

CHILD RIGHTS BAROMETER



ESWATINI

2018

Measuring government efforts
to protect girls and boys

The Child Rights Network for Southern Africa (CRNSA)

The Child Rights Network for Southern Africa (CRNSA) was established in 2012 and was then registered in South Africa in 2015 (NPC (2015/171797/08)). The vision of the Network is 'A Southern Africa where children's rights are respected, protected and fulfilled.' For this vision to be realised, the network promotes practices and policies that fulfil children's rights and welfare through national child rights networks. It also engages with regional and international institutions such as SADC and the AU for improved quality of life for children.

World Vision International

World Vision International is a Christian relief, development and advocacy organisation dedicated to working with children, families and communities to overcome poverty and injustice. World Vision International's Middle East and Eastern Europe Office is the official partner for the Child Protection Index. www.wvi.org/meero

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Foreword

World Vision notes with appreciation the significant progress Eswatini has made towards achieving global and national targets in key areas of child well-being. Children account for over half of the country's population, yet their rights and needs are often seen as peripheral to development efforts.

Despite the progress, some glaring challenges remain and require urgent attention. Poverty and child rights violations continue to threaten the lives of children daily and take away from the gains already made. 1 in 3 girls experience sexual violence by the time they are 18 years of age and children are most vulnerable to violence and abuse in their own homes. Too many children also experience physical violence in schools and in their homes through violent discipline or corporal punishment. Despite government and civil society efforts, children in Eswatini, by and large remain poor and are often exposed to harsh living conditions. Some find themselves having to provide for their families even though they are children themselves. This is hard to accept, but the reality for the majority of children in Eswatini, life is tough, full of violence, and for some, exploitation.

This is why World Vision's strategy in Eswatini, as guided by the Sustainable Development Goals (SDGs) and Eswatini Growth and Development Strategy (MGDS 3), aims at bringing measurable impact in the lives of 400 000 of the most vulnerable children in the hardest areas to reach. The goal of World Vision's Child Protection interventions is to work with partners to establish a child protection system that improves the prevention of and response to violence, abuse, exploitation and neglect of children, as well as the impact of HIV and AIDS. World Vision also supports the Eswatini government's efforts to improve services for children affected by violence, neglect and exploitation. We hope this report will trigger policymakers to develop comprehensive responses to address all forms of violence and poverty affecting children. And that the evidence and analysis presented here will encourage a national debate about what constitutes violence against children as well as child poverty in Eswatini and how to address it holistically. Violence destroys everything World Vision hopes to achieve in a child's life. And for this reason, ending all forms of violence against children in all its forms is one of our highest priorities.

This document is proof of our commitment to make life better for every child in Eswatini. Our work with families, local leaders, churches, partners, and children themselves to identify solutions seeks to bring in as many people as possible to touch hearts and souls. And it is our commitment, not to rest, until all children are transformed — equipped and empowered to protect themselves and one another.

FRANCIS DUBE

COUNTRY PROGRAMME DIRECTOR

Abbreviations

ACRWC	African Charter on the Rights and Welfare of the Child
AIDS	Acquired Immune Deficiency Syndrome
ART	Anti-Retroviral Therapy
CBO	Community Based Organisation
CDC	Children in Difficult Circumstances
DSW	Department of Social Welfare
DWACs	District Welfare Assistance Committees
HIV	Human Immuno-deficiency Virus
ICT	Information and Communication Technology
ILO	International Labour Organization
NCCC	National Coordinating Council for Children
NGO	Non-Governmental Organisation
LAB	Legal Aid Board
CoR	Commissioner for Refugees
MCDMCH	Ministries of Community Development, Mother and Child Health
NCLSC	National Child Labour Steering Committee
NCJF	National Child Justice Forum
OECD	Organisation for Economic Co-operation and Development
OVC	Orphans and Vulnerable Children
TEVETA	Technical Education, Vocational and Entrepreneurship Training Authority
UNICEF	United Nations Children's Fund
UNCRC	United Nations Convention on the Rights of the Child

Introduction

Eswatini is a landlocked kingdom bordered in the north, west and south by the Republic of South Africa and by Mozambique in the east. The country covers an area of approximately 193 kilometers from North to South, and 145 kilometers from East to West. Eswatini depends on South Africa for a majority of its exports and imports. Eswatini's currency is pegged to the South African rand, effectively relinquishing Eswatini's monetary policy to South Africa. The government is dependent on customs duties from the Southern African Customs Union (SACU) for almost half of its revenue. Eswatini is a lower middle-income country. As of 2017, more than one-quarter of the adult population was infected by HIV/AIDS. The country has the world's highest HIV prevalence rate.

Eswatini has ratified major child rights instruments such as the Convention on the Rights of the Child ratified on 6 October 1995 and the African Charter on the Rights and Welfare of Children signed on 29 June 1999. The country has a progressive national Constitution which, in Article 29, sets out a number of rights that specifically apply to children, including in relation to work; abuse, torture or other cruel inhuman or degrading treatment or punishment; the right to be properly cared for by parents or another lawful authority; discrimination on the basis of parents marital status; a duty of children to respect their parents; the right to education; and Parliament's duty to enact laws for the protection of children.

Further, Article 20 (also known as the Equality Clause) of the Constitution provides for equality before the law in all spheres of political, social, and cultural life and non-discrimination as relates to gender, race, colour, ethnic origin, tribe, birth, creed or religion, or social or economic standing, political opinion, age and disability. Eswatini operates a dual legal system, where the general law (comprised of Roman Dutch common law and Statute) and Swazi customary law (uncodified) operate side by side and are equal in legitimacy and authority. Often this results in conflicts of laws leading to numerous violations of children and women's rights.

Methodology

The CRB is designed to encourage regional cooperation, stimulate more robust implementation of the UNCRC, and serve as a policy analysis tool for civil society, governments and donors. It consists of 861 main indicators that together measure a state's policy and actions to protect and care for girls and boys under their jurisdiction. The CRB framework of indicators heavily relies on the Implementation Handbook for the Convention on the Rights of the Child, published by UNICEF. The Handbook provides a series of yes, no and partially-implemented checklists to create an understanding of each UNCRC article's significance. The CRB uses these checklists as core indicators to measure state performance.

To read the CRB, a score of one is a perfect score; the lower the score, the weaker the action; the higher the score, the stronger the action for children.

Dimensions of Government Action

The CRB measures five dimensions of government action for each of the articles of the UNCRC that refer to child protection. These five dimensions are: policy and law, services, capacity, coordination and accountability.

Policy & Law

The dimension of policy and law scores a country's efforts to create policy, laws and regulations that protect and care for children in situations of violence and vulnerability.

Services

The dimension of services measures a country's efforts to provide services that respond to children at risk or experiencing exploitation or in need of special care.

Capacity

The dimension of capacity scores a country's efforts to provide resources, staff, infrastructure and equipment necessary to adequately implement its policies and services for children.

Coordination

The dimension of coordination scores a country's efforts to effectively coordinate between different ministries, agencies and levels of government.

Accountability

The dimension of accountability measures a country's efforts to create accountability of public sector actions and formalise responsibilities so that public sector actors know their roles and limits of responsibility.

Methodology

CRB framework

The framework includes a series of 861 main indicators that together measure a state's policy and actions towards greater child protection. The indicators are drawn from four sources.

The first set of indicators comes from Article 4 of the UNCRC. This Article requires that states apply all appropriate measures within the toolbox of government action to achieve child protection. The CRB refers to this category as “the governance environment” for child protection. An example of the governance environment indicator is: has a consolidated law on the rights of the child and child protection been adopted?

The second set of indicators is based on Article 2 of the UNCRC. This Article requires that states respect and ensure the rights set forth in the Convention to each child within their jurisdiction without discrimination of any kind, and take all appropriate measures to ensure this requirement.

The third set of indicators comes from Article 7 of the UNCRC. This Article requires that children are registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by their parents. Article 7 requires all State Parties to ensure the implementation of these rights. Birth registration is considered to be a fundamental child protection right.

The fourth set of indicators uses specific child protection articles from the UNCRC and principles from the systems approach to child protection as the common foundation and matrix for its qualitative indicators. To unpack each Article's requirements, the CRB framework relies on the Implementation Handbook for the Convention on the Rights of the Child published by UNICEF. The Handbook offers analysis on each UNCRC Article from the Committee on the Rights of the Child's Concluding Observations in over 300 different opinions.³ The Handbook provides a series of “yes”, “no” and “partially-implemented” checklists to create an understanding of each Article's significance. The CRB uses these checklists as core indicators for the framework. The qualitative indicators are “yes”, “no” and “partially-implemented” questions that measure a state's (i) Policy/ legal and regulatory framework; (ii) Services, processes, mechanisms; (iii) Capacity; (iv) Accountability; and (v) Coordination and cooperation in relation to the UNCRC articles on child protection. These key elements are necessary to achieve a functional child protection system.⁴ UNCRC articles chosen are those associated with every child's right not to be subjected to harm and a state's duty to protect and care for children vulnerable to harm.

Data collection & validation

The Eswatini national data collection team comprised nine (9) child protection experts and one (1) legal expert selected in order to acquire a variety of expertise. A training workshop led by the CRB Data Manager (and co-author of the CRB framework) provided training to the team prior to collection. In the first stage of collection, groups of two experts collected data independently on selected sections of indicators (using reports, studies, articles, statistics data, etc.) to validate a “yes”, “no” and “partially-implemented” responses to each CRB indicator. In this way, two experts reviewed the same indicator separately. Where such evidence-based information was not available, interviews with relevant stakeholders and information based on the personal experience of professionals with relevant expertise in that particular field were taken into account.

After the completion of individual review and validation, responses provided for the same indicator by two different experts were considered and compared side-by-side

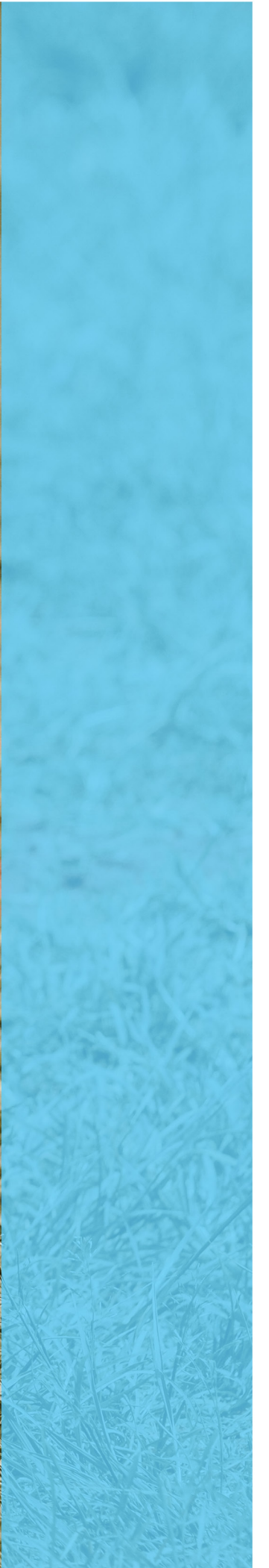
by the CRB Data Manager (due to the insufficient number of experts the recommended methodological approach could not be fully respected in the case of Eswatini. The comparative, side-by-side approach could not be used for the policy framework and for the implementation-connected indicators of articles 23, 34, 37 and 40). Responses found to be inconsistent between the two experts or that lacked sufficient validation required further review and evidence gathering. The two experts assigned to the same indicator again in group work reviewed and discussed the evidence and sought additional information when needed. Joint answers provided by each sub-team were further reviewed by the CRB Data Manager. Three to four reviews were required for the entire review process, in order to reach final agreements on each indicator considered.

