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Swaziland

Country Reports on Human Rights Practices - [2005](#)

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Swaziland is a modified traditional monarchy with executive, legislative, and limited judicial powers ultimately vested in the king (Mswati III). The king rules according to unwritten law and custom, 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 parties continued to be banned. Political power remained largely with the king and his circle of traditional advisors, including the queen mother. The civilian authorities maintained effective control of the security forces; however, there were some instances in which security forces committed abuses.

The government's human rights record was poor, and government agents continued to commit serious abuses. The country faced a serious socio-economic situation characterized by sluggish economic performance, poverty, drought, an HIV/AIDS prevalence rate of 42.6 percent, and growing unemployment. The following human rights problems were reported:

- 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
- child labor

The country adopted its first constitution in 32 years when the king signed the Constitution Bill on July 26; the constitution was scheduled to take effect 6 months afterwards. It contains a bill of rights, although civil society organizations charged that the document would not protect the rights of all citizens. The government amended the Industrial Relations Act (IRA) to increase workers' rights by strengthening the role of the Conciliation, Mediation, and Arbitration Commission (CMAC).

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 a few reports that security forces committed arbitrary killings.

On January 15, members of the Umbutfo Swaziland Defense Force (USDF) beat to death a South African murder suspect. The suspect's companion was also beaten. In late April USDF members patrolling the border with South Africa shot and killed a man and injured another suspected of smuggling an automobile across the border. At year's end the USDF was conducting internal investigations of both cases.

On May 24, Charles Mabuza and his brother Mfanzile were killed during a police raid. Family members claimed that police shot Charles in retaliation for the killing of a police sergeant by Mfanzile, but police stated that a stray bullet fired by the brother killed Charles. Police shot and killed Mfanzile when he tried to flee the scene. Police set up a commission of inquiry to investigate the shootings. On July 1, police shot

and killed Mzamo Hlophe during a marijuana raid. His body was abandoned for several hours before the police took it to a mortuary in Nhlanguano. Police claimed that Hlophe's family attacked them, forcing them to withdraw without collecting the body. Police set up a commission of inquiry to investigate the shooting. Investigations of both cases were ongoing at year's end.

In January the senior magistrate appointed by the prime minister to conduct an inquest into the May 2004 death of Mandla Mathousand Ngubeni in police custody released an inconclusive report. It 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. At year's end no arrests had been made.

There were no developments in the cases of the 2004 killings of three car smugglers.

There were reports of mob killings during the year. On July 24, a mob killed a man suspected of stealing three cell phones and a purse. At year's end no arrests had been made. On September 14, a mob attacked and beat Zakhele Mndzebele after he was found raping a teenage girl. The mob turned him over to police, who left him in a police van while recording witness statements instead of immediately taking him for medical treatment. He was dead upon arrival at the hospital.

Thandiwe Sellinah Simelane was arrested in September for allegedly killing her sister-in-law for practicing witchcraft. At year's end the case had been referred to the high court for scheduling, and the accused was free on bail awaiting trial.

b. Disappearance

There were no reports of politically motivated disappearances.

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

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. According to media reports, police also used 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.

On May 10, a 16-year-old student was admitted to the hospital in critical condition after police detained and interrogated him for stealing a cell phone. He said that police squeezed his testicles during the interrogation. Majaha Dlamini sued a USDF member for a June 6 attack in which he sustained serious injuries on his testicles and open wounds on the back and hip. Stephen Thwala said that police suffocated him by the tube style of interrogation after his August 17 arrest for assaulting a policeman.

On September 10 and 11 in Kwaluseni, community police severely beat two men suspected of burglarizing a house before turning the suspects over to police. In addition there were credible reports that members of the community beat suspects before handing them over to police.

Mfanawenkhosi Mntshali complained of police harassment and beating when he was questioned in November on suspicion of involvement in a series of petrol bombings that targeted government buildings and residences of several officials, including that of the government's spokesperson. Between December 16 and 18, Mntshali was arrested, along with eight others, for planning or participating in the bombings. Police said the suspects were members of "banned political parties." All nine suspects were charged with high treason and sedition on December 20, and at year's end they were in custody awaiting trial.

There were no developments in the 2004 case of police beatings of Ndwandwe High School students or the 2004 case of police beating a man suspected of attacking a policeman.

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 on September 17 that the government's draft multisectoral HIV and AIDS policy would provide for the release of prisoners in the last stages of AIDS, but at year's end the policy was not final.

On May 29, more than 200 inmates at Balegane Prison Center rioted over the death of Musa Nkambule, a prisoner serving a 3-year sentence for illegal weapons and ammunitions charges. Inmates alleged that Nkambule's death was due to warden negligence.

