



# ESWATINI (FKA SWAZILAND)

Legal System	Constitution	Bill of Rights	Country Structure	Form of Government
Common Law Statutory Law Customary Law	Written	Yes	Single State	Monarchy

## 1. INTRODUCTION

### 1.1. ESWATINI (FKA Swaziland) and Modern Slavery (Human Trafficking)

Eswatini is a unitary, sovereign, democratic Kingdom. The country’s approach to human trafficking has evolved over time. The Eswatini Constitution 2005 guarantees fundamental human rights and freedoms of the individual, including protection from inhuman or degrading treatment, slavery, forced labour, and respect for rights of family, women, children, workers, and persons with disabilities.<sup>1</sup> The Executive, the Legislature, the Judiciary, other organs or agencies of government, and all natural and legal persons are to respect and uphold those rights and freedoms.

These rights are enforced through the People Trafficking and People Smuggling (Prohibition) Act 2009 (**PTPS Act**) and other complementary laws in the criminal law, child protection, and employment areas.<sup>2</sup> The country is currently implementing its 2019–2023 National Strategic Framework and Action Plan to Combat People Trafficking (**NSFAP**).<sup>3</sup>

According to the 2020 U.S. State Department Trafficking In Persons Report:

- The country is ranked as Tier 2: “The Government of Eswatini does not fully meet the minimum standards for the elimination of trafficking but is making significant efforts to do so. The government demonstrated overall increasing efforts compared to the previous reporting period; therefore Eswatini remained on Tier 2.”<sup>4</sup>
- “The Ministry of Tinkhundla, which oversees chiefdoms and traditional systems of governance, developed an anti-trafficking awareness program to be shared throughout Eswatini’s four regions and later in the chiefdoms.”<sup>5</sup>

<sup>1</sup> Constitution of the Kingdom of Swaziland Act 2005, Chapter III, available at <https://aceproject.org/ero-en/regions/africa/SZ/CONSTITUTION%20OF%20THE%20KINGDOM%20OF%20SWAZILAND%202005.pdf>.

<sup>2</sup> People Trafficking and People Smuggling (Prohibition) Act 2009, available at: <https://www.ilo.org/dyn/natlex/docs/MONOGRAPH/107539/132415/F306693388/SWZ107539.pdf>.

<sup>3</sup> *Launch of the National Strategic Framework and Action Plan to Combat People Trafficking 2019-2023*, United Nations in Eswatini, available at: <https://eswatini.un.org/en/13688-launch-national-strategic-framework-and-action-plan-combat-people-trafficking-2019-2023>.

<sup>4</sup> U.S. Dep’t of State, Trafficking in Persons Report 203 (2020), available at: <https://www.hsdl.org/?abstract&did=840354>. The U.S. Department of State rankings are based on the minimum standards specified in the U.S. Trafficking Victims Protection Act of 2000, “which are generally consistent with the [UN] Palermo Protocol.” *Id.* at 39.

<sup>5</sup> *Id.*, at 204.

It was noted in the 2018 U.S. State Department Trafficking in Persons Report that “Eswatini is a source, transit, and, to a lesser extent, destination country for men, women, and children subjected to sex trafficking and forced labor.”<sup>6</sup>

According to an article published by the United Nations, “Eswatini is a source country for human trafficking with its citizens being trafficked primarily for labour exploitation to neighboring countries (mostly South Africa and to lesser extent Mozambique). It is also a transit country for African and Asian nationals being trafficked to South Africa predominantly for labour exploitation. Emerging forms of exploitation detected are: trafficking for use in the drug trade (drug mules); and abduction of babies from hospitals or families to South Africa for the purpose of accessing government child grants.”<sup>7</sup>

Human trafficking victims in Eswatini “come primarily from poor communities with high HIV/AIDS prevalence rates. Swazi girls, particularly orphans, are subjected to sex trafficking and domestic servitude, primarily in Eswatini and South Africa. Swazis are culturally expected to participate in the seasonal weeding and harvesting of the king’s fields, and there have been isolated reports that some local chiefs coerce participation in such cultural events. Swazi boys and foreign children are forced to labor in agriculture, including cattle herding, and market vending within the country. Mozambican boys migrate to Eswatini for work washing cars, herding livestock, and portering; some are subjected to forced labor. Traffickers use Eswatini as a transit country to transport foreign victims to South Africa for forced labor. Traffickers reportedly force Mozambican women into prostitution in Eswatini, or transport them through Eswatini to South Africa. Some Swazi women are forced into prostitution in South Africa after voluntarily migrating in search of work. Reports suggest labor brokers fraudulently recruit and charge excessive fees to Swazi nationals for work in South African mines—means often used to facilitate trafficking crimes. Swazi men in border communities are recruited for forced labor in South Africa’s timber industry.”<sup>8</sup>

Eswatini has a number of agencies that monitor and report on human trafficking. The Constitution establishes the Commission on Human Rights and Public Administration to investigate complaints concerning alleged violations of fundamental rights and freedoms under the Constitution and to take appropriate action to correct or remedy violations through such means as are fair, proper, and effective.<sup>9</sup> The Task Force for the Prevention of People Trafficking and People Smuggling was established under the PTPS Act to implement the Act and to formulate policies and programs to prevent and suppress people trafficking or people smuggling.<sup>10</sup> Enforcement officers under the PTPS Act investigate and enforce offences under that Act.<sup>11</sup>

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<sup>6</sup> U.S. Dep’t of State, Trafficking in Persons Report 181 (2018), available at: <https://www.state.gov/reports/2018-trafficking-in-persons-report/>.

<sup>7</sup> *Kingdom of Eswatini commemorates the World Day Against TIP, by launching the National Strategic Framework and Action Plan to Combat People Trafficking (2019 - 2023)*, United Nations, available at: [https://www.unodc.org/documents/southernafrica/Stories/2019/Revised\\_Web\\_story\\_World\\_Day\\_Against\\_TIP\\_in\\_Eswatini\\_21\\_August.pdf](https://www.unodc.org/documents/southernafrica/Stories/2019/Revised_Web_story_World_Day_Against_TIP_in_Eswatini_21_August.pdf).

<sup>8</sup> U.S. Dep’t of State, Trafficking in Persons Report 183 (2018), available at: <https://www.state.gov/reports/2018-trafficking-in-persons-report/>.

<sup>9</sup> Constitution of the Kingdom of Swaziland Act 2005, Chapter IX, Part 2, available at: <https://aceproject.org/ero-en/regions/africa/SZ/CONSTITUTION%20OF%20THE%20KINGDOM%20OF%20SWAZILAND%202005.pdf>.

<sup>10</sup> People Trafficking and People Smuggling (Prohibition) Act 2009, Part II, available at: <https://www.ilo.org/dyn/natlex/docs/MONOGRAPH/107539/132415/F306693388/SWZ107539.pdf>.

<sup>11</sup> *Id.*, Part V.

## 1.2. Eswatini’s Policy and Legal Position

The country’s Constitution, which is the supreme law of the country, sets out the fundamental rights and freedoms that all relevant government authorities and agencies must respect and uphold. Various statutes including the PTPS Act supplement the Constitution.