A final cross-check of information provided under the various sections of the CRB framework was performed by the CRB Data Manager before finally validating the National CRB, with the support of the National

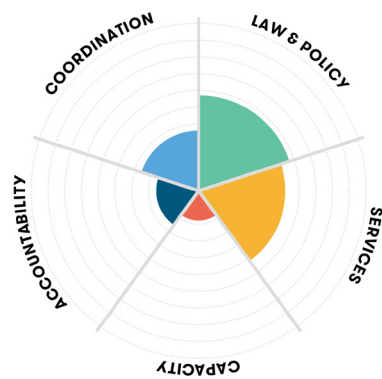
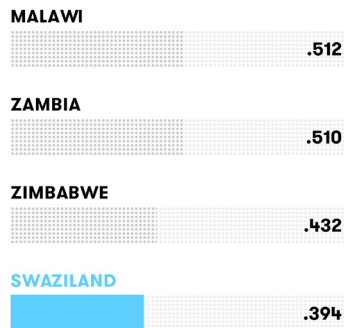
Scoring

Each qualitative indicator required a “yes,” “no,” or “partially-implemented” answer. To score the results, “yes” = 1, “no” = 0, and “partially-implemented” = 0,5. In situations where several sub-indicators contributed to one main indicator, the final main indicator score is calculated as an average of the scores of its sub-indicators (e.g. $1+0,5+0+1+0,5 = 3 : 5 = 0,6$).

An average score was calculated for three of the four sources of indicators, 1) Governance Environment, 2) Birth Registration, and 3) Non-discrimination. In the case of the main source (UNCRC Articles analysed with the Child Protection Systems Approach), each UNCRC article and its indicators is scored separately (to create one average score per article). The final (overall) CRB score is calculated as an average of all the main indicators included under all the components of the CRB framework; this way, each main indicator is equally contributing to the final (overall) CRB score.



Overview of Performance



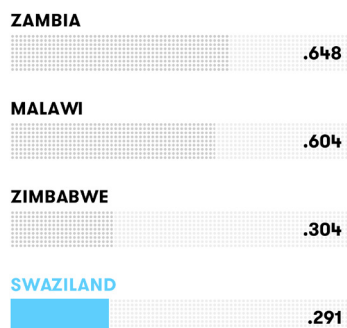
For all the child protection indicators that this study focused on, Eswatini consistently scored relatively high on promulgating laws and policies meant to protect children. This score shows general political commitment by the government of Eswatini in protecting children’s rights. It is worth noting that the second highest area of ranking is service provision. The government has put in place general measures for the provision of the rights. This includes a number of laws and institutions such as the newly established National Children Services Department (NCSD).

The lowest score by Eswatini is on capacity. This speaks to the lack of resources (financial, human, infrastructure) that are allocated to child protection. Whilst coverage may have a national character, the results here are showing that the quality of those services needs to be improved. Low capacity also speaks to resourcing of the institutions that deliver on child protection. Eswatini, as a lower middle-income country, needs to invest a lot more in children to make sure that inequality is not perpetuated. Deliberate public investment in children will enable all children of the country to enjoy their rights delivered to them with high quality standards.

Eswatini scored 0.394 which is an indication of the structural gaps in certain specific areas namely; capacity, accountability. Compared with the other CRB countries, Eswatini scored the least. The highest-ranking country is Zambia followed by Malawi. Zambia is the only country that exceeded the fifty percent mark since the highest attainable score is 1. The other three countries are below this threshold meaning that whilst mechanisms are in place to protect children from abuse, there is still a lot of investment required in sector specific areas like capacity, coordination and implementation to ensure quality of children’s rights.

Analysis and Policy Recommendations

Governance



Generally, governance refers to the process of rulemaking and enforcement. The CRB reviews whether a government has pursued aspects of good governance in its implementation of the UNCRC. Good governance upholds citizen rights, provides transparent access to information, relies on consistent decision making and rule of law and pursues furtherance of the public good.

Eswatini scores 0,291 out of a possible 1,0 and ranks last out of the four CRB countries considered for this exercise. The score mainly reflects the weakness of the formal bodies that monitor and hold accountable actors tasked with child protection. Eswatini adopted a consolidated law on the rights and protection of the child (the Children Protection and Welfare Act, 2012), however there has been no comprehensive review yet of all legislation in the country, to ensure compatibility with the Convention and there are no mechanisms in place to ensure that any new legal or regulatory framework adopted in the State is checked for compliance with the UNCRC. While the general principles of the UNCRC are reflected by the legislation in the country, and it is possible to invoke these principles before the courts, the Convention does not take precedence over the domestic law (where there is a conflict). In terms of S 238(4) of the Eswatini Constitution, domestic legislation always takes precedence in such situations. This is because domestication of international conventions must be through legislation.

The Deputy Prime Ministers Office (DPMO) is responsible for coordinating the development and implementation of the National Plan of Action for Children as the vehicle for realization of the country's responsibilities under the UNCRC. Prior to the establishment of the afore-mentioned National Children's Services Department (NCS), a National Children's Coordination Unit (NCCU) was in place and operating as a project, semi-autonomous to government. It was de-commissioned as part of transitioning the entire function into government to ensure sustainability of the policy interventions moving forward. It is worth mention that this Unit was more representative of government and civil society in its processes and in the monitoring of the implementation of UNCRC in Eswatini. Thematic technical working groups (established according to the major UNCRC themes) were in place comprising government, UN and civil society organisations and on a quarterly basis, a Child Protection Network (CPN) meeting was convened to share progress on the different thematic areas, identify gaps and jointly deliberate on solutions. These meetings, bringing together more than one hundred (100) stakeholders, were coordinated by UNICEF and presentations were led by the relevant government ministries. With the transition to the current department, this critical function has been lost which has compromised the effectiveness of the coordination of policy interventions for children in Eswatini. As such, the review of the National Plan of Action for Children (which expired in 2015 from the 2010 initial plan) is outstanding as well as other critical documents required to strengthen the legal and policy environment for children including Regulations of the Children's Protection and Welfare Act of 2012.

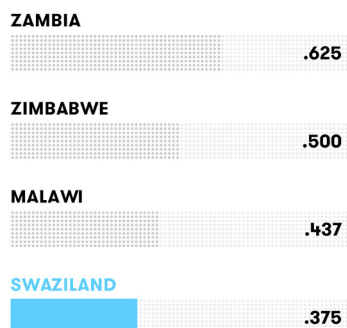
On the other hand, no permanent and effective mechanisms have been established to allow evaluation of policies related to children and monitoring

of their implementation, and also the budgetary analysis to ascertain the proportion of overall budgets devoted to children and eventual disparities related to particular groups of children or regions in the country. The next step should include further building and strengthening the coordinating and monitoring bodies between ministries to widen efforts to address child protection. Such bodies could unify tasks and outcomes by managing responses to the public sector that take into account all ministries and views. It is also recommended that Eswatini develop relevant monitoring bodies to further secure the place of children within the realm of debate and accountability.

Regular conversation between finance and social protection authorities is also recommended. Without an established mechanism to review budget and expenditure on a yearly basis, officials may be limited in their ability to set accurate and aligned budgets. Budget analysis for all child protection issues should review the proportion of overall budgets devoted to children and identify any disparities between Eswatini's regions, rural/urban areas and particular groups of children. It is important that officials are able to verify that sufficient funding reaches the most disadvantaged groups of children.

Eswatini should consider establishing a permanent Government mechanism at national level for consulting on matters relating to policy development and implementation related to child protection with relevant NGOs and other stakeholders. Parliament should also establish a formal body on child protection with a clearly defined mandate to monitor child protection in Eswatini and respond to specific issues when they arise. Such a parliamentary group should meet at regular intervals to align discussion with the legislation cycle. Whereas the Human Rights and Public Administration Commission is in place, it is recommended that an independent child rights directorate or function to promote the rights of children must be established in Eswatini (such as the Ombudsman for Children). The absence of such a body is affecting the proper monitoring of child rights implementation and reporting against various government bodies when there are allegations of child rights violations.

Non-discrimination



Article 2 of the UNCRC requires State Parties to respect and ensure the rights set forth in the Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status. It also requires States Parties to take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

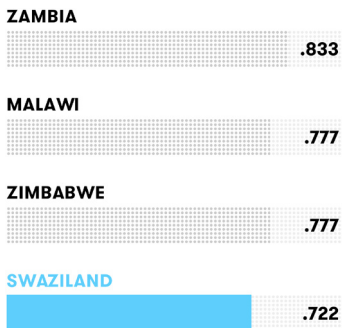
On the Article 2 related indicators, Eswatini scores 0,375 out of a maximum possible of 1, pointing to the fact that further action is needed to fully align Eswatini's legal and regulatory framework provisions with the UNCRC requirements.

On the Article 2 related indicators, Eswatini scored 0,375. Malawi scored 0,437 with Zambia having the highest score of 0,625. Zimbabwe scored second with 0,5 out of a maximum possible of 1. Further development of appropriate priorities, targets and programs for affirmative action to reduce discrimination against disadvantaged and vulnerable groups is required.

Eswatini needs to develop policies for appropriate priorities, targets and programmes of affirmative action to reduce discrimination against disadvantaged and vulnerable groups. Further, the development of a comprehensive implementation strategy for the Platform for Action adopted at the Fourth World Conference on Women (taking into account the recommendations of the 2000 and 2005 Reviews) would be required, and also of measures and programmes, relevant to the Convention, in order to follow up on the Durban Declaration and Programme of Action adopted at the 2001 World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance.

Monitoring of the realization of each right guaranteed in the Convention should include the principle of non-discrimination, and serious consideration needs to be given to data collection and reporting generally, and to collecting and reporting disaggregated data to enable effective monitoring of potential discrimination against various vulnerable categories of children in particular. Adequate data collection and reporting is essential for the strategic planning of prevention, support and response mechanisms targeting the most vulnerable groups of children and their parents.

Birth Registration



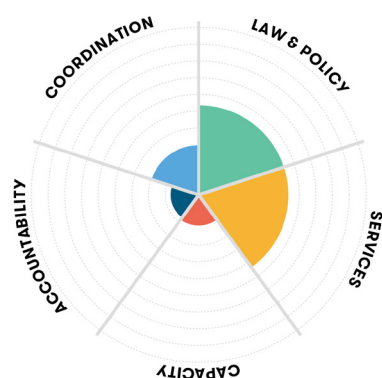
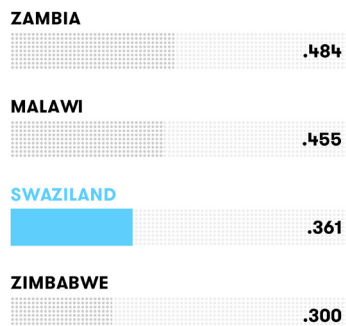
A name and nationality is every child's right, enshrined in the UNCRC and other international treaties. Registering children at birth is the first step in securing their recognition before the law, safeguarding their rights, and ensuring that any violation of these rights does not go unnoticed. Universal birth registration is also part of a system of vital statistics, which is essential for sound economic and social planning. Birth registration is therefore not only a fundamental human right, but also a key to ensuring the fulfilment of other rights.

Eswatini's birth registration rate of 53,3 percent is higher as compared the average of the region (41%). As compared to the other three countries included in the CRB, Eswatini's birth registration rate is lower than that of Malawi (with 67%), and higher than that of Zimbabwe (44%) and Zambia (11%).

Non-registered children may be at risk to be excluded from receiving elementary education, health care and social assistance. Birth registration is also essential in protection efforts, including: preventing child labour by enforcing minimum-employment-age laws; ensuring that children in conflict with the law are not treated (legally and practically) as adults; countering child marriage; and reducing trafficking, as well as assisting children who are repatriated and reunited with family members.

Eswatini's 0,722 Index score on Article 7 reflects the fact that the country has taken important steps towards aligning its birth registration policies with the UNCRC requirements. Further steps should be taken to secure the birth registration of all children born within the jurisdiction, including those born of non-citizens, and improving birth registration by placing a duty on the state authorities to take a more proactive approach to secure registration when parents fail to register their children, in particular, children with disabilities.

