced in April that he was retiring; no replacement had been named by year's end.

National/Racial/Ethnic Minorities

The new 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 (see section 2.d.). Nonethnic 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; however, education was slowly eroding the cultural prejudice. The May 19 Times of Swaziland reported that a major construction company in Matsapha was harassing an HIV-positive employee by denying her salary increments which other employees received and accusing her of gross incompetence.

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 employer. Approximately 80 percent of the formal private sector was unionized. The informal sector employed approximately 98,000 persons.

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 management in various industries dismissed workers for union activity. Other concerns identified 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 union discrimination were most common in the garment sector.

In May the Swaziland Hotel and Allied Workers Union met with hotel managers to discuss termination notices that had been sent to employees soon after they had joined the union. The hotel withdrew the notices on May 8. On August 15, the Zheng Yong Garment Factory fired Wonder Mkhonta, chairman of the Nhlanguano branch of the Swaziland Processing and Refining Allied Workers Union, for poor performance; however, the union claimed that he was dismissed for engaging in union activity. There were no developments in the 2005 case of two employees fired by the Oxford Leasing Company in Manzini, allegedly for joining the Swaziland Manufacturing and Allied Workers Union; their case remained before the Conciliation, Mediation, and Arbitration Commission (CMAC).

During a June visit to the country, an ILO delegation called on the government expressly to repeal the 1973 State of Emergency Proclamation and related decrees concerning trade unions' rights, amend the 1963 Public Order Act to prevent its use in oppressing legitimate and peaceful strike action, and ensure that prison staff and domestic workers be granted the right to organize.

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 terms of conditions of work for employees contributed to the failure of some trade unions to negotiate or promote collective bargaining agreements.

The Industrial Relations Act (IRA) empowers the government to mediate employment disputes and grievances through the CMAC. The IRA 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. The IRA prohibits protest actions in "essential services," which included police and security forces, correctional services, fire fighting, health, and many civil service positions. 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.

There are no export processing zones.

c. Prohibition of Forced or Compulsory Labor

The constitution and law prohibit forced or compulsory labor, including by children, and the government rarely had to enforce this prohibition. However, there were reports that such practices occurred (see section 5). 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 1980 Employment Act distinguishes between a "child" (under 15 years) and a "young man" (ages 15 to 18), but it does not establish a minimum age of employment. 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 young people aged 14 or 15 can be employed; however, children were vulnerable to joining the workforce early, and the law does not provide for compulsory primary school education. Legislation limits the number of night hours that children may work on schooldays and also limits children's work hours overall to six per day and 33 per week. Employment of children in the formal sector was not common; however, 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 in persons (see section 5).

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

e. Acceptable Conditions of Work

The constitution calls on parliament to enact laws to ensure equal payment for equal work without discrimination, and to protect employees from victimization and unfair dismissal or treatment; however, the parliament had not enacted any new laws by year's end. 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). Minimum wages for teachers were raised to approximately \$100 (750 emalangeni) during the year. These minimum wages generally 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. In July 40

temporary teachers marched to the Ministry of Education to demand salary payments that in some cases were in arrears to February. The government subsequently paid teacher salaries and also an end-of-year bonus.

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 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 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. In January a former employee of the Singapore Butchery filed a complaint in the Industrial Court after the CMAc failed to resolve a dispute claiming she was illegally dismissed after becoming pregnant in 2004; the case was pending at year's end. A supervisor who allegedly assaulted two employees of Zheng Yong textile/apparel factory was arrested and was released on bail in July; the complainants later withdrew the case.

The constitution calls on parliament to enact laws to protect a worker's right to satisfactory, safe, and healthy conditions; however, the parliament had not enacted any new laws by year's end. The law provides for 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 no developments in the February 2005 arrests of workers following a riot at Welcome Textile. The company later went into liquidation.

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