Eswatini is a party to the UN conventions that address fundamental human rights and is a party to several treaties that are relevant to the fight against human trafficking and smuggling. The treaties and conventions become part of the law of Eswatini on ratification by Parliament.<sup>12</sup>

## 2. OVERVIEW OF ESWATINI’S LEGAL APPROACH TO COMBATING MODERN SLAVERY AND HUMAN TRAFFICKING

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### 2.1. Eswatini’s Regional and International Law Obligations

#### 2.1.1. *Fundamental human rights*

Eswatini is a party to the United Nations conventions that address fundamental human rights. It has acceded to or ratified the International Covenant on Civil and Political Rights (2004),<sup>13</sup> the International Covenant on Economic, Social and Cultural Rights (2004),<sup>14</sup> the Convention on the Elimination of All Forms of Discrimination against Women (2004),<sup>15</sup> and the Convention on the Rights of the Child (1995).<sup>16</sup> It is also involved in human rights initiatives through a number of voluntary pledges and commitments, including its participation in the African Charter on Human and Peoples’ Rights<sup>17</sup> and the African Charter on the Rights and Welfare of the Child.<sup>18</sup>

<sup>12</sup> Constitution of the Kingdom of Swaziland Act 2005, section 238(2), available at: <https://aceproject.org/ero-en/regions/africa/SZ/CONSTITUTION%20OF%20THE%20KINGDOM%20OF%20SWAZILAND%202005.pdf>.

<sup>13</sup> International Covenant on Civil and Political Rights: Signatories, United Nations Treaty Collection, available at: [https://treaties.un.org/pages/ViewDetails.aspx?src=treaty&mtdsg\\_no=iv-4&chapter=4&clang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=treaty&mtdsg_no=iv-4&chapter=4&clang=en).

<sup>14</sup> International Covenant on Economic, Social and Cultural Rights: Signatories, United Nations Treaty Collection, available at: [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-3&chapter=4](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4).

<sup>15</sup> Convention on the Elimination of All Forms of Discrimination against Women: Signatories, United Nations Treaty Collection, available at: [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-8&chapter=4](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4).

<sup>16</sup> United Nations Convention on the Rights of the Child: Signatories, United Nations Treaty Collection, available at: [https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-11&chapter=4](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11&chapter=4).

<sup>17</sup> African Charter on Human and Peoples’ Rights, available at: [https://au.int/sites/default/files/treaties/36390-treaty-0011\\_-\\_african\\_charter\\_on\\_human\\_and\\_peoples\\_rights\\_e.pdf](https://au.int/sites/default/files/treaties/36390-treaty-0011_-_african_charter_on_human_and_peoples_rights_e.pdf).

<sup>18</sup> African Charter on the Rights and Welfare of the Child, available at: [https://au.int/sites/default/files/treaties/36804-treaty-african\\_charter\\_on\\_rights\\_welfare\\_of\\_the\\_child.pdf](https://au.int/sites/default/files/treaties/36804-treaty-african_charter_on_rights_welfare_of_the_child.pdf).

### 2.1.2. *Slavery and trafficking*

Eswatini is a party to several treaties that are relevant to the fight against human trafficking and smuggling. It has ratified the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2012)<sup>19</sup> and the Convention against Transnational Organized Crime (2012).<sup>20</sup>

### 2.1.3. *Effect under Eswatini's law*

Section 238 of the Constitution provides that the Government may sign an international treaty or convention in the name of the Crown.<sup>21</sup> However, the treaty or convention does not become binding on the Government until an Act of Parliament or a resolution of at least two-thirds of the members at a joint sitting of the two Chambers of Parliament ratify or accede to the treaty or convention.<sup>22</sup> Unless it is self-executing, a treaty or convention becomes law in Eswatini only when enacted into law by Parliament.<sup>23</sup>

## 2.2. Human Rights Protections Under Eswatini's Law

Chapter III of the Eswatini Constitution 2005 provides for fundamental human rights and freedoms.<sup>24</sup> Those rights and freedoms include protection from torture or inhuman or degrading treatment or punishment, protection from slavery and forced labour, rights and freedoms of women and children, and the right to practise a profession and to carry on any lawful occupation, trade, or business.

The Eswatini legal framework with respect to human rights is thus derived from its Constitution in the first instance and backed up by specific domestic legislation. Refer to Section 3.

Section 14(2) of the Constitution provides that the Executive, the Legislature, the Judiciary, other government organs or agencies and, where applicable, all natural and legal persons in the country shall respect and uphold the fundamental rights and freedoms enshrined in Chapter III.<sup>25</sup>

## 2.3. Criminalization of Modern Slavery

The PTPS Act creates the offence of people trafficking and trafficking in children.<sup>26</sup> Other laws that create offences include:

<sup>19</sup> Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime: Signatories, United Nations Treaty Collection, available at: [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtmsg\\_no=XVIII-12-a&chapter=18](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtmsg_no=XVIII-12-a&chapter=18).

<sup>20</sup> United Nations Convention against Transnational Organized Crime: Signatories, United Nations Treaty Collection, available at: [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtmsg\\_no=XVIII-12&chapter=18&clang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtmsg_no=XVIII-12&chapter=18&clang=en).

<sup>21</sup> Constitution of the Kingdom of Swaziland Act 2005, section 238, available at: <https://aceproject.org/ero-en/regions/africa/SZ/CONSTITUTION%20OF%20THE%20KINGDOM%20OF%20SWAZILAND%202005.pdf>.

<sup>22</sup> *Id.*, section 238(b).

<sup>23</sup> *Id.*, section 238(a).

<sup>24</sup> *Id.*, Chapter III.

<sup>25</sup> *Id.*, section 14(2).

<sup>26</sup> People Trafficking and People Smuggling (Prohibition) Act 2009, section sections 12 and 13, available at: <https://www.ilo.org/dyn/natlex/docs/MONOGRAPH/107539/132415/F306693388/SWZ107539.pdf>.

- Sexual Offences and Domestic Violence Act 2018 (**SODVA**), which prohibits commercial sexual exploitation;<sup>27</sup>
- Children Protection and Welfare Act 2012, which prohibits forced labour, prohibits hazardous work for children, and prohibits using children in illicit activities;<sup>28</sup> and
- Employment Act 1980, which prohibits forced labor.<sup>29</sup>

## 2.4. Supply Chain Reporting

Eswatini does not have any laws or policies that specifically require supply chain reporting on human trafficking.

## 2.5. Investigation, Prosecution, and Enforcement

### 2.5.1. Investigation and prosecution of criminal offenses

Police officers, immigration officers, and customs officers enforce the PTPS Act.<sup>30</sup> But no prosecution for an offence under the Act shall be instituted except by or with the written consent of the Director of Public Prosecution.<sup>31</sup> Enforcement officers under the PTPS Act have all powers necessary to carry out an investigation for any offence under that Act.<sup>32</sup> Those officers may arrest without warrant persons found committing, attempting to commit, or abetting the commission of an offence and persons whom the officer reasonably suspects of being engaged in committing, attempting to commit, or abetting the commission of an offence.<sup>33</sup> Those officers also have search and seizure powers with or without warrants and the power to require persons to attend examinations and produce all required documents.<sup>34</sup> The officers also can protect trafficked persons under the PTPS Act.<sup>35</sup>

The Labour Commissioner is responsible for enforcement of the Employment Act offences, and the Commissioner appoints inspectors to assist in that role.<sup>36</sup>

Police officers of the Royal Eswatini Police Service are generally responsible for enforcement of other criminal laws. Members of a special unit within the Police Service—the Domestic Violence, Child Protection

<sup>27</sup> Sexual Offences and Domestic Violence Act 2018, section 13, available at: <https://www.ilo.org/dyn/natlex/docs/SERIAL/108709/134536/F1384531235/SWZ108709%20Eng.pdf>.