Preventing Child Family Separation: Helping Families Stay Together



As stated in Article 9 of the UNCRC, it is important that Children – no matter where they come from or what their migration status – are children first and foremost. Those who were left with no option but to flee their homes have the right to be protected, access essential services, and be with their families – just like all children. It is the realization of these rights that gives every child the best chance at a healthy, happy and productive future. “Family separations are traumatic experiences that can leave children more vulnerable to exploitation and abuse and can create toxic stress which, as multiple studies have shown, can impact children’s long-term development. It is equally important that Children should not be separated from their parents unless it is for their own good, for example, as provided by S23 of the Children’s Protection and Welfare Act of 2012, if a parent is unfit, or has neglected, or is unable to exercise proper supervision and control over the child and the child is falling into bad association. The same Act states that a child may be separated from the parent if the parent has neglected or is unwilling to provide for the child’s adequate food, clothing, shelter and education and health.

On its efforts to prevent and respond to child-family separation, Eswatini scores a total of 0,361 out of a possible score of 1,0 and it ranks third out of the four CRB countries. The country scores very low in its capacity (0,192) to prevent unnecessary parent-child separation, and also on its accountability mechanisms (0,177). Its highest scores are on law and policy (0,544) and services (0,545), while coordination scores in the lower range (0,305).

Out of the four CRB countries, Eswatini (0,323) is second from the bottom being better than Zimbabwe (0,300). Malawi (0,455), ranks second, with Zambia (0.484) being first.

While the traditional system of Emaswati has mechanisms to prevent child separation from families, there are no institutionalized processes to prevent that from happening. The government of Eswatini has undertaken measures to address by increasing staff capacity through the recruitment of 58 social workers and their deployment to the different regions within the country. The value of the addition is that family assessments are done quickly and appropriate decisions on separations are made based on sound information. While the National Children’s policy of 2010 recognizes the principle that children should not be separated from their families, implementation in this regard requires strengthening.

Laws and policies: Whilst the Children’s Protection and Welfare Act of 2012 provides for the circumstances under which separation may occur, there is need for additional guidance by way of protocols and procedures to facilitate separation. This may be achieved through the draft regulations to operationalize the CPWA of 2012, in particular Section 8 & 12, which are currently being developed. There is need to amend the Act to provide for broader definitions of abandonment, kinship and guardianship. It is also essential to maintain a well-trained and licensed pool of social workers with sufficient capability to provide psycho-social counseling and support services including all state, private and NGO driven facilities to ensure these services are readily available. This should be provided for and regulated by

the legislation.

Accountability: According to the 2014 Multiple Indicator Cluster Survey), 33.2% children between 0-17 years were living with neither biological parent, 20.4% children 0-17 years had lost one or both parents through death and 13.0% children between 0-17 years had at least one parent living abroad. Whilst the two latter figures explain the reason for separation, the 20.4% is a concern as reasons for separation are mostly unclear. This qualifies the low score of 0.177 in this area. No apparent steps have been undertaken by the Department of Social Welfare to document children who have been separated from their families. National studies have not been commissioned or sponsored to understand among others issues, the causes, consequences of child-family separation during the last 10 years. The Department of Social Welfare has neither licensing nor quality assurance standards that children separated from their families are regularly monitored and progress is tracked. The recent recruitment of 58 social workers provides an opportunity for children separated from their families to benefit from limited counseling and support. The challenge still remains licensing of all social workers in Eswatini even for NGOs that are running foster care programmes. The lack of licensing for social workers has meant that children can potentially be relocated to a toxic environment outside the principles of Article 9. Lastly, there is a need to develop an online and offline data collection system that allows families in dire circumstances to alert social workers on their needs and also be able to document the number of children who have been separated from their families.

Services: While Eswatini scores 0.545 which indicates systems that are operational and functional, quality standard requirements are absent. External monitoring of Government-led initiatives, NGOs and others are visibly absent. Periodic assessment of places of safety for children separated from their families is also not provided by the government. Complaint mechanisms that are easily accessible to children, child friendly and developed through direct consultation and input of the children themselves are also absent and there is no effort by the Government to develop such a mechanism. Currently the country is undertaking a baseline survey to look into developing an all-encompassing child line (toll free line - 116) and establishing other mechanisms to ensure that children can register complaints even in schools and communities. Limited physcho-social support system exists at national level to assist children that have been separated from their families.

Coordination mechanisms: Eswatini scores 0.305 in this area and the country should develop mechanisms to allow for cross coordination of cases such as case management regulations, standards, protocols or other mechanisms that outline cross-sectoral cooperation and coordination between the following main stakeholders: social service, justice, health, education in response to child-family separation decisions. The National Children Services Department recently established a multi sectoral coordination framework but without a guiding MoU and action plan, the activities of the multi sectoral task team remain ad hoc and are not systematic.

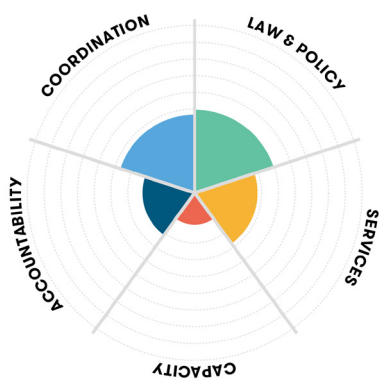
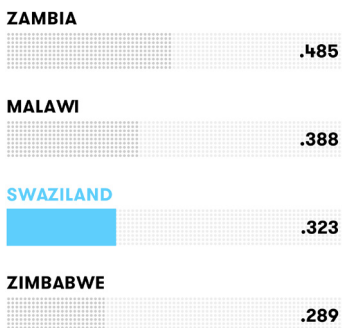
Capacity: Eswatini scores 0.192 which indicates significant capacity challenges. The lack of specialized judges and magistrates still remains a huge barrier to ensuring proper judgments are delivered with respect to all foster care cases. The other limiting factor is that there is only one operational child friendly court based in the capital city of Mbabane, thus making it

inaccessible to many communities and slowing down the justice delivery process. Additionally, there are no set standards on qualifications of social workers and psycho-social counselors including detailed training plans and professional supervision of the social workers on an on-going basis. The government of Eswatini still lacks capacity to collect quality data that can be effectively used for planning to respond to children in foster care situations. While the Department of Social Welfare is being supported by programmes from members of the Children's Consortium under CANGO and the European Union, there are no efforts directed at increasing investment in children by the national government.

The state should consider increasing incentives for all social workers to attract properly qualified social workers to manage cases of child separation from families. This can be done through increasing allocation of the national budget to the Deputy Prime Ministers Office which houses the Department of Social Welfare. There is need to urgently establish a grant to support families in dire circumstances which can lead to children being forcefully separated from families. Additionally, it is recommended that there be established a national system that allows for early identification and documentation of families that can adopt or manage children who have been separated from their families. The state should consider developing an assessment tool and adopting guidelines that clearly articulate state support for such families.

While the state has done a lot of ground work in terms of policy formulation, implementation remains a huge challenge. Eswatini scores 0.290 in implementation whereas, policy formulation scores above average at 0.5441. This is a reflection of policy provisions that remain on paper due to lack of investment and coordination as discussed earlier. Efforts should go towards enhancing capacity and accountability for government to implement. It is recommended, therefore, that Eswatini takes steps to address all these elements to effectively close the gap between policy and implementation.

Prevention And Response To Violence Against Children



Article 19 of the UNCRC provides for protection of children from all forms of physical or mental violence, from any form of corporal punishment and any other form of cruel or degrading treatment in any setting. As such, governments should ensure that children are properly cared for and protect them from violence, abuse and neglect by their parents, or anyone else who looks after them.

Of the four CRB countries in this study, Eswatini scores second lowest with 0.323 only better than Zimbabwe which has 0.289. Malawi is second with 0.388 whilst Zambia has the highest score of 0.485 where efforts to prevent violence against children are concerned.

As can be deciphered from the data above, the country scores averagely on policy and coordination whilst other areas remain challenged. This means that the country has put in place general measures of implementation whilst there is no resource commitment to increasing the capacity and actual implementation.

Policy: Eswatini scores an average 0.505 on policy on Article 19. To comprehensively address violence against children in Eswatini – in particular physical violence through corporal punishment, there is need to review the Constitution of Eswatini and align Section 29 with the UNCRC as it allows for “moderate chastisement of a child for purposes of correction. There is further need to amend Section 14 of the Child Protection and Welfare Act of 2012 which provides for discipline of a child without any quality standards and guidelines for quality assurance purposes. If the legislation cannot recognize corporal punishment as physical violence and outrightly outlaw it, there is need to develop expedite the development of the regulations for the Child Protection and Welfare Act to operationalize Section 14 (2) which provides for an assessment of a child before they are disciplined. As stated in the National study on the Drivers of Violence against Children in Eswatini published in 2016 by the Deputy Prime Ministers Office, the most prevalent of violence is psychological and physical violence at 88% while sexual violence is at 33% of all reported cases. There is need for the review of all laws providing for chastisement to be reviewed and be aligned with the provisions of the UNCRC, including the Constitution of Eswatini. This could be achieved through the promulgation of specific legislation to ban corporal punishment in homes, schools, alternative care institutions, the judicial system or any other facility. Additionally, a further review the 1988 Education Act and the schools regulations of 1997 is required to support the elimination of corporal punishment in schools and the introduction of positive discipline. In a publication by World Vision Eswatini capturing all media articles of violence against children in Eswatini from September 2015 published in early 2017, the report shows that most violence against children is at home and in schools with teachers failing to contextualize Section 14 of the Child Protection Act of 2012.

Services: Eswatini scores 0.3842 for service established to address violence against children. Attention has been mainly focused on extreme or sexual forms of violence in the country while the other forms of violence go undetected and under reported like violence in the home which is regarded as physical punishment. Services are still not responsive to child survivors of abuse. The biggest challenge is lack of child participation in planning which

would offer solutions to the type of services children need. Recovery from violent abuse is hindered by the lack of skilled social workers to address the needs of children and lack of adequate facilities to ensure that children recover from cases of physical violence such as halfway houses. A number of toll free lines were established by organisations including SWAGAA (951) and other partners some of which all functioned for short periods of time. Presently, through UNICEF and the office of the Deputy Prime Minister, an assessment is being undertaken to determine the best possible way of establishing an integrated child line (116). It is proposed that this will be coordinated by the state and if properly implemented, it will assist in harmonization of the response to incidences and data collection to inform programming. Re-integration of children into families and communities as well as adequate child friendly mechanisms remain a key gap in the country which requires government attention.

Children in Eswatini are little recognized as equal contributors to shaping their own future and their voices have, for a long time been ignored. In the Eswatini culture, children are seen – not heard and as such, their rights and needs are easily disregarded. To counter this, the state should institutionalise child participation and roll out programmes targeting parents and communities on the importance of listening to children. This will ensure that children are provided the opportunities to make input where facilities and programmes meant for them are being designed and rolled out.

Accountability: Eswatini scores a low score of 0.320 on accountability. The Child Protection & Welfare Act of 2012 provides for a regulatory framework on reporting, assessing and facilitating response to identified cases and proposes stiffer penalties for offenders. This framework should be utilised by both government and CSOs. The state should further develop a mechanism of ensuring that all halfway houses, including privately owned and NGO owned half way houses are licensed. The government of Eswatini should consider developing a system of monitoring and progressive reporting of each case including a centralized database and follow up mechanisms for children that have been re-integrated. The state should further develop guidelines and standard operating procedures for the recruitment of community child protection volunteers (Emahlombe ekukhalela) and rural health motivators who are usually the first intervenors in communities for survivors of violence.

Capacity: Eswatini scores 0.200 which indicates challenges including limited funding, inadequate staffing, absence of a state-funded national helpline, absence of purely state-funded foster or residential emergency protection and physical rehabilitation institution to provide the necessary services. Eswatini therefore needs to enhance funding in order to ensure the capacity gaps are addressed.

