



UNODC

United Nations Office on Drugs and Crime

Country Review Report of Eswatini

Review by Egypt and Papua New Guinea of the implementation by
Eswatini of articles 5-14 and 51-59 of the United Nations
Convention against Corruption for the review cycle 2016-2021

I. Introduction

1. The Conference of the States Parties to the United Nations Convention against Corruption was established pursuant to article 63 of the Convention to, inter alia, promote and review the implementation of the Convention.
2. In accordance with article 63, paragraph 7, of the Convention, the Conference established at its third session, held in Doha from 9 to 13 November 2009, the Mechanism for the Review of Implementation of the Convention. The Mechanism was established also pursuant to article 4, paragraph 1, of the Convention, which states that States parties shall carry out their obligations under the Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and of non-intervention in the domestic affairs of other States.
3. The Review Mechanism is an intergovernmental process whose overall goal is to assist States parties in implementing the Convention.
4. The review process is based on the terms of reference of the Review Mechanism.

II. Process

5. The following review of the implementation by Eswatini (formerly Swaziland) of the Convention is based on the completed response to the comprehensive self-assessment checklist received from Eswatini, and other supplementary information provided in accordance with paragraph 27 of the terms of reference of the Review Mechanism and the outcome of the constructive dialogue between the governmental experts from Egypt, Papua New Guinea and Eswatini, by means of telephone conferences and e-mail exchanges and involving from Egypt: Mr. Mohamed Yasser Abouelfetouh (Counsellor, Criminal Court), Mr. Ahmed Abdelrasoul (Head of Secretariat, National Coordinating Committee for Combating Corruption), and Mr. Islam Wageeh Bakir (Member, Administrative Control Authority); from Papua New Guinea: Mr. Levin Paiya (Legal Officer, Department of Justice and Attorney General); and from the Secretariat: Ms. Tanja Santucci and Mr. Badr El Banna.
6. A country visit, agreed to by Eswatini, was conducted in Mbabane from 17 to 18 October 2018.

III. Executive summary

1. Introduction: overview of the legal and institutional framework of Eswatini in the context of implementation of the United Nations Convention against Corruption

Eswatini signed the Convention on 15 September 2005 and deposited its instrument of ratification with the Secretary-General of the United Nations on 24 September 2012.

The implementation by Eswatini of chapters III and IV of the Convention was reviewed in the fourth year of the first review cycle, and the executive summary of that review (CAC/COSP/IRG/I/4/1/Add.38) was issued on 12 April 2016, in addition to the full country report.

Accepted and ratified international agreements form an integral part of the domestic law of Eswatini only when enacted into law by Parliament (article 238(1) of the Constitution).

Key institutions involved in preventing and countering corruption include the Anti-Corruption Commission (ACC), Commission on Human Rights and Public Administration (CHRPA), Royal Eswatini Police Service, Financial Intelligence Unit (FIU), Office of the Auditor General (OAG), Attorney General's Office (AGO), Public Procurement Regulatory Authority (PPRA), Director of Public Prosecutions (DPP), Parliamentary Public Accounts Committee, Civil Service Commission (CSC), National Anti-Corruption Forum and the judiciary.

The national legal framework against corruption includes the Constitution, Prevention of Corruption Act (PCA), Procurement Act (PA), Public Finance Management Act (PFMA), Public Service Act (PSA), Money-Laundering and Financing of Terrorism (Prevention) Act (MLFPTA), Prevention of Organized Crime Act (POCA) and Criminal Procedure and Evidence Act (CPEA).

Eswatini is party to several agreements on crime control, crime prevention and international cooperation. Eswatini contributes to the promotion of regional and international cooperation, in particular, by participating in relevant conferences, meetings and forums, including the working groups established under the Convention. ACC is also a member of the Commonwealth Africa Anti-Corruption Centre (CAACC). The law enforcement authorities of Eswatini cooperate through different mechanisms and networks, including the International Criminal Police Organization (INTERPOL).

2. Chapter II: preventive measures

2.1. Observations on the implementation of the articles under review

Preventive anti-corruption policies and practices; preventive anti-corruption body or bodies (arts. 5 and 6)

In 2007, Eswatini adopted the comprehensive National Anti-Corruption Strategy (NACS) and developed the National Anti-Corruption Action Plan (NAP), which provides the framework for the implementation of NACS. The Strategy takes a holistic approach and encourages the involvement of civil society, the media, academia and other stakeholders. ACC serves as the secretariat for the implementation of the Strategy. The National Anti-Corruption Forum (NACF) was constituted in 2007, with members from the public and private sectors, civil society and the media, to facilitate the implementation of NACS and NAP. NACF has been inactive for several years.

Although NACS establishes clear outcomes, outputs, activities to be implemented and performance indicators, it does not set time frames for implementation or sufficiently identify those responsible for its implementation. Owing to the lack of an enabling policy, an effective oversight, coordination, monitoring and evaluation mechanism and dedicated resources, NACS has been implemented only in part (i.e., whistleblower legislation and a code of ethics for several public entities).

Eswatini has developed a draft national anti-corruption policy (NACP) with the main objective of providing a framework for implementing NACS and NAP.

Eswatini has also adopted different thematic strategies with anti-corruption components.

Eswatini has made efforts in the area of the prevention of corruption. In addition to the adoption and amendment of laws, it has established NACF, conducted two National Corruption Perception Surveys, in 2010 and 2017, and established an online mechanism for reporting to ACC. ACC has organized anti-corruption training sessions for various sectors and engaged in preventive advocacy and media awareness campaigns.

Although Eswatini has a Law Reform Commission under AGO, it does not have sufficient measures in place to systematically evaluate the adequacy of legal instruments and administrative measures for preventing and fighting corruption.

ACC was established in 2006 pursuant to PCA and became operational in 2008. PCA tasks ACC with, inter alia, preventive and education functions in both the public and private sectors (s. 10). Although PCA provides for the independence of ACC, operational independence does not seem to be fully ensured in practice. Moreover, ACC lacks adequate financial, material and human resources.

Although the Constitution also vests CHRPA with a mandates to prevent corruption, in practice only ACC actively fulfils this mandate. Several other agencies are also involved in countering corruption, including DPP, PPRA, OAG and the Revenue Authority.

Eswatini was reminded of its obligation to inform the Secretary-General of the United Nations of the name and address of its authority or authorities that may assist other States in developing and implementing corruption prevention measures.

Public sector; codes of conduct for public officials; measures relating to the judiciary and prosecution services (arts. 7, 8 and 11)

Powers related to the appointment, promotion, transfer, termination, dismissal and disciplinary control of public officers are vested in CSC (s. 187, Constitution), which functions in an advisory capacity (r. 22) and is governed by the CSC regulations of 1963. Qualified officers are generally given priority in recruitment over persons not in the service (r. 25(3)). However, the regulations do not establish detailed criteria for appointment and promotion or a mechanism to address related grievances.

The Civil Service Board may, at its discretion, advertise vacancies (r. 24(4)). For vacant posts to be filled through promotion, the head of department should recommend an officer to CSB. Detailed reasons should be given only if the senior eligible officer is not recommended (r. 28).

Eswatini has not identified positions considered especially vulnerable to corruption.

Eswatini has adopted salary scales for civil servants, which are based on the nature and status of the posts and on other indicators, such as the standard of living and wages in the private sector.

The Human Resource Development Department of the Ministry of Public Service is mandated to ensure that public servants have adequate and relevant skills. However, training programmes do not include integrity or anti-corruption components.

The Constitution (s. 96), the Election Act of 2013 (s. 31) and the Urban Government Act of 1969 contain criteria for candidacy to Parliament and municipal and town councils. A conviction for an offence under PCA (s. 31, Election Act) or for corrupt practices (s. 10(f), Urban Government Act) is a disqualifying factor, unless five or more years have elapsed.

There are no political parties in Eswatini. The Elections Expenses Act of 2013 provides for the supervision and administration of election expenses by the Registrar of the Elections and Boundaries Commission. The Act, which has not been applied in any election yet, provides a regime of accountability for funds used in election campaigns, prohibits certain electoral practices and establishes sanctions. The regulations prescribing maximum thresholds for election expenses have not been issued (s. 5).

Eswatini promotes integrity, honesty and responsibility among its public officials, primarily through legislation on asset declaration, the protection of public funds and avoidance of conflicts of interest, in addition to awareness-raising campaigns and education on integrity and anti-corruption.

Chapter XVI of the Constitution establishes the Leadership Code of Conduct. Breaches of the Code may lead to dismissal or removal from, and disqualification from holding, public office (s. 242). PSA contains the Public Officer's Code of Conduct (s. 5), which, inter alia, prohibits public officers from receiving or keeping gifts unless specifically authorized to do so. PA, in turn, establishes standards of conduct for public officers and specified political appointees involved in procurement (s. 60). No disciplinary or other measures are provided for violations of the codes contained in PSA and PA.

The Leadership Code of Conduct includes provisions on conflicts of interest and asset declaration (s. 240). Likewise, PSA (s. 15), PCA (s. 27) and PA (s. 60) establish obligations for public officials to declare or avoid conflicts of interest. It is unclear, however, whether there is sufficient guidance on what constitutes a conflict of interest or awareness of the obligation to report conflicts, given the recent date of the legislation. Accordingly, the lack of a comprehensive regulatory framework for declaring and managing conflicts of interest hinders the ability of Eswatini to effectively implement interest disclosure requirements. Furthermore, the asset disclosure requirements in the Leadership Code are not operational and a bill to amend the Code has been pending since 2011 (see below, article 52(5)).

PCA establishes the duty for any person who holds "a position of authority" to report corrupt transactions to ACC (s. 49). Although no internal reporting mechanisms are in place, various competent authorities,

including ACC, PPRA, the Revenue Authority and the police, have toll-free lines for reporting offences, including corruption. All these channels are available to the public and public officials. Reporting can be anonymous.

The independence of the judiciary is established in the Constitution (s. 141), which also sets forth the rules and conditions for the appointment, qualification and dismissal of judges (ss. 153, 154 and 158). The Supreme Court has supervisory jurisdiction over courts and any adjudicating authority (s. 148). The Chief Justice conducts inspections of the work of the judiciary (s. 142).

The Constitution also established the Judicial Service Commission (JSC), which, inter alia, advises the Government on how to improve the administration of justice, receives and processes recommendations and complaints concerning the judiciary, and advises the King on the appointment, disciplining and removal of the DPP and other public officers, as provided in the Constitution (s. 160).

Judges, the Attorney-General and Deputy Attorney-General, the DPP and Deputy DPP also adhere to the Leadership Code of Conduct and are subject to the provisions on conflicts of interest and asset declaration. Judges also participate in judicial ethics and integrity training as part of their general training.

Eswatini has taken some measures to strengthen integrity and prevent opportunities for corruption among members of the public prosecution service, which does not form part of the judiciary. The Constitution establishes the rules and conditions for the appointment, qualification and termination of the DPP (s. 162). PSA and government regulations applicable to civil servants also apply to prosecutors.

Public procurement and management of public finances (art. 9)

Eswatini has a centralized system of public procurement regulated by PA. The Act establishes PPRA as an independent body responsible for policy, regulation, oversight, professional development, information management and dissemination in the field of public procurement (s. 9). PA also establishes the Government Tender Board as the highest approvals authority (s. 25). Tender boards at the level of procuring entities are also authorized under PA.

PA applies to all public procurement, except procurement related to defence or national security (s. 4). PPRA may also permit deviations under limited circumstances (s. 6).

PA provides that all procurement shall be conducted in a manner that promotes economy, efficiency, transparency, accountability, fairness, competition and value for money (s. 38). The preferred methods of procurement are open tendering for goods, works and non-consulting services, and requests for proposals for consulting services. Other methods should be used only where the procurement meets the conditions for the use of an alternative method (s. 42).

Although substantial sections of PA refer to public procurement regulations (including for determining procurement methods and processes and specifying thresholds), no such regulations have been issued to date, which to some extent affects the implementation of PA.

Contract award decisions are taken by the appropriate approvals authority. Subsequently, a notice containing all relevant information is sent by the procuring entity to all tenderers and published on the Government's public procurement website (s. 45).

PPRA may suspend a tenderer or supplier from participation in public procurement, including for corrupt practices relating to the submission of tenders (s. 56, PA).

In addition to the Independent Review Committee, a tribunal may be established on an ad hoc basis by PPRA whenever a dispute or complaint arises in relation to a tender process (s. 50(3), PA), and administrative review by the High Court is possible.

In addition to establishing standards of conduct for procurement personnel (s. 60), PA regulates the disclosure of interests by members of the PPRA Board of Directors and members of tender boards (ss. 17 and 30). No additional measures are in place with regard to enhanced selection or training requirements for procurement personnel.

Members of the PPRA Board of Directors are appointed for a three-year term, renewable once, and in a manner that ensures rotation (s. 13). Office bearers must have appropriate training and experience.

The annual budget of Eswatini is prepared by the Ministry of Finance (MOF) following consultations with government agencies, and submitted to Parliament for approval. The budget is published on the official government website on the same day it is presented to Parliament. MOF oversees the implementation of the annual budget and monitors adherence to public finance requirements by public entities in line with PFMA.

The Accountant-General is responsible for compiling and managing the accounts of the Government and for managing the Government Financial Management Information and Accounting System. The Accountant-General may also inspect all offices of government and public entities (s. 10(3), PFMA).

PFMA provides for annual government-level and entity-level reporting and audit. The Accountant-General prepares and submits consolidated annual accounts to the Auditor-General, who in turn submits certified annual reports to Parliament through MOF (s. 87, PFMA).

Following the issuance of the audit report, MOF publishes the annual government accounts, audit opinion and annual non-financial performance report on the official government website. Public entities and government enterprises are also required to produce annual reports on both financial and non-financial performance, with audited financial statements.

The Internal Audit Office under MOF is responsible for ensuring the adequacy and effectiveness of control systems. The Office has introduced an Enterprise Risk Management Framework for the public sector.

PFMA establishes the criminal and disciplinary liability of any public office holder, public officer or other person with responsibility for government resources who fails to keep proper records, conceals or wrongfully destroys information that must be recorded or fails to comply with instructions issued under PFMA (ss. 107 and 108).

Public reporting; participation of society (arts. 10 and 13)

There are no specific regulations governing public access to information, which limits access to such information in practice. A draft law on the right to information is pending for tabling in Parliament.

Eswatini has taken some steps to simplify administrative procedures and facilitate public service delivery, including the adoption of national and ministerial service charters. The Government's website contains web pages on electronic government online services. However, many of them have not been activated.

Several institutions, including ACC, publish statistics and annual activity reports; however, none of those reports cover corruption risks. ACC has begun conducting corruption risk assessments of private and public entities, none of which have been finalized.

Eswatini has taken measures to promote the participation of society in the prevention of and fight against corruption and to raise public awareness.

ACC accepts corruption reports, including anonymously, through various communication channels, including by toll-free line and email, as noted above.

Private sector (art. 12)

PCA tasks ACC with preventive and education functions in private as well as public sector entities (s. 10). PCA extends the duty to report corrupt transactions in the private sector to persons holding certain private sector positions (s. 49).

Companies are registered pursuant to the Companies Act of 2009, which established the Office of the Registrar (s. 4). The Registrar collects identification information of members and directors, but not beneficial owners of registered companies. The information is available to the public and law enforcement (s. 8).

The Companies Act (ss. 245–264) regulates the retention and disclosure of accounting records. Furthermore, companies should appoint auditors (s. 232), give notice of that appointment to the Registrar (s. 237) and file annual returns, together with audited statements, with the Registrar. Failure to comply with this requirement is penalized (ss. 151 and 152).

Persons who have been convicted of a criminal offence are disqualified from serving as company directors (s. 198).

Directors and officers with an interest in a contract being considered by the company are required to declare such interest in writing to the company secretary and every director (s. 207). Companies should maintain a register of all declarations of interest (s. 208).

There are no regulations or legislation to limit the professional activities of former public officials after resignation and no requirements for private enterprises to have internal auditing controls to assist in preventing and detecting corruption.

Eswatini has not developed codes or standards of business conduct.

The Income Tax Order does not explicitly disallow the tax deductibility of expenses that constitute bribes (s. 15).

Measures to prevent money-laundering (art. 14)

Eswatini has established a domestic regulatory and supervisory regime for banks and non-banking financial institutions. The regime also covers money transmission service providers (s. 10, MLFTPA).

The anti-money-laundering (AML) framework includes requirements for customer and beneficial owner identification, with additional due diligence measures in the case of high-value transactions; record-keeping; and the reporting of suspicious transactions, as detailed under article 52.

A national risk assessment was completed in 2017 and relevant guidance for accountable institutions was issued. However, challenges have been reported in implementation, given the recent adoption of the requirements.

MLFTPA provides for domestic coordination by FIU in the analysis and dissemination of suspicious transaction reports to law enforcement agencies (s. 19(f) and (o)), and for information sharing by FIU at the international level (s. 19(n)). Section 91 further provides for international cooperation through mutual legal assistance.

With regard to domestic cooperation, POCA overrides bank secrecy restrictions for the purposes of cooperation and information-sharing (s. 77). The Act applies to all offences punishable by imprisonment for a period of twelve months or more, including offences against the laws relating to the prevention of corruption and money-laundering. The National Task Force on Anti-Money-Laundering and Combating Financing of Terrorism (AML/CFT) coordinates inter-agency cooperation.

Eswatini has established a cross-border declaration regime for cash and negotiable bearer instruments above 15,000 emalangeneni (approx. US\$ 1,000) (s. 41, MLFTPA), including measures for the detection and punishment of violations. The requirements relating to cross-border declarations are not fully implemented and there are challenges in their enforcement.

Electronic funds transfers are regulated in accordance with the Convention (ss. 10, 8 and 11(1)(d), MLFTPA).

Eswatini is a member of the Asset Recovery Inter-Agency Network for Southern Africa (ARINSA) and the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG) and has amended its laws and measures in line with their recommendations. Other cooperation channels are available through the Southern African Regional Police Chiefs Cooperation Organization (SARPCCO) and INTERPOL.

Eswatini signed a memorandum of understanding (MOU) with South Africa to facilitate the exchange of information and technical assistance. The Royal Eswatini Police has also entered into MOUs to enable cooperation with the police forces of Lesotho and Mozambique. ACC has signed an MOU with the United Republic of Tanzania. FIU has signed MOUs with 13 counterparts and its application to the Egmont Group is pending.

2.2. Successes and good practices

- Inclusion of members of the public and private sectors, civil society and the media in anti-corruption efforts (art. 5)

2.3. Challenges in implementation

It is recommended that Eswatini:

- *Review and update its national anti-corruption strategy, including by providing time frames for implementation and identifying those responsible for its implementation. It is also recommended that Eswatini adopt its national anti-corruption policy, implement an effective oversight, coordination, monitoring and evaluation mechanism and commit necessary resources for the full implementation of the strategy (art. 5(1)).*
- *Take further measures to periodically evaluate the adequacy of relevant legal instruments and administrative measures for preventing and fighting corruption (art. 5(3)).*
- *Enhance collaboration with relevant international and regional organizations in the prevention of and fight against corruption (art. 5(4)).*
- *Grant ACC the necessary independence to carry out its functions effectively and free from any undue influence, and provide ACC with adequate financial, material and human resources and training (art. 6(2)).*
- *Establish publicity requirements, detailed selection procedures, a mechanism to address related grievances and clear criteria for the appointment and promotion of public officials that are based on principles of efficiency, transparency and objective criteria such as merit, equity and aptitude (art. 7(1)(a)).*
- *Identify positions considered especially vulnerable to corruption and consider adopting procedures for the selection and training of individuals for such positions and their rotation, where appropriate (art. 7(1)(b)).*
- *Provide public officials with specialized anti-corruption training (art. 7(1)(d)).*
- *Issue regulations prescribing the threshold for election expenses (art. 7(3)).*
- *Consider developing a comprehensive regulatory and institutional framework and guidelines for managing and preventing conflicts of interest, and adopt measures to implement the relevant constitutional and legislative provisions (art. 7(4)).*
- *Consider adopting disciplinary or other measures against public officials who violate the codes or standards of conduct (art. 8(6)).*
- *Adopt measures to give effect to and implement the requirements of PA; and consider adopting additional measures to regulate matters regarding procurement personnel, such as screening procedures and training requirements (art. 9(1)).*
- *Continue efforts to simplify administrative procedures and facilitate public service delivery (art. 10(b)); and publish information on the risks of corruption in public administration (art. 10(c)).*
- *Strengthen measures to prevent corruption and enhance accounting and auditing standards in the private sector, including by:*
 - *Promoting the development of standards of conduct in the private sector (art. 12(2)(b)).*
 - *Taking measures that make it necessary to identify beneficial owners of companies and legal entities (art. 12(2)(c)).*
 - *Considering the adoption of restrictions on the professional activities of former public officials (art. 12(2)(e)).*
 - *Requiring private enterprises to have adequate internal auditing controls (art. 12(2)(f)).*
- *Explicitly prohibit the tax deductibility of expenses that constitute bribes (art. 12(4)).*
- *Ensure that the public has effective access to information (art. 13(1)).*
- *Continue efforts towards implementing requirements for cross-border declarations (art. 14(2)).*
- *Continue efforts by judicial, law enforcement and financial regulatory authorities to strengthen international cooperation to combat money-laundering, including finalizing the application for Egmont membership (art. 14(5)).*

2.4. Technical assistance needs identified to improve implementation of the Convention

- *Legislative assistance (arts. 5, 6, 9, 13 and 14)*
- *Capacity development (arts. 5, 6, 9 and 13)*
- *Electronic records management system and facilitation of exchange programmes with other countries (art. 11)*

- *Institution-building, policymaking, and sharing of best practices (art. 13)*

3. Chapter V: asset recovery

3.1. Observations on the implementation of the articles under review

General provision; special cooperation; bilateral and multilateral agreements and arrangements (arts. 51, 56 and 59)

The framework for international cooperation on asset recovery comprises provisions of the Criminal Matters (Mutual Assistance) Act of 2001 (CMMAA), POCA and MLFTP.