<sup>28</sup> Children Protection and Welfare Act 2012, sections 232 and 233, available at: <https://gazettes.africa/archive/sz/2011/sz-government-gazette-dated-2011-02-25-no-16.pdf>.

<sup>29</sup> Employment Act 1980, Part XIV, available at: <https://www.ilo.org/dyn/travail/docs/2179/Employment%20Act%201980.pdf>.

<sup>30</sup> People Trafficking and People Smuggling (Prohibition) Act 2009, section 26, available at: <https://www.ilo.org/dyn/natlex/docs/MONOGRAPH/107539/132415/F306693388/SWZ107539.pdf>.

<sup>31</sup> *Id.*, section 40.

<sup>32</sup> *Id.*, section 27.

<sup>33</sup> *Id.*, section 28.

<sup>34</sup> *Id.*, sections 29, 30, and 33.

<sup>35</sup> *Id.*, Part VI.

<sup>36</sup> Employment Act 1980, sections 7, 8, and 9, available at: <https://www.ilo.org/dyn/travail/docs/2179/Employment%20Act%201980.pdf>.

and Sexual Offences Unit or equivalent—enforce the SODVA.<sup>37</sup> Under SODVA, the investigation and prosecutorial process is approached in a victim-centred manner. The law enforcement officer must inform the victims of the availability of counselling and other protective services.<sup>38</sup> The SODVA requires that medical treatment minimize the effects of secondary trauma on the victim.<sup>39</sup> The SODVA also establishes victim and witness protection measures to facilitate safe communication with officials, such as police and magistrates, requires the use of child-friendly courts for child victims, and establishes several additional protections for child witnesses.<sup>40</sup> The SODVA creates protective measures to support children during trial.<sup>41</sup> The Government uses a victim-centred approach throughout the referral process, and it has improved coordination between law enforcement, the judiciary, and victim protection providers. The Government encourages victims to assist in investigations by providing witness protection services, as well as transportation and housing, as needed.

**2.5.2. Mutual assistance/international cooperation**

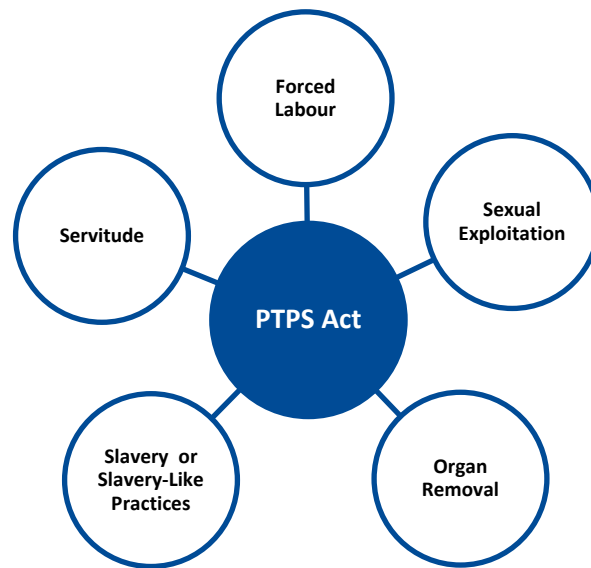
Refer to Section 2.1.

**3. ESWATINI’S FEDERAL CRIMINAL OFFENSES RELATING TO SLAVERY, SLAVERY-LIKE CONDITIONS, AND HUMAN TRAFFICKING**

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**3.1. Overview of Criminal Offenses**

Eswatini has several legal structures addressing offences and penalties relating to slavery, slavery-like conditions, and human trafficking, including the PTPS Act and the laws described in Section 2.3.



<sup>37</sup> Sexual Offences and Domestic Violence Act 2018, section 13, available at: <https://www.ilo.org/dyn/natlex/docs/SERIAL/108709/134536/F1384531235/SWZ108709%20Eng.pdf>.

<sup>38</sup> *Id.*, section 72.

<sup>39</sup> *Id.*, section 76.

<sup>40</sup> *Id.*, Part XXVIII.

<sup>41</sup> *Id.*, Part XXIX.

## 3.2. Slavery Offenses Under the Criminal Code

### 3.2.1. General

Section 17(1) of the Eswatini Constitution provides that a person shall not be held in slavery or servitude.<sup>42</sup>

Eswatini adopted the PTPS Act in 2010 to target human trafficking. Various provisions of the PTPS Act have broad scope to prohibit human trafficking.

Section 12 provides that a person who recruits, transports, transfers, harbours, receives, employs, maintains, or holds any person or persons for the purpose of exploitation by (a) threat; (b) use of force or other forms of coercion; (c) abduction; (d) fraud; (e) deception; (f) abuse of power, law, or legal process; (g) abuse of the position of vulnerability of a person to an act of trafficking in persons; or (h) the giving or receiving of payments or benefits to obtain the consent of a person having control over the trafficked person, commits an offence and may be punished by imprisonment not exceeding 20 years.<sup>43</sup>

The PTPS Act defines a number of terms in section 2.

- “Exploitation” includes all forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude, or the removal of human organs.
- “Maintains” means, in relation to labour services, to secure continued performance regardless of the trafficked person’s initial agreement to perform the service.
- “People trafficking” means the recruiting, transporting, transferring, harbouring, providing, or receiving of a person for the purpose of exploitation.
- “Trafficked person” means any person who is the victim or object of an act of people trafficking.
- “Slavery” includes a situation where a person is compelled to work through force, coercion, inducement, or fraud without pay or pay below subsistence.<sup>44</sup>

Section 13 provides that a person “recruits, transports, transfers, harbours, obtains, receives, employs, maintains or holds any person or persons knowing or in reckless disregard that the person is a child,” for the purpose of exploitation, commits an offence and is, on conviction, liable to a term of imprisonment not exceeding 25 years.<sup>45</sup> A child is defined as a person under the age of 18 years.<sup>46</sup>

Section 14 provides that a person who profits from the exploitation of a trafficked person commits an offence and is, on conviction, liable to a term of imprisonment not exceeding 15 years and to a fine not exceeding SZL 800,000.<sup>47</sup>

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<sup>42</sup> Constitution of the Kingdom of Swaziland Act 2005, section 17(1), available at: <https://aceproject.org/ero-en/regions/africa/SZ/CONSTITUTION%20OF%20THE%20KINGDOM%20OF%20SWAZILAND%202005.pdf>.

<sup>43</sup> People Trafficking and People Smuggling (Prohibition) Act 2009, section 12, available at: <https://www.ilo.org/dyn/natlex/docs/MONOGRAPH/107539/132415/F306693388/SWZ107539.pdf>.

<sup>44</sup> *Id.*, section 2.

<sup>45</sup> *Id.*, section 13.

<sup>46</sup> *Id.*, section 2.

<sup>47</sup> *Id.*, section 14.