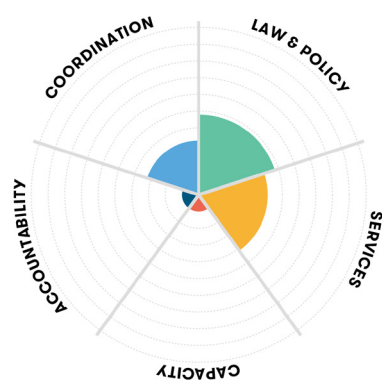
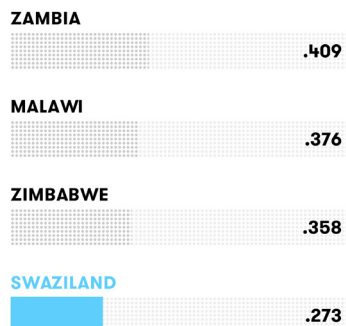
Coordination: Eswatini scores moderately at 0.476 in Coordination reflecting some positive milestones and areas for improvement. On the positive side, government has established a Sector wide coordinating task force for children's issues which comprises different government departments, relevant UN agencies and child-focused organizations. However, some NGOs hold the view that these structures do not effectively coordinate the services provided to children due to overlapping responsibilities and miscommunication between government departments, unclear mandates of all stakeholders, lack of resources, poorly trained and resourced staff,

and lack of understanding on legislative provisions and obligations, and inadequate data capturing and retention.

There is a reporting and referral system in place which is the National Surveillance system on violence which is coordinated by the national surveillance Committee. This entitles all citizens and, specifically, obligates certain professional groups to report instances of violence against children. This is in addition to the right children have to access the courts for redress. Furthermore, because of the plurality of laws and institutions dealing with cases of violence against children, some institutions are unclear about their roles. Improved / increased funding to the DEPARTMENT OF SOCIAL WELFARE and NCSD is needed to ensure nationwide coverage of programmes for all children across the 4 regions of Eswatini. The critical need to recruit adequate well-trained social workers cannot be over-emphasised to ensure availability of services to such as Lavumisa.

The difference of 0.287 between policy and implementation suggests that Eswatini has lagged behind in its commitments under the UNCRC. Therefore, it is recommended that concrete steps be taken to abolish corporal punishment against children, boost funding to increase the reach and quality of the services provided by state agencies and improve the coordination of interventions/ services of state agencies and NGOs in the provision of services to children.

Alternative Care



Article 20 of the UNCRC and Article 18 of the ACRWC require States Parties to take appropriate measures to prevent child-family separations and respond to the needs of children deprived of their family environment. Eswatini scores are low in all areas here as follows; policy (0.488), services (0.422), coordination at (0.333) accountability (0.108), and capacity (0.108) scores. Of the four CRB countries in this study, Eswatini scores the lowest at 0.273 on protecting children deprived of family environment. Zambia has the highest score of 0.409 followed by Malawi with 0.376, with Zimbabwe on 0.358.

Policy: Eswatini policy score is fairly low at 0.488 because its legal framework makes no distinct provision for the state to provide welfare assistance to families in stress to reduce the need for alternative care. The CPWA Act of 2012 does not require rigorous, multidisciplinary approaches to decision-making that includes the informed participation of children and their families in alternative care. Eswatini laws however emphasise that the placement of children in alternative care be a measure of last resort. The law assigns the responsibility to decide on the alternative placement of children to the courts, the Immigrations Department and the Department of Social Welfare which can make independent decisions. When the children are in alternative care, Eswatini laws prohibit child labour, compulsory use of uniforms, restriction of liberty and deprivation of food and sleep. It does not, however, prohibit corporal punishment in care other than in group homes and detention facilities, the use of drugs and restriction of contact with families for behavioural control. It is recommended that Eswatini amend the Child Welfare & Protection Act to allow for laws that prohibit these harmful practices in all forms of alternative care.

Capacity has also been scored 0.108 for Eswatini in view of the fact that there is inadequate funding for counselling and support services, as well as residential care services, among others. There is very limited support available for after care support due to inadequate financial support. Plans to grow and capacitate the social welfare workforce should be aligned with adequate funding that should ensure effective and efficient capacity to handle counselling and support services and residential care services. There are no regulations in Eswatini that govern the standard of psycho-social counselling provided by all service providers through the Technical Education, Vocational institutions in the country. In addition, there are no set quality standards for foster care and group homes. It is recommended that Eswatini sets quality standards for other forms of alternative care as well as funding guidelines for alternative care and all services.

Services: Eswatini's score on services is very poor at 0.422. Psychosocial and support services are not fully provided by the state and therefore accessible for families and children while children in alternative care plans do not have individual care plans which are assessed and monitored on a regular basis. Eswatini needs to enhance its funding towards psycho-social and support services including strengthening follow up mechanisms for children in alternative care using individual care plans whose development should involve the views of children; ensuring that services allow for investigating, training and authorising as appropriate, kinship and guardianship care as well

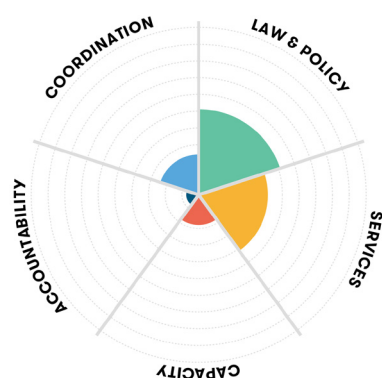
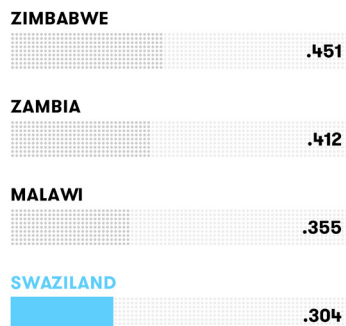
as foster care. Some NGOs like SOS Eswatini have programmes towards the families whose children have been re-integrated with the aim of financially supporting the family to be able to accommodate the child when he/she returns. These programmes have indirectly been found to further strengthen the families. The state provides some material support towards families to address vulnerabilities although there is need for the state to strengthen efforts aimed at utilising existing programmes as well as boosting funding for its own programmes.

Accountability scores a low 0.108 due to the failure to licence existing services as well as and poor monitoring and evaluation mechanisms. Although residential care facilities have certification, that certification is only limited to the legal registration with the government as an operational entity. There are no measures that can be triggered to revoke the license where expected service standards are not met. There is an absence of legally established strategies for ensuring that numbers of children under institutional care are reduced. This could be regulated by the proposed alternative care and residential facilities operating guidelines and standards. It is recommended that the state should ensure that licencing is provided both for public and private institutions to expand the pool of available facilities for children. Currently, there is no clear provision of licencing for services that government is providing in state-owned alternative care facilities, this can also be addressed through the recommended guidelines. Further, there is no centralised information or a national data base with reports of child victims of child labour and economic exploitation. Eswatini needs to ensure that a centralised database is created, with data disaggregated according to age, gender and disability monitored on a regular basis would facilitate effective policy formulation and implementation.

Coordination: Eswatini scores 0.476 in view of the fragmented efforts to coordinate child related interventions. Improvements need to be made to ensure the consistent engagement of authorities, agencies and services providers dealing with alternative care including police, social welfare, education and justice as well as community stakeholders in their various levels. Presently, the services provided to child victims of abuse and neglect, are as a consequence not comprehensive due to overlapping, unregulated, unclear mandates and responsibilities in and amongst the different stakeholders. The lack of resources, poorly trained and resourced staff, lack of understanding of legislative provisions and obligations and inadequate data keeping all contribute to a weak coordinating framework.

The slow pace of the responsiveness of government in providing care for children deprived of family care implies that the state will not be able to minimise or stop children from growing up under institutional care in the immediate future. This is clearly evidenced by the gap between policy, at 0.488 and implementation at 0.208. There is a need to take concrete steps to abolish harmful practices in all forms of alternative care, such as corporal punishment, the use of drugs and restriction of contact with families for behavioural control. In addition, Eswatini needs to mobilise funding and develop the capacities of its agencies to provide children with all services contemplated under the UNCRC in order to bridge this gap.

Child Adoption



Article 21 of the UNCRC provides that states parties recognize and/or permit a system of adoption which shall ensure that the best interests of the child are the paramount consideration. In this area, Eswatini scores 0.520 in policy; 0.423 in services; 0.189 in capacity; 0.083 in accountability and 0.25 on coordination.

Of the four CRB countries, Eswatini ranks lowest with a score of 0.304 followed by Malawi with 0.355. Zimbabwe scores highest with 0.451 followed by Zambia with 0.412 in efforts to facilitate ease of adoption of children.

Policy: Eswatini scores 0.520 on policy and as articulated in the Child Protection & Welfare Act of 2012 provides for adoption in Section 55, 56 and 67. However it is not clear whether the adoption Committee provided by the law is operational. Delays in drafting of regulations under the CPW Act of 2012 to give operational effect to the law on adoption due to limited resources have resulted in the poor implementation of this mechanism which has been placed on hold until such time as appropriate regulations are promulgated. The Children’s Protection and Welfare Act does not provide for an assessment of options before adoption. Regulations could be a means in which to explore other means other than adoption which effectively break the legal relationship entirely between the child and its natural parents and replaces it by a similar one with the child’s adopter. The Child Protection Act of 2012 provides for the regulation of Inter-country adoption processes. The legislation establishes a closely-regulated adoption system in the country and secures protection of children adopted through inter-country proceedings. However, there have been no inter-country adoptions for the past five years which was the only common type of adoption practiced. The Child Welfare & Protection Act of 2012 does not contain any quality and financial standards to be met by state and non-state actors providing adoption related services. The laws allows for state actors providing adoption services to obtain licenses, which enhances the state ability to regulate the quality of services provided by these agencies. The law does not set out a clear complaints mechanism relating to adoption services and a comprehensive periodic review mechanism to cover all children (particularly children above the age of 16). Eswatini laws also do not require that the child’s identity be preserved in adoption placements but only recognizes that the child’s religious, cultural and background be considered in adoptions. It is understood that the legislation itself cannot be expansive to include the full scope of the details of adoption, however, the recommended specific guidelines would be helpful.

Services: Eswatini scores of 0.423 which reflects that there are a lot of challenges when it comes to adoption in Eswatini. While section 55, 56 and 67 of the CPWA provides for adoption, the ethnicity of the child is not listed as a factor. There are still no forms that guide the process of domestic adoption. The country also lacks an active database or register of prospective adoptive parents and the assessment of such prospective parents who want to adopt even though the law has provision even for an adoption Committee. While the laws clearly give the department of social welfare authority to govern the adoption process, the law lacks directives guiding domestic adoptions. The views of children in adoption processes are also

watered down due to the fact that they are generally viewed to be immature to understand the processes and have to be spoken for by a social worker in court proceedings.

It is important to note that there is limited demand for this service hence implementation, service provision and coordination are not usually brought into question, also that the process for intercountry adoption is well articulated as opposed to domestic adoption.

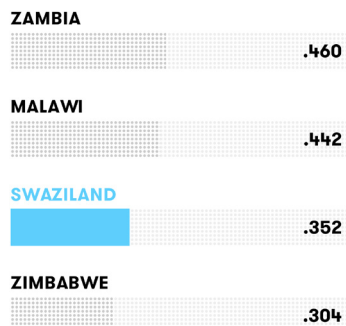
Capacity: Capacity presents a low score for Eswatini at 0.189 as a result of existing challenges within the government departments responsible. These include the over-burdening of the Department of Social Welfare with numerous functions which result in lessened quality service delivery. It is suggested that some of the functions carried out by this department, such as the payment of grants to the elderly and persons with disabilities, can be outsourced to allow the department to focus on those functions that fall directly within social welfare service provision. There are no statistics available, if they exist, on frequency, profile and other data on domestic adoptions. Since 2014, the country has not developed any systems that seek to improve the processing and documentation of adoption cases. The state needs to increase funding to the DEPARTMENT OF SOCIAL WELFARE to ensure that the adoption function is implemented effectively and efficiently. It is also recommended that the state considers streamlining its services to focus more on adoption and ensuring due diligence and quality services. The state needs to take deliberate action in establishing and strengthening data management on adoptions.