There have been no amendments to CMMAA to reflect the changes introduced by POCA in 2018. Accordingly, there could be limitations in terms of recognizing and enforcing foreign orders under CMMAA. Furthermore, under CMMAA, assistance in criminal matters is limited to designated foreign countries (currently only South Africa), although Eswatini may also provide assistance under section 4 otherwise than in accordance with the Act. Eswatini does not require a treaty to provide assistance and can cooperate on the basis of reciprocity.

Eswatini has not issued any guidelines on asset recovery procedures.

Requests for assistance under CMMAA are received by the Minister of Justice and Constitutional Affairs or an authorized officer (s. 17). In practice, requests are handled by the DPP (s. 26, CMMAA). Other dedicated offices responsible for tracing criminal proceeds and facilitating asset confiscation are the Fraud and Commercial Crime Unit and the Anti-Money Laundering and Asset Forfeiture Unit of the police.

Eswatini has received and responded to requests for restraint, search or seizure of foreign assets, but there have been no requests for confiscation or return. Eswatini has never formally refused a request for assistance with asset recovery.

Section 32 of MLFTP permits FIU to share financial intelligence with foreign counterparts, and other law enforcement agencies do so in practice.

Prevention and detection of transfers of proceeds of crime; financial intelligence unit (arts. 52 and 58)

Section 6 of MLFTP requires accountable institutions to identify and verify their customers and identify beneficial owners, with additional measures to identify and verify beneficial owners in the case of transactions conducted by legal entities (s. 6(2)(c)). Additional due diligence measures apply for transactions above 20,000 emalangeni, or 10,000 emalangeni for cash transactions (s. 6(3)). Due diligence and monitoring requirements apply with a view to detecting suspicious transactions (ss. 11–13, MLFTP).

Additional identification, diligence and monitoring requirements are in place for politically exposed persons, both domestic and foreign, and for their family members and associates (s. 6(2)(d)).

There are some gaps in the coverage of designated non-financial businesses and professions (DNFBPs), such as dealers and real estate agents. Although FIU has a supervisory mandate, it does not yet supervise all DNFBPs. The Financial Services Regulatory Authority (FSRA) was established by the Financial Services Regulatory Authority Act of 2010 and commenced its operations in 2012.

Eswatini issued AML/CFT guidelines for financial institutions in 2016 and guidelines for reporting suspicious transactions. FSRA issued similar guidelines for DNFBPs. No measures are in place to notify financial institutions of the identity of particular persons requiring enhanced scrutiny.

The registration requirements in the Financial Institutions Act No. 6 of 2005 (ss. 5 and 6) prohibit the establishment of shell banks. Section 18(4) of MLFTP prohibits correspondent banking relationships with shell banks.

Through the Leadership Code of Conduct Bill of 2011, Eswatini proposed measures to require public leaders to declare assets and liabilities, as enshrined in the Constitution (chapter XVI, ss. 239–244). The Bill, however, would not cover spouses and does not specify a compliance mechanism or penalties for non-compliance. The asset disclosure requirements are not yet operational. Apart from public leaders, there are currently no plans to extend asset declaration requirements to other public officials.

There is no requirement for public officials to report interests, signature or other authority over foreign financial accounts.

FIU is newly established and faces resource and operational challenges.

Measures for direct recovery of property; mechanisms for recovery of property through international cooperation in confiscation; international cooperation for purposes of confiscation (arts. 53, 54 and 55)

There is no provision in the law that allows foreign States to initiate civil proceedings in the courts of Eswatini.

Victims of crime may be compensated from the Confiscated and Forfeited Funds Account and the Criminal Assets Recovery Fund (CARF), which is being established. A State party is not excluded as a victim under the law.

There are no measures that mandate the recognition of a foreign State as a legitimate owner in confiscation proceedings, except that in any given proceeding a State and any other domestic or foreign legal entity could be a bona fide third party, whose rights are protected by POCA and MLFTP (Wesbank, a Division of First National Bank of Swaziland v National Commissioner of Police & Another (344/15) [2015] SZHC208 (1 December 2015)).

Section 26 of CMMAA read together with POCA (parts IV, VI and VIII) allows for the recognition and enforcement of foreign confiscation and forfeiture orders, subject to the limitations noted under article 51 in respect of designated countries and references to POCA.

The confiscation procedure is set out in parts IV, VI and VIII of POCA. The law does not distinguish between foreign and domestic proceeds (s. 11). Eswatini may confiscate assets on the basis of either a foreign court order or a foreign request.

The confiscation of proceeds is possible where a person absconds or dies (ss. 32, POCA, 61, MLFTP). In all other cases, confiscation is conviction-based (ss. 23, POCA, 36(1), PCA).

The enforcement of a foreign restraining order is possible under section 26(2) of CMMAA, read together with the provisions of POCA on seizure and restraint (parts V, VIII and XIII). Section 56 of MLFTP provides for search for and seizure of property on the basis of a foreign request, although its application is subject to ministerial approval under CMMAA.

Seized property shall be managed and preserved for confiscation in accordance with the direction of the court upon application of the DPP (s. 42, POCA). Relevant measures may include the issuance of property preservation orders or the appointment of a curator bonis.

The procedure for making mutual legal assistance requests is provided in sections 17 and 25 of CMMAA.

There is no provision obliging Eswatini to give a requesting State an opportunity to provide reasons in support of continuing provisional measures.

The rights of bona fide third parties are protected under sections 43, 54 and 56 of POCA and section 57(7) of MLFTP. See also Wesbank, a Division of First National Bank of Swaziland v National Commissioner of Police & Another (344/15) [2015] SZHC208 (1 December 2015).

Return and disposal of assets (art. 57)

POCA allows for the compensation of victims and for the sharing of property with foreign States pursuant to any relevant treaties or arrangements (s. 67(2)(c)). Upon the recommendation of the Criminal Assets Recovery Committee pursuant to section 67(2)(c), payments out of the CARF may be authorized for these purposes.

Domestic legislation does not provide for the mandatory return of confiscated assets to a requesting State as required under article 57(3) of the Convention.

There is no law or regulation on the costs of asset recovery through international cooperation.

Eswatini is signing the SADC Protocol on Mutual Assistance in Criminal Matters. There are no bilateral MLA treaties or asset sharing agreements in place. According to case law, following a final determination of a legal action declaring lawful entitlement to property, funds will be distributed in accordance with the

orders of the court and, if necessary, will be returned to Eswatini (*Roots Construction v Andrea Nassi & Others*, Case No. 114212014 (11 December 2014)).

3.2. Successes and good practices

- *Establishment of the Confiscated and Forfeited Funds Account and the CARF to enable victims of crime to be compensated, among other purposes (art. 57)*

3.3. Challenges in implementation

It is recommended that Eswatini:

- *Amend CMMAA to reflect the provisions of POCA; consider removing the limitation in terms of application of CMMAA to designated countries; consider adopting an asset recovery guide providing further guidance to requesting countries (arts. 51, 54, 55, 57).*
- *Provide financial investigation training for police investigators and guidelines on the use of investigative powers under relevant laws; training and guidelines for prosecutors on confiscation and MLA, asset management and asset return; and awareness-raising for the judiciary (art. 51).*
- *Ensure that all relevant entities are covered by the AML/CFT requirements, including financial institutions and DNFBPs such as dealers and estate agents, and ensure effective oversight and supervision (including examinations) of all sectors (art. 52(1)).*
- *Adopt measures to allow the authorities to notify financial institutions of particular AML threats, at the request of other States or on their own initiative (art. 52(2)(b)).*
- *Adopt measures to effectively implement the asset and interest disclosure requirements and re-examine the proposed framework for asset declarations under the 2011 Leadership Bill in line with international best practices to ensure, in particular, the comprehensive scope and effectiveness of the reporting and verification mechanism (art. 52(5)).*
- *Consider adopting a provision requiring appropriate public officials to report any interest in or authority over a foreign financial account to appropriate authorities and to maintain appropriate records, and establishing sanctions for non-compliance (art. 52(6)).*
- *Specify in the law recovery mechanisms for injured parties to establish title to or ownership of property, and to be awarded compensation or damages for injuries, through domestic proceedings (art. 53(a), (c)).*
- *Consider removing the limitation in terms of the application of CMMAA to designated countries; this would also allow for the search for and seizure of property in relation to foreign offences under MLFPA on the basis of a foreign request (art. 54(2)(b)).*
- *Consider adopting a provision in CMMAA obliging Eswatini to give a requesting State an opportunity to provide reasons in support of continuing provisional measures (art. 55(8)).*
- *Adopt a law, regulation or written policy document that makes clear reference to the obligation to return property as provided under paragraph 3 of article 57.*
- *Adopt a law or regulation on the costs of asset recovery through international cooperation (art. 57(4)).*
- *Continue efforts to provide adequate resources and capacity for FIU to effectively carry out its mandate (art. 58).*

3.4. Technical assistance needs identified to improve implementation of the Convention

- *Legislative assistance (art. 58)*

IV. Implementation of the Convention

A. Ratification of the Convention

Please provide information on the ratification/acceptance/approval/accesion process of the United Nations Convention against Corruption in your country (date of ratification/acceptance/approval of/accesion to the Convention, date of entry into force of the Convention in your country, procedure to be followed for ratification/acceptance/approval of/accesion to international conventions etc.).

The Convention was signed by His Majesty the King of Eswatini on 15 September 2005 (C.N.821.2005.TREATIES-30) and ratified by the Government of Eswatini on 24 September 2012 as per Eswatini's Depository Notification (C.N.500.2012.TREATIES-XVIII.14).

Article 238 (1) of the Constitution states that the Government may execute or cause to be executed an international agreement in the name of the Crown. Subsection (2) states that:

"An international agreement executed by or under the authority of the Government shall be subject to ratification and become binding on the government by:

- (a) an Act of Parliament; or
- (b) a resolution of at least two-thirds of the members at a joint sitting of the two Chambers of Parliament".

Subsection 4 states that "Unless it is self-executing, an international agreement becomes law in Swaziland only when enacted into law by Parliament". Subsection 6 provides that "For the purposes of this section, "international agreement" includes a treaty, convention, protocol, international agreement or arrangement". This generally means that accepted international agreements when they have been ratified by Government form an integral part of Swaziland's domestic law only when enacted into law by Parliament.

Accordingly, the UN Convention against Corruption has become an integral part of Eswatini's domestic law following ratification of the Convention.

The implementing legislation includes:

- The Constitution of the Kingdom of Swaziland Act 2005
- Parliamentary Privileges Act 1967
- The Prevention of Corruption Act 2006 (also referred to as PCA)
- Procurement Act 2011
- The Money Laundering and Financing of Terrorism (Prevention) Act 2011
- Prevention of Organised Crime Act, 2018 (POCA)
- Extradition Act 1968
- Criminal Matters (Mutual Assistance) Act 2001 (also referred to as CMMAA)
- Swaziland Extradition Agreement with South Africa 1968

- Swaziland Extradition Agreement with the United States of America 1935
- Electronic Records (Evidence) Act 2009
- High Court Act 1954
- Magistrate Court Act 1939
- Criminal Procedure and Evidence Act 1938
- Suppression of Terrorism Act 2008

B. Legal system of Eswatini

Please briefly describe the legal and institutional system of your country.

Please provide a hyperlink to or copy of any available assessments of measures to combat corruption and mechanisms to review the implementation of such measures taken by your country that you wish to share as good practices.

The Kingdom of Eswatini is a small landlocked developing country which is bordered on the North, West and South by the Republic of South Africa and on the East by the Republic of Mozambique. It has a small-export oriented diversified economy which is closely linked to the South African economy. The country is part of a monetary union with the Republic of Namibia, the Republic of South Africa and the Kingdom of Lesotho. The South African currency (the Rand) circulates freely on par with these countries' national currencies within the union.

The proximity of the country to major cities in Mozambique and South Africa makes it a strategic transit country for illegal operations into these countries and Southern Africa at large. The major generators of corruption are facilitated through crimes such as trafficking in human beings and drugs, counterfeiting of goods and currency, fraudulent cross-border bank transfers, tax and customs evasion, forgery, and theft. As a result of the geographical location and economic profile of the country, the major crimes generating proceeds have manifestations of organized cross-border operations with the illicit funds invested within the monetary union, also known as the Common Monetary Area (CMA). Eswatini is committed to addressing these challenges through various initiatives such as the promotion of law enforcement coordination and cooperation within and outside of the country, setting up of institutions to promote good governance and transparency in both public and private sector spheres.

Eswatini engaged in a national corruption perception survey whose purpose was to inform future anti-corruption policy and legislative initiatives and encourage public participation in the fight against corruption. To elaborate further, according to the Survey, perceptions on cultural practices yielded results, which suggested that some people did not recognize the potential elements of corruption in certain cultural practices.

Eswatini operates a dual legal system with Customary Law on one hand and Roman Dutch Law on the other hand, both of which command equal politico - legal standing. The offence of corruption is criminalized in Eswatini under the Prevention of Corruption Act, 2006. The Prevention of Corruption Act, however, does not define the offence of corruption but rather criminalizes and punishes corrupt practices. In addition, the recovery of proceeds generated through corrupt activities is still a major concern given that the current legislative framework requires that a person should be convicted before any confiscation can take place. The aforementioned criminalized acts include; bribery, money laundering, conflict of interest and cheating of the public revenue.

The institutions most relevant in the fight against corruption are the Anti-Corruption Commission, the Commission on Human Rights and Public Administration, the Royal Eswatini Police Service, the Financial Intelligence Unit, Auditor General's office, Attorney General, Eswatini Public Procurement Authority, the office of the Director of Public Prosecutions, Parliamentary Public Accounts Committee, the National Anti-Corruption Forum.

According to section 79 of the constitution of the Kingdom of Eswatini, the system of government for Eswatini is a democratic, participatory, Tinkhundla based system, which emphasizes devolution of state powers from central government to Tinkhundla areas and individual merit as a basis for election or appointment to public office. The Kingdom of Eswatini has three arms of government, the executive, legislative and the judiciary. The existence of strong political will has resulted in the signing and ratification of the UNCAC and enactment of various legislative instruments to enhance the fight against corruption.

Please provide the relevant information regarding the preparation of your responses to the self-assessment checklist.

The Public Education Section of the ACC coordinated the implementation of the United Nations against Corruption in Eswatini. The exercise was conducted through a task team that comprised of officers drawn from the Ministry of Justice and Constitutional Affairs, Civic Society and the private sector. Training for the aforementioned officials was facilitated by two international experts on the UNCAC implementation mechanism.

Please describe three practices that you consider to be good practices in the implementation of the chapters of the Convention that are under review.

Please describe (cite and summarize) the measures/steps, if any, your country needs to take, together with the related time frame, to ensure full compliance with the chapters of the Convention that are under review, and specifically indicate to which articles of the Convention such measures would relate.

C. Implementation of selected articles

II. Preventive measures

Article 5. Preventive anti-corruption policies and practices

Paragraph 1 of article 5

1. Each State Party shall, in accordance with the fundamental principles of its legal system, develop and implement or maintain effective, coordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes, in part

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

The country has entrenched the fight against corruption in various means including, legislative, institutional and procedural and these include role players from different sectors comprising all arms of Government, private sector and ordinary citizens. These coordinated anti-corruption efforts can be summarized as follows:

- the Directive Principles of State Policy, the country made it a political objective that all lawful measures shall be taken to expose, combat and eradicate corruption and the abuse of power by those holding political and other public offices. This is provided for in Section 58(5) of the Constitution of the Kingdom of Eswatini Act, 2005. The Constitution further places the duty on every citizen to prevent the misuse and abuse of public funds and resources (section 63(g)).
- There are the two sessional committees of the House of Parliament (Finance and Public Accounts Committees) established in terms of Section 209 of the Constitution. The duties of the Finance Committee are regulated by the Standing Orders of the House and include amongst others considering and reporting to the House on any matter relating to public finance as the House may refer to the Committee. The duties of the Public Accounts Committee include the duty to examine and report to the House on the accounts of the Government tabled before the House.

- Further, section 129 of the Constitution directs each chamber of Parliament to appoint sessional committees and other committees as may be necessary for the effective discharge of the functions of that chamber. The standing committees are charged with such functions, including the investigation and inquiry into the activities and administration of ministries and departments. Such Committees appointed under this section have the powers, rights and privileges of the High Court or a Justice of the High Court at a trial for: (a) enforcing the attendance of witnesses and examining them on oath, affirmation or otherwise; (b) compelling the production of documents; and (c) issuing a commission or request to examine witnesses abroad.
- There is also a provision for an Integrity Commission responsible for receiving, from time to time, declarations in writing of assets and liabilities of persons listed in the Constitution, for enforcing the Code and supervising all matters connected with the Code as may be prescribed (Section 241). The Human Rights Commission per the Constitution is also the Integrity Commission, which is already in place and operational since 2009.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

- The sitting of the Public Accounts Committee (PAC) which considers the Auditor General's Annual Report and further calls upon public officials to answer. The PAC has on numerous occasions issued recommendations for the recovery of public funds or referred the matters to other institutions like the Royal Eswatini Police Service and the Anti-Corruption Commission.
- Statistics are available in the PAC's Annual Report.

(b) Observations on the implementation of the article

In 2007 Eswatini adopted a comprehensive National Anti-Corruption Strategy (NACS) and developed a National Anti-Corruption Action Plan (NAP) which provides the framework for the implementation of NACS. The strategy adopts a holistic approach and encourages the involvement of civil society, the media, academia and other stakeholders. ACC is the secretariat of the implementation of the Strategy. A National Anti-Corruption Forum (NACF) was constituted in 2007 with members from the public and private sectors, civil society and the media, to facilitate the implementation of the NACS and NAP. NACF has been inactive for several years.

Although the NACS sets clear outcomes, outputs, activities to be implemented and performance indicators, it does not establish timeframes for implementation nor sufficiently identify those responsible for its implementation. Due to the lack of an enabling policy, an effective oversight, coordination, monitoring and evaluation mechanism, and dedicated resources, the NACS was only implemented in part (i.e. whistle-blower legislation, code of ethics for several public entities).

Eswatini has developed a draft National Anti-Corruption Policy (NACP) with the main objective to provide a framework for implementing the NACS and the NAP.

NACP adopts a multi-sector approach for its implementation and contains implementation action plan matrix for each of its three frameworks (legal framework, institutional framework, and social framework), indicating the proposed policy, proposed measures, the institutions with primary

responsibility, and a suggested time frame.

According to the draft, the oversight and coordination role is to be undertaken by the ACC. The monitoring role will be the responsibility of the NACF assisted by the ACC as the Secretariat. The policy performance will be evaluated by independent evaluators commissioned to perform that task.

Eswatini has adopted different thematic strategies with anti-corruption components. For instance, important elements of the National Development Strategy (1997-2022) include full transparency and accountability in the use of public funds. Similarly, the Poverty Reduction Strategy and Action Programme adopted in 2006 has a pillar on “Improving Governance and Strengthening Institutions”. Moreover, the Government’s Programme of Action (20013-2018) has prioritized the fight against corruption as the eighth and final focal area.

It is recommended that Eswatini review and update its national anti-corruption strategy including by providing timeframes for implementation and identifying those responsible for its implementation. It is also recommended that Eswatini adopt its national anti-corruption policy, implement an effective oversight, coordination, monitoring and evaluation mechanism, and commit necessary resources for the full implementation of the strategy.

(c) Successes and good practices

Inclusion of members of the public and private sectors, civil society and the media in anti-corruption efforts.

Paragraph 2 of article 5

2. Each State Party shall endeavour to establish and promote effective practices aimed at the prevention of corruption.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

The country established or has in place institutions that ensure and promote the prevention of corruption. These are:

- (1) The Anti-Corruption Commission which is vested with powers of taking the necessary measures for the prevention of corruption in public and private bodies including, in particular measures for
 - (i) examining the practices and procedures of public and private bodies in order to facilitate the discovery of corrupt practices and secure the revision of their methods of works or procedures which, in the opinion of the Commissioner, may be prone or conducive to corrupt practices;

(ii) advising public and private bodies on the ways and means of preventing corrupt practices, and on changes in the methods of work or procedures of those public and private bodies compatible with the effective performance of their duties, which the Commissioner considers necessary to reduce the likelihood of the occurrence of corrupt practices;

The ACC can also instruct, advise and assist any person, on the request of that person, on ways in which corrupt practices may be eliminated by that person; and do all such things as may be necessary for the prevention of corruption and the furtherance of the objects of the Act.

The ACC does that in accordance with section 10 of the Prevention of Corruption Act, 2006.