Section 15 provides that a person who intentionally facilitates, by any unlawful means, the continued presence of a trafficked person in a receiving country in order to obtain a financial or other material benefit commits an offence and is, on conviction, liable to a term of imprisonment not exceeding 15 years, a fine not exceeding SZL 50,000, or both.<sup>48</sup> Unlawful means for this purpose includes producing, providing, or procuring false travel or identity documents in respect of the trafficked person.<sup>49</sup>

Section 16 provides that it is not a defence to a prosecution that the trafficked person consented to the act of people trafficking or to the exploitation.<sup>50</sup>

Section 18(1) provides that a person who makes, obtains, gives, sells, or possesses a fraudulent travel or identity document for the purpose of facilitating an act of people trafficking commits an offence and is, on conviction, liable to a term of imprisonment not exceeding 15 years, a fine not exceeding SZL 50,000, or both.<sup>51</sup>

Section 18(2) provides that a person who recruits, transports, transfers, harbours, obtains, receives, maintains, or holds any person or persons for the purpose of exploitation by destroying, concealing, removing, confiscating, or possessing any actual or purported travel or passport or identity document of another commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding 18 years.<sup>52</sup>

Offences are also committed for recruiting persons to participate in the commission of the act of people trafficking, providing premises, equipment, or other facilities for the act of people trafficking, or providing services for that purpose.<sup>53</sup> A person who commits these offences shall, on conviction, be liable to a term of imprisonment not exceeding 10 years, a fine of not more than SZL 20,000, or both.

Commercial sexual exploitation is also an offence under section 13 of the SODVA, and, on conviction, a person is liable to pay a fine not exceeding SZL 100,000, a term of imprisonment not exceeding 20 years, or both, but where the victim is a child (under 18 years of age) the term of imprisonment is a term not exceeding 25 years.<sup>54</sup>

### 3.2.2. *Extraterritorial application*

Section 3 of the PTPS Act provides that the PTPS Act applies, regardless of whether the conduct constituting the offence took place inside or outside Eswatini if:

- Eswatini is the receiving country or the exploitation occurs in Eswatini; or

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<sup>48</sup> *Id.*, section 15.

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*, section 16.

<sup>51</sup> *Id.*, section 18(1).

<sup>52</sup> *Id.*, section 18(2).

<sup>53</sup> *Id.*, section 57.

<sup>54</sup> Sexual Offences and Domestic Violence Act 2018, section 13, available at: <https://www.ilo.org/dyn/natlex/docs/SERIAL/108709/134536/F1384531235/SWZ108709%20Eng.pdf>.



- The people trafficking starts in Eswatini or transits Eswatini, though the receiving country is another country.<sup>55</sup>

Section 4 provides that any offence under the PTPS Act committed (a) on the high seas on board a ship or an aircraft registered in Eswatini; (b) by a citizen or permanent resident of Eswatini on the high seas on board any ship or on any aircraft; or (c) by a citizen or permanent resident of Eswatini in any place outside and beyond the limits of Eswatini, may be handled as if it had been committed at any place within Eswatini.<sup>56</sup>

### 3.3. Slavery-Like Offenses in Eswatini’s Legal Order

#### 3.3.1. *Servitude*

Servitude is prohibited under the Constitution.<sup>57</sup> It also is included in the definition of exploitation under the PTPS Act and is, therefore, a criminal offence under that Act, punishable as set out in Section 3.2.1.<sup>58</sup>

#### 3.3.2. *Forced labor*

##### 3.3.2.1 *Constitution of Eswatini*

Section 17(2) of the Constitution provides that a person shall not be required to perform forced labour.<sup>59</sup> Section 17(3) provides that, for the purposes of this section, the expression “forced labour” does not include any labour:

- required because of the sentence or order of a court;
- required of any person while that person is lawfully detained which, though not required by the sentence or order of the court, is reasonably necessary for the hygiene or maintenance of the place at which that person is detained;
- required of members of a disciplined force as part of their duties or, in the case of a person who has conscientious objections to service as a member of a naval, military, or air force, any labour that the person is required by law to perform in place of that service;
- reasonably required during a period of public emergency or in the event of any other emergency or calamity that threatens the life or well-being of the community; or
- reasonably required as part of reasonable and normal parental, cultural, communal, or other civic obligations, unless it is repugnant to the general principles of humanity.<sup>60</sup>

<sup>55</sup> People Trafficking and People Smuggling (Prohibition) Act 2009, section 3, available at: <https://www.ilo.org/dyn/natlex/docs/MONOGRAPH/107539/132415/F306693388/SWZ107539.pdf>.

<sup>56</sup> *Id.*, section 4.

<sup>57</sup> Constitution of the Kingdom of Swaziland Act 2005, section 17(1), available at: <https://aceproject.org/ero-en/regions/africa/SZ/CONSTITUTION%20OF%20THE%20KINGDOM%20OF%20SWAZILAND%202005.pdf>.

<sup>58</sup> People Trafficking and People Smuggling (Prohibition) Act 2009, section 2, available at: <https://www.ilo.org/dyn/natlex/docs/MONOGRAPH/107539/132415/F306693388/SWZ107539.pdf>.

<sup>59</sup> Constitution of the Kingdom of Swaziland Act 2005, section 17(2), available at: <https://aceproject.org/ero-en/regions/africa/SZ/CONSTITUTION%20OF%20THE%20KINGDOM%20OF%20SWAZILAND%202005.pdf>.

<sup>60</sup> *Id.*, section 17(3).

### 3.3.2.2 PTPS Act

Forced labour is included in the definition of exploitation under the PTPS Act and is, therefore, a criminal offence under that Act, punishable as set out in Section 3.2.1.<sup>61</sup>

### 3.3.2.3 Employment Act

In addition, section 145 of the Employment Act 1980 provides that any person who exacts or imposes forced labour or causes or permits forced labour to be exacted or imposed shall be guilty of an offence and liable to a fine of SZL 500 or to imprisonment for six months.<sup>62</sup>

Section 144 defines forced labour as the following:

(1) “Forced labour” means all work or service which is exacted from any person under threat of any penalty and which the person has not offered to perform voluntarily, but does not include:

- (a) any military work or service compelled by compulsory military service law;
- (b) any work or service required because of a conviction in a court of law;
- (c) any work or service compelled in case of emergency, war, calamity, or threatened calamity such as fire, flood, famine, earthquake, epidemic, epizootic disease, invasion by animals, insect pests, or plant diseases, and in general any circumstances which might endanger the existence or well-being of the whole or part of the population; or
- (d) communal services of a kind which community members are to perform for the community and not for purposes of their financial gain.

(2) No work or service specified in paragraphs (a), (b), (c), or (d) of sub-section (1) shall be imposed as a means of:

- (i) political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social, or economic system;
- (ii) mobilizing and using labour for purposes of economic development;
- (iii) labour discipline or as a punishment for having participated in strikes; or
- (iv) racial, social, national, or religious discrimination.

(3) Any work or service carried out under the supervision or control of a public authority as required by paragraphs (a) and (b) of subsection (1) shall not be carried out on behalf of, or for the benefit of, any private person.

<sup>61</sup> People Trafficking and People Smuggling (Prohibition) Act 2009, section 2, available at: <https://www.ilo.org/dyn/natlex/docs/MONOGRAPH/107539/132415/F306693388/SWZ107539.pdf>.

<sup>62</sup> Employment Act 1980, section 145, available at: <https://www.ilo.org/dyn/travail/docs/2179/Employment%20Act%201980.pdf>.