Accountability: Eswatini scores 0.083. The absence of regulations operationalizing the Child Protection Act of 2012 is limiting in that the Act clearly calls for constant monitoring of the child's welfare in the case of an inter country adoption but does not provide for remedial action should the adoptive parents fall on dire circumstances and can no longer provide for the child. The state should put in place safeguard mechanisms to ensure that Swazi children adopted outside the country are kept safe and their best interests are the basis for all decisions.

Coordination: Eswatini coordination score of 0.25 reflects the lack of state progress in this area. The DEPARTMENT OF SOCIAL WELFARE is the central coordinating institution of adoptions in Eswatini. However, the efficacy of the Department is limited by underfunding which affects staffing levels. The entire Department has 58 established Social Welfare officers for the whole country. The lack of resources also limits Eswatini's ability to provide proper training to these officers which compromises the Department's ability to effectively coordinate the provision of adoption services in Eswatini. The adoption Committee has yet to be constituted and the country through a government halted the adoption process and it is not clear if the process would resume anytime soon.

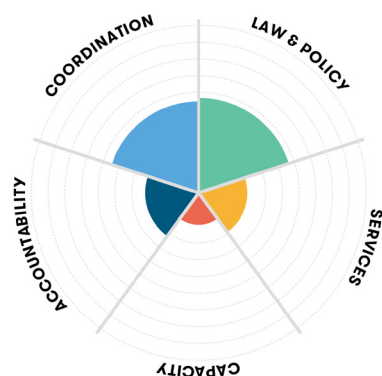
The gap of 0.299 between policy and implementation suggests that Eswatini has not done enough to abide by its commitments under the UNCRC. There is need to make amendments to the regulatory framework in line with the recommendations to provide meaningful contributions as guided by the

Protection Of Children With Disabilities



Article 23 of the UNCRC provides that state parties should recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community. As such, children who have any kind of disability should receive special care and support so that they can live a full and independent life. In this area Eswatini scores 0.576 on policy, 0.3 on services; 0.200 on capacity; 0.328 on accountability and lastly 0.555 on coordination, all these scores, out of a possible score of 1.

Eswatini scores 0.352 with Malawi having 0.442 out of a possible 1,0 on its actions to protect children with disabilities. Zambia has the highest score of 0.46.



The government of Eswatini has done well in ratifying and promulgating laws that protect children with disabilities. The government however has not taken a further step of ensuring that what is encapsulated in the laws becomes a reality for the children living with disabilities.

Policy: The government provides inclusive education and it finds expression in the Eswatini Education and Training Sector Policy (2011); the National Disability Policy and the National Children's Policy. There is also need to finalize the draft mental health policy. The Persons with Disabilities Act of 2018 provides for a registrar of people living with disabilities (Article 20) and a centralized council (Article 3) that deals with all matters of people living with disabilities. The state should consider expediting the implementation of both platforms to urgently address all matters affecting people living with disabilities.

Accountability: Eswatini scores 0.238 which is a reflection of poor accountability measures largely caused by an ineffective disability unit. The role of the Disability Unit within the DEPARTMENT OF SOCIAL WELFARE is still not clear and most services geared towards children with disabilities like pre-school care and education services are rendered by private institutions that are rarely monitored by government. There are no regulations to oversee how non state actors should be made to account to the government of Eswatini for purposes of children with disabilities. There is no body mandated to deal with discrimination against children with disabilities. State agencies and NGOs providing social and vocational rehabilitation are not required to obtain licenses. Eswatini has no national database specifically designated for children with disability. This makes it hard for any effective planning for any programme aimed towards children with disabilities.

Services: Government has only two residential facilities for children with disabilities; one being the Crisis Centre at Mbabane Government Hospital, and a Half-way House in Motshane which offers temporary shelter for children until they are returned home or place in foster care. These centres admit children regardless of their ability status. There are also the Neighborhood Care Points (NCPs) which offer a hot meal and informal education to children at the community level. These non-residential facilities which were born of a government parastatal (National Emergency Response Council on HIV and AIDS) program responding to the high number of Orphaned and

Vulnerable Children, and its sustainability has been challenged. Regardless of accepting all children, access is only guaranteed for those within close proximity. The state should consider rolling out the early identification strategy (EII) that was developed by an NGO working on education and children with disabilities (SWANCEFA) which allows for early intervention and provision of the right learning support for children with disabilities. There is need to address access to basic social services especially provision of grants to children with disabilities. This can be done through establishing a database that synthesizes all data on all four regions of people living disabilities and documenting the type of disabilities they live with. This is crucial for the state as there is currently no comprehensive data on children living with disabilities in the country even though the disability unit is in place and it offers grants to parents of children with disabilities. The state needs to develop early identification and intervention programs that can effectively identify potential disabilities and diagnose the problem at an early stage (Identification, assessment, diagnosis and treatment). The state should also invest in awareness and capacity building for education, health and social services officials dealing with children living with disabilities.

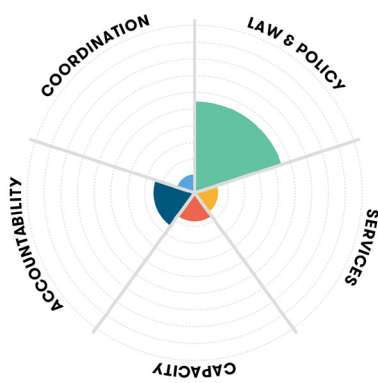
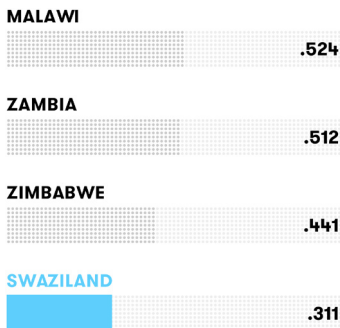
There is a need to address the attitudes towards persons with disabilities from communities and government which view disability only as a medical condition rather than a reflection of many existing social challenges are limiting the participation of people with disabilities in society. It is therefore important to raise awareness to address the negative stereotypes and support the improvement of the physical environment to ensure accessibility for and integration of persons with disabilities in community programmes.

Capacity: Eswatini scores 0.200 which is very low due to limitations in providing countrywide assistance and services to children with disabilities. In addition, although Eswatini attempts to provide trained specialists in its educational institutions, the numbers of teachers deployed are still inadequate especially in the school for the deaf and other schools across Eswatini. Furthermore, the state institutions providing physical and psychological rehabilitation services are ineffective in their work due to limitations in funding which leads to inadequate personnel, equipment and other materials, and accessibility. Eswatini does not also provide or sponsor social and vocational rehabilitation.

Coordination: Eswatini scores 0.555 under coordination, a low score. There is no effective coordination for all engagement between various authorities on disability matters, hence the relatively low score on coordination. Apart from the Deputy Prime Ministers office which is the coordinating body of all things regarding disability, the National Advisory Council for Persons with Disabilities established under the Disability Act of 2018 is not functional due to organizational constraints. The Ministry has plans and guidelines to ensure that social services are responsive to the needs of the children with disabilities, however follow up/monitoring is not regularly conducted at regional/Inkhundla level. The Deputy Prime Ministers office has no interface mechanism with the Federation of Persons with Disabilities (FODSWA), a network of all organisations that deal with issues of children living with disabilities. There is lack of sharing of reports and planning of activities between CANGO, FODSWA and the DPMs office. It is recommended that the National Advisory Council immediately be constituted to start addressing coordination challenges related to children living with disabilities.

The total implementation score on policies for children with disabilities in Eswatini is 0.299, which means a gap of 0.277. To facilitate full commitment to its international and regional obligations towards children with disabilities, Eswatini first needs to establish a system for continuous data collection on children with disabilities, disaggregated by age, gender, and types of disability, centralised and updated at regular intervals for proper case management of individual children. Furthermore, Eswatini needs to invest enough human and financial resources on children with disabilities.

Protection of Children from Economic Exploitation



Article 32 of the UNCRC provides that state parties are to recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development. In protecting children from economic exploitation, Eswatini scores 0.555 on laws and policies; 0.149 on services; 0.18 on capacity; 0.253 on accountability and 0.119 on coordination.

Eswatini (0,311) has the lowest score followed by Zimbabwe (0,441). Malawi scores highest with 0,524. Zambia is closest in rank with a score of 0,512 out of a possible score of 1,0 and actions to prohibit economic exploitation.

Policy: Section 236 of the Child Protection and Welfare Act of 2012 provides for children not being exploited for labour purposes, there is need to clearly define labour in the Swazi context in the prevailing laws of the country. The Child Protection and Welfare Act of 2012 does not define labour in particular in line with the ILO principles and that subjects the issue of labour to varying interpretation. The Eswatini Labour Act 1980 should be amended to include, if possible, the notion of 'light work' by children in the age group 12 (or 13) to 14 years as per ILO Convention No. 138, so that the estimate of child labour aligned to international guidelines may be made with greater precision for the country as a whole

The Eswatini Labour Act 1980 should be amended also to provide greater clarity on the extent to which children in the lowest age group 5 to 11 (or 12) years might be allowed to work especially in family owned farms and homesteads in the rural agricultural sector. This will add precision to the child labour estimates and better aligned to ILO Convention No. 138 which, among others, is important in defining child labour. The absence of such a clause in the prevailing Labour Act enforced application of the available guidelines for child workers in industrial undertakings to children working in the agriculture and herding sectors for estimation purposes.

Further, the country needs to redefine the worst forms of labor as provided by ILO conventions. Though the score of recognize 0.555 is recognized, it is average there is need to realign laws and legislation to address the definitions of worst forms of labor to include any activity that can limit a child from attaining their full potential growth. The definition could be expanded to include prostitution which might not be covered yet children have been known to be involved in prostitution if the country. There is no legislation providing for an entity to play oversight to track economic exploitation of children. The law recognizes the Ministry of Labour and Social Security as the sole institution for tracking exploitation but the practice is skewed towards labor exploitation and inspectors prioritize labor practices. The law can be amended to address this fundamental gap. The law should be expanded and the age restriction should be made to be 18 years instead of the current 15 years.

Services: Eswatini scores 0.149 which is a reflection of poor services that protect children from economic exploitation. Identification of vulnerable children, assessment and planning, referral to services and follow up,

in collaboration with the extended family, community and other service providers is still lacking. There is no dedicated line for children nor is there a clear complaints mechanism for child labour cases. The state needs to improve the inspection services of situations of work or employment, and ensure that reporting and referral mechanisms for and penalties or other sanctions for non-compliance are implemented. Though ILO has continuously engaged the government of Eswatini on labour issues, most of them seem to focus more on unions and calls for regime change and this incapacitates the country's response to address child labour practices. Eswatini has found herself in ILO special paragraphs due to the fact that the state has weak systems to address labour and economic exploitation, even worse for children. There is need to integrate a child labor component into existing social programs to support vulnerable children. Additionally, it is recommended that government should prioritize spending on education and social protection programs, and provide timely delivery of school fees for OVC to avoid disruptions of children's schooling.

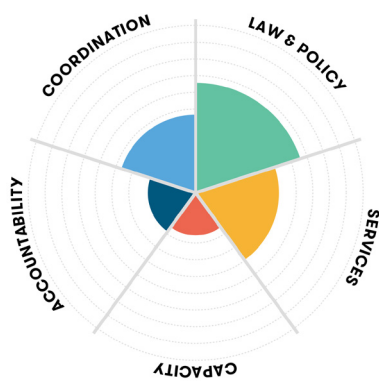
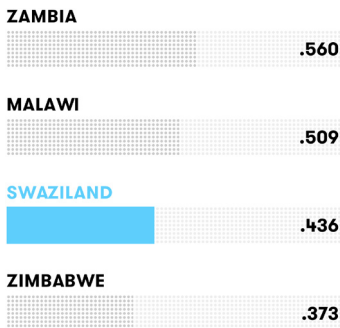
Capacity: Eswatini scores 0.180 which is a low score that underpins the limited capacity for the country to track economic exploitation of children and there are no specialized labor inspectors to track economic exploitation of children. There is an entity within the Ministry of Trade and commerce that is directed at addressing such issues but with limited capacity. There is need for the Public Service Ministry to consider recruiting more personnel for the department and allowing for highly trained personnel to monitor economic exploitation of children and provide government recommendations to address the issue. The main challenge is poor budget allocations, low demonstration of political will and lack of prioritisation of children's issue that has seen such a weak capacity gap.