(2) There is also a Commission on Human Rights and Public Administration which is amongst other roles mandated to eliminate or foster the elimination of corruption, abuse of authority or public office; and promote fair, efficient and good governance in public affairs;

(3) The Internal Audit Office (IAO) as established by the Public Finance Management Act 2017 is responsible for managing public sector internal audit activities to ensure it adds value to the MDAs' operations. The office plays an important role in ensuring that ministries have effective systems of control and provides advice on preventative strategies that promote good governance, ethics, as well as effective practices, transparency and accountability in public institutions. The office is leading development of a combined assurance framework that will formalize collaboration between public sector assurance providers to promote practices to prevent corruption. These include the Internal Audit Office, Anti-Corruption Commission, SPPRA, Office of the Auditor General and anti-fraud units. A risk management policy is being developed to ensure that risks are managed in the public sector.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

- (1) Conducting corruption risk assessment exercises on private and public entities.
- (2) conducting corruption surprise audits on private and public bodies
- (3) Accounting Officers appearing before the Public Accounts Committee for financial misconduct and unethical conduct in the performance of their functions.
- (4) Conducting assurance and consulting internal audit activities including trainings on good governance and risk management
- (5) Introducing an enterprise risk management framework

(b) Observations on the implementation of the article

Eswatini has made many efforts in the area of preventing corruption, in addition to the adoption and amendment of laws. It has established the NACF, conducted two National Corruption Perception Survey in 2010 and 2017 and established an online reporting mechanism to the ACC. The ACC also organized several trainings for different sectors.

Paragraph 3 of article 5

3. Each State Party shall endeavour to periodically evaluate relevant legal instruments and administrative measures with a view to determining their adequacy to prevent and fight corruption.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(N) No

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Currently the country does not have a Monitoring & Evaluation framework on the effectiveness of legal instruments and administrative measures.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

N/A

(b) Observations on the implementation of the article

Although Eswatini has a Law Reform Commission under the AGO which reviews legal instruments whenever the need arises, and despite the adoption of several relevant laws such as the Witness Protection Act of 2018 and the POCA 2018, it does not have sufficient measures in place to systematically evaluate the adequacy of legal instruments and administrative measures in preventing and fighting corruption.

It is recommended that Eswatini take further measures to periodically evaluate the adequacy of relevant legal instruments and administrative measures in preventing and fighting corruption.

Paragraph 4 of article 5

4. States Parties shall, as appropriate and in accordance with the fundamental principles of their legal system, collaborate with each other and with relevant international and regional organizations in promoting and developing the measures referred to in this article. That collaboration may include participation in international programmes and projects aimed at the prevention of corruption.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes, in part

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

The Anti-Corruption Commission (ACC) is a member of the Commonwealth Africa Anti-Corruption Centre (CAACC).

The ACC has undergone monitoring and evaluation by the CAACC.

In addition, two (2) officers from the ACC were placed on attachment with South Africa's Special Investigation Unit where they underwent training.

(b) Observations on the implementation of the article

Eswatini contributes to the promotion of regional and international cooperation, particularly through its participation in relevant conferences, meetings and forums, including the working groups established under the Convention. The ACC is also a member of the Commonwealth Africa Anti-Corruption Centre (CAACC).

Nevertheless, it is recommended that Eswatini enhance collaboration with relevant international and regional organizations in the prevention of and fight against corruption.

(c) Challenges, where applicable

Please outline actions required to ensure or improve the implementation of the article under review and describe any specific challenges you might be facing in this respect.

The aforesaid legislations are not harmonised which creates challenges with implementation.

There is no systematic process in which legislation is reviewed and implemented in the absence of the Law Review Commission.

There is no concerted effort to build capacity on the legislation.

(d) Technical assistance needs

Legislative assistance:

Technical expertise would be needed in the process of harmonising all the existing legislation to provide clarity on the roles of the different actors, to minimise duplication and maximise utilisation of the minimal available resources.

Support is also needed in advocating for the Leadership Code of Conduct bill and Human Rights and Public Administration Bill.

A technical person to help with harmonising all the legislative interpretation in relation to the Convention.

Institution-building:

There is a need to build institutional capacity of all the key bodies: human, structural, infra-structural capacity

Article 6. Preventive anti-corruption body or bodies

Paragraph 1 of article 6

1. Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies, as appropriate, that prevent corruption by such means as:

(a) Implementing the policies referred to in article 5 of this Convention and, where appropriate, overseeing and coordinating the implementation of those policies;

(b) Increasing and disseminating knowledge about the prevention of corruption.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

1. The State has created four bodies through the Constitution and a Statute and these are:

The Commission on Human Rights and Public Administration (CHRP), Swaziland Public Procurement Regulatory Agency (SPPRA), the Anti-Corruption Commission (ACC) and the Swaziland Revenue Authority (SRA).

a) There is an Anti-Corruption policy in place. However, the Constitution which is the supreme law of the land articulates a number of provisions under Section 164(1) (b) to address the elimination and abuse of authority or public office. This is the same provision which gives the powers to CHRP to prevent and eliminate corruption. The Prevention of Corruption Act of 2006 (PCA) and the Anti-Corruption Strategy also compliment what is provided for in the

supreme law and provide for powers of the ACC and the relevant action:

b) The country also promulgated a law that regulates public procurement and is cited as Procurement Act No. 7 of 2011. In its long title, it states that “the Act provides for the regulation and control of practices in respect of procurement. (Procurement corruption is one of the practices controlled by the Act”.

Section 9 of the Act alluded to above establishes the Swaziland Public Procurement Regulatory Agency (SPPRA). Section 9(2) makes the SPPRA an independent regulatory body for public procurement. As a preventative measure, the Act in section 14 states that a member of the board of directors may be fired any time for corruption.

Section 50(3) of the Act provides for establishment of an Independent Review Committee. This committee is a tribunal set ad hoc by the Agency (SPPRA), whenever there is a dispute or complaint in a tender process, which may include allegations of corrupt practices in a public procurement process. The members are not employees of the Agency and are completely independent. Currently the IRC, through the Agency, are finalising their rules of procedure. The act also states that in section 55 read with 56 of the Act that the Agency may suspend a tenderer or a supplier from participation in public procurement on grounds of misconduct relating to corrupt practices.

c) The Swaziland Revenue Authority has also set up an Internal Affairs section to be deal with acts of corruption, integrity, abuse of office, theft, act of dishonesty etc.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

The Anti-Corruption Commission has been engaging in preventive advocacy and different media awareness/ communication medium campaigns and the radio. Information on eradication of corruption has been included in the training of police officers and prison officials on Human Rights and these trainings were conducted between June and September 2017.

The Commissioner also complies with Section 20 of the Prevention of Corruption Act, 2006 which provides that the Commissioner shall, not later than three months after the end of each financial year, submit to the Minister a report on the activities of the commission during the year and in particular increasing and disseminating knowledge about the prevention of corruption, cases under investigation, corruption risk assessments, etc. Anti-Corruption website: www.acc.gov.sz.

The SPPRA is newly established; however, there has been one instance in which there was a court case in an effort to enforce the public procurement law. Unfortunately, the Agency lost the case, in that the presiding officer highlighted the fact that there are no public procurement regulations whereas the Act requires in many parts of the Act that the regulations shall specify the procedure. The regulations are to be issued by the Minister of Finance on recommendation of SPPRA. SPPRA has completed its part and has sent the draft to the Ministry in preparation to be sent to Parliament.

There is also capacity building by way of trainings with the procuring entities which are still ongoing. The business community is also allowed to make proposals with the department and arrangements can be made to train them as well. The trainings have not yet caught the speed desired by the Agency due to financial constraints. The Agency has also embarked on a price reference project as one of its deliverables, for purposes of creating market price data base for common use items which will be used by the procuring entities as a reference for market price for items intended to be procured. With this, the Agency seek to prevent corruption which results in the hiking of

prices during the tendering process. This project has not yet started due to financial constraints. The IRC's decisions are available on the SPPRA website: <http://www.sppra.co.sz>.

(b) Observations on the implementation of the article

Eswatini established an Anti-Corruption Commission (ACC) pursuant to the Prevention of Corruption Act of 2006 (PCA) which became operational in 2008. PCA tasks the ACC with investigative powers but also with preventive and education functions in both public and private sectors (Section 10 subparas. 1(a), 1(g) and 1(h)).

It was explained during the country visit that the same anti-corruption prevention mandate given to the Commission on Human Rights and Public Administration (CHRPA) by the Constitution is given to the ACC by the PCA. In practice, the mandate is only fulfilled actively by the ACC. CHRPA is mainly focusing on the human right component of its mandate. Accordingly, CHRPA refers all corruption cases to ACC.

The ACC is headed by a Commissioner and has two Departments, namely, the Administration Department and the Operations Department, each of them headed by a Deputy Commissioner. The Operations Department is responsible for all operational functions and has three Sections: the Corruption Prevention Section, the Public Education Section and the Investigations Section. According to the ACC annual report of 2015/2016, the Education Section continued to conduct education exercises across sectors during that period and the Prevention Section conducted corruption risk assessment exercises and surprise audits.

The ACC has been engaging in preventive advocacy and different media awareness/communication medium campaigns and the radio. Information on eradication of corruption has been also included in different trainings provided by the ACC.

In addition, there are several government agencies involved in various aspects countering corruption, each in its respective area of competence, including the Commission on Human Rights and Public Administration (CHRPA), which is mandated by the Constitution to foster the elimination of corruption, the promotion and strict adherence to the rule of law and principles of natural justice in public administration, and the promotion of fair, efficient and good governance in public affairs (Section 164 subparas. 1(f), 1(g) and 1(h)). So far, CHRPA is not fulfilling this mandate; Director of Public Prosecutions (DPP): The Swaziland Public Procurement Regulatory Agency (SPPRA) and the Office of the Auditor General. the Swaziland Revenue Authority (SRA).

The Commissioner and Deputy Commissioners are appointed by the King on the advice of the Judicial Service Commission for a period not exceeding five years renewable for a single term.

According to the PCA 2006, the ACC is established as an independent body and its Commissioner and Deputy Commissioners are also to be independent with respect to their duties and shall not be subject to the direction or control of any person or authority.

Paragraph 2 of article 6

2. Each State Party shall grant the body or bodies referred to in paragraph 1 of this article the necessary independence, in accordance with the fundamental principles of its legal system, to enable

the body or bodies to carry out its or their functions effectively and free from any undue influence. The necessary material resources and specialized staff, as well as the training that such staff may require to carry out their functions, should be provided.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes, in part

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

The independence of both the bodies are legally guaranteed .The Independence of CHRPA is guaranteed by Section 166 of the Constitution of Swaziland Act 1/2005 which states that “the Commission shall be independent in the performance of its functions and shall not be subject to the direction or control of any person or authority”; and Independence of the ACC is guaranteed by the PCA in section 4(4) which states that:” In the performance of their functions and in the carrying out of their duties the Commissioner and the Deputy Commissioners shall be independent and shall not be subject to the direction or control of any person or authority.” However, the requirements of the article are not fully adhered in practice.

Funds for both bodies are sourced from the consolidated fund and CHRPA still does not have a separate financial head which means their funds are still controlled at Ministry Level. Although ACC has separate financial head, a number of procedures still need approval at Ministry (government level) which can hinder effectiveness: for instance, approval of positions, external travel, capacity building for officers etc. Both bodies still have challenges with financial resources to ensure efficiency in the delivery and execution of their mandates. These include constraints with human resources, office space and essential working tools.

Efforts have been made to ensure that ACC is staffed with specialized personnel but there are still a number of gaps that are currently being advocated for. With the ACC, initially, the recruitment mainly focused on police and lawyers who do not really possess the required expertise for the job. However, they attend ad hoc capacity-building trainings for the job. With the Commission also, there is no specialized staff for the job and no one amongst the staff members has been afforded training /capacity building for corruption cases.

The CHRPA currently has no specialized staff to deal with corruption, the exception being one of the officers who previously worked for the ACC. There are still efforts being made to set up a functional public administration department within the Commission but currently there has been minimal contribution from CHRPA in this regard.

Vacation of office and immunity of Commissioners. The provision of the Constitution (section 170(1)) relating to the removal of Judges of the superior courts from office shall, subject to any necessary modifications and adaptations, apply to the removal from office of the Commissioner or Deputy Commissioner of CHRPA. According to subsection (2), a member of the Commission shall have such and like protection and privilege in the case of any action or suit brought against the Commission for any act done or omitted to be done in the honest execution of the duties of the Commission as is by law given to acts done or words spoken by a Judge of the superior courts in exercise of the judicial office.

The independence of the SPPRA is guaranteed by Section 9 of the Act and it makes the Agency an independent regulator for public procurement in the Kingdom of Eswatini.

The Prevention of Corruption Act, 2006 provides for the establishment of an independent Commission, which consists of a Commissioner and two Deputy Commissioners. In the performance of their functions and in the carrying out of their duties the Commissioner and the Deputy Commissioners shall be independent and shall not be subject to the direction or control of any person or authority. Section 17 of the Act guarantees immunity of Commissioner, Deputy Commissioner and officials. It provides that no civil or other proceeding shall be brought against the Commissioner, Deputy Commissioner or an officer of the Commission in respect of any act or thing done or omitted to be done in good faith in the performance of their functions under the Act.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

The SPPRA is newly established; however, there has been one instance in which there was a court case in an effort to enforce the public procurement law. Unfortunately the Agency lost the case, in that the presiding officer highlighted the fact that there are no public procurement regulations whereas the Act requires in many parts of the Act that the regulations shall specify the procedure.

The regulations are to be issued by the Minister Finance on recommendation of SPPRA. SPPRA has completed its part and has sent the draft to the Ministry in preparation to be sent to Parliament hopefully in this current Parliament which term of office ends in 2018.

The Agency is also working on capacity building in preparation for trainings with the procuring entities. The business community is also allowed to make proposals with the department and arrangements can be made to train them as well. The trainings have not yet caught the speed desired by the Agency due to financial constraints. The Agency also intends to embark on a price reference project as one of its deliverables, for the purposes of creating a market price data base for common use items which will be used by the procuring entities as reference for the market price for items intended to be procured. With this, the Agency seek to prevent corruption which results in the hiking of prices during the tendering process. This project has not yet started due to financial constraints.

The Independent Review Committee (IRC's) decisions are available on the SPPRA website: www.sppra.co.sz.

(b) Observations on the implementation of the article

Although PCA provides for the independence of ACC, operational independence does not seem to be ensured entirely in practice. Moreover, ACC lacks adequate financial, material and human resources to perform its functions effectively.

The lack of funding affects, in particular, the ability to recruit and employ specialized staff with requisite skills for the job.

According to the ACC annual report of 2015/2016, the lack of financial resources compromises training and development of staff in addition to the recruitment of qualified staff. The budget allocated to the ACC for the year 2015/2016 is almost 30% of the budget that was requested by the Commission.

It is recommended that Eswatini take the necessary measures to grant the ACC the necessary independence to carry out its functions effectively and free from any undue influence. It is also recommended that Eswatini provide ACC with adequate financial, material and human resources and training.

Paragraph 3 of article 6

3. Each State Party shall inform the Secretary-General of the United Nations of the name and address of the authority or authorities that may assist other States Parties in developing and implementing specific measures for the prevention of corruption.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Has your country provided the information as prescribed above? If so, please also provide the appropriate reference.

The country submitted to the UNODC a Diplomatic Note (#05/2017), the names of focal points for international cooperation in the use of civil and administrative proceedings relating to corruption in August 2017. These are the Principal Secretary in the Ministry of Justice & Constitutional Affairs and the Directorate of Public Prosecutions.

(b) Observations on the implementation of the article

Eswatini has not informed the Secretary-General of the United Nations of the name and address of the authority or authorities that may assist other States Parties in developing and implementing specific measures for the prevention of corruption.

Eswatini was reminded of its obligation to inform the Secretary-General of the United Nations of the name and address of its authority or authorities that may assist other States in developing and implementing corruption prevention measures.

(c) Challenges, where applicable

Please outline actions required to ensure or improve the implementation of the article under review and describe any specific challenges you might be facing in this respect.

The challenges are mainly the lack of resources.

(e) Technical assistance needs

Legislative assistance:

A comprehensive legal framework is required

Is any technical assistance already being provided to you? If so, please provide a general description of the nature of the assistance, including donor information.

The United Nations Development Programme is currently assisting in funding a programme for strengthening the good governance pillar, which comprises the institutions referred to in this article.

Article 7. Public sector

Paragraph 1 of article 7

1. Each State Party shall, where appropriate and in accordance with the fundamental principles of its legal system, endeavour to adopt, maintain and strengthen systems for the recruitment, hiring, retention, promotion and retirement of civil servants and, where appropriate, other non-elected public officials:

(a) That are based on principles of efficiency, transparency and objective criteria such as merit, equity and aptitude;

(b) That include adequate procedures for the selection and training of individuals for public positions considered especially vulnerable to corruption and the rotation, where appropriate, of such individuals to other positions;

(c) That promote adequate remuneration and equitable pay scales, taking into account the level of economic development of the State Party;

(d) That promote education and training programmes to enable them to meet the requirements for the correct, honourable and proper performance of public functions and that provide them with specialized and appropriate training to enhance their awareness of the risks of corruption inherent in the performance of their functions. Such programmes may make reference to codes or standards of conduct in applicable areas.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(P) Yes, in part

(a) This article of the Convention has been implemented in the following measures:

1. The Constitution of Swaziland 2005, Section 187 states that appointments, secondments, and confirmation of appointments, promotion, transfer, termination of appointment, dismissal and disciplinary control of public officers shall vest in the Civil Service Commission/Board.
2. The Civil Service Commission/Board is an independent body that assists in recruitment.
3. The Internal Promotions Board is also responsible for promotions. In this body sits the Minister responsible where the promotions are taking place, the Minister of Public Service, the Minister of Finance (chairman) and the Human Resources officer for the responsible Ministry.
4. Regulation 25 (3) of the Civil Service Board Regulations of 1963 provides that if an advertised vacant office is to be filled on promotion or by appointment to the service, the claims of suitably qualified officers shall be first considered and shall generally take precedence over those persons not in the service. Sub-regulation (4) provides that the Board may advertise a vacant office if, after reviewing the claims for promotion of all eligible officers, the Board has been unable to advise that any serving officer is qualified for promotion.
5. General Order A120 which analyses the Kingdom's Recruitment Policy (1) provides that in advising the Prime Minister concerning the recruitment of staff for the Public Service, the Civil Service Board shall consider the categories of persons to be qualified for appointment to an office a public officer who is a local, who is not already in the Public Service, or undergoing training with a view to possible admission to the Service and not already in the Public Service.
6. General Order A.157 (1) states that an officer shall be required to pass the appropriate Civil Service Examination as a condition precedent to promotion from grade to grade, and for accelerated promotion within a grade in a cadre. (2) provides that the syllabuses of the examinations, and their general requirements, shall be as laid down by the Principal Secretary, Ministry of Public Service and Information, from time to time in the Schemes of Service.

Retirements of public servants is regulated by the General Orders, Public Service Bill of 2015 and the Retirements Funds Act 2005. An appointment of any officer who is beyond 60 years of age is regulated by the Constitution of Eswatini. For example, the appointment of Judges and Principal Secretaries. Retention - Scare skills are eligible for retention allowance that is periodically reviewed through Establishment Circulars.

(b) The Eswatini Government In-Service Training Facility, referred to as the Human Resource Development Department (HRDD) in the Ministry of Public Service, is mandated to ensure continuous availability of adequate and relevant skills in the Public Service through In-Service Training and Development of Public Servants aimed at enhancing efficiency and effectiveness as well as improvement of Public Service Delivery which complies with the provisions of the Prevention of Corruption Act of 2006 in the following way:

1. The facility is guided by Professionalism, Transparency and Equity among other core values and principles. These values put emphasis on high ethical standards, excellence while striving for top quality training, integrity, transparency, honesty, impartiality, justice and fairness.
2. Ministries and Departments are always encouraged to employ a collective and consultative approach in compiling their annual In-Service Training Plans that are then formally submitted to the Ministry of Public Service for consideration for funding.
3. The proposals are then discussed with management teams representing the respective Principal Secretaries and or Heads of Department wherein the eligibility criteria and available annual budget is again comprehensively shared with them. It is after then that they return back to their respective ministries and departments to make their final priorities for training and funding in any given financial year.
4. The eligibility criteria and selection processes are not only shared during such fora as the training proposal discussion meetings but during official communiques, training briefings, bonding sessions, and consultative meetings. The eligibility criteria comprises, among other things, inclusion in the annual training plan proposal submission, priority by line Ministry/Department, relevance of training to priority capacity gaps of line Ministry/Department as informed by their core operational mandate, permanency and pensionability status, clear of any previous bonding obligations, and must be a Swazi citizen.
5. All in-service training commitments are also guided by the provision of the Eswatini Government In-Service Training Policy of 2000, General Orders and numerous circular memoranda.
6. Briefing sessions are held for all long-term in-service training wherein representatives of the line Ministry PS and of Head of Department are given an opportunity to further justify the training request as well as proof that the eligibility criteria and other governing provisions are met. They are also expected to justify the selection of a particular candidate ahead of other officers.
7. The fundamental guiding principle is that in-service training should, while guided by priority capacity gaps from an operational perspective, be done in an equitable manner across all cadres irrespective of work station. In fact, Ministries and Departments are encouraged to consider out stationed public servants for in-service training just like officers are at central or headquarter levels.
8. All candidates for both short- and long-term in-service training are recommended by their Principal Secretaries and or Head of Departments in consultation with their training focal points and management comprising Heads of Departments.

9. Handling of all training request from line Ministries/ Departments are done in an efficient, transparent, objective and meritorious manner which puts emphasis on equity and aptitude. This is particularly so because in-service training builds on an existing foundation of a serving officer hence current qualifications and performance record is discussed during the briefing sessions.

10. The Government In-Service Training principle does not allow individual officer driven training request but only Ministerial/departmental driven in - service training requests.