In the sole women's detention facility, detainees were not held separate from convicts.

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 law prohibits 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 the areas of investigative skills and the appropriate use of force.

Unlike in 2004, the courts did not invalidate any confessions induced through physical abuse.

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 suspect might flee. Detainees may consult with a lawyer of their choice, but the government pays for defense counsel only in capital cases or when difficult points of law are at issue. 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. Unlike in 2004, there were no cases of suspects remaining detained after posting bail.

Arbitrary arrest was a problem. When police dispersed demonstrations that they considered unauthorized or politically motivated, they sometimes detained some of the demonstrators for several hours before releasing them without charge (see section 2.b.).

There were no reports of political detainees.

Lengthy pretrial detention was common. 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 this has led to repeated remands that can last for years. On June 23, Jabulani Simelane, the country's longest serving detainee, died while undergoing medical treatment. He had been in custody without trial for 11 years, charged with the murder of his father. Simelane spent most of that time in a psychiatric center.

e. Denial of Fair Public Trial

The law provides for an independent judiciary; however, the king has certain judicial powers. Unlike in previous years, there were no known cases where government officials attempted to influence or reverse court decisions. The lack of an independent court budget and trained manpower, inadequate levels of salary remuneration, and poor casework management remained problems for the judiciary.

There were no developments in the 2003 case against the director of public prosecutions for obstruction of justice, which was indefinitely postponed in 2004.

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 Court of Appeal (the highest judicial body and composed entirely of foreign, usually South African, judges), the high court, and magistrate courts. The courts were generally claimed to be independent of executive and military control; however, the royal family has not always respected court of appeal rulings.

The Court of Appeal was reconstituted in November 2004, after a 2-year absence due to the government's refusal to comply with a 2002 court decision involving the eviction of 200 residents from 2 chiefdoms (see section 1.f.).

In March 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. The October 22 *Swazi News* quoted the judicial commissioner as saying that some traditional court presidents imposed fines exceeding the legal limit of approximately \$16 (100 emalangeni).

The public prosecutor legally has the authority to determine which court should hear a case, but in practice police usually made the determination. Accused persons have the right to transfer their cases from the traditional courts. Prolonged delays in trials in the magistrate court and high court were common.

Trial Procedures

Trials are public, except in cases in which proceedings are closed to protect child crime victims. Juries are not used. Court-appointed counsel is provided at government expense in capital cases or when difficult points of law are at issue. Otherwise, defendants in 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 Court of Appeal.

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 and the Court of Appeal.

The king appoints traditional chiefs. The traditional courts have limited civil and criminal jurisdiction and are authorized to impose fines up to approximately \$16 (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. Accused persons are required to appear in person without representation by a legal practitioner or advocate, but the defendant may appeal the court's decision.

Political Prisoners

There were no reports of political prisoners.

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

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. Searches without warrants occurred. For example, according to the October 6 issue of *The Swazi Observer* daily newspaper, the Lubombo regional police commander stated that since the population was not providing information about who was burglarizing the houses of Duze Primary School teachers, police would raid homesteads at random until the residents "repented." Police arrested 13 persons in the resulting raid.

There were instances in which police conducted physical surveillance on members of labor unions and banned political groups. On September 17, police officers posing as journalists attended a Swaziland Federation of Trade Unions (SFTU) seminar.

Chief Mliba Fakudze, whose eviction along with 200 other residents of 2 chiefdoms in 2000 sparked the 2002 rule of law crisis, returned to Macetjeni in April. The other ousted chief, Mtfuso Dlamini, did not return. Chief Dlamini said the other evictees were permitted to return not because of a 2002 court ruling in their favor, reinforced when the Court of Appeal was reconstituted in 2004, but rather because they finally agreed to accept the king's representative as chief. At year's end only Chief Dlamini, his family, and a few students remained in South Africa.

Section 2 Respect for Civil Liberties, Including:

a. Freedom of Speech and Press

The law does not provide for freedom of speech or of the press, and 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. With some exceptions, the government continued to withhold its advertising from the independently owned daily newspaper.

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.

The government discouraged critical news coverage of the royal family. In February palace officials banned the press from taking photographs of the king's cars, following negative publicity surrounding the king's purchase of one of the world's most expensive automobiles. In May the king privately threatened journalists from the *Times of Swaziland* newspaper. He said that if reporters did not immediately cease all negative coverage of his immediate family and himself, he would shut down the newspaper. The *Times* refrained from printing any stories about the king and his immediate family for at least 10 weeks.