Coordination: Eswatini scores 0.119, which is a very low score. There is no multi sectoral task team dealing with economic exploitation of children hence there is no mechanism to track the situation on the ground. This leads to poor coordination and disjointed efforts by actors on the ground. There is no data to track how many children are victims of economic exploitation. There is need for provision of services by each actor on the ground towards identifying and addressing economic exploitation of children in the country.

Accountability: Eswatini scores 0.253, a very low score which reflects a need for a comprehensive information base on child labour in Eswatini. Eswatini poor accountability score reflects its limitations in monitoring the operations of the state agencies. State agencies providing services to child victims of economic exploitation are non-existent. No private or public institution is mandated to undertake such a task. Furthermore, Eswatini does not maintain a database on reports of child victims of child economic exploitation. There is need to document child labour practices even in the informal sector as the state has no data on the prevalence of child labour except for herding livestock. Furthermore we need to assess the National Policy on Children, the National Social Development Policy, the Education Plan and the National Development Strategy and their impact on the worse forms of child labor.

The gap between policy and implementation for Eswatini is 0.361; which indicates the need for the country to strengthen capacity to deliver effective and efficient services through strong accountability mechanisms and improved service delivery across at all levels.

Protection Of Children From Sexual Exploitation



Article 34 of the UNCRC stipulates that states parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. The states parties are expected to take all appropriate national, bilateral and multilateral measures to prevent the inducement or coercion of a child to engage in any unlawful sexual activity; the exploitative use of children in prostitution or other unlawful sexual practices and the exploitative use of children in pornographic performances and materials. In this area Eswatini scores 0.666 on policy; 0.505 on services; 0.262 on capacity; 0.295 on accountability and 0.476 on coordination.

Eswatini scores 0.436 out of a possible score of 1. It is lower than Malawi which has a score of 0.509 and Zambia which has the highest score of 0.560 on efforts to prevent the sexual exploitation of girls and boys.

While the country scores a low-average of 0.436, there is much work that still needs to be done. The country has a very sound case management system for victims of sexual exploitation and there are institutions on the ground managing such cases.

Policy: There is need to enact a Legal Aid Act to support children who are victims of sexual exploitation. There is urgent need to expedite the development of the Child Protection and Welfare Act regulations to identify and map the structures involved for case management of victims of sexual exploitation. Currently, it is only applied in principle without any legal obligation stated in law on the mandate of the key institutions involved. The country should consider acceding to the Budapest Convention of 2001 to ensure that children are not victims of sexual exploitation through online media platforms.

Coordination: Eswatini scores 0.476 which is an average score. There is a limited coordination for a victim which is led by the Domestic Violence Unit. There are documented guidelines on the sector wide response for victims for sexual exploitation in place used by response institutions including the Police and the Judiciary. There is a national surveillance system that is able to track survivors of sexual exploitation. The system involves CSOs government, police and cooperating partners like UNICEF. However, it is under resourced and is not able to meet regularly to publicize statics broken down as dis-aggregated data. It captures the number of cases but cannot give broken down data for children who are victims of sexual exploitation.

Services: Eswatini scored 0.505 which is an average score that shows that a lot needs to be done to align the country with UNCRC and ACRWC provisions. No rehabilitation services, halfway houses or any service offered are on an ad hoc basis with no legal or policy basis. In instances where services are provided, the quality of the, especially in remote areas, is often compromised due to long distances to these health facilities, lack of adequate staff and insufficient equipment and facilities. The quality of these services is also affected by insufficient resources (both finances and trained human resources) to provide these services. Placement of child victims is limited by the fact that Eswatini does not have its own shelters where victims of sexual exploitation can be housed while receiving psychological services in cases where their homes are unsafe. For now, the obtaining practice is

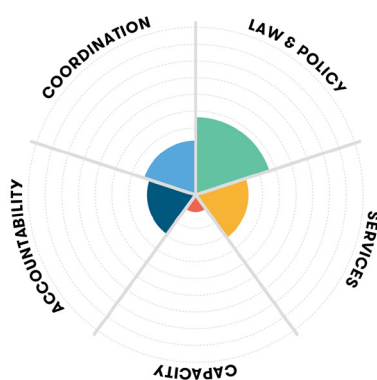
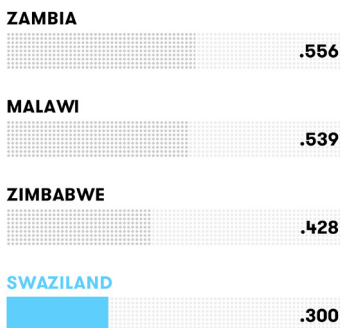
heavily reliant on the goodwill of donors and partners and without a legal aid provision, children will have no equitable access to justice. There is need for minimum adopted guidelines and package that is offered by the Department of Social Welfare on how they assist children who are victims of sexual exploitation. This can go a long way in addressing the lack of information on what the Department of Social Welfare offers. The department should further invest in the use of social media and radio programs to offer information to the public on the dangers of sexual exploitation. Currently any survivors of sexual exploitation including children do not have access to legal aid limiting their access to justice. It is recommended that Eswatini must mobilize resources to establish shelters to house child victims of sexual exploitation. Eswatini should also consider the views of child victims of sexual exploitation in the provision of rehabilitation services and when making placement decisions.

Capacity: Eswatini scored 0.262 on capacity which indicates that lack of special allocation of the national budget to state agencies for the provision of rehabilitation and placement services to child victims of sexual exploitation. As a consequence, these services are primarily provided by NGOs who get minimal support from the government and primarily depend on private donors. Eswatini has 58 social welfare officers spread across the country and they are not sufficient. The DEPARTMENT OF SOCIAL WELFARE, which is the principal state institution providing psychological rehabilitation services to child victims of sexual exploitation, is underfunded, understaffed and heavily overburdened. There is also need to for increased budget allocations to the Department of Social Welfare to develop halfway houses for victims and also ensure that they have properly trained qualified counselors to offer counseling to victims of sexual exploitation.

Accountability: Eswatini scores 0.295, a reflection of a low score. For accountability, licensing of services directly provided by the state authorities is generally not required, with the exception of institutions which provide medical care in addition to any other form of care as these institutions need to be licensed by the Medical council of Eswatini and or any other mandated institution by the Government. There is no regulatory framework for NGOs in Eswatini hence NGOs do not have to account to any oversight body within government and this affects the multi sectoral country wide approach to address children who are victims of sexual exploitation are cared for by NGOs. The Childrens Protection and Welfare Act of 2012 does provide limited oversight for state entities dealing with children but in terms of accountability there are poor oversight mechanisms. There are no laws that require criminal background checks for people that want to work with children in government. These exist in the form of policies and behavior protocols in NGOs and development agencies working with children. Though the CPWA Act of 2012 establishes a sex offenders list, there are no clear laws that prevent persons convicted of violent offences and sexual abuse of children from working with children and there are no sensitive complaint mechanisms available for children with disabilities. The nationwide database of convicted sex offenders is yet to be made available and accessible to employers as provided by the CPWA Act of 2012.

The gap between policy and implementation is 0.309, the total implementation score being 0.357. To reduce the risk of sexual exploitation, the gaps in policy need to be covered to enhance services, capacity, coordination and accountability for child victims of sexual exploitation. Available monitoring mechanisms should not just mainly be focused on child care facilities, but also health care services. There is need for proper monitoring and oversight

Protection Of Children From Abduction, Sale And Trafficking



Article 35 of the UNCRC denotes that states parties should take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form. In protecting children from abduction and trafficking, the scores of Eswatini are as follows: policy, 0.472; service provision, 0.325; capacity to deliver on the rights, 0.111; accountability, 0.300; coordination, 0.333.

Of the four CRB countries in their actions to prevent the abduction, sale or trafficking of children, Eswatini scores lowest at 0.300, whilst Zambia scores highest at 0.556. Malawi scores second with 0.539, with Zimbabwe ranking third at 0.428 out of a possible score of 1.0.

The country scores a low score of 0.3 recognizing the limited efforts by the government in addressing the issue of trafficking and abduction of children. Initiatives such as those undertaken by the Human Trafficking Department and the coordination mechanisms it has established in collaboration with Mozambique and South Africa are commendable though a lot more still can be done to prevent abduction and sale of children.

Policy: The law should be amended to ensure that Swati nationals can be prosecuted in other countries especially South Africa and Mozambique since trafficking in this context has been seen to be involving the three countries. There is a need for an MoU between Eswatini, Mozambique and South Africa to ensure that there is a multi-national framework that can limit human trafficking across the three countries. The (Prohibition) of People Smuggling and People Trafficking Act provides for stiffer sentences where victims of smuggling or trafficking are children.

Coordination: Eswatini scores 0.333 under coordination. While there is a strong multi sectoral approach to trafficking, without binding agreements, the multi sectoral approach in place may fall victim to inactivity. This is due to the fact that the response relies heavily on NGOs such as BANTWANA and Cabrini Ministries. Should the funding available to these organisations be depleted, there will be a significant gap since the government has not taken ownership. The government needs to increase budget allocation to the DCS department under the police services to address the capacity challenges it faces as they deal with matters of trafficking. In the coordination of the multi sectoral approach, the DCS unit plays a key role and their efforts need to be recognized and be expanded to appropriately deal with trafficking especially with live tissue organs.

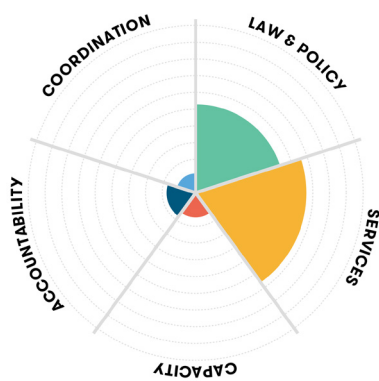
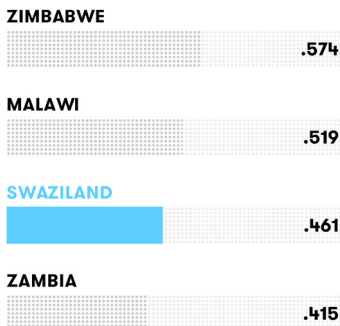
Services: Eswatini scores 0.325 for services and in terms of services, one stop centres, with multidisciplinary teams which include members from the relevant Ministries exist in 3 site locations with very limited capacity for the inter-ministerial teams to coordinate and jointly handle the cases. There is a working structure which brings together state authorities and Civil Society Organisations to share implementation reports on cases of child trafficking led by the trafficking department under the Prime Minister's office which coordinates submission of reports. Police do a play a clear role in management of victims of abduction, the sale of or traffick in children for

any purpose or in any form with presence across all four regions of Eswatini. However local authorities have no 'Public Assistance and Emergency Relief' program that covers the provision of psychosocial support, protective care, and repatriation of victims of child trafficking, though reports from these authorities indicate that they are sometimes unable to implement due to resource constraints. There is need to develop a program that deals with reintegration and support for survivors of human trafficking. The program should be tailor made for each gender. Currently, there are no early warning systems developed to identify potential victims of trafficking and as such with no dedicated line to report such cases for further investigation, children might easily be victims of child trafficking.

Capacity: Eswatini capacity score is 0.111 which is extremely low. Eswatini does not provide anti-trafficking training in law enforcement training curricula at Eswatini Police training academy. However the government of Eswatini has provided scholarships to law enforcement agencies to study further how to respond to trafficking cases. Around 5 officers from the Anti-Trafficking unit have been trained. This is however not sufficient and there is need for continuous training of Police Officers as trafficking in persons is an evolving crime that also moves with developments in technology. A training manual for judicial officers and police prosecutors, justice officials and investigators on issues of human trafficking in Eswatini has to be developed and adopted. There are minimum care provisions which are not documented by law but are adopted from a case by case basis and support is also sought from NGOs who are privately funded. There is need for consistency in training on child justice competencies with a focus on the Children's Protection and Welfare Act, which includes provisions on child trafficking. Despite this, human and financial resources remain a challenge for adequately protecting children from trafficking.