11. All in-service trainings that are endorsed, approved and funded are prioritized and nominated at Ministerial and or Departmental level. In a nutshell, the procedure does not provide for HRDD to pick beneficiaries from Ministries and/or Departments, but rather allows them the freedom to make their priorities as informed by their capacity gaps. HRDD only guides them in terms of the policy provisions and eligibility criteria.

12. The Government In-Service Training Facility is audited on a regular basis and reports quarterly to Parliament and the Public Policy Coordinating Unit.

13. All long-term trainings are supported by not less than 12 official documents at bonding stage including affidavits signed by commissioner of oath and the relevant Head of Department for the prospective beneficiary.

14. No request for in-service training is ever entertained unless formally submitted by the relevant Principal Secretary and/or Head of Department.

15. At the beginning of every financial year, Ministries and Departments are given an equal opportunity to benefit from the government in-service training facility considering their size and priority status.

In summary, therefore, it is HRDD belief that these checks and balances help the facility to comply with the provisions of the Prevention of Corruption Act of 2006 because throughout the process, transparency and professional ethics are embraced and for every training request, no less than six people discuss it and endorse it for final approval, even before discussion by consideration by the Cabinet Sub-committee in the case of all external trainings (outside the country). No unprofessional or unethical tendencies may go unnoticed with all these checks and balances. Even if they were to occur, it would be easy to know who is guilty of unbecoming conduct and to deal with that person or report to relevant structures to deal with that.

(c) The government of Eswatini is committed to paying market related scales with a view to retaining scarce skills. This is done by conducting research and benchmarking with the private sector and the SADC region at five-year intervals. However, the pay scales to a large extent are determined by affordability factors taking into consideration the Government economic situation. Every beginning of the financial year the Joint Negotiations Forum (JNF), comprising the Government Negotiations Team and Public Sector Associations (PSA's) comprising the Swaziland Nurses Association (SNA), Swaziland National Association of Teachers, the Swaziland National Association of Government Accounting Personnel (SNAGAP) and the National Association of Public servants and Allied Workers Union (NAPSAWU) meet to discuss the agenda for that particular financial year and the issue of Cost of Living Adjustment is usually among the agenda items. The PSA submit a joint demand on the Cost of Living Adjustment which is informed by consumer price index over a twelve-month period and economic outlook. The Government Negotiations Team also table their offer which is usually informed by the Economic Outlook Paper and mandate given to the GNT by Cabinet. The parties negotiate until they reach a Collective Agreement or a deadlock signed by all parties.

The Collective Agreements are usually registered with the Industrial Court to be the order of the court. Where there is a deadlock, each party is at liberty to approach CMAC for redress. When it comes to the issue of salary review. Government hires a consultant to undertake salary reviews. The terms of reference for such an undertaking are agreed at the negotiations table by both the Government Negotiations Team and the PSAs.

This essentially means the job evaluation process which entails job design and analysis and ultimately evaluation is a consultative process encompassing all Stakeholders. The instrument which eventually applies to determine the compensation structure and salary grades is known and agreed by all concerned.

The implementation of the outcome of a salary review is determined to a large extent by affordability and communicated through a circular memorandum, depicting all the levels and positions within the public service, including their commensurate salary scale as determined by the salary review and grading procedure. In essence therefore, the Government is committed to equal pay for equal work as the pay scales are a reflection and an extension of the job worth.

(d) Regulation 51 (2) of the Civil Service Board Regulations of 1963 provides that selection of candidates for scholarships or training courses shall be made in accordance with principles applicable to promotion.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

a) Ministries advertise internally or externally through the Civil Service Commission. Ministries interview and make appointment recommendations to the Civil Service Commission for short-listed candidates.

b) The internal promotions Board make recommendations for promotions to CSC where vacancies are filled by promotion.

c) The salary grading system is outlined in the yearly establishment register which Government circulates.

(d) The Ministry of Public Service responsible for training uses as a basis of training the Ministries and departments submitted annual training plans. A number of officers are trained both on short term and long-term programs.

(b) Observations on the implementation of the article

Appointment, promotion, transfer, termination, dismissal and disciplinary control of public officers are vested in the Civil Service Commission (CSC) (Section 187 of the Constitution), which functions in an advisory capacity (R. 22) and is governed by the CSC Regulations of 1963. Qualified officers are generally given priority in recruitment over persons not in the service (R. 25(3)). Apart from that, the Regulations do not establish detailed criteria for appointment and promotion nor a mechanism to address related grievances. The Civil Service Board (CSB) may at its discretion advertise vacancies (R. 24(4)). For vacant posts to be filled on promotion, the head of department should recommend an officer to CSB. Detailed reasons for such promotions should only be given in case the senior eligible

officer was not recommended (R. 28).

Eswatini has not identified positions considered especially vulnerable to corruption or established procedures for the selection, training and rotation, as appropriate, of individuals for such positions.

Eswatini has adopted salary scales for civil servants, depending on the nature and status of the posts, and on other indicators such as the standard of living and wages in the private sector.

The Human Resource Development Department (HRDD) in the Ministry of Public Service is mandated to ensure that public servants have adequate and relevant skills. However, training programmes do not include integrity and anti-corruption components.

It is recommended that Eswatini establish publicity requirements, detailed selection procedures, a mechanism to address related grievances, and clear criteria for the appointment and promotion of public officials that are based on principles of efficiency, transparency and objective criteria such as merit, equity and aptitude (art. 7(1)(a)).

It is also recommended that Eswatini identify positions considered especially vulnerable to corruption and consider adopting procedures for the selection and training of individuals for such positions and their rotation, where appropriate. (art. 7(1)(b)).

Furthermore, it is recommended that Eswatini provide public officials with specialized anti-corruption training (art. 7(1)(d)).

Paragraph 2 of article 7

2. Each State Party shall also consider adopting appropriate legislative and administrative measures, consistent with the objectives of this Convention and in accordance with the fundamental principles of its domestic law, to prescribe criteria concerning candidature for and election to public office.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

The country prescribed the criteria for candidates and the process of election into public office in following legislations:

a) The Constitution Act: Section 96 outlines the qualifications for membership of Parliament. It provides that “subject to the provisions of this Constitution, a person qualifies to be appointed, elected or nominated, as the case may be, as a Senator or a member of the House if that person - (a) is a citizen of Eswatini; (b) has attained the age of eighteen years and is a registered voter; (c) has

paid all taxes or made arrangements satisfactory to the Commissioner of Taxes; and (d) is registered as a voter in the inkhundla (constituency) in which that person is a candidate (in the case of elected members).

b) The Elections Act 2013 provides for the nomination process. Section 31 states that the number of candidates nominated pursuant to section 27 shall not be less than three and not more than twenty. It further states that following nomination, a candidate shall present himself to the Police for the purpose of getting a clearance certificate which shall be delivered to the returning officer. Subsection (8) provides that a candidate shall not be nominated for election where the candidate has at any time been convicted of offences under the Prevention of Corruption Act; the Prevention of Organised Crime Act; the Sexual Offences and Domestic Violence Act; or any other offence listed under the Fourth and Fifth Schedule of the Criminal Procedure and Evidence Act, 1938. Offences under the Fourth and Fifth schedule include murder, rape, robbery and fraud. There is a caveat, however, that if five years or more have elapsed since the termination of the sentence of imprisonment, the latter conditions shall not apply.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

The Elections and Boundaries Commission has stated that the legislation they use is fairly new. For that reason, during the last elections it was already late to educate candidates on the laws. They also do not have statistics for candidates who were disqualified after being vetted at police stations.

(b) Observations on the implementation of the article

The Constitution (s. 96), Election Act of 2013 (s. 31) and Urban Government Act of 1969 cover, respectively, the criteria for candidacy to the Parliament and to municipal or town councils. Conviction for an offence under PCA (s. 31, Election Act) or for corrupt practices (s. 10(f), Urban Government Act) is a disqualification factor, unless five years or more have elapsed since the termination of the sentence.

Paragraph 3 of article 7

3. Each State Party shall also consider taking appropriate legislative and administrative measures, consistent with the objectives of this Convention and in accordance with the fundamental principles of its domestic law, to enhance transparency in the funding of candidatures for elected public office and, where applicable, the funding of political parties.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

The Elections Expenses Act No. 9 of 2013 governs transparency in the funding of election candidates. Section 4(1) requires all candidates for elections to disclose, at least three (3) days after primary elections, the amount of funds expected to be received for use as election expenses. Section 6 requires all candidates who intend to spend money for an election to open an election expenses account into which all money to be used for the election shall be deposited. Such money must include donations received by the candidate, if any. Section 7(4) provides that when a candidate receives a donation, that candidate is obligated to disclose such donation to the Registrar who is the Head of the Secretariat of the Elections and Boundaries Commission. Section 8(1) provides that any organisation or individual that participates in any activity that relates to elections must disclose the sources and the amount of funds to be used for that activity. Subsection (3) provides that ninety days after an election the organisation or individual concerned is obligated to furnish the Registrar with information relating to expenses incurred for the election. Section 12 provides that all funds received by a candidate must be disclosed in the return for election expenses. Section 13 places the obligation to keep records on a candidate and any organisation that participated in election activities. The Act provides various penalties for the violation of its provisions including disqualification of a candidate.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

During the last election in 2013 this Act was still new. For this reason, it was too late for the Elections and Boundaries Commission to ensure compliance with it. However, it is expected that candidates will comply in future elections.

(b) Observations on the implementation of the article

There are no political parties in Eswatini. The Elections Expenses Act of 2013 provides for the supervision and administration of election expenses by the Registrar of the Elections and Boundaries Commission. The Act, which has not been applied in any election yet, provides a regime of accountability for funds used for election campaigns, prohibits certain electoral practices and establishes sanctions. Regulations prescribing maximum thresholds for election expenses have not been issued (s. 5).

It is recommended that Eswatini issue regulations prescribing the threshold for election expenses.

Paragraph 4 of article 7

4. Each State Party shall, in accordance with the fundamental principles of its domestic law, endeavour to adopt, maintain and strengthen systems that promote transparency and prevent conflicts of interest.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

a) Section 240 of the Constitution covers conflict of interest and it provides that

"A person who holds an office referred to in section 241 (2) shall not; -

(a) assume a position where personal interest conflicts or is likely to conflict with the performance of functions of that officer; and

(b) engage in conduct that is; -

(i) likely to compromise the honesty, impartiality and integrity of that officer;

(ii) likely to lead to corruption in public affairs; or

(iii) which is detrimental to the public good or welfare or good governance.

Section 241

(2) Sections 240 and 241(1) apply to the holders of the following offices —

(a) Prime Minister, Deputy Prime Minister and Minister;

(b) member of the King's Advisory Council;

(c) member of Parliament including the Presiding Officers;

(d) Chairman and member of a Service Commission or Board;

(e) Army Commander and Deputy Army Commander;

(f) Commissioner of Customs;

(g) Commissioner of Police and Deputy Commissioner of Police;

(h) Commissioner of Labour;

(i) Commissioner of Correctional Services and Deputy Commissioner of Correctional Services;

(j) Commissioner of Taxes;

(k) Justice of the Superior Court of Judicature and all judicial officers;

(l) Ambassador, High Commissioner, and Head of Diplomatic or Consular Mission;

(m) Secretary to the Cabinet;

(n) Commissioner and Deputy Commissioner of the Integrity Commission;

- (o) Member of the Elections and Boundaries Commission;
- (p) Attorney-General and Deputy Attorney-General;
- (q) Head of Ministry of Government or department;
- (r) Director of Public Prosecutions and Deputy Director of Public Prosecutions;
- (s) Managing Director, general manager and departmental head of a public corporation or company in which the Government has a controlling interest; and
- (t) in the public service and any other public institution as Parliament may prescribe.

b) Section 27 of the Prevention of Corruption Act provides for conflict of interest and provides as follows:

(1) A member or an employee of a public body commits an offence of corruption where that member or employee or an immediate member of the family of that member or employee has a direct or indirect interest in any company or undertaking with which that public body proposes to deal, or that member or employee has a personal interest in any decision which that public body is to make, and that member or employee, knowingly fails to disclose the nature of that interest, or votes or participates in the proceedings of that public body relating to that dealing or decision.

(2) It is a defence to a charge under this section where the person having an interest has first made in writing to the public body the fullest disclosure of the exact nature of interest and has been permitted after that disclosure to take part in the proceedings relating to that dealing or decision.

(3) For the purposes of this section "member of family" includes a paramour.

c) The Procurement Act 2011 defines "conflict of interest" as circumstances in which the personal interest of an officer, or of a close relative or close associate of an officer, might benefit, directly or indirectly, from their official actions; and "close relative" as a parent, a spouse, a child, a sibling, or a parent, child or sibling of a spouse. Pursuant to section 60(1)(f), officials involved in public procurement have to avoid conflicts of interest at all times. Pursuant to section 62, non-compliance with the Act is an offence.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

1) Only one known case relating to conflict of interest, *The King vs. Mduzuzi Elliot Nkambule*, Case No. 142/14 [2016] SZHC (May 2016), in which the accused was acquitted of charges under section 27 (1) read together with section 35 (1) of the Prevention of Corruption Act.

2) In the Judiciary, it is an established practice for presiding officers to voluntarily recuse themselves where they feel conflicted. Where a presiding officer fails to recuse himself or herself the lawyers are entitled to approach that presiding officer in chambers to request his/her recusal and if there's failure by the presiding officer to comply with the request, an application may be made in open court. Examples include the following cases:

- *Zuke v Swaziland Environmental Authority and Others* (393/2016) [2017] SZIC 23 (30)

March 2017) in which an Industrial Court Judge voluntarily recused himself because he had a social relationship with the Respondents.

- *Swaziland Revenue Authority v Impuzi Wholesalers (Pty) Ltd (06/2015) [2015] SZSC 06 (09 December 2015)* in which a Judge of the High Court refused to recuse himself when requested as he was dealing with the matter while he was still the Registrar of the High Court. In an appeal, the Supreme Court held that the Judge ought not have heard the matter because he was conflicted.
- *Inkhosatane Gelane Simelane v African Echo (PTY) LTD and Others (2362/09) [2013] SZHC 277 (5th December 2013)* in which a Judge was requested to recuse himself and he refused after the lawyers were unable to provide reasonable apprehension of bias on his part.

(b) Observations on the implementation of the article

The Constitution (s. 240) provides general rules for preventing conflicts of interest of high-ranking officials, including the Prime Minister, ministers, members of Parliament, Judges, the Attorney-General and Deputy Attorney-General and the DPP and Deputy DPP. Further, PCA mandates officials of public bodies to disclose personal interests in any company dealing with that public body and to refrain from participating in any related proceedings without permission (s. 27). Pursuant to the PA (s. 60), officials involved in public procurement must always avoid conflicts of interest. Both PCA and PA provide criminal sanctions for non-compliance. However, the lack of a comprehensive regulatory framework and guidelines for managing and preventing conflict of interest appear to impede the effective implementation and monitoring of these requirements.

It is recommended that Eswatini consider developing a comprehensive regulatory and institutional framework and guidelines for managing and preventing conflict of interest and adopt measures to implement the relevant constitutional and legislative provisions.

Article 8. Codes of conduct for public officials

Paragraph 1 of article 8

1. In order to fight corruption, each State Party shall promote, inter alia, integrity, honesty and responsibility among its public officials, in accordance with the fundamental principles of its legal system.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

The Constitution, in terms of section 239, provides a leadership code of conduct which is meant to regulate how senior officials are to conduct their official business. The country also put in place a declaration process for certain categories of public officials as stated in Section 241 of the Constitution. This section enjoins a category of office bearers to submit to the integrity commission a written declaration of all property, assets owned by, or any benefit gained or liabilities owed by the holder of that office whether directly or indirectly. The Constitution stipulates the how, when and intervals of the declarations by these officials. The officials who are expected to make the declarations are high ranking officials including the Prime Minister, Deputy Prime Minister, Minister, member of the King's Advisory Council, member of Parliament including the Presiding Officers, Chairman and member of a service commission or board, Army commander, deputy army commander, Commissioners, Justices of superior courts, judicial officers, Ambassadors, High Commissioners and heads of diplomatic or consular missions and a lot more as they appear in Section 241 (2) of the Constitution. However, this process is not sufficient as it is not open to public scrutiny and efficiency in this regard has been hindered by the delays in the enactment of the Leadership Code of Conduct Bill 2011.

There is also the Civil Service Board (General) Regulations of 1963 which seek to regulate the use of official information. Section 21 prohibits the sharing, disclosure or publication of such information without the requisite authority. The Kingdom has also enacted the Public Finance Management Act 2017 (PFMA), whose section 107 provides for cases of financial misconduct amongst public officials or persons with responsibility for Government resources. Section 108(1) provides that a public office holder, public officer or other person with responsibility for Government resources commits a criminal offence if they engage in activity stipulated under the Act. Such activity includes taking unlawful possession of public funds or assets including electronic data, misappropriating public funds or assets, providing inaccurate financial information or concealing information on public finances to obtain a benefit for that person or another person or engaging in corrupt acts including soliciting or receiving bribes.

The country also put in place the Procurement Act 2011 which deals with standards of conduct of public officials and politicians involved in public procurement. Section 60 creates obligations for public officials and politicians involved in public procurement. These officials have various obligations in terms of subsection (1), including that they have to always act in the public interest and in accordance with the objectives and procedures set out in the Act and regulations. They also have to exercise their powers and discharge duties for a proper purpose, consistent with their responsibilities, and with the degree of care that a reasonable person would exercise in similar circumstances. They also have to discharge their duties impartially so as to assure fair competitive access to public procurement by tenderers. They also have to avoid conflict of interest at all times. They also must not commit or abet corrupt, fraudulent, collusive or coercive practices. In terms subsection (2) the Act disqualifies public officers and politicians from participation as tenderers in public procurement. Section 59 of the Act states that the Agency may promulgate codes of conduct to guide the behaviour of public officers, politicians, tenderers and suppliers involved in public procurement. The Agency is working towards promulgation of codes of conduct for public officials

and this project has not yet started. To enforce the standards of conduct of public officers, section 62 for instance, makes it an offence for a person to connive and collude to commit a corrupt practice.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

- 1) Government employees sign an ethics form on employment as per the official Secret Act No. 30 of 1968.
- 2) Internal auditors sign the Internal Audit Code of ethics on annual basis as per the Audit Standards.
- 3) Adherence to the general orders by both the employer and employee is enforced and any deviations from these, public officers are disciplined and they in turn engage courts or workers' unions where there are disputes.
- 4) An annual general Sibaya (People's Parliament) meeting of the nation was last held in 2016 and some issues raised were implemented by Government including non-engagement of retired civil servants on contract as per the Ministry of Public Service Memorandum to ministries.

(b) Observations on the implementation of the article

Eswatini promotes integrity, honesty and responsibility among its public officials primarily through legislation aimed at the protection of public funds, avoidance of conflicts of interest, and asset declaration, in addition to awareness raising campaigns and education on integrity and anti-corruption.

It was confirmed during the country visit that integrity criteria are indirectly considered in appraisals and promotions.

Paragraph 2 and 3 of article 8

2. In particular, each State Party shall endeavour to apply, within its own institutional and legal systems, codes or standards of conduct for the correct, honourable and proper performance of public functions.

3. For the purposes of implementing the provisions of this article, each State Party shall, where appropriate and in accordance with the fundamental principles of its legal system, take note of the relevant initiatives of regional, interregional and multilateral organizations, such as the International Code of Conduct for Public Officials contained in the annex to General Assembly resolution 51/59 of 12 December 1996.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with these provisions?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with these provisions of the Convention.

An effort is being made by the Management Service Division (MSD) in the Ministry of Public Service for all government Ministries/departments to have Public Charters and the Commission on Human Rights & Public Administration has been designated to be the monitoring body for that.

Furthermore, there are Government General Orders which detail the manner in which public servants are expected to conduct themselves. The Procurement Act (Sections 60 and 61) also provides codes or standard of conduct for the correct, honourable and proper performance of public functions in procurement matters.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

- An oath of allegiance taken
- Officers that violated section 108 of the Public Finance Management Act 2017 (Treasury Dept.)
- Rex vs Leo Ndvuna Dlamini (corruption case)

(b) Observations on the implementation of the article

The Constitution dedicates Chapter XVI to a “Leadership Code of Conduct” which establishes relevant standards of conduct. Breaches of the Code may lead to dismissal or removal from office and to disqualification from holding public office, either generally or for a specified period (s. 242). PSA also contains a “Public Officer’s Code of Conduct” (s. 5), which inter alia prohibits public officers from receiving or keeping gifts unless specifically authorized. The PA in turn provides for the standard conduct of public officers and specified political appointees involved in procurement (s. 60). No disciplinary or other measures are provided for in case of violation of the codes contained in the PSA and PA.

Section 59 of the Procurement Act states that the Public Procurement Regulatory Agency may promulgate codes of conduct to guide the behaviour of public officers, politicians, tenderers and suppliers involved in public procurement. The authorities noted that the Agency is working towards promulgation of such codes of conduct.

Paragraph 4 of article 8

4. Each State Party shall also consider, in accordance with the fundamental principles of its domestic law, establishing measures and systems to facilitate the reporting by public officials of acts of corruption to appropriate authorities, when such acts come to their notice in the performance of their functions.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Section 49 of the Prevention of Corruption Act 2006 places a duty to report corrupt transactions on all persons who are in positions of authority, and those who know or ought reasonably to have known or suspected that another person has committed an offence as listed in the same Act. The section lists the categories of persons who are deemed to hold positions of authority. The list includes a principal secretary in charge of any Government Ministry, the Head of a department or equivalent officer, or a Regional Administrator or Regional Secretary. It also includes the chief executive officer or clerk of a municipality. It also includes any head, chairperson, or chief executive officer of any public or private body. It also includes any head, rector or principal of any school or college. It also includes the manager, secretary or director of a company. It also includes the executive manager of any bank or other financial institution. It also includes any partner in a partnership. It also includes any person who has been appointed as head or chief executive officer of any agency, authority, board, commission, committee, corporation, council, department, entity, financial institution, foundation, fund institute, service or any other institution or organisation, whether established by legislation, contract or any other legal means. The list also includes any person who is responsible for the overall management and control of the business of an employer. In respect of the above positions, the person is obligated even if they hold the position in an acting or temporary capacity.