In November the cabinet approved a media policy drafted by the Minister of Public Information and Public Service that calls for reviewing outdated legislation.

During the first week of August a Media Institute of Southern Africa representative stated that the media were economically crippled as a consequence of an increase of civil defamation cases that resulted in high financial penalties being awarded to litigants.

In late 2004 a traditional court convicted a senator's husband of common assault and imposed a fine, following his assault of a *Times of Swaziland* reporter who implicated the senator in an extramarital affair.

There were no government restrictions on the Internet.

The practice of self-censorship and the prohibition on political gatherings restricted academic freedom by limiting academic meetings, writings, and discussion on political topics.

b. Freedom of Peaceful Assembly and Association

Freedom of Assembly

The law does not provide for freedom of assembly, and the government restricted this right in practice. A decree prohibits meetings of a political nature, processions, or demonstrations in a public place without the consent of the police commissioner. Authorities routinely withheld permission to hold most such meetings.

During the year police forcibly dispersed several demonstrations and meetings and arrested demonstrators. For example, on January 22, police used tear gas and a water cannon to disrupt a demonstration by the banned People's Democratic Movement (PUDEMO), held to commemorate a young girl killed during a 1998 strike.

On May 12, approximately 150 members of the clergy delivered to the prime minister a petition protesting the draft constitution. Members of parliament (MPs), including the Speaker of the House, accused the church of engaging in a protest march, and King Mswati publicly censured the group.

On August 6 in Mbabane, police used tear gas and rubber bullets to disperse a rally organized by the Swaziland Youth Congress (SWAYOCO). SWAYOCO members and a few bystanders were treated for injuries. Police detained SWAYOCO Secretary Ignatius Dlamini for an hour and a half when he tried to join the rally. Police also arrested five SWAYOCO members for damaging police vehicles and charged one SWAYOCO member with sedition. He was awaiting trial at year's end.

On September 8, police intercepted a protest by one thousand first-year university students demanding government scholarships. The police fired tear gas at the students and used a water cannon to disperse the crowd. Several protestors were injured.

On November 30, the minister of health and social welfare postponed the government-sponsored World AIDS Day ceremony because it coincided with the start of the Incwala harvest festival. Other organizations held their celebrations as planned. AIDS activists and other members of the government decried the postponement in view of the pandemic in the country.

There was no action taken against security forces who forcibly dispersed demonstrations in 2003 and 2004.

During the year police harassed and disrupted the meetings of prodemocracy activists and members of banned political parties. On July 9 in Manzini, police occupied the location planned for a PUDEMO rally organized to commemorate the 22nd anniversary of its establishment.

Freedom of Association

The law does not provide for freedom of association, and the government restricted this right in practice. Political parties were banned, although political organizations operated without calling themselves parties (see section 3). After the king signed the constitution on July 26, a group of persons announced that they were forming the Communist Party of Swaziland but conducted no subsequent activities.

c. Freedom of Religion

There is no formal legal provision for freedom of religion; however, the government generally respected freedom of religion 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.

On May 7, traditional leaders fined the family of a Jehovah's Witnesses member one cow because the woman refused to wear mourning clothes after her husband's death.

On June 23, the Court of Appeal ruled that the University of Swaziland's failure to accommodate a student's religious obligation was an infringement of his freedom of religion. The first-year university law student, a member of the Seventh-day Adventist Church, failed his course because he chose to attend a church service instead of taking his final exam on a Saturday in May 2004.

On September 2, three children in Lomahasha who were members of Jehovah's Witnesses were reinstated in school after being expelled in 2004 for refusing to pray during assemblies.

On November 11, 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.

Societal Abuses and Discrimination

The relationships among religions 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 2005 [International Religious Freedom Report](#).

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

The law does not provide for these rights, and the government placed some limits on them in practice. Under traditional law a married woman requires her husband's permission to apply for a passport, and an unmarried woman requires the permission of a close male relative. 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). Unlike in 2004, there were no reports that political dissenters had their citizenship questioned or experienced difficulty in obtaining travel documents.

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. According to the UNHCR, there were an estimated one thousand refugees in the country, the majority from central Africa and Angola. The government did not accept refugees for resettlement.

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. The king chooses the prime minister, the cabinet, two-thirds of the Senate, many senior civil servants, and the heads of government offices.

On July 26, the king ratified a constitution and announced that it would take effect in January 2006. 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 March the high court dismissed an application by two banned political parties and two labor unions for a court order to stop parliament from debating or ratifying the constitution. The case was dismissed under the 1973 proclamation that banned all political parties.