Accountability: Eswatini scored 0.300 which is a low score. It is worth noting that the National Plan of Action against Trafficking in Persons embraces a Victim Centred approach by empowering survivors as engaged participants in the process. The courts play a central role in cases of child trafficking. Every decision and action of state bodies pertaining to victims of trafficking is reviewed by the courts which are imbued with broad remedial powers. The courts are assisted by state institutions such as the DEPARTMENT OF SOCIAL WELFARE and private players such as NGOs. In court proceedings, the children have a right to legal counseling and support from competent institutions before, during and after legal proceedings. However there are no legal mechanisms for children to register complaints if officers act inappropriately. There is no national framework to monitor the effectiveness of the multi sectorial task team. There is no NGO body which monitors and assesses the activities of the NGOs/private providers dealing with cases of trafficking and it is presumed that CANGO plays such a role. Compulsory licensing is required only in connection to health care service providers but not social service providers and the state plans programmes for child victims of trafficking, with a specific indicator for regional social welfare offices to report on every month, but this requires adequate funding which is currently not provided for. There must also be compulsory licensing for social service providers including those provided by government.

Protection Of Children From Torture And Other Cruel, Inhuman Or Degrading Treatment



Article 37 of the UNCRC provides for states parties to ensure that no child is subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age. The Article further prescribes that no child should be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time. Every child deprived of liberty should be treated with humanity and respect for the inherent dignity of the human person, and in a manner, which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances. For the children deprived of their liberty, the same shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

In adherence to the aforementioned provisions of the Convention, Eswatini scores 0.538 on policy; 0.671 on services; 0.156 on capacity; 0.183 on accountability and 0.125 on coordination. The highest score for each should have been 1. Eswatini scores 0.461 while Zimbabwe has the highest score of 0.574, with Malawi scoring 0.519 and Zambia scoring 0.415 out of a possible 1,0 on actions to protect children from torture and all other cruel, inhuman or degrading treatment or punishment.

Policy: There is need to provide clear guidance in this matter as the practice is that inhuman or degrading punishments are both banned in the national Constitution and CPWA Act but children continue being victims of inhuman degrading punishments. This indicates poor implementation of the law and the punishments offered for breaking such laws are indicatively poor and ineffective. The best option for the country would be for the country to consider amending the Constitution of Eswatini to prohibit the punishment of children and removing the current provision for moderate chastisement. This would allow for the other accompanying Act to be align in line with the Constitution. The Prisons Act should amended to ensure that it clearly stipulates that children cannot be put under solitary confinement. The country should consider ensuring clarity regarding the punishment of offenders through the regulations of the CPWA Act to emphasise the banning of corporal punishment and subjecting of children to solitary confinement.

Services: Eswatini scored 0.671 which is a high score. The School Policy and Education Act bans corporal punishment with follow up mechanisms such as radio shows and training for teachers being provided by the government. Furthermore there is a positive response to programs like the one initiated by Save the Children Eswatini that promotes positive discipline instead of corporal punishment. Teachers and parents are being trained at community level about child in particular degrading and inhumane treatment however

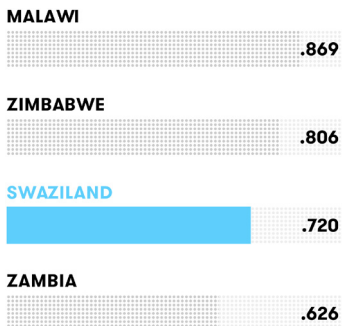
there is need to ensure that simplified modules and guidelines both in Siswati and English are readily available and properly disseminated. Children in contact with the law are treated differently during court proceedings however care and individual rehabilitation plans are hardly developed for the children in detention facilities, mainly due to the lack of knowledge and lack of regulations for the child law of 2012. The law does not specifically provide for separation of children detained pre-trial from convicted children and in practice such separation does not always happen. Legal aid is provided mainly with regard to capital offences.

Coordination: Eswatini scored 0.125 on coordination which is a very low score. There is no sector wide approach to protect children from degrading and or inhuman treatment. The NCSO has developed a social media platform to coordinate such a response but the multi sectoral task team is yet to have clear deliverable and terms of reference. CANGO has a technical working group under the Children's Consortium but even that platform does not contribute to national structures and or a national M&E framework that gathers data on children who have suffered degrading or inhuman treatment.

Capacity: Eswatini scored 0.156 on capacity. The personnel interacting with children in juvenile detention facilities do not always receive the relevant tailor-made training. Likewise, the detention centers have specific limited professionals who are in most cases social workers. The state does not provide an adequate number of specially trained personnel in its criminal justice system (such as trained Police, prosecution and judicial personnel) to deal with children and apply extra judicial measures. There is need to take concrete steps to source funding to create units within the law enforcement agencies, the National Prosecution Authority and the judiciary to deal with children and to provide ongoing training to officers handling cases involving children.

Accountability: In relation to Eswatini accountability score of 0.183, the positive note on this is that children deprived of liberty have access to the courts to challenge their detention. However, these processes can be drawn out as a consequence of delays in dispensing with justice in Eswatini courts. The situation of children in detention is not regularly reviewed and there is no complaints procedure to cover all children in detention. Furthermore, state-run facilities which detain juveniles are not licensed and subject to ineffective inspections which are viewed by NGOs as being largely routine.

Protection Of Refugees And Asylum Seekers



Articles 22 provides for states parties to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties. Article 38 provides for states parties to respect and ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child. Since Eswatini is not involved in armed conflicts, the analysis was primarily on the extent to which the country addresses the situation of refugee children. The following are the scores for the country on the aforementioned: policy, 0.723; service provision, 0.796; capacity, 0.571; accountability, 0.666 and coordination 0.75.

Eswatini at 0.741 out of a possible 1,0 on its actions on protecting children from involvement in armed conflict. Eswatini is third out of the four CRB countries, with Zimbabwe having 0.806 and Malawi scoring 0.869. Zambia scores lowest at 0.626.

The number of refugees in Eswatini decreased from 759 refugees in 2011 to 505 in 2012. This change was perhaps due to a massive drought and food concerns in the region that began at that time. In 2015, a sample of data was collected by the UNHCR concerning refugees in Eswatini. The data found that the number of refugees still had not reached pre-drought levels and was currently at 696 refugees. Refugees in Eswatini today come from countries which include Burundi, Angola, the Democratic Republic of the Congo, Rwanda and Somalia. Eswatini refugee children are enrolled in schools in order to integrate. The Eswatini government applies to the UNHCR for funding in order for the children to attend for free.

Policy: The state should accede to the Optional Protocol to the Convention on the involvement of children in armed conflict. There is also urgent need to amend the Refugees Control Order of 1978 which is outdated and pass the Refugee Bill of 2015 that is still in draft format. The Refugee Bill should be aligned to the UNCRC and should include the principle of the best interest of the child as a horizontal provision in the Refugees Bill, 2015. It should also incorporate the full wording of Article 3(1) of the UNCRC; and Give consideration to ensuring the application of the principle of the best interest of the child to all actions affecting children seeking asylum, irrespective of whether they are accompanied or not, especially, but not only, in relation to registration and processing of asylum applications and their care. Some of the national legal provisions on nationality do not fully comply with human rights treaties ratified by Eswatini or with the Statelessness Conventions and may under certain circumstances lead to statelessness.

In particular, the national legislation:

- i. Does not contain a safeguard that any child born in the country who would otherwise be stateless is granted nationality;
- ii. Does not grant women equal rights with men with respect to the nationality of their children; and
- iii. Grants only to male nationals the right to confer their nationality on their spouses.

Services: There is an urgent need to ensure that all unaccompanied children seeking asylum should not be refused access to Eswatini and their claim should always be considered under the normal protection status determination procedure. Claims of children should preferably be prioritized over claims lodged by adults if this is in the best interests of the particular child, but not accelerated by applying shorter timelines between the making and the lodging of the application, so as to allow sufficient time for rest and preparation for the interview. Additionally, children who are the principal applicants in an asylum procedure should also be appointed a legal representative. Both the guardian and the legal representative should be properly trained on child protection, child care and child rights as well as child asylum claims and should support the child throughout the procedure.

There is need to increase the number of site visits to the refugee centers to ensure timely delivery of services. The obtaining situation on the ground is that the Ministry of Home Affairs visits the centers once per quarter but they have been occasions where the center has run out of necessary amenities. Increased site monitoring can reduce the gaps in terms of provision of services. Further, the country should be generally commended for its extensive ground work undertaken to ensure the protection of unaccompanied migrant children and be applauded for development of the Refugees Bill of 2015. Enactment into law and implementation is what now remains. It is essential to ensure that the implementation plan of the law is costed and budgets are allocated to actualize its provisions for refugee children in particular. As regards the prevention and reduction of statelessness, the national legislation does not yet fully implement Eswatini's international legal obligations, although Eswatini is party to the 1954 and the 1961 Statelessness Conventions.

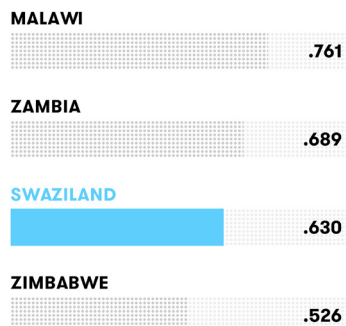
Capacity: Eswatini scored 0.516 on capacity which is an average score. Eswatini does provide Child Immigrants accommodation and other material support in Malindza camp although this is often inadequate. Secondly, through support from UNHCR, Eswatini has been providing child asylum seekers and refugees access to education. The schooling system does recognize children's need for social integration hence refugee children learn together with Swazi children. The Ministry of Health has an established health care center nearby the refugee camps with Primary Health Care facilities, which serve both the refugee community and the surrounding villages, but there are challenges with human and financial resources. State agencies especially the refugee unit is limited both in financial and institutional support to provide comprehensive care for children of immigrants and refugees. As such camps like Malindza run out of basic amenities occasionally for extended periods of time.

On accountability, Eswatini scored 0.183 which is a very low score. The obtaining practise is that any applicant, including children cannot appeal decisions of the refugee unit. There is no clear oversight body and decisions seem to be final. There is no external monitoring of the effectiveness of the country's system and UNHCR has been providing technical support of the government of Eswatini to strengthen the country's system. There is no complaint mechanisms relating to the services provided and complaints are usually attended to after media reports.

In terms of coordination, Eswatini scored 0.125 which is an extremely low score. The law mandates the Refugee unit to determine refugee status, and establishes the Refugee Committee to administer the granting of refugee status and it is the central coordinating authority on refugee matters. The Committee operates on standards that outline cross-sectoral cooperation and coordination mechanisms between various stakeholders, but unfortunately, the Committee does not meet often. The Committee has no framework to work with NGOs or the broader society. As such the operations and decision of the Committee are rarely publicized. Only 2 NGOs, mainly CARITAS Eswatini and Joyful Hearts, work with the Refugee unit with support from donors. Government does not have a multi sectoral framework in place for coordination and as such the system remains rudimentary.

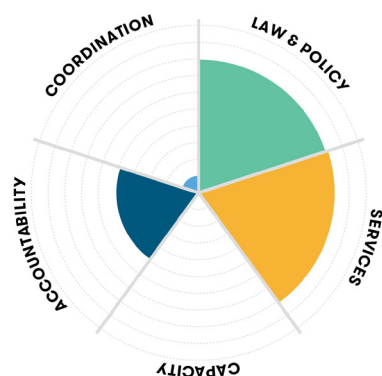
The gap between policy and implementation is 0.148 the total implementation score being 0.389. The small gap highlights the positive steps Eswatini has taken to meet its UNCRC commitments. However, more needs to be done such as providing Child Immigrants the same rights as Eswatini children as well as clear mechanism for channeling queries to appropriate authorities.