The country has also simplified reporting by making available the use of toll free lines. The agencies that have these toll-free lines are the Anti-Corruption Commission, Royal Swaziland Police Service, Swaziland Public Procurement Agency and Swaziland Revenue Agency.

(b) Observations on the implementation of the article

PCA provides for a duty on any person who holds “a position of authority” to report corrupt transactions to the ACC (s. 49). Although no internal reporting mechanisms are in place in government ministries, agencies and departments, different competent authorities, including ACC, PPRA, Eswatini Revenue Authority and the Police, have toll-free lines for reporting offences including corruption. All these channels are available to the public and public officials. Reporting can be anonymous.

Paragraph 5 of article 8

5. Each State Party shall endeavour, where appropriate and in accordance with the fundamental principles of its domestic law, to establish measures and systems requiring public officials to make declarations to appropriate authorities regarding, inter alia, their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

The Constitution, in terms of section 241, requires that every person who holds an office shall submit to the integrity Commission, a written declaration of all property, assets owned by or any benefit gained by the holder of office. The Public Service Bill also addresses the issue of declarations of conflict of interest and benefits of substantial gifts that may hinder dispersing the function as a public official.

The Constitution, in terms of section 240, further requires any person with potential conflict not to assume public office. It provides that “a person who holds an office shall not assume a position where personal interest conflicts with the performance of its office or engage in conduct that is likely to compromise honesty and integrity and is likely to lead to corruption of public affairs.”

(b) Observations on the implementation of the article

The Leadership Code of Conduct includes provisions on conflict of interest and asset declarations. Likewise, the PSA introduces an obligation for public officials to declare conflicts of interest (s. 15). It is unclear however if there is enough guidance of what constitutes a conflict of interest, and awareness of the obligation to report conflicts, given the recent date of the legislation. Accordingly, the lack of a comprehensive regulatory framework to declare and manage conflicts of interest hinders Eswatini’s ability to effectively implement interest disclosure requirements. Furthermore, as detailed under article 52(5) of the Convention, the requirements on asset disclosure in the Leadership Code are not operational and a bill to amend the Code in this regard has been pending since 2011.

Paragraph 6 of article 8

6. Each State Party shall consider taking, in accordance with the fundamental principles of its domestic law, disciplinary or other measures against public officials who violate the codes or standards established in accordance with this article.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

The General Orders outline the disciplinary measures to be taken against misconduct or violation of the code of standards by public officials.

The Public Finance Management Act 2017 (PFMA), in terms of section 108, states that a public office holder commits a criminal offence if they provide inaccurate financial information or conceals information on public finances to obtain a benefit for that person or another person. The Act provides further that a person who commits such an offence is liable to imprisonment for a period not exceeding two (2) years or to a fine not exceeding twenty thousand Emalangeni (E20, 000) or to both upon conviction.

The Public Finance Management Act 2017 (PFMA), section 83 (1), provides that the functions of the Audit Committee shall include assisting a Chief Executive Officer in fulfilling oversight responsibilities relating to financial practices, internal controls, governance systems, compliance with laws and ethics and audit matters.

According to regulation 41 of the Civil Service Board (General) Regulations of 1963, if a head of department receives a report alleging the misconduct of an officer he shall cause a departmental preliminary investigation to be made in order to establish the facts of the matter so that he may decide whether he should prefer formal charges of misconduct against the officer.

The Kingdom also has other law enforcement bodies in place to assist in disciplining public officers who have engaged in misconduct. These include the Internal Audit office, the Auditor General, the Anti-Corruption Commission, the Royal Swaziland Police (Fraud unit)

The Constitution under section 242 on the Leadership Code of Conduct.

Section 242(1) provides that: “An officer who contravenes the Code may, after due process of law, be dismissed or removed from office by reasons of such breach or abuse and maybe disqualified from holding any public office either generally or for a specified period.

(2) Any property or assets acquired after the initial declaration under this chapter and which is not reasonably attributable to income, government loan, inheritance or any other legitimate source, shall, after, due process of law, be forfeited to government.”

(b) Observations on the implementation of the article

As previously noted under para. 3 of this article, breaches of the “Leadership Code of Conduct” may lead to dismissal or removal from office and to disqualification from holding public office, either generally or for a specified period (Constitution, s. 242). No disciplinary or other measures against public officials are provided for in case of violation of the codes contained in the PSA and the Procurement Act.

It is recommended that Eswatini consider adopting disciplinary or other measures against public officials who violate the codes or standards of conduct.

Article 9. Public procurement and management of public finances

Paragraph 1 of article 9

1. Each State Party shall, in accordance with the fundamental principles of its legal system, take the necessary steps to establish appropriate systems of procurement, based on transparency, competition and objective criteria in decision-making, that are effective, inter alia, in preventing corruption. Such systems, which may take into account appropriate threshold values in their application, shall address, inter alia:

(a) The public distribution of information relating to procurement procedures and contracts, including information on invitations to tender and relevant or pertinent information on the award of contracts, allowing potential tenderers sufficient time to prepare and submit their tenders;

(b) The establishment, in advance, of conditions for participation, including selection and award criteria and tendering rules, and their publication;

(c) The use of objective and predetermined criteria for public procurement decisions, in order to facilitate the subsequent verification of the correct application of the rules or procedures;

(d) An effective system of domestic review, including an effective system of appeal, to ensure legal recourse and remedies in the event that the rules or procedures established pursuant to this paragraph are not followed;

(e) Where appropriate, measures to regulate matters regarding personnel responsible for procurement, such as declaration of interest in particular public procurements, screening procedures and training requirements.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

The country enacted the Procurement Act 2011 which addresses the provisions of this article.

(a) Section 7 of the Procurement Act provides for public accessibility to the relevant and necessary information and it provides that; “The text of this Act, public procurement regulations and all administrative rulings and directives of general application in connection with procurement covered by this Act, and all amendments thereof, shall be promptly made accessible to the public and systematically maintained by the Agency.

(b) With regards to the establishment in advance of conditions for participation, the Procurement Act 2011, Section 45 (2) provides that the contract award decision shall be taken by the appropriate approvals authority. It further provides in subsection 3 that, following the contract award decision, the procuring entity shall prepare a notice indicating the name of the best evaluated tenderer, the value of the proposed contract and any evaluation scores. Such notice is to be- (i) sent directly to all tenderers who submitted tenders by letter where appropriate, by fax or email; and, (ii) published on the Government’s public procurement website. Section 38 of the Act provides for Procurement Principles which include the fact that all procurement be conducted in a manner which promotes economy, efficiency, transparency, accountability, fairness, competition and value for money.

c) On the use of objective and predetermined criteria for public procurement decisions, the Procurement Act clearly states the Purpose and Objectives of legislating on the subject matter. The purpose is to establish public procurement institutions and to regulate the procurement of goods, works and services by procuring entities. The objectives are to establish a system and practices that serve to-

- i) ensure transparency and accountability in public procurement while maintaining appropriate confidentiality of information;
- ii) achieve economy, efficiency and maximum competition to ensure value for money in the use of public funds;
- iii) promote more diverse private sector participation, through fair and non-discriminatory treatment of tenderers;
- iv) develop economic capacity in Swaziland, through the provision of opportunities for Swazi companies to participate in public procurement; and,
- v) promote regional and international trade in accordance with agreements entered into by the Government of Swaziland.

The Public Accounts Committee is one other mechanism that sits to address supplier issues with the assistance and support of the Auditor General with a view of ensuring objective and laid down criterion for procurement is adhered to. Furthermore, Parts 4 & 5 of the Procurement Act put up or establish mechanisms to ensure objective procurement decisions are made.

(d)

i) The Procurement Act (Part 5) establishes an Independent Review Committee which investigates complaints arising from procurement processes.

ii) The Prevention of Corruption Act also criminalises the act of a public officer wherein he/she solicits or demands or accepts any advantage as an inducement to or a reward for or otherwise on account of that person giving assistance in the promotion, execution or procurement and such offences are classified as offences of corrupt activities relating to contracts and tenders.

iii) Section 17 of the Audit Act 2005 provides that whenever it appears to the Auditor General that any public money has been misappropriated by any person, he shall forthwith report the circumstances of the case to the Attorney General and the Controlling Officer for the Ministry of Finance for appropriate action.

(e) On the measures to regulate matters regarding personnel responsible for procurement, such elements are covered in various legislation as follows;

i) The Procurement Act provides for regulations whose purpose is to regulate the procurement of goods, works and services by government Ministries and Departments in order to ensure transparency and accountability in public procurement.

ii) Section 27 (2) of the Prevention of Corruption Act promotes declaration of interest as it makes it a mitigating factor or defence where the person having an interest had first made in writing to the public body the fullest disclosure of the exact nature of interest and has been permitted after that disclosure to take part in the proceedings relating to that dealing or decision.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

(b) PAC (Public Accounts Committee): The PAC sitting of 2017 saw the SPPRA attend to a case whereby a company was paid for undelivered services in Mozambique. The PAC made an effort to analyze the situation. Efforts to return monies due to Government were taken.

2) SPPRA: The organization has established a comprehensive website- <http://www.sppra.co.sz>. This website has accommodated this Article by making public all Ministries and departments procurement plans. These plans make the public aware of available tenders and expressions of interest.

(b) Observations on the implementation of the article

establishes PPRA as an independent body, responsible for policy, regulation, oversight, professional development, information management and dissemination in the field of public procurement (s. 9). PA also established the Government Tender Board as the highest approvals authority, where the value of procurements exceeds the levels of authority of lower approving authorities (s. 25). Tender boards at the level of procuring entities are also authorized under the PA.

PA applies to all public procurement, except those related to defence or national security. In the latter case, the application of the procurement rules and procedures may be modified to the extent necessary for the protection of the public interest and in accordance with procedures agreed with the PPRA (s. 4). PPRA may also permit deviations under limited circumstances (s. 6).

Section 38 provides that all procurement shall be conducted in a manner which promotes economy, efficiency, transparency, accountability, fairness, competition and value for money. The preferred methods of procurement are open tendering for goods, works and non-consulting services; and, request for proposals for consulting services. Other methods should only be used where the procurement meets the conditions for use of an alternative method (s. 42).

Contract award decisions are taken by the appropriate approvals authority. Following a contract award decision, the procuring entity should prepare a notice indicating the name of the best evaluated tenderer, the value of the proposed contract and any evaluation scores. Such notice is sent to all tenderers and be published on the Government's public procurement website (s. 45).

PPRA may suspend a tenderer or supplier from participation in public procurement on the grounds specified in section 56 of PA, including for corrupt practices relating to the submission of tenders.

For the purposes of hearing applications for administrative review and appeals against suspension, PPRA should constitute a standing review panel. For each application for administrative review or appeal against suspension, PPRA should constitute an Independent Review Committee, composed of three members of the standing review panel (sec. 50). 7 decisions on administrative review are published on the website since 2015. In addition to the Independent Review Committee, it was confirmed during the country visit that the administrative review by the High court is always possible.

Although substantial sections of the PA refer to the public procurement regulations (including for defining the procedure for applying for and issuing deviations, determining procurement methods and processes, and specifying thresholds), no such regulations have been issued to date, which to some extent affects the implementation of PA.

In addition to applicable standards of conduct for procurement personnel noted above (s. 60), PA sections 17 and 30 regulate respectively the disclosure of interests by members of the PPRA Board of Directors and members of the tender boards.

Members of the PPRA Board of Directors are appointed for a three-year term renewable once and in a manner to ensure rotation (s. 13). Office bearers must have appropriate training and experience.

It is recommended that Eswatini adopt measures to give effect to and implement the requirements of PA and consider adopting additional measures to regulate matters regarding procurement personnel, such as screening procedures, and training requirements.

Paragraph 2 of article 9

2. Each State Party shall, in accordance with the fundamental principles of its legal system, take appropriate measures to promote transparency and accountability in the management of public finances. Such measures shall encompass, inter alia:

(a) Procedures for the adoption of the national budget;

- (b) *Timely reporting on revenue and expenditure;*
- (c) *A system of accounting and auditing standards and related oversight;*
- (d) *Effective and efficient systems of risk management and internal control; and*
- (e) *Where appropriate, corrective action in the case of failure to comply with the requirements established in this paragraph.*

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

a) Paragraph 2 of this article has been implemented. Procedures for the adoption of the national budget are covered by;

i) The Public Finance Management Act of 2017 (PFMA) (section 29) which provides that Parliament shall endeavour to consider and approve the annual budget no later than 31 March of each year. It further outlines that the Principal Secretary of the ministry responsible for finance shall be responsible for the technical preparation of any proposal made by Parliament to amend the annual budget and Bill which seek to implement the annual budget and shall be responsible for ensuring that the numbers contained in the proposals are accurate.

ii) Chapter XI of the Constitution is dedicated to public finance. Section 200 specifically deals with the procedure and it provides that “the Minister responsible for finance shall cause to be prepared and laid before both chambers of Parliament, before or not later than sixty days after the commencement of each financial year, estimates of the revenues and expenditure of Swaziland for that year”.

It further provides that “the heads of expenditure contained in the estimates for a financial year (other than expenditure charged upon the Consolidated Fund in terms of this Constitution or any other law) shall be included in a bill to be known as an Appropriation Bill which shall be introduced in the House to provide for the withdrawal from the Consolidated Fund of the sums necessary to meet that expenditure and the appropriation of those sums necessary to meet that expenditure and the appropriation of those sums for the purposes specified in the bill”.

(b) With regards to timely reporting on revenue and expenditure, the article is implemented according to;

i) The Public Finance Management Act (PFMA) (Part VI) provides for annual Government level reporting and entity level reporting and audit. Section 87 (1) provides that “The Accountant-General shall, within 3 months of the end of each financial year, prepare and submit to the Auditor-General consolidated annual accounts containing a consolidated budget

report against the revenue, expenditure and financing estimates in the annual budget and any supplementary budget and the Appropriation Act.

ii) The Audit Act 2005 (Section 15) enjoins the Auditor General to submit a certified annual report to Parliament through the Minister within a period of nine months after the close of each financial year and if Parliament is not sitting, on the first day next that Parliament is sitting.

(c) Compliance in relation to a system of accounting and auditing standards and related oversight is ensured as follows;

i) Audit Act mandating all Ministries to annually submit financial statements

ii) The Public Finance Management Act (PFMA) (section 81) concerning the establishment of the Internal Audit Office and auditing according to the International Audit Standards set by the Institute of Internal Auditors.

iii) The Public Finance Management Act provides for authoritative principles on how transactions and other events should be reflected in the accounts and financial statements in accordance with the International Public Sector Accounting Standards issued by the International Federation of Accountants, as adopted for use by the Accountant-General from time to time on how transactions and other events should be reflected in the accounts and financial statements;

iv) The Public Finance Management Act (PFMA) on accounting standards (section 85) enjoins the Accountant-General to prescribe and publish accounting standards and practices to be implemented by Government including Local Government and public entities.

v) The Public Finance Management Act (PFMA) (section 85) also states that prior to the adoption of the International Accounting Standards practice by the Accountant General, the Government, Local Government and Public Entities shall use the accounting standards and practice approved by promulgated by the Ministry responsible for finance and the Minister shall determine whether the cash basis or the accrual basis of accounting may be used.

(d) For the effective and efficient systems of risk management and internal control, the Government has established an Internal Audit Office in accordance with Section 81 of the PFM Act 2017 to provide internal audit functions in public entities that helps in ensuring adequacy and effectiveness of internal control and risk management.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

Eswatini established an Internal Audit Office as per a recommendation in Eswatini's Performance Expenditure Review conducted by the World Bank in 2006, to assist MDAs in strengthening policy implementation and ensuring effective controls and governance systems to mitigate public finance management risks including poor discipline in expenditure control that open opportunities for fraud and corruption. The Internal Audit Office assesses and evaluates the effectiveness of internal controls, governance and risk management processes and advises on improvement and implementation of policies. Reports are submitted to management of each MDA for corrective measures. Where measures are not implemented a report of such is issued to management and 52 of such were referred to the Auditor General, according to the aforementioned report.

To ensure effectiveness of risk management and internal controls, the following measures are implemented:

The Internal Audit Office is introducing the Enterprise Risk Management Framework to all ministries to ensure participation of all levels within an organization in reducing risk to acceptable levels for achievement of objectives. Implementation is ongoing and the framework has been introduced to 20 entities.

Government is strengthening public sector capacity by trainings and awareness campaigns on management oversight responsibilities related to effective risk management and internal controls. These were funded by Government of Eswatini and assisted by United States of America in 2013 and European union in 2017.

(b) Observations on the implementation of the article

Eswatini's annual budget is prepared by the Ministry of Finance (MOF), following consultations with government agencies, and submitted to Parliament for approval. The budget is published on the official government website on the same day it is presented to Parliament. MOF oversees implementation of the annual budget and monitors adherence to public finance requirements by public entities. The budget should be implemented in line with PFMA and according to financial management principles, accounting standards, processes and systems established by the Accountant-General.

MOF also prepares the Fiscal Framework Paper (FFP) which, upon approval by Cabinet, is presented to Parliament, together with economic and fiscal half-year and annual reports.

The Accountant-General is responsible for compiling and managing the accounts of the Government and for managing the Government Financial Management Information and Accounting System. The Accountant-General may also inspect all offices of government and public entities (Section 10(3), PFMA).

PFMA provides for annual government-level and entity-level reporting and audit. The Accountant-General prepares and submits consolidated annual accounts to the Auditor-General within 3 months of the end of each financial year. The Audit Act 2005 requests the Auditor General to submit certified annual reports to Parliament through MOF.

Following the issuance of the audit report, MOF publishes the annual government accounts, audit opinion and annual non-financial performance report on the official government website. Public entities and government enterprises are also required to produce annual reports that include financial and non-financial performance with audited financial statements.

The Internal Audit Office under MOF is responsible for ensuring adequacy and effectiveness of control systems. The Office has introduced an Enterprise Risk Management Framework in the public sector.

Paragraph 3 of article 9

3. Each State Party shall take such civil and administrative measures as may be necessary, in accordance with the fundamental principles of its domestic law, to preserve the integrity of accounting books, records, financial statements or other documents related to public expenditure and revenue and to prevent the falsification of such documents.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

The Public Finance Management Act (PFMA) (S85- 5 & 6) states that:

- a) All accounts prepared by a Government business enterprise shall be prepared in accordance with International Accounting Standards and the Ministry responsible for finance may issue instructions to Government business enterprises on the adoption of suitable practises and standards consistent with the Companies Act, 2009.
- b) Any departure from the Accounting Standards shall be explained in the disclosures relating to the individual or consolidated accounts.

The Act (Section 108) further states that “a public office holder, public officer, or other person with responsibility for Government resources, commits a criminal offence if without lawful authority under this Act or under other lawful authority that person wilfully or negligently- ... (c) provides inaccurate financial information or conceals information on public finances to obtain a benefit for that person or another person”.

The Audit Act 2005, Procurement Act, Tender Board and Stores Regulations also help in ensuring the integrity of records and financial statements.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

Government Ministries and departments keep their financial information in accordance with the PFMA and other related policies and procedures. Quarterly reports are issued to cabinet. These are audited by both the Internal Audit Office and the Office of the Auditor General.

The office of the Auditor General produces annual reports and the reports are used by the Public Accounts Committee to hold Accounting Officers to be accountable of the public expenditure/ revenue.

(b) Observations on the implementation of the article

PFMA provides for criminal and disciplinary liability of any public office holder, public officer, or other person with responsibility for Government resources, who fails to keep proper records or conceals or wrongfully destroys information that is required to be recorded or fails to comply with instructions issued under the PFMA (Sections 107, 108).

(d) Technical assistance needs

Others:

Capacity building in developing performance audits and budget tracking would be helpful.

Legislative assistance:

SPPRA is in the process of drafting the regulations to give effect to the Procurement Act and for this reason there is a need for drafters of legislation. The preference is to have three (3) sets of regulations. A set relating to central government, parastatals and local government.

Institution-building:

Capacity building in corruption prevention and combating in the sphere of public procurement.

Is any technical assistance already being provided to you? If so, please provide a general description of the nature of the assistance, including donor information.

The institution is currently not receiving any technical assistance.

Article 10. Public reporting

Subparagraph (a) of article 10

Taking into account the need to combat corruption, each State Party shall, in accordance with the fundamental principles of its domestic law, take such measures as may be necessary to enhance transparency in its public administration, including with regard to its organization, functioning and decision-making processes, where appropriate. Such measures may include, inter alia:

(a) Adopting procedures or regulations allowing members of the general public to obtain, where appropriate, information on the organization, functioning and decision-making processes of its public administration and, with due regard for the protection of privacy and personal data, on decisions and legal acts that concern members of the public;

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes, in part

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

This has been done partly through the government website. However, the information there is not sufficient for purposes of combatting corruption. There is a gap as Ministerial reports are not readily available to the public but can be made available upon request as not all Government information can be publicized.