Elections and Political Participation

According to law, 55 seats in the 65-member House of Assembly are popularly contested, and the king appoints the remaining 10 members. 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. Political parties are banned but several participated, and three opposition members were elected to parliament.

The king appoints 20 members of the 30-seat Senate; the House of Assembly elects the other 10.

Chiefs are custodians of traditional law and custom and are responsible for the day-to-day running of their chieftdom 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.

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 5 women in the 65-member House of Assembly, 10 women in the 30-member Senate, and 3 female ministers in the cabinet. 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; however, apart from denunciations of corruption by several high-level government officials and the drafting of an anticorruption bill, the government took no action to combat it. On March 9, Minister of Finance Majozi Sithole stated during his budget speech presentation that the government was losing more than \$5.9 million (40 million emalangeni) through corruption every month. There were credible reports that unqualified businesses were awarded contracts due to the owners' relationship with government officials.

The press reported that some MPs engaged in fraud, kickbacks, and scams. There were no developments in the 2004 cases of three sitting MPs who were free on bail pending trial for fraud, the case of a former speaker of the House of Assembly who was alleged to have misappropriated \$7,463 (50 thousand emalangeni) while in office, or the case of fraud charges against the chair of the Swaziland Electricity Board. The latter two cases were referred to police for further investigation.

There is no law permitting public access to government documents, and public documents were difficult to access. For example, few persons were able to obtain copies of the draft constitution while it was being debated in parliament.

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, although in August the RSPS and SWAGAA finished co-drafting a manual to be used in training police recruits on sexual abuse and domestic violence cases (see section 5). Human rights groups spoke out on a number of occasions, criticizing the lack of accountability and transparency in the government.

On July 3, 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 commission gave the country six months to conform to the charter. By year's end the government had taken no action except to declare the decree would be repealed when the constitution goes into effect in early 2006.

In July the International Crisis Group, an NGO working to prevent and resolve deadly conflict, issued a report, *Swaziland: The Clock Is Ticking*, which criticized the absolute monarchy and called for a number of reforms. By year's end the government had not acted on any of these recommendations.

Section 5 Discrimination, Societal Abuses, and Trafficking in Persons

In general the law does not prohibit discrimination based on race, sex, disability, language, or social status, and women and mixed-race citizens sometimes experienced governmental and societal discrimination. 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 July 25, a high court judge sentenced a man who had killed his girlfriend to seven years' imprisonment but suspended five years of the sentence.

Rape also was common and regarded by many men as a minor offense. Rape is against the law, and the penalty is nine years' imprisonment. A sense of shame and helplessness often inhibited women from reporting such crimes, particularly when incest was involved. In the modern courts, the acquittal rate was high and sentences were generally lenient. The three persons suspected of raping and sexually assaulting a student in September 2004 for wearing a miniskirt were awaiting trial at year's end.

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. For example, according to a July 13 article in the *Times of Swaziland*, several female fire department officers complained to their union that senior officers called them into their offices and touched them inappropriately; one of the women was transferred to another station. In July three newly recruited female soldiers were dismissed after medical tests revealed they were pregnant. 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. In both civil and traditional marriages, wives are legally treated as minors, although those married under civil law may be accorded the legal status of adults if stipulated in a signed prenuptial agreement. A woman generally must have her husband's permission to borrow money, open a bank account, obtain a passport, leave the country, gain access to land, and, in some cases, obtain a job. Women routinely executed contracts and entered into a variety of transactions in their own names.

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.

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. Under the law a woman does not pass citizenship automatically to her children. Inheritances are passed through male children only.

Mourning customs led to inequalities for women, and the high prevalence rate of HIV/AIDS further exacerbated this inequality. 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).

The Ministry of Home Affairs is responsible for coordinating women's issues but took no notable actions during the year. Although gender sensitization was not part of the formal school curriculum, some schools organized debates and other mechanisms to address gender issues. The University of Swaziland Senate had a subcommittee that encouraged students and faculty to hold seminars and workshops on gender issues.

Children

The government was committed to children's rights and welfare, but the growing number of orphans and vulnerable children (OVC)--70 thousand in 2004--challenged that commitment.

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 paid for OVC tuition and school fees, but at year's end some schools complained of delayed payment. 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 for medical care, 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. Children convicted of crimes sometimes were caned as punishment. On June 30, the Mbabane National Court sentenced a 14-year-old boy to 4 strokes of the cane for shoplifting. In July, 10 students from Siphocosini High School said their teacher used corporal punishment (reports varied between 2 and 15 strokes of a stick) for laughing at a joke. The Minister of Education stated that teachers are permitted to use up to four strokes for disciplinary action. Some students complained teachers used a whip for punishment or beat them with a long stick.