(4) Before communal services of the kind mentioned in paragraph (d) of subsection (1) are exacted, the persons concerned or their representatives shall be consulted with regard to the need for those services.<sup>63</sup>

#### 3.3.2.4 Child protection

Section 29 of the Constitution protects a child from engaging in work that threatens the health, education, or development of that child.<sup>64</sup>

Part XXV of the Children’s Protection and Welfare Act deals with employment of children.<sup>65</sup> A child is defined as a person below the age of 18 years.<sup>66</sup> That Part provides:

- No person shall employ a child in exploitative labour, defined as labour that deprives or hinders the child from access to health, education, or development, or in hazardous employment, defined as work endangering the morals, health, safety, or development of the child.<sup>67</sup>
- No person shall engage a child under 16 years in night work (night defined as 6 pm to 6 am) or work in industrial undertakings (defined as an undertaking other than in commerce or agriculture).<sup>68</sup>
- The minimum employment age for a child is 15 years old.<sup>69</sup>
- Any person who contravenes the provisions of Part XXV commits an offence and is liable on conviction for a fine of not less than SZL 15,000, imprisonment for a term of not less than two years, or both, but the punishment for a first conviction for violating sections 232(1), 234, or 236 is a fine of not less than SZL 100,000, imprisonment for a term of not less than five years, or both, and the punishment for a second or subsequent conviction is imprisonment for a minimum term of 10 years without the option of a fine.<sup>70</sup>

Sections 97 to 100 of the Employment Act 1980 also deal with employment of children (defined as a person under the age of 15 years) and of young persons (defined as a person between 15 and 18 years old).<sup>71</sup>

Section 97(1) provides that no person shall employ any child in any industrial undertaking other than (a) an industrial undertaking in which only members of the child’s immediate family are employed; (b) a technical school under the supervision of a teacher or person authorised by the Education Minister; or (c) a non-profit industrial undertaking that is conducted essentially for education purposes and approved as such by the Labour Commissioner in writing.<sup>72</sup> Section 97(2) provides that no person shall employ any child in any undertaking during school hours, between 6 pm to 7 am, for more than six hours in any one day, for more

<sup>63</sup> *Id.*, section 144.

<sup>64</sup> Constitution of the Kingdom of Swaziland Act 2005, section 29, available at: <https://aceproject.org/ero-en/regions/africa/SZ/CONSTITUTION%20OF%20THE%20KINGDOM%20OF%20SWAZILAND%202005.pdf>.

<sup>65</sup> Children Protection and Welfare Act 2012, Part XXV, available at <https://gazettes.africa/archive/sz/2011/sz-government-gazette-dated-2011-02-25-no-16.pdf>.

<sup>66</sup> *Id.*, section 2.

<sup>67</sup> *Id.*, sections 232 and 236.

<sup>68</sup> *Id.*, sections 233, 235, and 237.

<sup>69</sup> *Id.*, section 234.

<sup>70</sup> *Id.*, section 238.

<sup>71</sup> Employment Act 1980, section 2, available at: <https://www.ilo.org/dyn/travail/docs/2179/Employment%20Act%201980.pdf>.

<sup>72</sup> *Id.*, section 97(1).

than 33 hours in one week, or for more than four hours continuously, without an interval of at least one hour for a meal or rest.<sup>73</sup>

Section 98(1) provides that no person shall employ a young person in any undertaking other than an agricultural undertaking between 6 pm and 7 am, except for the purposes of apprenticeship or vocational training approved by the Minister in writing after consultation with the Labour Advisory Board.<sup>74</sup> Section 98(2) provides that where the Minister approves the employment of a young person, the young person shall be allowed to rest for at least 13 consecutive hours between any two periods of such employment.<sup>75</sup>

Section 98(3) provides that no person shall employ a child or young person in (a) premises that are wholly or mainly used for the sale of intoxicating drinks for consumption on the premises; (b) work that is underground, dangerous, unhealthy, likely to harm the child's morals or behavior, or otherwise is proscribed.<sup>76</sup>

Section 99(1) provides that, notwithstanding sections 97 and 98, a child or young person may be employed during the prohibited hours in the interest of art, science, education, any form of public entertainment, or for the purpose of making cinematographic films, under and in accordance with the conditions of a licence granted by the Minister.<sup>77</sup> Every such licence shall contain conditions that the period of employment shall not continue after midnight, the person shall be allowed a rest period of at least 14 consecutive hours, and safeguards shall be taken to protect the health and morals of the person and to avoid interfering with the child's education.<sup>78</sup>

Section 100 requires employers at their cost to ensure every young person employed in an industrial undertaking shall be medically examined at time of employment and annually thereafter until the person reaches 18 years.<sup>79</sup> No person shall employ in an industrial undertaking a young person certified by a medical practitioner as being unfit for such employment.<sup>80</sup> The employer shall discharge that person and pay any employment contract entitlements, including wages in lieu of notice.<sup>81</sup>

Any person who employs a child or young person in violation of the Employment Act shall be guilty of an offence and liable on conviction to a fine not exceeding SZL 3,000, imprisonment not exceeding one year, or both.<sup>82</sup>

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<sup>73</sup> *Id.*, section 97(2).

<sup>74</sup> *Id.*, section 98(1).

<sup>75</sup> *Id.*, section 98(2).

<sup>76</sup> *Id.*, section 98(3).

<sup>77</sup> *Id.*, section 99(1).

<sup>78</sup> *Id.*, section 99(3).

<sup>79</sup> *Id.*, section 100(1).

<sup>80</sup> *Id.*, section 100(2).

<sup>81</sup> *Id.*, section 100(3).

<sup>82</sup> *Id.*, section 109.

### 3.3.3. *Deceptive recruiting for labor or services*

The PTPS Act includes deceptive recruitment in the offence of people trafficking, punishable as set out in Section 3.2.1.<sup>83</sup>

### 3.3.4. *Early and forced marriage*

Section 27 of the Constitution provides that men and women of marriageable age have the right to marry and start a family.<sup>84</sup> Marriage requires the free and full consent of the intending spouses.<sup>85</sup>

Section 3(1) of the Marriage Act 1964 provides that no male person below the age of 18 years and no female person below the age of 16 years may marry, provided that the Minister may allow such a marriage in special circumstances.<sup>86</sup>

### 3.3.5. *Debt bondage*

Debt bondage is a practice similar to slavery and is therefore included in the offence of people trafficking under the PTPS Act.<sup>87</sup> It is a criminal offence under that Act, punishable as set out in Section 3.2.1.

Debt bondage is the pledging by the debtor of their personal services or labour or those of a person under their control as security or payment for a debt, where the length and nature of the services is not clearly defined or the value of the services as reasonably assessed is not applied toward the liquidation of the debt.

### 3.3.6. *Any other relevant offenses*

Eswatini has no other relevant slavery-like offences.

### 3.3.7. *Extraterritorial application of the offenses*

Refer to Section 3.2.2.

## 3.4. Human Trafficking/Smuggling-Related Criminal Offenses

### 3.4.1. *International and domestic trafficking/smuggling of people*

The PTPS Act creates an offence of people smuggling. Section 19 provides that a person who arranges or assists a person's illegal entry into any country of which the person is not a citizen or permanent resident, including Eswatini, either knowingly or being reckless as to the fact that the person's entry is illegal, in order

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<sup>83</sup> People Trafficking and People Smuggling (Prohibition) Act 2009, section 12(1)(e), available at: <https://www.ilo.org/dyn/natlex/docs/MONOGRAPH/107539/132415/F306693388/SWZ107539.pdf>.