However, with regards to procurement, the Procurement Act requires the Agency to promptly make accessible to the public, public regulations and all administrative rulings and directives of general application in connection with procurement covered by this Act, and all amendments thereof. Section 45(3) requires the procuring entities to publish on the Government website (SPPRA website), notice indicating the best evaluated tenderer. This notice is also key to ignite the lodging and processes of procurement complaints and thereby ensuring transparency in the public procurement process.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

- 1) Information may be sourced from the Government website: www.gov.sz
- 2) With regard to Public Procurement, rulings can be found in the Swaziland Public Procurement Regulatory Agency website: www.sppra.co.sz
- 3) Legal information available on www.swazilii.org

(b) Observations on the implementation of the article

The dissemination of information is mainly ensured through specialized online portals, such as the Government website and the websites of the ACC and the PPA. Moreover, ministerial reports can be made available upon request.

Subparagraph (b) of article 10

Taking into account the need to combat corruption, each State Party shall, in accordance with the fundamental principles of its domestic law, take such measures as may be necessary to enhance transparency in its public administration, including with regard to its organization, functioning and decision-making processes, where appropriate. Such measures may include, inter alia:

...

(b) Simplifying administrative procedures, where appropriate, in order to facilitate public access to the competent decision-making authorities; and

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(P) Yes, in part

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

This is being addressed by the Service Charters and people will have the right to report to the Commission on Human Rights and Public Administration if there are issues that go against these principles.

(b) Observations on the implementation of the article

Eswatini has taken some steps and measures to simplify administrative procedures and facilitate public services delivery, including through the adoption of national and ministerial service charters and through the Government website, which contains webpages of electronic government online services, many of which are, however, not yet activated.

It was further indicated during the Country visit that the National Service Charter has been adopted and is applicable to everyone. Every ministry is obliged to develop its own service charter which for instance will cover the time a service should take and can be used as an accountability tool. Ten ministries have already submitted their service charters to the Ministry of Public service.

It is recommended that Eswatini continue efforts to simplify administrative procedures and facilitate public services delivery.

Subparagraph (c) of article 10

Taking into account the need to combat corruption, each State Party shall, in accordance with the fundamental principles of its domestic law, take such measures as may be necessary to enhance transparency in its public administration, including with regard to its organization, functioning and decision-making processes, where appropriate. Such measures may include, inter alia:

...

(c) Publishing information, which may include periodic reports on the risks of corruption in its public administration.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Section 20 of the Prevention of Corruption Act 2006 covers this article and provides that:

(1) The Commissioner shall, not later than three months after the end of each financial year, submit to the Minister a report on the activities of the Commission during that year.

(2) The report of the Commissioner shall not contain the facts or findings of any pending investigation. (3) The Minister shall, within thirty days after receipt of the report during the sitting of Parliament, cause the report to be laid before Parliament and if Parliament is not then sitting, within fourteen days of the next sitting of Parliament.

The Public Finance Management Act, in terms of section 16 provides that the Principal Secretary of the ministry responsible for finance shall publish the Fiscal Framework Paper on the Government official website one (1) week after the Fiscal Framework Paper is presented to Parliament.

The Procurement Act, Part II, provides that the Board shall, as soon as practicable, but not later than four months after the expiry of each financial year, submit to the Minister a report concerning the Agency's activities during that financial year

Public Enterprise Act 1989 (7) provides information and each public enterprise shall within four months after the end of its financial year prepare a report on its operations which together with a copy of its annual audited accounts as well as any report by the auditors on its management and accounting practices, shall be submitted

(b) Observations on the implementation of the article

Several institutions, including ACC, publish statistics and annual activity reports; however, none of those reports covers corruption risks in public administration. ACC has begun conducting corruption risk assessments of private and public entities; however, it was noted that those were not finalized due to the lack of financial resources.

It is recommended that Eswatini continue efforts to publish information on the risks of corruption in public administration.

Article 11. Measures relating to the judiciary and prosecution services

Paragraph 1 of article 11

1. Bearing in mind the independence of the judiciary and its crucial role in combating corruption, each State Party shall, in accordance with the fundamental principles of its legal system and without prejudice to judicial independence, take measures to strengthen integrity and to prevent opportunities for corruption among members of the judiciary. Such measures may include rules with respect to the conduct of members of the judiciary.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

The integrity of the Judiciary is strengthened by the Constitution which firstly guarantees its independence (section 141) which is inclusive of necessary assistance by other State agencies, non-liability of judges to action or suit in their line of duty, paying out of administrative expenses from the Consolidated Fund. The Constitution further guarantees that rights and privileges shall not be varied to the disadvantage of the Judges or judicial officers.

Further the strengthening of integrity and to prevention of opportunities for corruption is ensured by laying out the criteria for appointment (section 153) and guarding jealously the tenure of office of Judges (section 155). The Constitution provides for the non-removal of judges except for stated serious misbehaviour or inability to perform the functions of office arising from infirmity of body or mind and the process of removing a judge is clearly stipulated (section 158).

The Judiciary is also expected to adhere to the Leadership Code of Conduct (section 239) which seeks to ensure are transparent in their activities and accountable to the people they represent or serve; are committed to the rule of law and administrative justice; adhere to the principles of service for the common good; do not abuse office; and do not engage in conduct that is likely to lead to corruption in public affairs. Contravention of the Code is an offence punishable by dismissal or removal from office, after due process of law, by reasons of such breach or abuse and the person may be disqualified from holding any public office either generally or for a specified period.

There is also a criteria for the determination of a potential conflict of interest for members of the Judiciary the Constitution (section 240) provides that a person who holds an office shall not assume a position where personal interest conflicts or is likely to conflict with the performance of functions of office; and /or engage in conduct that is likely to compromise the honesty, impartiality and integrity of that officer; likely to lead to corruption in public affairs; or which is detrimental to the public good or welfare or good governance.

To address a potential conflict of interest for members of the Judiciary, it is an established practice for presiding officers to voluntarily recuse themselves wherein in they feel conflicted. Where strong grounds warranting recusal exist, the lawyers involved in the matter are entitled to ask for an adjournment and approach that presiding officer in chambers to request his/her recusal and if the presiding officer still fails to recuse themselves an application an application for recusal may then be made in open court.

To ensure and maintain transparency in the court process, the public and media are allowed access to court proceedings. Court judgements are also published on the swazilii web portal as well as in the Swaziland Law Reports. The procedures governing case assignment and distribution are regulated by the Rules of the High Court (section 55).

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

1. Declaration of Assets and Liabilities in terms of Section 241(1) of the Constitution in terms of which newly appointed judges at entry to their tenure declare their assets and liabilities. Thereafter Judges are expected to declare once every two years. When they leave office they are also enjoined to declare their assets and liabilities.
2. The Prescription of Salaries and Allowances of Judicial Office, Notice 2016 which implemented the increase in salaries of our Justices of the Superior Courts in terms of Section 208 of the Constitution of Swaziland.
3. Impeachment Proceedings (in terms of Section 158 of the Constitution) against some of our Superior Court Judges for charges relating to conflict of interest.
4. Judges attend trainings and workshops locally and externally on induction programmes and emerging legal issues.
5. The Judiciary in conjunction with multiple stakeholders is in the process of developing an electronic case management system in an effort to enhance efficiency in case management.
6. A Magistrate was also arrested and subsequently dismissed from service for demanding a bribe from an accused person.

(b) Observations on the implementation of the article

The independence of the judiciary is established in the Constitution (Section 141) which also sets forth the rules and conditions for the appointment, qualification, and dismissal of judges (Sections 153, 154 and 158). The Supreme Court has supervisory jurisdiction over all courts of judicature and over any adjudicating authority (Section 148).

The Constitution also establishes a Judicial Service Commission (JSC), which, among other things, advises the Government on improving the administration of justice, receives and processes recommendations and complaints concerning the judiciary, and advises the King on the appointment, discipline and removal of the Director of Public Prosecutions and other public officers as provided in the Constitution (s. 160).

Judges, the Attorney and Deputy-Attorney General, the DPP and Deputy DPP should also adhere to the “Leadership Code of Conduct” and are covered by the provisions on conflict of interest and asset

declaration.

It was confirmed during the Country visit that judges participate in judicial ethics or integrity training as part of their general training and that the Chief Justice conducts inspections of the work of the judiciary.

Paragraph 2 of article 11

2. Measures to the same effect as those taken pursuant to paragraph 1 of this article may be introduced and applied within the prosecution service in those States Parties where it does not form part of the judiciary but enjoys independence similar to that of the judicial service.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes, in part

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

The article is covered in part as only the head of prosecutions (Director of Public Prosecutions) is explicitly provided for in the Constitution Act (section 162) and obligated to adhere to the Leadership Code of Conduct, together with his Deputy. All the other officials/ prosecutors holding posts beneath the Director and the Deputy are not specifically provided for even though all officers are expected to conduct themselves in a professional manner, with integrity and desist from acts that would taint the office that they hold, including corrupt activities.

The Constitution provides that in the execution of his duties, the Director of Public Prosecutions shall have regard to public interest, the interest of the administration of justice and the need to prevent abuse of the legal process; and be independent and not be subject to the direction or control of any other person or authority. The procedure for the removal of the Director is also outlined in the Constitution, and it is the same manner and on the same grounds as a Judge of the superior courts, except that the Minister responsible for Justice shall initiate the proceedings.

The Director of Public Prosecutions is also expected to adhere to the Leadership Code of Conduct (section 239) which seeks to ensure are transparent in their activities and accountable to the people they represent or serve; are committed to the rule of law and administrative justice; adhere to the principles of service for the common good; do not abuse office; and do not engage in conduct that

is likely to lead to corruption in public affairs. Contravention of the Code is an offence punishable by dismissal or removal from office, after due process of law, by reasons of such breach or abuse and may be disqualified from holding any public office either generally or for a specified period.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

- The King vs John Ndwandwe - A Public Prosecutor solicited a bribe from an accused's relative in order to withdraw a case.
- The King vs Siphon Dlamini 654/17 - A court clerk charged for demanding a bribe.
- The King vs Mbhekeni Dlamini - An interpreter was charged for bribery.

(b) Observations on the implementation of the article

Eswatini has taken some measures to strengthen integrity and to prevent opportunities for corruption among members of Public Prosecutions which does not form part of the judiciary. The office of the Director of Public Prosecutions is established in terms of Section 162 of the Constitution read together with the Public Prosecutions Order of 1973. The Constitution provides the rules and conditions for the appointment, qualification, and termination of the Director of Public Prosecutions (s. 162). The Director and Deputy-Director of Public Prosecutions should also adhere to the "Leadership Code of Conduct" and are covered by the provisions on conflict of interest and asset declaration. The PSA and government regulations apply to civil servants, which includes also prosecutors.

(c) Challenges, where applicable

Please outline actions required to ensure or improve the implementation of the article under review and describe any specific challenges you might be facing in this respect.

- The development of a Public service charter to deal with the development of a gift register and interest declaration framework which will be cutting across (public servants in particular Judiciary personnel.
- To build capacity to the judiciary personnel to foster a zero tolerance towards corruption

(d) Technical assistance needs

Institution-building:

Electronic Records management system that will enhance the effectiveness of the case management system

Facilitation of international cooperation with other countries:

Exchange programme

Article 12. Private sector

Paragraphs 1 and 2 of article 12

1. Each State Party shall take measures, in accordance with the fundamental principles of its domestic law, to prevent corruption involving the private sector, enhance accounting and auditing standards in the private sector and, where appropriate, provide effective, proportionate and dissuasive civil, administrative or criminal penalties for failure to comply with such measures.

2. Measures to achieve these ends may include, inter alia:

(a) Promoting cooperation between law enforcement agencies and relevant private entities;

(b) Promoting the development of standards and procedures designed to safeguard the integrity of relevant private entities, including codes of conduct for the correct, honourable and proper performance of the activities of business and all relevant professions and the prevention of conflicts of interest, and for the promotion of the use of good commercial practices among businesses and in the contractual relations of businesses with the State;

(c) Promoting transparency among private entities, including, where appropriate, measures regarding the identity of legal and natural persons involved in the establishment and management of corporate entities;

(d) Preventing the misuse of procedures regulating private entities, including procedures regarding subsidies and licences granted by public authorities for commercial activities;

(e) Preventing conflicts of interest by imposing restrictions, as appropriate and for a reasonable period of time, on the professional activities of former public officials or on the employment of public officials by the private sector after their resignation or retirement, where such activities or employment relate directly to the functions held or supervised by those public officials during their tenure;

(f) Ensuring that private enterprises, taking into account their structure and size, have sufficient internal auditing controls to assist in preventing and detecting acts of corruption and that the accounts and required financial statements of such private enterprises are subject to appropriate auditing and certification procedures.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with these provisions?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is

planning to take, together with the related appropriate time frame) to ensure full compliance with these provisions of the Convention.

The Constitution of Eswatini (section 241) on declaration of assets and liabilities provides that “A person who holds an office shall submit to the integrity Commission, a written declaration of all property, assets owned by, any benefit gained or liabilities owned by the holder of that office, whether directly or indirectly

The Public Enterprise Act, 1989 (section 7) requires each public enterprise unit to provide, within four months after the end of its financial year prepare a report on its operations.

The Procurement Act (section 3) outlines the purpose of the Regulations which is to regulate the procurement of goods, works and services by government Ministries and Departments, in order to ensure transparency and accountability in public procurement.

There is also the Eswatini Financial Services Authority (section 6) which issues guidelines and codes of practice.

The Public Finance Management Act (section 11), places a responsibility, amongst others, on the Chief Executive Officer of an enterprise to ensure effective and efficient internal controls arrangements and systems for the management of assets, liabilities, and other risks. The internal audit system should be in compliance with internal audit standards issued under this Act.

The Act (section 83) further places a duty upon the Audit Committee to assist a Chief Executive Officer in fulfilling oversight responsibilities relating to financial practices, internal controls, governance systems, compliance with laws and ethics and audit matters.

The Public Enterprise Act (section 7) obligates each public enterprise, within four months after the end of its financial year, to prepare a report on its operations which together with a copy of its annual audited accounts as well as any report by the auditors on its management and accounting practices.

The Prevention of Corruption Act (section 10) mandates the Anti-Corruption Commission to take necessary measures for the prevention of corruption in public and private bodies including, in particular measures for examining the practices and procedures of public and private bodies in order to facilitate the discovery of corrupt practices and also secure the revision of their methods of works or procedures which, in the opinion of the Commissioner, may be prone or conducive to corrupt practices.

(b) Observations on the implementation of the article

Eswatini has taken some measures to prevent corruption involving the private sector. PCA tasks ACC with preventive and education functions among private sector entities in addition to the public sector (s. 10). PCA criminalizes bribery in the private sector (s. 23) and extends the duty to report corrupt transactions to certain persons holding the private sector positions (s. 49).

The registration of both local and foreign companies is done under the Companies Act of 2009, which establishes the Office of the Registrar (s. 4) as the place where all companies established in Eswatini must be registered (s. 26). The Registrar collects identification information and documents on the members and directors, but not on beneficial owners of registered companies. The information kept by the Registrar is available to both members of the public and law enforcement (s. 8).

Companies should appoint auditors (s. 232) and give notice of that appointment to the Registrar (s. 237). At the end of each financial year, companies should file their annual returns together with audited statements with the Registrar. Failure to comply with this requirement is penalized (Ss. 151 and 152).

A person who has, at any time, been convicted domestically or abroad of theft, fraud, forgery or uttering a forged document, perjury, or any offence involving dishonesty is disqualified from being appointed or acting as a director of a company (s. 198).

Directors and officers with an interest in a contract being considered by the company are required to declare such interest in writing to the company secretary and every director (s. 207). Companies should maintain a register of all declarations of interest (s. 208).

There are no regulations or legislation to limit the professional activities of former public officials after resignation and no requirements on private enterprises to have internal auditing controls to assist in preventing and detecting acts of corruption.

It is recommended that Eswatini strengthen measures to prevent corruption and enhance accounting and auditing standards in the private sector, including by: promoting the development of standards of conduct in the private sector, taking measures that make it necessary to identify beneficial owners of companies and legal entities, considering the adoption of restrictions on the professional activities of former public officials, and requiring private enterprises to have adequate internal auditing controls.

Paragraph 3 of article 12

3. In order to prevent corruption, each State Party shall take such measures as may be necessary, in accordance with its domestic laws and regulations regarding the maintenance of books and records, financial statement disclosures and accounting and auditing standards, to prohibit the following acts carried out for the purpose of committing any of the offences established in accordance with this Convention:

- (a) The establishment of off-the-books accounts;*
- (b) The making of off-the-books or inadequately identified transactions;*
- (c) The recording of non-existent expenditure;*
- (d) The entry of liabilities with incorrect identification of their objects;*
- (e) The use of false documents;*
- (f) The intentional destruction of bookkeeping documents earlier than foreseen by the law.*

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

The Financial and Accounting Instructions, 1970 Chapter 3, (0313), where the minimum periods of keeping records is stipulated. The maximum is 20 years and minimum is 5 years, depending on the class of records.

The Companies Act

Duty of company to keep accounting records.

245.(1) Every company shall keep such accounting records as are necessary fairly to present the state of affairs and business of the company and to explain the transactions and financial position of the trade or business of the company, including—

(a) records showing the assets and liabilities of the company;

(b) a register of fixed assets showing the respective dates of acquisition and the cost thereof, depreciation, if any, the respective dates of any disposals and the consideration received in respect thereof:

Provided that in respect of fixed assets acquired before the commencement of this Act, a company may, as at the end of its first financial year after the said commencement, take an inventory of all fixed assets and make a realistic allocation of the total value of fixed assets as shown in the financial statements as at that date over the inventory of assets;

(c) records containing entries from day to day in sufficient detail of all cash received and paid out and of the matters in respect of which receipts and payments take place;

(d) where the trade or business of the company has involved dealings in goods, records of all goods sold and purchased and (except in the case of ordinary retail trade) records showing the goods and the buyers and the sellers thereof in sufficient detail to enable the nature of those goods and those buyers to be identified; and

(e) statements of the annual stocktaking.

(2) The accounting records referred to in subsection (1) may be kept either by making entries in bound books or by recording the matters in question in any other manner, and where such records are not kept by making entries in bound books, adequate precautions shall be taken for guarding against falsification and facilitating its discovery.

(3) The accounting records shall be kept at such place in Swaziland as the directors think fit and shall at all times be open to inspection by the directors.

Auditor's duties as to annual financial statements and other matters.

261. It shall be the duty of the auditor of a company—

(a) to audit the annual financial statements and group annual financial statements to be laid before its annual general meeting;

(b) to satisfy himself that proper accounting records as required by this Act have been kept

by the company and that proper returns adequate for the purposes of his audit have been received from branches not visited by him;

(c) to satisfy himself that the minute books and attendance register in respect of meetings of the company and of directors and managers have been kept in proper form as required by this Act;

(d) to satisfy himself that a register of interests in contracts as required by section 208 have been kept and that the entries therein are in accordance with the minutes of director's meetings;

(e) to examine or satisfy himself as to the existence of any securities of the company;

(f) to obtain all information and explanations which to the best of his knowledge and belief are necessary for the purposes of carrying out his duties;

(g) to satisfy himself that the company's annual financial statements are in agreement with its accounting records and returns;

(h) to examine group annual financial statements and satisfy himself that they comply with the requirements of this Act;

(i) to examine such of the accounting records of the company and carry out such tests in respect of such records and such other auditing procedures as he considers necessary in order to satisfy himself that the annual financial position of the company and its subsidiaries and the result of its operations and those of its subsidiaries, are in conformity with Swaziland and International Financial Reporting Standards applied on a basis consistent with that of the preceding year;

(j) to satisfy himself that statements made by the directors in their report do not conflict with a fair interpretation or distort the meaning of the annual financial statements and accompanying notes;

(k) when he gets to know, or has reason to believe, that the company is not carrying on business or is not in operation and has no intention of resuming operations in the foreseeable future, to report forthwith accordingly by certified post to the Registrar;

(l) to comply with any other duty imposed on him by this Act; and

(m) to comply with any applicable requirements of the Accountants' Act, 1985.

(b) Observations on the implementation of the article

The Companies Act (Ss. 245 - 264) adequately regulates the retention and disclosure of accounting records.

Paragraph 4 of article 12

4. Each State Party shall disallow the tax deductibility of expenses that constitute bribes, the latter being one of the constituent elements of the offences established in accordance with articles 15 and 16 of this Convention and, where appropriate, other expenses incurred in furtherance of corrupt conduct.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Tax deductibility of expenses that constitute bribes is prohibited by the Income Tax Order of 1975 in terms of section 15 (g). This section disallows tax deductibility of any money which was not expended for the purpose of trade.

(b) Observations on the implementation of the article

The Income Tax Order does not explicitly disallow the tax deductibility of expenses that constitute bribes (s. 15 on Deductions not allowable).

It is recommended that Eswatini explicitly prohibit the tax deductibility of expenses that constitute bribes.

Article 13. Participation of society

Paragraph 1 of article 13

1. Each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption. This participation should be strengthened by such measures as:

(a) Enhancing the transparency of and promoting the contribution of the public to decision-making processes;

(b) Ensuring that the public has effective access to information

(c) Undertaking public information activities that contribute to non-tolerance of corruption, as well as public education programmes, including school and university curricula;

(d) Respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption. That freedom may be subject to certain restrictions, but these shall only be such as are provided for by law and are necessary:

(i) For respect of the rights or reputations of others;

(ii) For the protection of national security or ordre public or of public health or morals.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

(a) IBP Survey: This survey is meant to increase effective participation of the public in the National budgetary processes. This is done through publicising the research findings on the openness of the budget process. 2017 -

- Press statement detailing the analysis of the national budget calling for accountability & transparency. This is done annually.
- Economic Justice Program (Peoples' Budget): Detailed analysis of the national budget including drafting of policy brief advising the Government on key priority areas. This is done annually.
- Civil Society Recovery Road map: Roadmap citing key areas of concern in view of the economic recovery roadmap process (2012).
- Organizational Development - CANGO has a program that is aimed at promoting governance and leadership of NGOs where roadmap assessments are done to CSOs and identified gaps are dressed as guided by an Institutional strengthening plan for each organization. This activity is part of the CANGO 2016 - 2020 Strategic Plan.