Juvenile Justice



Article 40 of the UNCRC creates a special duty to protect and promote the welfare of children in the administration of juvenile justice. Eswatini scores 0.630 out of a possible 1,0 on its actions on administration of juvenile justice. Malawi ranks first out of the four CRB countries, followed by Zambia with a 0.689 score, then Eswatini at 0.630. Zimbabwe’s score is the lowest at 0.526.

Article 40 of the UNCRC requires States Parties to recognize the rights and protection of every child in juvenile justice administration. Eswatini scores an impressive 0.821 on services in juvenile justice administration and it’s score on law and policy is 0.805. On coordination Eswatini scores 0.111 and accountability, Eswatini scores 0.5 with the lowest score in this regard is on capacity, at 0 due to lack of information.



Policy: The high score on policy is due to the fact that Eswatini has provisions in different statues that deal with children in conflict with the law namely: The Child Protection and Welfare Act of 2012 which introduces the Children’s Courts that generally have jurisdiction over criminal cases involving children. The Criminal Procedure and Evidence Act 1938, the Juvenile Act, the Reformatories Act 1921, the Crimes Act 1889, the Magistrates Courts Act and the Swazi Courts Act 1950 also contain provisions related to children in conflict with the law. Swazi customary law is also applicable, unless it is inconsistent with the Constitution or “repugnant to natural justice or morality or general principles of humanity”. Due process and the rights of children are observed under Roman Dutch Law and apply to children in the juvenile justice system. The challenge is the limited number of child friendly courts, well trained personnel and correctional facilities specifically designed for children. Children in conflict with the law have the right to treatment consistent with the special needs of children; to be informed of the charges promptly; to be presumed innocent; to be provided with legal representation; to remain silent; to have the matter determined by a competent authority, without delay; to appeal; and to privacy including not to have their identity revealed by the media, except as specified by an order. The minimum age of criminal responsibility is 12 years, however the law does not provide for legal aid even for children.

Services: Eswatini scored impressive 0.821 on services because they are 3 child friendly courts which are available in specific locations. There are designated Magistrates and Judges who deal with children’s matters. The child is allowed to adduce and challenge evidence, and to examine or have examined adverse witnesses. Free interpretation services are available for the child and his or her parents or guardian and cases involving children are heard in camera as a practice and as required by the law. Eswatini has not provided measures for dealing with children without resorting to judicial proceedings. Diversionary measures which may include guidance and supervision orders, victim reparation/restitution, counselling or therapy, probation, foster care, compulsory education, vocational training courses, mentoring, family monitoring, restrictive order are yet to be practised.

Capacity: Eswatini scored “0” largely due to lack of information that is available even to other government agencies. Eswatini further lacks sufficient specially trained police workers to address juvenile offenders and none

of the police stations have trained prosecutors/police officers to handle children's cases and the inadequacy of child friendly facilities. Child Justice Courts are presided over by a professional Magistrate who is usually well trained on the operations of child friendly courts. Practically, training in juvenile justice administration is not a prerequisite for appointment as a Child Justice Court Judge or Magistrate. However, those appointed as well as other child justice personnel do get exposed to on-going child justice capacity building trainings, workshops and conferences including on application of extra-judicial measures mostly initiated by SWAGAA and other NGOs. The challenge with professionals whose capacity on child justice administration has been built is that they can also be moved to other sections, especially within the justice ministry hence there is no continuity. It is recommended that Eswatini should ensure sustainability by keeping specialised personnel in the child justice departments. There is also need to train more personnel and to have specialised courses on child justice at tertiary level.

On accountability in juvenile justice administration, Eswatini scored 0.5 and there is no oversight, competent, independent and impartial authority or judicial body that can redress children complaints especially those in contact with the law. The Human Rights Commission is assumed to be that oversight entity with limited resources and capacity. There are no sanctions of a fine and imprisonment for not observing limits on media reporting on hearings involving children and the law does not provide for such hence the media has no accountability measures. Confidentiality of records is however observed as access is limited to authorised officers only. There is nonetheless no centralised information or a national database on all children in conflict with the law but this is kept at institutional level under His Majesty's Correctional Facilities. Eswatini needs to have a centralised database with disaggregated data on children in conflict with the law.

Coordination: Under coordination, Eswatini scores 0.111 which is very low and signals the lack of a multi sectoral framework that can be triggered for children in contact with the law. There are no mechanisms for engagement between various agencies and issues on juvenile justice administration that exists at national or regional levels. His Majesty's Correctional Facilities plays the coordination, counselling, re-integration and management of children in contact with the law and no other agency has a role to play. There is need to develop a multi sectoral stakeholder coordination platform to address issues of children in contact with the law.

The total implementation score on policies for juvenile justice administration in Eswatini is 0.520. To facilitate full commitment to its international and regional obligations on juvenile justice administration, Eswatini needs to establish a system for continuous and centralised data collection on children in conflict with the law, disaggregated by age, gender, and types of offences, measures undertaken. This would allow for better planning and the type of investments needed to be undertaken to make the juvenile system well equipped.

The gap (0.284) between Eswatinis policy and implementation scores suggests that Eswatini has taken strides to align its laws and practice with its UNCRC commitments. However, there are still practical steps that need to be undertaken to ensure that the juvenile system is able to deal with children in contact with the law. Practical solutions include:

- i. Building of specialised correctional facilities those houses only child inmates and the inmates are separated by sexes. This could be done in each region.
- ii. Ensure that children in contact with the law are provided with education and the curriculum is guided and governed by national curriculum center and is subject introspection by the Ministry of Education inspectors.
- iii. Provision of licensed and qualified social workers who are well trained and qualified to manage children facing psychological and welfare challenges.

Policy Recommendations

[General Measures of Implementation]

A Constitutional Amendment Bill should be introduced for consideration by Parliament, and should:

- i. Include the principle of the best interests of the child as an interpretive guideline when dealing with children;
- ii. Remove any references to corporal punishment in all its forms and clearly prohibit this practice;
- iii. Extend the Bill of Rights chapter to include other justiciable socio-economic rights, including the right to the highest attainable standard of health;
- iv. Allow for direct domestication of the international and regional human rights instruments signed by Eswatini.

Government to initiate and speed up the process of formulating the Regulatory Framework of the CPWA, 2012; and this should include securing and allocating adequate human and financial resources necessary for Act's full implementation.

[Resources for Children]

To enable fair budgeting for the implementation of child rights instruments; the government needs to develop national plan of action based on domestic, regional and international law governing child rights; further cost the plan with clear line items to enable transparency and accountability for child rights investments.

[Independent Monitoring and Coordination of Children's Issues]

The data collection system should be strengthened through the development of clear institutionalized Monitoring and Evaluation Systems (M&E system) that will lead to a standardization of data collection tools and mechanisms. M&E system should cut across Government and all partners working in the field, and should be coordinated by the newly formed NCSD.

[Cooperation with CSO]

Formal mechanisms and structures should be developed, including adopting an NGO Act, which would formalize and provide for systematic engagement of NGOs, including child rights NGOs, in the implementation of human/child rights instruments and other areas of critical cooperation.

[Respect of the Views of Children]

The Government of Eswatini should formalize and institutionalize channels for children's ongoing participation on issues that affect them, including through the law reform and progressive judicial enforcement of children's rights as spelt out in the UNCRC and the laws of Eswatini. In this regard, the Attorney General's office should put in place guidelines on child participation and submit it for adoption by Cabinet.

Adequate resources to roll out participatory legislative reform processes including provisions for capturing children's views as active participants should be secured.

[Civil Rights and Freedoms]

Initiate a process to amend the legislation and allowing the passing of citizenship by Swatii women to their children regardless of their birth circumstances.

[Physical or mental violence, from any form of corporal punishment and any other form of cruel or degrading treatment]

The government should develop regulations to operationalise the Sexual Offences and Domestic Violence Act of 2018.

More research to strengthening the GBV response targeting the children, both the girl and the boy child should be undertaken.

This includes sensitization of the religious and traditional leaders at community level on child protection, including on child abuse and neglect, in order to increase the prevention of violence, abuse, neglect and exploitation of children at a community level.

The Government should immediately adopt the Legal Aid Policy, and provide a free legal aid. Furthermore, it should invest adequate resources to strengthen the Children's Courts and take necessary steps to ease the access to justice for children and their guardians.

[Birth Registration]

Additional steps must be taken by the Government of Eswatini to reduce the barriers of child registration and to ease the process, including raising awareness on the importance of the registration and introducing the mobile units for registration.

[Family Environment and Alternative care: Children without parental care]

The Government should address the gap and develop innovative sustainable alternative care options.

The data and research on the OVCs should be strengthened, including on the situation of children in institutions, adoptions, foster-cares, informal care settings.

The monitoring and oversee mechanisms within the institutions providing care for OVCs should be strengthened.

[Children with disabilities]

The Government of Eswatini should implement the Disability Act of 2018, followed by and the Plan of Action Plan which is now in place. Regulations should be developed to operationalize the law and ensure full implementation. This includes allocating necessary human and financial resources.

The Government should roll-out campaign on the rights of people with disabilities, aiming also at countering widely held negative perception about the people with disabilities. And these should be accompanied by awareness raising programmes on HIV/AIDS prevention, treatment, care and support interventions targeting people with disabilities in learning institutions should be developed and implemented.

[Juvenile Justice]

Increase resources necessary for full implementation of provisions on children within the contact in law as spelt out in the Children's Protection and Welfare Act, including increasing resources and train judges of the Children's Courts.

Training programmes on relevant international standards for all professionals involved with the system of juvenile justice should be strengthened and improved, including through development of training programmes and publications adjusted for each professional group. These efforts need to be focused, consistent and institutionalized.

[Economic Exploitation, including Child labour]

The Government should address the gaps in legislation against protection of child labour, including enact a compulsory education for children and amend Employment Act and Children's Protection and Welfare Act in order to ensure that the law's minimum age provisions would apply to children working in all industries, including in agriculture and domestic work.

The Government should strengthen institutions responsible for detecting and preventing the worst forms of child labour, including labour inspectorates.

The Government should develop and adopt a comprehensive Action Programme on the Elimination of Child Labour, which would also foresee social protection programmes for the withdrawal from or prevention of children working in agriculture and livestock herding

End Notes

- 1 <https://www.economy.com/Eswatini/#ECONOMY>
- 2 Human Rights Watch, Eswatini, Accessed 23 November 2018, <https://www.hrw.org/world-report/2018/country-chapters/Eswatini>
- 4 <https://data.unicef.org/topic/child-protection/birth-registration/#>
- 5 <https://www.unicef.org/press-releases/children-should-not-be-separated-their-families-because-their-migration-status>
- 6 Lihlombe lekhalela is literally translated as “Shoulder to cry on.”
- 7 The Kingdom Of Eswatini’s Periodic Report On The United Nations UNCRC 2006 - 2017 Part 6.5 Paragraph 136-138
- 8 The Kingdom Of Eswatini’s Periodic Report On The United Nations UNCRC 2006 - 2017-Part 6.5, Paragraph135
- 9 See Policy Analysis Report, Strengthening the Participation of Children with Disabilities in Education in Eswatini, SWANCEFA, April, 2014).
- 10 UNICEF Assessment Report on Assessment of Alternative Care for Children without Parental Care from page 8: https://www.unicef.org/Eswatini/sz_publications_2007altcare_.pdf
- 11 https://www.sintef.no/globalassets/upload/samfunn/finalreport/c_swasilandweb.pdf
- 12 file:///C:/Users/User/Downloads/Eswatini_CL_in_Herding_WEB_20180817.pdf
- 13 <https://borgenproject.org/about-Eswatini-refugees/>
- 14 file:///C:/Users/User/Downloads/UN-HCR_UPR25_SWZ_E_Main_20(2).pdf
- 15 file:///C:/Users/User/Downloads/UN-HCR_UPR25_SWZ_E_Main_20(2).pdf