<sup>84</sup> Constitution of the Kingdom of Swaziland Act 2005, section 27, available at: <https://aceproject.org/ero-en/regions/africa/SZ/CONSTITUTION%20OF%20THE%20KINGDOM%20OF%20SWAZILAND%202005.pdf>.

<sup>85</sup> *Id.*

<sup>86</sup> Marriage Act 1964, section 3(1), available at: <https://data.unicef.org/wp-content/uploads/2018/01/THE-MARRIAGE-ACT-1964-Swaziland.pdf>.

<sup>87</sup> People Trafficking and People Smuggling (Prohibition) Act 2009, sections 2 and 12, available at: <https://www.ilo.org/dyn/natlex/docs/MONOGRAPH/107539/132415/F306693388/SWZ107539.pdf>.

to obtain a financial or other material benefit, commits the offence of people smuggling and is liable on conviction to a term of imprisonment not exceeding 18 years.<sup>88</sup>

The PTPS Act also includes an aggravated people smuggling offence. Section 20 provides that a person who intentionally engages in people smuggling where (a) the smuggled person is or is intended to be subject to exploitation; (b) the smuggled person is subjected to torture or to any other cruel, inhuman, or degrading treatment; or (c) the life or safety of the smuggled person is or is likely to be endangered, regardless of whether the smuggled person arrives in the receiving country, commits an offence and is liable on conviction to a term of imprisonment not exceeding 20 years.<sup>89</sup>

### **3.4.2. *International and domestic trafficking in children***

The PTPS Act creates the offence of children smuggling. Section 21 provides that a person who smuggles children for the purpose of exploitation commits an offence and is on conviction liable to a term of imprisonment not exceeding 20 years.<sup>90</sup>

### **3.4.3. *Victim harboring***

The PTPS Act includes the harbouring of trafficked persons within the offence of people trafficking.<sup>91</sup>

### **3.4.4. *Extraterritorial application of human trafficking and smuggling offenses.***

Refer to Section 3.2.2.

### **3.4.5. *International and domestic organ trafficking***

The PTPS Act defines exploitation to include the removal of human organs.<sup>92</sup> Therefore, organ trafficking is a part of the criminal offence of people trafficking, punishable as set out in Section 3.2.1.

## **3.5. Online Exploitation of Children Offenses**

The SODVA provides offences for making, distributing, publishing, or benefitting from pornography involving a child.<sup>93</sup> It is a defence to such an offence for a person to prove that the person engaged in this conduct for a genuine artistic, educational, legal, medical, scientific, or public benefit purpose, including Swazi cultural events, and the conduct was reasonable for that purpose.<sup>94</sup>

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<sup>88</sup> *Id.*, section 19.

<sup>89</sup> *Id.*, section 20.

<sup>90</sup> *Id.*, section 21.

<sup>91</sup> *Id.*, section 12.

<sup>92</sup> People Trafficking and People Smuggling (Prohibition) Act 2009, section 2, available at: <https://www.ilo.org/dyn/natlex/docs/MONOGRAPH/107539/132415/F306693388/SWZ107539.pdf>.

<sup>93</sup> Sexual Offences and Domestic Violence Act 2018, sections 24–28, available at: <https://www.ilo.org/dyn/natlex/docs/SERIAL/108709/134536/F1384531235/SWZ108709%20Eng.pdf>.

<sup>94</sup> *Id.*, section 29.

Also, the general offence that prohibits exploitative child labour can apply where children are exploited online for purposes of child labour.<sup>95</sup> Refer to Section 3.3.2.

### 3.6. Child Sex Tourism Offenses

Child sex tourism is a form of sexual exploitation, which is part of the offence of people trafficking under the PTPS Act.<sup>96</sup>

## 4. ESWATINI'S SUPPLY CHAIN REPORTING LEGISLATION

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Eswatini has no supply chain reporting legislation regarding human trafficking. The NSFAP may assist indirectly on chain supply issues.

## 5. FORCED LABOR: OVERVIEW OF ESWATINI'S APPLICABLE EMPLOYMENT AND MIGRATION LAWS

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### 5.1. Employment Law Rights for Victims of Human Trafficking and Forced Labor

The Employment Act 1980 provides that an employee can recover owed wages in a Magistrates Court.<sup>97</sup> An employee is defined under that Act as a person to whom wages are paid or are payable under a contract of employment.<sup>98</sup> A contract of employment is defined as a contract of service, apprenticeship, or traineeship whether it is express or implied and, if it is express, whether it is oral or in writing.<sup>99</sup>

The Wages Act of 1964 provides that wage regulation orders can be made for specific industries setting a minimum wage.<sup>100</sup> These orders have been made for various industries. If a minimum wage is not paid to an employee, then the employer is guilty of an offence and is liable on conviction for a fine not exceeding SZL 100 for each offence, and the court shall order the employer to pay to the employee the shortfall (the minimum wage less the wage actually received).<sup>101</sup> This Act defines an employee as a person who has entered into or works under a contract with an employer, whether the contract is for manual labour, clerical work, service, apprenticeship, or otherwise, expressed or implied, orally or in writing, or for money or other reward.<sup>102</sup>

If no wages or other reward are payable to a person, then that person does not appear to fall within the definition of employee. The victims of forced labour could be in this category and would not be protected by employment laws. Civil remedies under those laws may not be available. But the PTPS Act would apply.

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<sup>95</sup> *Id.*, section 28.

<sup>96</sup> People Trafficking and People Smuggling (Prohibition) Act 2009, section 12, available at: <https://www.ilo.org/dyn/natlex/docs/MONOGRAPH/107539/132415/F306693388/SWZ107539.pdf>.

<sup>97</sup> Employment Act 1980, section 54(1), available at: <https://www.ilo.org/dyn/travail/docs/2179/Employment%20Act%201980.pdf>.

<sup>98</sup> *Id.*, section 2.

<sup>99</sup> *Id.*

<sup>100</sup> Wages Act 1964, sections 11 and 15(1), available at: <https://www.ilo.org/dyn/travail/docs/2174/Wages%20Act%201964.pdf>.

<sup>101</sup> *Id.*, section 15(2).

<sup>102</sup> *Id.*, section 2.

## 5.2. Applicability of Employment Legislation in the Context of Forced Labor or Trafficking

Based on the requirements specified in Section 5.1., victims of forced labour must receive some wages or other reward to enable employment laws to apply. Employment law does not provide any civil remedies to victims who do not fall within the definition of employees.

## 5.3. Statutory Rights

### 5.3.1. *Rights to minimum wages, entitlements, and other applicable minimum standards*

Where wage regulation orders are in force for specific industries, then minimum wages apply to employees in those industries. The Employment Act entitles employees to an annual holiday of at least two weeks, sick leave of 14 days with full pay and a further 14 days with half pay, and maternity leave for females of up to 12 weeks with two weeks of full pay.<sup>103</sup>

### 5.3.2. *Claims available in relation to misrepresentations and “sham” arrangements*

Eswatini has no applicable laws.