(b) The country does not have any law that prevents CSOs from accessing information. However, there is no enabling mechanism or legislation that obligates institutions to give the public and CSOs access to information.

(c) Economic justice program:

- CSO sensitization meeting in collaboration with Anti-Corruption (Post Ethiopia training)
- UNCAC Civil Society Sensitization Workshop was held in Mountain Inn Hotel, Mbabane on 2nd October 2015 where 30 organisations from CSO were trained on the provisions of UNCAC.
- The Prevention of Corruption Act (section 10) mandates the Anti-Corruption Commission to, amongst other things, disseminate information on the evil and dangerous effects of corrupt practices on the society; and also enlist and foster public support against corrupt practices.

(d) The current human rights framework in the country allows for freedom of participation of individuals and groups outside the public sector. Operation of these organizations in the fight against corruption is not limited by any legislative, policy framework or practices. However nothing can be construed to be active measures to promote such participation. There are currently no active

parties outside the aforementioned bodies that have an active role in the fight against corruption with the exception of the media that reports on these allegations.

Extractive Industry Platform has been established to promote accountability and transparency in the extractive sector. Two (2) dialogues have been held regarding the management of the extractive mining industry in terms of beneficiaries.

Publish what you Pay: CANGO has started to mobilise CSOs to join the Publish what you pay platform which seeks to limit corruption and promote accountability and transparency in the extractive sector in Eswatini in September 2016 and May 2017.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

- 1) IBP Survey report
- 2) CANGO Strategic plan
- 3) ACC annual reports

(b) Observations on the implementation of the article

Eswatini has taken measures to promote the participation of civil society in the prevention of and the fight against corruption and to raise public awareness.

It was indicated during the country visit that two schools (one primary and one secondary) have developed educational courses on anti-corruption with the cooperation of the ACC.

There are no specific regulations governing public access to information. It was indicated during the Country visit that the authorities have prepared a draft law on the right to information for tabling in Parliament.

It is recommended that Eswatini ensure that the public has effective access to information.

Paragraph 2 of article 13

2. Each State Party shall take appropriate measures to ensure that the relevant anti-corruption bodies referred to in this Convention are known to the public and shall provide access to such bodies, where appropriate, for the reporting, including anonymously, of any incidents that may be considered to constitute an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

1) The public is aware of the Anti-Corruption Commission and efforts have been made to ensure adequate information is available with regards to its functions and what the public can report. On the issue of accessibility efforts are on going to have decentralized offices at regional level. For example an office has already been set up in Manzini.

A report to the Anti-Corruption Commission may be made anonymously or a person may reveal his/her identity to the Commission's Report Centre in any of the following ways:

- Through visiting our offices at Mbandzeni House 1st and 3rd floors
- Using the toll free number 8003500
- Sending a fax to 24040758
- Writing to us at P.O Box 4842 MBABANE
- Email: anticorruption@realnet.co.sz
- Website: www.acc.gov.sz

2) The Swaziland Revenue Authority as a regulatory body has taken significant steps towards strengthening controls to prevent and curb acts of corruption. Although the target is mainly with their clients and employees a number of interventions have been put in place to ensure that the public knows of these controls and how to report:

Swaziland Revenue Authority offers the following reporting methods: ·Toll free line: 8008000

- Email: internalaffairs@sra.org.sz
- Telephone:2404 8549, 24048449
- In person: SRA Offices- Leites Toyota Premises, Mbabane

3) Swaziland Public Procurement Regulatory Agency and Commission on Human Rights & Public Administration are yet to invest significant efforts in these regard. Although some members of the public may be aware on how to report there is still need for improvement.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

(1) The annual report of the Anti-Corruption Commission contains the statistics of all received reports from the public.

(b) Observations on the implementation of the article

ACC accepts corruption reports, including anonymously, through various communication channels, including by toll-free line and e-mail.

(c) Challenges, where applicable

Please outline actions required to ensure or improve the implementation of the article under review and describe any specific challenges you might be facing in this respect.

- Capacity building for CSO on corruption, anti-corruption programming, including indicators and provisions of the Convention
- Information on the benefits of platforms like Publish What you Pay
- Advocacy on anti-corruption
- Understanding of interlinkages between programs and issues of corruption for comprehensive advocacy purposes
- Lack of anti-corruption strategic framework to inform CSO programs
- Capacity on the role of CSOs in combating corruption, including promotion of transparency and accountability to the public by Government.

(d) Technical assistance needs

Legislative assistance:

Capacity in the finalization of the NGO Bill that will promote accountability by CSOs' capacity in advocating for a Public Access to Information Bill.

Institution-building:

Mentorship for CSOs that will lead to the implementation of anti-corruption programs, including the Human Rights Consortium.

Policymaking:

Orientation of CSOs on the policies in place and how they link with CSO programs for dissemination and advocacy purposes.

Capacity-building:

- Capacity building for CSO on corruption, anti-corruption programming, including indicators and provisions of the Convention

- Information on the benefits of platforms like Publish What you Pay
- Advocacy on anti-corruption
- Understanding of interlinkages between programs and issues of corruption for comprehensive advocacy purposes
- Lack of anti-corruption strategic framework to inform CSO programs
- Capacity on the role of CSOs in combating corruption, including promotion of transparency and accountability to the public by Government.

Research/data-gathering and analysis:

Capacity building on conducting surveys on budget allocation trends.

Facilitation of international cooperation with other countries:

Strengthen relations with other countries for exchange programs to share best practices.

Is any technical assistance already being provided to you? If so, please provide a general description of the nature of the assistance, including donor information.

No technical assistance is currently being received.

Article 14. Measures to prevent money-laundering

Subparagraph 1 (a) of article 14

1. Each State Party shall:

(a) Institute a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions, including natural or legal persons that provide formal or informal services for the transmission of money or value and, where appropriate, other bodies particularly susceptible to money-laundering, within its competence, in order to deter and detect all forms of money-laundering, which regime shall emphasize requirements for customer and, where appropriate, beneficial owner identification, record-keeping and the reporting of suspicious transactions;

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

1. The Money Laundering and Financing of Terrorism (Prevention) Act 6 of 2011 (as amended) (MLFPA) (section 19) creates the Swaziland Financial Intelligence Unit (SFIU) which is responsible for receiving, requesting, analysing and disseminating to competent authorities disclosures of financial information in order to counter money laundering and financing of terrorism as per section 31.

2. There is also a Task Force established in terms of section 38 and it is an organ responsible for making policies for anti-money laundering and counter financing of terrorism in Eswatini. Its functions include: advising on the anti-money laundering and counter financing of terrorism national strategy plan for Eswatini; the composition of the Technical Committee; and the exercise of the powers entrusted on the Minister in terms of this Act.

3. There is also a Technical Committee whose functions include the development of an anti-money laundering and counter financing of terrorism national strategy plan for Eswatini and ensure its implementation on approval; co-ordinating the national anti-money laundering and counter financing of terrorism risk assessment; facilitating collaboration between the stakeholders in the anti-money laundering and counter financing of terrorism arena; act as the point of contact for international agencies in the anti-money laundering and counter financing of terrorism arena, including donor agencies; advise the Ministry of Finance on legislative and practical initiatives necessary to secure compliance with international and regional standards in anti-money laundering and counter financing of terrorism; ensure that Government policy on anti-money laundering and counter financing of terrorism is implemented; produce and submit quarterly reports on the national strategy plan and the progress to the Council; and within three months after the close of each financial year, produce an annual report on its activities, which shall be presented to the Minister.

In terms of section 6 of MLFPA (as amended), all banks and non-bank financial institutions, collectively referred to as accountable institutions, have an obligation before entering into a business relationship with any person to ascertain the identity of the customer or beneficial owner on the basis of any official identifying document. The institution is further obligated to verify the identity of the customer on the basis of reliable and independent source documents, data or information or other evidence as is reasonably capable of verifying the identity of the customer. The obligation also arises where there is a suspicion of a money laundering or financing of terrorism offence. The accountable institution also has to obtain information on the purpose and nature of the business relationship. If the customer is a natural person information that has to be obtained from the customer must include the name, physical address and occupation of the person. To be further obtained must be a national identity card, passport or other applicable official identifying document. If the customer is a legal entity, the institution has to establish its legal existence and structure. On top of that information relating to the customer's name, legal form, address and directors, the principal owners and beneficiaries has to be obtained. It must also be verified that the person acting on behalf of the customer is authorised.

In terms of section 8 of MLFPA (as amended), an accountable institution is obligated to establish

and maintain specific records. These include those relating to the identity of any person obtained in terms of section 6. Others include those relating to transactions carried out by the institution and correspondence relating to the transactions, all reports made to the SFIU and enquiries relating to money laundering and financing of terrorism made to it by the SFIU. These records are to be kept for a minimum period of five (5) years. An institution is obligated keep records for a period beyond the minimum period of five (5) years when requested to do so by the SFIU, a law enforcement agency or a supervisory authority. See articles 14(3) and 52(1) below for details.

In terms of section 11 of MLFTP (as amended), an accountable institution is obligated to pay special attention to any complex, unusual or large transactions and any unusual patterns of transactions that have no apparent or visible economic or lawful purpose.

In terms of section 12 of MLFTP (as amended), an accountable institution is obligated to report suspicious transactions and cash transactions to the SFIU. On the other hand, section 13 provides that where a supervisory authority or an auditor of an accountable institution suspects or has reasonable grounds to suspect that information it has concerning any transaction or attempted transaction may be related to the commission of a money laundering offence or an offence of financing of terrorism, of assistance in the enforcement of the Act or is an act of preparation in relation to an offence of financing of terrorism then such supervisory authority or auditor is obligated to report to the SFIU.

The definition of “accountable institution” is in Section 2 of MLFTP (as quoted under paragraph 1 of article 52).

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

In the period 2017 to 2018 the SFIU received 2,809 STRs. Of these, 318 were followed up on, namely 134 were referred to the police, 19 were referred to the ACC and 165 were referred to the Eswatini Revenue Authority.

(b) Observations on the implementation of the article

Eswatini has established a domestic regulatory and supervisory regime for banks and non-bank financial institutions. The regime also covers money transmission service providers, in accordance with Section 10 of the MLFTP.

The AML framework includes requirements for customer and beneficial owner identification, with additional due diligence measures in the case of high-value transactions; record-keeping; and the reporting of suspicious transactions, as detailed under article 52.

A National Risk Assessment (NRA) was completed in 2017 and relevant guidance for accountable institutions was issued. However, there are reported challenges in implementation, given the recent adoption of the requirements.

(DNFBPs) are included under article 52.

Subparagraph 1 (b) of article 14

1. Each State Party shall: ...

(b) Without prejudice to article 46 of this Convention, ensure that administrative, regulatory, law enforcement and other authorities dedicated to combating money-laundering (including, where appropriate under domestic law, judicial authorities) have the ability to cooperate and exchange information at the national and international levels within the conditions prescribed by its domestic law and, to that end, shall consider the establishment of a financial intelligence unit to serve as a national centre for the collection, analysis and dissemination of information regarding potential money-laundering.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

The Swaziland Financial Intelligence Unit (SFIU) established in terms of section 19 of the MLFPTA (as amended) renders the country compliant with this provision. The SFIU is an institution responsible for receiving, requesting, analysing and disseminating to competent authorities disclosures of financial information in order to counter money laundering and financing of terrorism. Section 31 states the functions and powers of the SFIU as the following;

(a) shall receive reports made sections 12, 13 and 41(7) and information provided to the SFIU by any agency of another country, information provided to the SFIU a competent authority or a government institution or agency, and any other information voluntarily provided to the SFIU about suspicions of an unlawful activity, a money laundering offence or the offence of financing of terrorism;

(b) shall have the authority to collect any information that the SFIU considers relevant to an unlawful activity, money laundering activities or financing of terrorism and that is publicly available, including commercially available databases, or information that is collected or maintained, including information that is stored in databases maintained by the government;

(c) shall have the authority to request information from accountable institutions, any supervisory agency and any law enforcement agency for purposes of this Act;

(d) shall analyse and assess all reports and information and shall in the process conduct operational and strategic analysis;

- (e) shall carry out examinations of accountable institutions for the purposes of this Act;
- (f) shall send any information derived such report or any other information it receives to the appropriate competent authority or supervisory authority if, on the basis of its analysis and assessment, the SFIU has determined that there is an element of money laundering, financing of terrorism, proliferation of weapons of mass destruction or criminal activity or unlawful activity;
- (g) shall have the authority to instruct any accountable institution to take such steps as may be appropriate in relation to any information or report received by the SFIU, to enforce compliance with this Act or to facilitate any investigation anticipated by the SFIU;
- (h) shall compile statistics and records and may disseminate information within Swaziland or elsewhere, as well as make recommendations arising out of any information received;
- (i) shall issue guidelines to an accountable institution not under the jurisdiction of a supervisory authority relating to risk based supervision, customer identification, record keeping, reporting obligations, identification of suspicious transactions, politically exposed persons and such other related actions required for that accountable institution to be in compliance with this Act;
- (j) may obtain further information on parties or transactions referred to in a report made to it under this Act;
- (k) may provide training programs for accountable institutions in relation to customer identification, record keeping and reporting obligations and the identification of suspicious transactions;
- (l) may conduct research into trends and developments in the area of money laundering and financing of terrorism and improved ways of detecting, preventing and deterring money laundering and the financing of terrorist activities;
- (m) may educate the public and create awareness on matters relating to money laundering and financing of terrorism;
- (n) may disclose any report, any information derived from such report or any other information it receives to an institution or agency of a foreign state or of an international organisation established by the governments of foreign states that has powers and duties similar to those of the SFIU as set out in section 32, if on the basis of its analysis and assessment, the SFIU has reasonable grounds to suspect that report or information would be relevant to investigating or prosecuting a money laundering offence or a terrorist financing offence;
- (o) may enter into any agreements or arrangements with any domestic government institution or agency regarding the exchange of information;
- (p) may require police and other investigative or prosecutorial bodies to report progress and outcomes on matters referred to them;
- (q) shall provide feedback to Accountable institutions on reports made to the SFIU;
- (r) shall implement a registration system for Accountable institutions;
- (s) may perform such other acts as may be necessary to fulfill the objectives of the SFIU.

The Prevention of Organised Crime Act, 2018 further overrides bank secrecy restrictions for the purposes of cooperation and information sharing as follows:

Sharing of information

77. Notwithstanding the Income Tax Order, Order 21 of 1975, or its successor, and with regard to any other secrecy provision in similar legislation, whenever any investigation is instituted in terms

of this Act, including an investigation into any offence referred to in the Schedule and an investigation into the property, financial activities, affairs or business of any person, the Minister responsible for finance or any official designated by the Minister for this purpose shall be notified of that investigation with a view to mutual co-operation and the sharing of information.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

The SFIU has signed MOUs with the local police, the Revenue Authority, the Anti-Corruption Commission and the Financial Services Regulatory Authority.

The list of MOUs with foreign FIUs is under paragraph 5 of article 14.

(b) Observations on the implementation of the article

The MLFTPA provides for domestic coordination by the SFIU in the analysis and dissemination of STRs to law enforcement agencies (section 19(f) and (o)), as well as for information sharing by the SFIU internationally as permitted under section 19(n). Section 91 further provides for international cooperation through mutual legal assistance.

The Prevention of Organised Crime Act, 2018 (POCA) overrides bank secrecy restrictions for the purposes of cooperation and information sharing (section 77). The Act applies to offences as listed in the to the Act, which include all offences which are punishable by imprisonment for a period of twelve months or more, as well as offences against the laws relating to the prevention of corruption and money-laundering. The National Task Force on AML/CFT coordinates inter-agency cooperation AML/CFT and meets regularly.

The Government of Eswatini entered into a cooperation memorandum of understanding with the Government of the Republic of South Africa in order to facilitate exchange of information and technical assistance. The Royal Swaziland Police has also entered into memoranda of understanding to enable cooperation with the Police Forces of the Kingdom of Lesotho and Mozambique. The ACC has also signed a MOU with Tanzania.

Paragraph 2 of article 14

2. States Parties shall consider implementing feasible measures to detect and monitor the movement of cash and appropriate negotiable instruments across their borders, subject to safeguards to ensure proper use of information and without impeding in any way the movement of legitimate capital. Such measures may include a requirement that individuals and businesses report the cross-border transfer of substantial quantities of cash and appropriate negotiable instruments.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Measures include a mandatory declaration of cash at all points of entry and departure. Section 41 of MLFPA (as amended) provides that a person who leaves or arrives in Swaziland with more than fifteen thousand Emalangeni (E15,000) (approx. USD 1,000) or equivalent in cash or negotiable bearer instruments on his or her person or in his or her luggage shall report the fact to the Customs Office and to the police at the point of entry or departure. The Act further criminalises non-declaration of such monies and provides that “a person who contravenes the provisions of the section commits an offence and shall be liable on conviction to a fine not exceeding thirty thousand Emalangeni (E30, 000) or imprisonment not exceeding five years”.

The Act also authorises border officials, where necessary and reasonable, to examine any article which a person has with him or her or in his or her luggage; and upon reasonable suspicion, search the person. The Act also provides for the seizure of cash or negotiable instruments at exit points on grounds listed in section 40. These grounds include suspicion that cash or negotiable instruments were derived from an unlawful activity or a money laundering offence or an offence of financing of terrorism; or intended by any person for use in the commission of an unlawful activity or a money laundering offence of financing of terrorism.

(b) Observations on the implementation of the article

Eswatini has legislatively implemented this provision. During the country visit it was explained that the requirements on cross-border declarations are not fully implemented in practice. While some arrests and prosecutions have been made, there are challenges in enforcement. Data on reported declarations and detection was not available.

Based on the above, it is recommended that Eswatini continue efforts towards the implementation of the requirements under this paragraph.

Paragraph 3 of article 14

3. States Parties shall consider implementing appropriate and feasible measures to require financial institutions, including money remitters:

- (a) To include on forms for the electronic transfer of funds and related messages accurate and meaningful information on the originator;*
- (b) To maintain such information throughout the payment chain; and*
- (c) To apply enhanced scrutiny to transfers of funds that do not contain complete information on the originator.*

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

The country is compliant with this article as it has put in place measures to require financial institutions to gather information in the transmission of funds.

(a) Section 10 of the MLFPA (as amended) provides that:

(1) An entity or person that is licensed to do business in Swaziland as a financial institution under the Financial Institutions Act, 2005, or a money transmission service provider shall include accurate originator information and other related messages on electronic funds transfers and such information shall remain with the transfer.

(2) Subsection (1) shall not apply to an electronic funds transfer, other than a money transfer effected from the use of a credit or debit card as means of payments that results from a transaction carried out using a credit or debit card, where the credit or debit card number is included in the information accompanying such a transfer.

(3) Subsection (1) shall not apply to electronic funds transfers and settlements between financial institutions where the originator and beneficiary of the funds transfer are acting on their own behalf.

These provisions are implemented by all financial institutions in Eswatini.

(b) Section 8 of the MLFPA (as amended) requires all “accountable” institutions to maintain records or information gathered throughout the payment chain and provides as follows;

(1) An accountable institution shall establish and maintain records of-

(a) the identity of a person obtained in accordance with section 6;

(b) all transactions carried out by it and correspondence relating to the transactions as is necessary to enable the transaction to be readily reconstructed any time by the SFIU or competent authority, and shall contain particulars as the Minister may by Regulation prescribe;

(c) all reports made to the SFIU under section 12; and

(d) enquiries relating to money laundering and financing of terrorism made to it by the SFIU.

(2) The records mentioned in subsection (1) shall be kept for a minimum period of five years from the date-

(a) the evidence of the identity of a person was obtained;

(b) of any transaction or correspondence;

(c) the account is closed or business relationship ceases,

whichever is the later.

(3) The records established and maintained for purposes of subsection (1) shall be-

(a) sufficient to enable the transaction to be readily reconstructed at any time by the SFIU or competent authority to provide, if necessary, evidence for prosecutions of any offence; and,

(b) maintained in a manner and form that will enable the accountable institution to comply immediately with requests for information from the law enforcement or SFIU.

The amended section 8 obligates an accountable institution to maintain particular records beyond the minimum period of five years when requested to do so by the SFIU, a law enforcement agency or a supervisory authority.

(c) This is provided for by section 11 (1) (d) of the MLFPA (as amended) which provides that an accountable institution must pay special attention to electronic funds transfers that do not contain complete originator information.

(b) Observations on the implementation of the article

Eswatini has implemented this provision.

Paragraph 4 of article 14

4. In establishing a domestic regulatory regime and supervisory regime under the terms of this article, and without prejudice to any other article of this Convention, States Parties are called upon to use as a guideline the relevant initiatives of regional, interregional and multilateral organizations against money-laundering.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

The country is a member of the Asset Recovery Inter-Agency Network for Southern Africa (ARINSA). This is an informal network which enables the quick sharing of information relating to

asset forfeiture cases among member countries. The main factor which led to its formation was the realisation that the exchange of information through diplomatic channels often leads to assets disappearing or being dissipated before law enforcement can take action to seize, freeze or confiscate assets. Every ARINSA member country has an investigator and a prosecutor who network and share information with their counterparts. The country has benefitted a lot from its membership of ARINSA. This organization has continually given technical assistance in a number of ways. Some of the main ways include the training of prosecutors and investigators and the placement of a mentor who is on the ground assisting investigators and asset recovery practitioners. The asset recovery legislation in the country has largely been influenced by ARINSA activities. Staff from the asset forfeiture unit in the DPP's office have also attended ARINSA trainings.