Abandoning newborn babies was a problem. On August 26, the *Times of Swaziland* published a police report stating that 21 newborn babies had been discovered abandoned since January; most did not survive. The media subsequently reported additional instances of abandoned babies, but no official statistics were available.

The legal age of marriage is 21 for both men and women. However, with parental consent and approval from the minister of justice, girls age 16 and boys age 18 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 Mozambican and 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 (UNICEF) 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 of small numbers of women and girls. Underage Mozambican and Swazi girls reportedly worked as prostitutes in the country or were trafficked to South Africa for domestic work or prostitution. There is no government agency specifically responsible for combating trafficking.

Persons with Disabilities

There is no law prohibiting discrimination against persons with disabilities in employment, access to health care, or in the provision of other state services. Persons with disabilities complained of government neglect. There was no secondary school for deaf children. In November the Foundation of Disabled Persons in Swaziland complained that there were no schools for approximately 900 visually impaired children of school age. The hospital for persons with mental disabilities in Manzini held 80 patients in wards designed for 35 and was understaffed. 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.

In June the body of a child with a disability was buried after three weeks in a mortuary. His family said that the reason for delay was the traditional leaders' belief that the child's disability would spread in the community if he was buried in the traditional manner.

National/Racial/Ethnic Minorities

Governmental and societal discrimination was practiced widely against nonethnic Swazis, namely 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 is a social stigma associated with being HIV positive, and this discouraged persons from being tested; however, education was slowly eroding the cultural prejudice.

Section 6 Worker Rights

a. The Right of Association

The law provides for the right to form associations, including trade unions, and workers exercised this right in practice. The 2000 IRA was amended, strengthening the CMAC. Business and labor representatives in the apparel sector entered into an agreement clarifying procedures governing union recognition. Unlike in 2004, the government did not harass labor unions. Workers in essential services, such as the police, may not form unions. Approximately 80 percent of the formal private sector was unionized. The informal sector employed approximately 98 thousand persons.

The law prohibits antiunion discrimination; however, such discrimination continued to occur. Unlike in 2004, manufacturers did not refuse to recognize any duly elected unions. 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. On April 27, the *Times of Swaziland* reported that the Oxford Leasing Company in Manzini fired two employees for joining the Swaziland Manufacturing and Allied Workers Union. The government did not intervene, and the union took the matter to the industrial court, where the case was pending at year's end. The CMAC ordered the government to promote a fireman who had allegedly been denied promotion because he was a union official; the fireman was promoted on November 1.

b. The Right to Organize and Bargain Collectively

The law provides 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. Several collective bargaining agreements were reached during the year. There are no export processing zones.

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. In January, 150 to 200 persons participated in a 2-day protest to express to the prime minister their dissatisfaction with the government. The protest was organized by the two largest trade unions as well as the country's banned political parties. There were no reports of violence. 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; unlike in 2004, no lockouts occurred. 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. In June the International Labor Organization again cited the government for excessive length in the procedures required before a trade union can conduct a legal strike. The IRA empowers the government to mediate employment disputes and grievances through the CMAC.

c. Prohibition of Forced or Compulsory Labor

The law prohibits 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 SFTU cited the 1998 Administrative Order as a form of forced labor, because it reinforced the tradition of residents performing tasks for chiefs without receiving compensation and penalized them for nonparticipation.

d. Prohibition of Child Labor and Minimum Age for Employment

The law prohibits 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. However, children were vulnerable to joining the workforce early, and the law does not guarantee a 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 6 per day and 33 per week. Employment of children in the formal sector was not common; however, children below the minimum age frequently were employed in the agricultural sector, particularly in the eastern cotton-growing region. Children also were employed as domestic workers and as herd boys in rural areas. 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 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). These minimum wages generally did not provide a decent standard of living for a worker and family. Wage arrears, particularly in the garment industry, were a problem.

There is a maximum 48-hour workweek in the industrial sector except for security guards, who worked up to six 12-hour shifts per week. 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' annual leave. 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 physically abused employees. On August 25, the acting chief justice of the Court of Appeal ordered the Sun Taylon company to give a woman \$2,064 (13,829 emalangeni) in damages, after a supervisor slapped the woman twice on the face on January 21.

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 had no legal right to remove themselves from dangerous workplaces without jeopardizing their continued employment, nor did any collective bargaining agreements address the matter.

On February 15, several hundred workers at Welcome Textile rioted after a foreign employee hit a local employee. Her co-workers, thinking she had died, extensively damaged the workplace. There was at least one arrest, but no further information on the incident was available.

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

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