### 5.3.3. *Claims available in relation to unlawful deductions, loans, and debt bondage*

The Employment Act permits an employer to make authorised deductions from an employee’s wages.<sup>104</sup> The authorised deductions are for any tax or rate required to be deducted by law, contributions to the National Provident Fund, any amount advanced to the employee by the employer, any membership dues to organisations, and cost of material, clothing (other than protective clothing), and tools.<sup>105</sup> An employee may also assign a part of the employee’s wages to another person.<sup>106</sup>

The total amount to be deducted and assigned shall not in any pay period exceed one-third of the wages due to the employee for that pay period.<sup>107</sup>

### 5.3.4. *Remedies*

If a trafficking victim does not fit the definition of an employee under employment laws, then those laws do not provide any remedies. In that event, the PTPS Act can apply. That Act provides that traffickers who are convicted shall pay the trafficked person any amount of loss as determined by the court, including wages owed according to law regulating wages.<sup>108</sup>

<sup>103</sup> Employment Act 1980, sections 121(1), 129(1), and 102(1), available at: <https://www.ilo.org/dyn/travail/docs/2179/Employment%20Act%201980.pdf>.

<sup>104</sup> *Id.*, section 56(1).

<sup>105</sup> *Id.*

<sup>106</sup> *Id.*, section 56(3).

<sup>107</sup> *Id.*, section 56(4).

<sup>108</sup> People Trafficking and People Smuggling (Prohibition) Act 2009, section 12(2), available at: <https://www.ilo.org/dyn/natlex/docs/MONOGRAPH/107539/132415/F306693388/SWZ107539.pdf>.



### 5.3.5. *The well-being of workers: Rest time*

Refer to Section 3.3.2. for child rest times.

No person shall employ a domestic employee (person employed in or about a private dwelling house) for more than eight hours of actual work in any one day, for more than 48 hours of actual work spread over six days in any one week, continuously for a longer period than 4.5 hours actual work without a break of at least one hour.<sup>109</sup> A domestic employee shall be allowed not less than one day of rest each week.<sup>110</sup> But a domestic employee may consent to perform overtime at one-and-one-half times the normal wage.<sup>111</sup>

### 5.3.6. *The well-being of workers: Freedom to change jobs and right to leave*

An employee may terminate employment by giving the employer one week's notice.<sup>112</sup> A longer period might be specified, such as in a collective agreement.<sup>113</sup>

## 5.4. Rights to a Safe Workplace and Compensation Associated With Enforcing Social Legislation

The Eswatini Occupational Safety and Health Act of 2001 protects the safety and health of persons at work and at workplaces.<sup>114</sup> Employee and employer are defined in this Act:

- Employee means “any person who is employed by or works for or assists an employer, in or at any workplace or any other premises.”
- Employer means “an occupier or a person who in connection with any workplace or other premises subject to this Act employs or provides work for or permits any person in any matter whatsoever to assist him in the carrying out of his business in or about a workplace or other premises subject to this Act and includes any persons or undertaking, contractor, corporation, company, public authority or body of persons who or which has entered into contract of employment with an employee.”<sup>115</sup>

An employer or an occupier has a duty to ensure the safety and health of all employees during employment by securing safe and healthy working conditions in that employer's or occupier's workplace.<sup>116</sup>

An employer must not expose persons other than its employees to hazards or dangers arising from that employer's activities.<sup>117</sup>

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<sup>109</sup> Employment Act 1980, section 108(1), available at: <https://www.ilo.org/dyn/travail/docs/2179/Employment%20Act%201980.pdf>.

<sup>110</sup> *Id.*, section 108(2).

<sup>111</sup> *Id.*, section 108(3).

<sup>112</sup> *Id.*, section 33(1).

<sup>113</sup> *Id.*, section 33(3).

<sup>114</sup> Occupational Safety and Health Act 2001, available at: [http://www.vertic.org/media/National%20Legislation/Swaziland/SZ\\_Occupational\\_Health\\_Act.pdf](http://www.vertic.org/media/National%20Legislation/Swaziland/SZ_Occupational_Health_Act.pdf).

<sup>115</sup> *Id.*, section 2.

<sup>116</sup> *Id.*, section 9(1).

<sup>117</sup> *Id.*, section 9(9).

Employees are protected from retaliation for reporting violations and are allowed to remove themselves from an imminent and serious risk to their safety and health.<sup>118</sup>

The Workmen’s Compensation Act 1983 (**WC Act**) also provides that, in general, the employer must compensate a worker who is injured in a workplace accident.<sup>119</sup> A worker generally means a person who has entered into or works under a contract of service, apprenticeship, or traineeship, whether the contract is express or implied, whether it is oral or in writing, and whether the remuneration is calculated by time or work done.<sup>120</sup> The Act requires employers to take out insurance to cover their liability under that Act.<sup>121</sup>

If an employer does not pay compensation as required by the WC Act, the employer is guilty of an offence and liable on conviction to a fine not exceeding SZL 500,000, imprisonment not exceeding 12 months, or both.<sup>122</sup>

## 5.5. Access to Justice and Practical Issues Associated With Enforcing Social Legislation

Access to justice is difficult for victims in Eswatini. Enforcing legislation through prosecutions has progressed slowly. The Government has focused on training programs for police and other actors.

Victims often are not aware of their rights and remedies and the protection available to them. Victims also lack assistance to make claims and seek protection. The NSFAP is seeking to address these issues through public awareness campaigns, and there have been few prosecutions. One prosecution in 2020 resulted in 15 years imprisonment.<sup>123</sup> Prosecution currently is not seen as a major deterrence.

The Royal Eswatini Police Service, Director of Public Prosecution, immigration officers, and social workers are frontline responders that may assist victims. Some NGOs assist victims from time to time subject to available resources and funding.

## 5.6. Interaction Between Employment Law and Migration

### 5.6.1. *Employment rights affected where employment is unlawful under migration law*

If the victims meet the definition of “employees,” claims under employment law are available.<sup>124</sup>

Victims of forced labor or trafficking do not face criminal sanctions under migration laws. Section 63 of the PTPS Act provides that a trafficked or smuggled person shall not be liable to criminal prosecution in respect of illegal entry into the receiving country, the period of unlawful residence in the receiving country, and the

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<sup>118</sup> *Id.*, section 18.

<sup>119</sup> Workmen’s Compensation Act 1983, section 5, available at: <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/27203/127269/F-1634665203/SWZ27203.pdf>.

<sup>120</sup> *Id.*, section 2.

<sup>121</sup> *Id.*, section 25(1).

<sup>122</sup> *Id.*, section 46(1).

<sup>123</sup> U.S. Dep’t of State, Trafficking in Persons Report 203 (2020), available at: <https://www.hsd.org/?abstract&did=840354>.

<sup>124</sup> Employment Act 1980, section 2, available at: <https://www.ilo.org/dyn/travail/docs/2179/Employment%20Act%201980.pdf>.

procurement or possession of any fraudulent travel or identity document where such acts are the direct consequence of people trafficking or people smuggling.<sup>125</sup>

### 5.6.2. *Rights/remedies available under applicable migration law and regulations*

Rights and remedies for victims are derived from the PTPS Act. The migration laws do not assist.

## 5.7. Employment laws and child labor

Refer to Section 3.3.2.

## 6. GOVERNMENT PROCUREMENT RULES

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### 6.1. Overview

The Procurement Act 2011 (**Procurement Act**) governs Swazi government procurement.<sup>126</sup> The Act has a Code of Conduct for Tenderers and Suppliers.<sup>127</sup> That Code states that such persons must abide by all laws, but no specific provisions require them to covenant that their business does not use trafficked workers or that they do not otherwise act in violation of human trafficking laws.

The Procurement Act and its regulations establish a public procurement framework. The purpose of that Act is to establish public procurement institutions and to regulate the procurement of goods, work, and services by procuring entities. Its objectives include transparency and accountability in public procurement while maintaining appropriate confidentiality of information, economy, efficiency, maximum competition in the use of public funds, and fair treatment of suppliers.

The Procurement Act established the Eswatini Public Procurement Regulatory Agency as an independent regulatory body with responsibility for policy, regulation, oversight, professional development, and information management and dissemination in the field of public procurement.<sup>128</sup> The Act also provides for Tender Boards with suitably qualified people to evaluate tenders.<sup>129</sup> The Act and its regulations set out the rules to be followed for public procurement.

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<sup>125</sup> People Trafficking and People Smuggling (Prohibition) Act 2009, section 63, available at: <https://www.ilo.org/dyn/natlex/docs/MONOGRAPH/107539/132415/F306693388/SWZ107539.pdf>.

<sup>126</sup> Procurement Act 2011, available at: <http://www.gov.sz/images/stories/finance/corporate%20Services/the%20procurement%20act%202011.pdf>.

<sup>127</sup> *Corporate Services*, Government of the Kingdom of Swaziland: Ministry of Finance, available at: <http://www.gov.sz/index.php/ministries-departments/ministry-of-finance/corporate-services/71-finance/finance/1391-public-procurement>.

<sup>128</sup> Procurement Act 2011, section 9, available at: <http://www.gov.sz/images/stories/finance/corporate%20Services/the%20procurement%20act%202011.pdf>.

<sup>129</sup> *Id.*, section 25.

## 6.2. Government Procurement Rules and Action Plan

The Procurement Act provides that a tenderer is eligible to participate in a public procurement only if it meets certain conditions, including that it adheres to basic labour legislation, such as the Employment Act.<sup>130</sup> Refer to Section 3.3.2. for provisions on forced labour offences.

## 7. RESTITUTION AND VICTIM COMPENSATION

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A convicted trafficker shall pay to the trafficked person any amount of loss as the court may determine.<sup>131</sup> Amount of loss is defined in section 2 as including (a) costs of medical, physical, psychological, or psychiatric treatment required by the trafficked person; (b) costs of physical and occupational therapy or rehabilitation required by the victim; (c) costs of necessary transportation, temporary childcare, temporary housing, or the movement of the trafficked person to a place of temporary safe residence; and (d) lost income and due wages according to law regulating wages.<sup>132</sup>

Part VI of the PTPS Act provides for the Government's care and protection of trafficked persons, including places of refuge, medical examinations and treatment, and hospitalisation of those persons.<sup>133</sup>

The Government allocates limited funding to a victim assistance fund for protective services but does not have shelter policies or guidelines to ensure quality of care for trafficking victims. The primary shelter available is inadequate. NGOs are involved from time to time in building shelters and other facilities for trafficked persons.

## 8. ESWATINI'S MULTIDISCIPLINARY/INTERAGENCY COOPERATION APPROACH

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### 8.1. Overview

Various government agencies within Eswatini deal with human trafficking, but they are poorly resourced with little funding. These include the Commission on Human Rights and Public Administration, the Task Force for the Prevention of People Trafficking and People Smuggling, Ministry of Home Affairs, the Ministry of Labour & Social Security, the Royal Eswatini Police Service, the Director of Public Prosecution, and the Children's Services Department.

### 8.2. Responsible Agencies

#### 8.2.1. Commission on Human Rights and Public Administration

This Commission is established pursuant to section 163 of the Constitution.<sup>134</sup> It investigates complaints concerning alleged violations of fundamental rights and freedoms under the Constitution and then takes

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<sup>130</sup> *Id.*, section 40(1).

<sup>131</sup> People Trafficking and People Smuggling (Prohibition) Act 2009, section 12(2), available at: <https://www.ilo.org/dyn/natlex/docs/MONOGRAPH/107539/132415/F306693388/SWZ107539.pdf>.

<sup>132</sup> *Id.*, section 2.

<sup>133</sup> *Id.*, Part VI.

<sup>134</sup> Constitution of the Kingdom of Swaziland Act 2005, section 163, available at: <https://aceproject.org/ero-en/regions/africa/SZ/CONSTITUTION%20OF%20THE%20KINGDOM%20OF%20SWAZILAND%202005.pdf>.

appropriate remedial action. It may refer matters to the Director of Public Prosecutions or bring proceedings to restrain enforcement of legislation. It is independent and not subject to the direction or control of any person or authority.

### **8.2.2. Task Force for the Prevention of People Trafficking and People Smuggling**

This Task Force is established by the PTPS Act and is responsible for coordinating the implementation of the PTPS Act, formulating policies and programmes to prevent and suppress people trafficking or people smuggling, formulating victim assistance and protection programmes, and initiating education programmes to increase public awareness.<sup>135</sup> It is leading the current national action plan.

### **8.2.3. Ministry of Home Affairs**

This Ministry is responsible for immigration services, refugees, non-governmental organisations, and citizenship matters. Enforcement officers under the PTPS Act include immigration officers.<sup>136</sup>

### **8.2.4. Ministry of Labour & Social Security**

This Ministry's responsibilities include administration of the Employment Act, the Wages Act, and the Occupational Health and Safety Act.

### **8.2.5. Royal Eswatini Police Service**

The Police Service Act of 2018 establishes the Police Service, which is responsible for enforcing all laws of Eswatini, apprehending offenders, and bringing them to justice.<sup>137</sup> Police officers are enforcement officers under the PTPS Act.<sup>138</sup>

### **8.2.6. Director of Public Prosecutions**

The position of Director of Public Prosecutions is established by the Constitution.<sup>139</sup> The Director has the power to institute, prosecute, and supervise all criminal prosecutions in the country, which includes people trafficking offences under the PTPS Act.

### **8.2.7. Children's Services Department**

This Department enforces legislation relating to children. It also develops and implements policies, plans, and programmes for children consistent with the United Nations treaties and conventions on child rights ratified by Eswatini.

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<sup>135</sup> People Trafficking and People Smuggling (Prohibition) Act 2009, Part II, available at: <https://www.ilo.org/dyn/natlex/docs/MONOGRAPH/107539/132415/F306693388/SWZ107539.pdf>.

<sup>136</sup> *Id.*, section 26(1)(b).

<sup>137</sup> Police Service Act of 2018, section 3, available at: <https://www.ilo.org/dyn/natlex/docs/MONOGRAPH/107531/132412/F1549253153/SWZ107531%20Part%20I.pdf> (Part 1) and <https://www.ilo.org/dyn/natlex/docs/MONOGRAPH/107531/132413/F-1666388804/SWZ107531%20Part%20II.pdf> (Part 2).

<sup>138</sup> People Trafficking and People Smuggling (Prohibition) Act 2009, section 26(1)(a), available at: <https://www.ilo.org/dyn/natlex/docs/MONOGRAPH/107539/132415/F306693388/SWZ107539.pdf>.

<sup>139</sup> Constitution of the Kingdom of Swaziland Act 2005, section 162, available at: <https://aceproject.org/ero-en/regions/africa/SZ/CONSTITUTION%20OF%20THE%20KINGDOM%20OF%20SWAZILAND%202005.pdf>.

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