The country is also a member of the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG). This is a regional body subscribing to global standards to combat money laundering and financing of terrorism and proliferation. The purpose of ESAAMLG is to combat money laundering by implementing the FATF recommendations. This includes coordinating with international organizations concerned with combating money laundering, studying emerging regional typologies and developing institutional and human resource capacities to deal with these issues. Its mission is to consolidate and sustain combined efforts to combat money laundering and terrorist financing in the Eastern and Southern Africa region through effective implementation of international AML/CFT standards. It became an associate member of the FATF in June 2010. The country regularly participates in activities of ESAAMLG. Together with ARINSA, ESAAMLG has been very influential in shaping the country's asset recovery legislation.

The assessment of the implementation of anti-money laundering and counter-terrorist financing (AML/CFT) measures by Eswatini was conducted by ESAAMLG in February 2010 (<http://www.fatf-gafi.org/countries/s-t/swaziland/documents/mutualevaluationofswaziland.html>).

Eswatini's Post-Evaluation Progress Report for the First Mutual Evaluation Round covering the period August 2016 to July 2017 was finalized in 2017 and is available on the FATF website.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

The country has recently promulgated the Prevention of Organised Crime Act. This legislation is modelled along South Africa's Prevention of Organised Crime Act. South Africa is very active in ARINSA and is the one country that has been offering a lot of technical assistance to neighbouring countries.

(b) Observations on the implementation of the article

Eswatini has implemented this provision. The recent amendments to the MLFPA and POCA were also made in line with the requirements of the FATF.

Paragraph 5 of article 14

5. States Parties shall endeavour to develop and promote global, regional, subregional and bilateral cooperation among judicial, law enforcement and financial regulatory authorities in order to combat money-laundering.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes, in part

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

The country is a member of ARINSA and participates activities of ARINSA. These include the prosecutor placement programme and the activities relating to prevention of money laundering and terrorist financing which happen two times a year. The country also attends the AGM where progress on fighting money laundering and terrorist financing is discussed. The country is also a member of ESAAMLG and regularly participates in its activities.

The FIU's application to the Egmont Group was pending at the time of review.

Other cooperation channels are available through the Southern African Regional Police Chiefs Co-operation Organisation (SARPCCO) and INTERPOL.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

The SFIU has MOUs with FIUs of South Africa, Zambia, Lesotho, Malawi, Angola, Namibia, Botswana, Uganda, Zimbabwe, Mozambique, Seychelles, Mauritius and Madagascar.

(b) Observations on the implementation of the article

While Eswatini has taken steps towards the implementation of this provision, and also cooperates with other SADC countries as mentioned under article 59 below, the reviewers encourage the continuation of these efforts by judicial, law enforcement and financial regulatory authorities, including finalization of the application for Egmont membership.

(c) Challenges, where applicable

Please outline actions required to ensure or improve the implementation of the article under review and describe any specific challenges you might be facing in this respect.

The FIU is in its early days. However, the view has been that the passing of the POCA Bill and Witness Protection Bill would improve the implementation of this article. Both have recently been passed.

(d) Technical assistance needs

Legislative assistance

In light of the promulgation of the Prevention of Organised Crime Act and Witness Protection Act the kind of assistance required would be to determine if the current legislative framework is adequate.

Is any technical assistance already being provided to you? If so, please provide a general description of the nature of the assistance, including donor information.

Currently assistance is being given by the South African FIU which relates to the setting up of the SFIU.

V. Asset recovery

Article 51. General provision

Article 51

1. The return of assets pursuant to this chapter is a fundamental principle of this Convention, and States Parties shall afford one another the widest measure of cooperation and assistance in this regard.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes, in part

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention, including identifying both any legal authorities/procedures for accepting requests for asset recovery and assessing that these requests are reasonably substantiated and supplemented as well as any time frame established under domestic laws and procedures for their execution, taking into account requests received from countries with similar or different legal systems and any challenges faced in this context.

This is provided for by section 56 of the Money Laundering and Financing of Terrorism (Prevention) Act 6 of 2011 (as amended) (MLFPA).

Where a foreign State requests assistance to locate or seize property suspected to be tainted property in respect of an offence within its jurisdiction or property suspected to be terrorist property, the provisions of sections 52, 53 and 54 apply in so far as is applicable, provided that the Minister of Justice and Constitutional Affairs has, under the Criminal Matters (Mutual Assistance) Act, 2001, authorised the giving of assistance to the foreign State.

The following sections of the MLFPA are also relevant for this article.

Section 52 - SEARCH WARRANTS MAY BE GRANTED BY TELEPHONE, ETC

(1) Where by reason of urgency a law enforcement agent considers it necessary to do so, that law enforcement agent may make application for a search warrant under section 51 by telephone or by other means of communication.

(2) A Magistrate, to whom an application for the issue of a warrant is made by telephone or other means of communication, may sign a warrant if that Magistrate is satisfied that it is necessary to do

so, and shall inform the law enforcement agent of the terms the warrant so signed.

(3) The law enforcement agent shall complete a form of warrant in the terms furnished by the magistrate.

(4) The law enforcement agent to whom a warrant is granted by telephone or other means of communication shall, not later than the next working day following the execution of the warrant, give the magistrate a duly sworn information and the form of warrant completed by the law enforcement agent.

Section 53 - SEARCHES IN EMERGENCIES

(1) Where a law enforcement agent suspects on reasonable grounds that-

(a) particular property is tainted property or terrorist property;

(b) it is necessary to exercise the power of search and seizure in order to prevent the concealment, loss or destruction of the property; and

(c) the circumstances are so urgent that they require immediate exercise of the power without the authority of a warrant or the order of a court,

the law enforcement agent may-

(i) search a person;

(ii) enter upon land, or upon or into premises and search for the property; and

(iii) if property is found, seize the property.

(2) If during the course of a search conducted under this section, a law enforcement agent finds-

(a) property that the law enforcement agent believes on reasonable grounds to be tainted property or terrorist property; or

(b) anything the law enforcement agent believes on reasonable grounds will afford evidence as to the commission of an unlawful activity,

the law enforcement agent may seize that property or thing.

Section 54 - RECORD OF SEIZED PROPERTY

A law enforcement agent who seizes property under section 49 or section 50 shall detain the property seized, make a written record thereof, and take reasonable care to ensure that the property is preserved.

The following provisions of the Criminal Matters (Mutual Assistance) Act, 2001 (CMMAA) are also relevant for this article.

Section 3 - APPLICATION OF ACT TO DESIGNATED COUNTRIES

This Act shall apply to such foreign country as the Minister (of Justice and Constitutional Affairs) may designate from time to time by notice in the Gazette and referred to in this Act as the "designated country".

Currently the only country which has been designated by Gazette is South Africa. However, the process of designating a country is a very quick process which can be undertaken in a period of one day. Practically, this means that once a request is received by the country, the Minister can designate that country by Gazette a day after receiving the request.

Section 4 - ACT DOES NOT PRECLUDE OTHER FORMS OF ASSISTANCE

Nothing in this Act shall prevent the provision or obtaining of international assistance in criminal matters otherwise than in accordance with this Act.

Section 17 - REQUEST FOR ASSISTANCE GENERALLY

(1) All requests by a designated country for assistance under this Part shall be transmitted to the Minister or an authorised officer.

(2) A request shall normally be made in writing except in the case of emergency when it shall be made orally and confirmed in writing forthwith.

(3) A request shall -

- (a) specify the nature of the assistance requested;
- (b) contain information appropriate to the assistance sought as specified in this Part;
- (c) state any time limit within which compliance with the request is desired and reasons therefor;
- (d) contain the following information:
 - (i) the identity of the agency or authority initiating the request;
 - (ii) the identity of the accused person; and
 - (iii) whether or not criminal proceedings have been instituted;
- (e) where criminal proceedings have been instituted, it shall contain the following information:
 - (i) the court exercising jurisdiction in the proceedings;
 - (ii) the identity of the accused person;
 - (iii) the offence of which that person stands accused, and a summary of the facts;
 - (iv) the stage reached in the proceedings;
 - (v) any date fixed for further stages in the proceedings;
- (f) where criminal proceedings have not been instituted, state the offence which the designated country has reasonable grounds to believe have been committed, with a summary of the known facts; and
- (g) any other information that may assist in giving effect to the request.

Section 26 - SEIZURE AND CONFISCATION OF PROCEEDS OF SERIOUS OFFENCE

(1) Where -

- (a) the appropriate authority in a designated country requests the Minister to make arrangements

for the enforcement of -

(i) a forfeiture order made in respect of a serious offence against property that is believed to be located in Swaziland; or

(ii) a pecuniary penalty order made in respect of a serious offence where some or all of the property available to satisfy the order is believed to be located in Swaziland; and

(b) the Minister is satisfied that -

(i) the person has been convicted of the offence; and

(ii) conviction and the order are not subject to further appeal in the designated country,

the Minister (for Justice and Constitutional Affairs) may authorise the Director of Public Prosecutions in writing to apply for the registration of the order in the High Court.

(2) Where the appropriate authority in a designated country requests the Minister to make arrangements for the enforcement of a restraining order made in that country in respect of a serious offence against property that is believed to be located within Swaziland, the Minister may authorise the Director of Public Prosecutions in writing to apply for the registration of the order in the High Court.

(3) Where the Director of Public Prosecutions has applied for registration in the High Court or a forfeiture order or a pecuniary penalty order under subsection (1) or a restraining order under subsection (2), the High Court shall register the order accordingly.

Section 27 - EFFECT OF REGISTRATION OF FORFEITURE ORDER, PECUNIARY PENALTY OR RESTRAINING ORDER

A forfeiture order, a pecuniary penalty order or a restraining order registered under section 26 shall have effect and may be enforced as if it were a forfeiture order, a pecuniary penalty order or a restraining order made by the High Court under the Serious Offences (Confiscation of Proceeds) Act, 2001.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

The country has not yet received any request for the return of property which is the subject of a foreign forfeiture or confiscation order.

(b) Observations on the implementation of the article

The framework for international cooperation and assistance on asset recovery is comprised of provisions in the Criminal Matters (Mutual Assistance) Act, 2001 (CMMAA), Prevention of Organised Crime Act, 2018 (POCA) and MLFTP.

It is noted that the cited sections of MLFTP are limited to asset recovery (restraint, search, seizure and forfeiture of assets) in money-laundering and financing of terrorism cases (Part 7 of MLFTP). In other cases, provisions in the Prevention of Organised Crime Act, 2018 (POCA) apply to offences as listed in the schedule to the Act, which include all offences which are punishable by

imprisonment for a period of twelve months or more, as well as offences against the law relating to the prevention of corruption and money-laundering.

It was explained that there have been no amendments to the Criminal Matters (Mutual Assistance) Act, 2001 (CMMAA) to reflect the changes introduced by POCA. Rather, the CMMA still makes reference to "serious offences" and the now repealed Serious Offences (Confiscation of Proceeds) Act, 2001 (see, for example, sections 26 and 27 CMMAA). Accordingly, there could be limitations in terms of recognizing and enforcing foreign orders under the CMMAA. A legislative amendment of CMMA to refer to the new POCA and to eliminate references to "serious offences" and the now repealed SOCPA is necessary to ensure there are no obstacles in the recognition and enforcement of foreign orders. It was confirmed that the CMMAA would be amended in this regard.

Further observations relate to the application of the CMMAA. Although under the CMMAA assistance in criminal matters is limited to designated foreign countries (currently only South Africa), Eswatini may also provide assistance under section 4 otherwise than in accordance with the Act. It was explained by the national authorities that Eswatini does not require a treaty to provide assistance but can cooperate on the basis of reciprocity. Section 4 further authorizes cooperation through direct contact among law enforcement authorities not using MLA channels.

For the purposes of MLA, currently only South Africa has been gazetted as a designated country under the CMMA. This presents practical limitations in Eswatini's ability to assist other countries. In this context, the national authorities explained that additional countries would be designated by Minister's order published in the Gazette. There have been no such cases.

Eswatini has not issued any guidelines that regulate asset recovery procedure in the Ministry, including timeframes within which Eswatini should provide assistance to requesting countries and a delegation of authority if the Minister is not physically in office. The authorities further explained that they would be amendable to a suggestion to consider adopting an asset recovery guide providing further details on the asset recovery procedure and guidance to requesting countries.

Requests for assistance under CMMA are received by the Minister of Justice and Constitutional Affairs or an authorised officer (section 17). The MOJ is the central authority for international cooperation on asset recovery, although in practice requests are handled by the Director of Public Prosecution (DPP) in accordance with section 26 CMMA. Apart from MOJ, other dedicated offices in Eswatini responsible for tracing criminal proceeds and facilitating asset confiscation are the Fraud and Commercial Crime Unit in the Police and the AML and Asset Forfeiture Unit in the Police. In the DPP's office, there has been established an asset forfeiture unit and also a mutual legal assistance and extradition unit.

In terms of cases, it was confirmed that there have been no requests for the return of property which is the subject of a foreign forfeiture or confiscation order or for the confiscation of foreign proceeds. However, there have been requests through mutual legal assistance for restraint, search or seizure of foreign assets. While no statistics on completed cases were available, the authorities reported one freezing request from South Africa in a fraud case that was pending the receipt of more information from South Africa at the time of review (Sep 2018) and 2 asset tracing requests (see art. 54(2) for details).

The authorities reported that Eswatini has never formally refused a request for assistance to restrain, search, seize or confiscate foreign assets.

The single biggest challenge appears to be the lack of financial investigation skills by investigators

to pursue the money trail and successfully bring cases before the courts. Technical assistance has already been provided through ARINSA.

The following could assist the authorities to more fully implement the asset recovery provisions of chapter V, in particular in light of the new provisions introduced by POCA.

- (i) Amend the CMMA to eliminate references to "serious offences" and reflect the provisions of the new Prevention of Organised Crime Act, 2018 to ensure there are no obstacles in the recognition and enforcement of foreign orders.**
- (ii) Consider removing the limitation in terms of application of the CMMAA to designated countries (currently only South Africa), to ensure the widest measure of assistance may be provided to requesting countries.**
- (iii) Consider adopting an asset recovery guide providing further details on the asset recovery procedure and guidance to requesting countries.**
- (iv) Provide financial investigation training to up-skill police investigators, and guidelines on the use of different investigative powers under relevant laws relating to mutual assistance, confiscation of criminal assets, asset management and return of confiscated assets.**
- (v) Training and guidelines for prosecutors to understand the legal framework on confiscation and mutual legal assistance, asset management and return of confiscated assets.**
- (vi) Awareness for the judiciary, including development of sufficient rules around litigating criminal assets confiscation matters, mutual legal assistance and return of assets.**

(c) Challenges, where applicable

Please outline actions required to ensure or improve the implementation of the article under review and describe any specific challenges you might be facing in this respect.

Police officers who are involved in the investigation of matters which involve asset recovery lack financial investigation skills. This makes it difficult to carry out financial investigations for purposes of tracing proceeds of crime. Police officers also do not have adequate capacity to combat transnational cyber enabled fraud, corruption and kindred offences.

(d) Technical assistance needs

None to specify at this stage.

Is any technical assistance already being provided to you? If so, please provide a general description of the nature of the assistance, including donor information.

Technical assistance is provided by the Asset Recovery Inter-agency Network for Southern Africa (ARINSA) in relation to implementation of asset recovery legislation.

Article 52. Prevention and detection of transfers of proceeds of crime

Paragraph 1 of article 52

1. Without prejudice to article 14 of this Convention, each State Party shall take such measures as may be necessary, in accordance with its domestic law, to require financial institutions within its jurisdiction to verify the identity of customers, to take reasonable steps to determine the identity of beneficial owners of funds deposited into high-value accounts and to conduct enhanced scrutiny of accounts sought or maintained by or on behalf of individuals who are, or have been, entrusted with prominent public functions and their family members and close associates. Such enhanced scrutiny shall be reasonably designed to detect suspicious transactions for the purpose of reporting to competent authorities and should not be so construed as to discourage or prohibit financial institutions from doing business with any legitimate customer.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

The relevant provisions applicable to this paragraph are provided by the MLFPA (as amended) which applies to accountable institutions.

Section 2 - DEFINITION OF "ACCOUNTABLE INSTITUTION"

This means any person who carries on the business or activity of -

- (a) a financial institution licensed under the Financial Institutions Act, 2005;
- (b) acceptance of deposits and other repayable funds from the public, lending, including consumer credit, mortgage credit, factoring (with or without recourse) and financing of commercial transactions;
- (c) financial leasing;
- (d) money transmission services;
- (e) issuing and administering means of payment (such as credit cards, travellers' cheques and bankers' drafts);

- (f) financial guarantees and commitments;
- (g) trading for that person's own account or for the account of that person's customers in money market instruments (such as cheques, bills, certificates of deposit), foreign exchange, financial futures and options, exchange and interest rate and index instruments, commodity futures trading and transferable securities;
- (h) participation in securities issues and the provision of services related to such issues;
- (i) money broking;
- (j) individual and collective investment schemes or trustees of collective investment schemes;
- (k) safekeeping and administration of cash or liquid securities on behalf of other persons;
- (l) safe custody services;
- (m) investing, administering or managing funds or money on behalf of other persons;
- (n) an insurer, an insurance broker or an insurance underwriter;
- (o) a trustee administrator or investment manager of a retirement scheme but excluding close-ended schemes;
- (p) bureaux de change or foreign exchange dealer;
- (q) operating a gambling house, casino or lottery, including an operator who carries on such operations through the internet;
- (r) a trust or company service provider, not otherwise covered by this section, which as a business, provides, to third parties, the services of -
 - (i) acting as a formation agent of legal persons;
 - (ii) acting as, or arranging for another person to act as, a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons;
 - (iii) providing a registered office, business address or accommodation, correspondence or administrative address for a company, a partnership or any other legal person or arrangement;
 - (iv) acting as, or arranging for another person to act as, a trustee of an express trust; or
 - (v) acting as, or arranging for another person to act as, a nominee shareholder for another person
- (s) an offshore entity;
- (t) a lawyer, notary, conveyancer, other independent legal professional, or an accountant when preparing or carrying out transactions for a client concerning the following activities-
 - (i) buying and selling of immovable property;
 - (ii) managing of client money or trust funds, securities or other assets;
 - (iii) management of bank, savings or securities accounts;
 - (iv) organisation of contributions for the creation, operation or management of companies; or
 - (v) creation, operation or management of legal persons or arrangements, and buying and selling of business entities.
- (u) dealing in immovable property when the persons dealing are involved in transactions for the client concerning the buying and selling of real estate;
- (v) dealing in precious metals or stones, when the persons dealing engage in any cash transaction

with a customer equal to or above the applicable designated threshold; or
(w) dealing in the trade, including the lease of motor vehicles.

Section 6 - ACCOUNTABLE INSTITUTIONS TO VERIFY CUSTOMERS' IDENTITY

(1) An accountable institution shall, before entering into a business relationship with any person, ascertain the identity of a customer or a beneficial owner on the basis of any official identifying document and shall verify the identity of the customer on the basis of reliable and independent source documents, data or information or other evidence as is reasonably capable of verifying the identity of the customer when-

(a) an accountable institution -

(i) enters into a continuing business relationship; or

(ii) in the absence of such a business relationship, conducts any transaction;

(b) carrying out an electronic funds transfer;

(c) there is a suspicion of a money laundering offence or the financing of terrorism; or,

(d) the accountable institution has doubts about the veracity or adequacy of the customer identification and verification documentation or information it had previously obtained.

(2) Without limiting the generality of subsection (1), an accountable institution shall-

(a) When establishing a business relationship, obtain information on the purpose and nature of the business relationship;

(b) If the transaction is conducted by a natural person, adequately identify and verify the identity of that person, including information relating to the-

(i) name, physical address and occupation of the person; and

(ii) national identity card or passport or other applicable official identifying document;

and take reasonable measures to establish the source of wealth and source of property of that person;

(c) If the transaction is conducted by a legal entity, adequately identify and verify its legal existence and structure, including information relating to-

(i) the customer's name, legal form address and directors;

(ii) the principal owners and beneficiaries and control structure; and

(iii) provisions relating to the power to bind the entity;

and verify that any person purporting to act on behalf of the customer is so authorised, and identify those persons.

(d) In relation to politically exposed persons, in addition to the requirements in paragraph (b) shall-

(i) have appropriate risk management systems to determine whether the customer is a politically exposed person;

(ii) obtain the approval of senior management before establishing a business relationship with the customer; and

(iii) conduct regular enhanced monitoring of the business relationship.

(3) An accountable institution shall take reasonable measures to ascertain the purpose of any transaction in excess of twenty thousand Emalangeni (E20,000) or of ten thousand Emalangeni (E10,000) in case of cash transactions, and the origin and ultimate destination of the funds involved in the transaction.

Section 8 - ACCOUNTABLE INSTITUTION TO MAINTAIN RECORDS

(1) An accountable institution shall establish and maintain records of-

- (a) the identity of a person obtained in accordance with section 6;
- (b) all transactions carried out by it and correspondence relating to the transactions as is necessary to enable the transaction to be readily reconstructed any time by the SFIU or competent authority, and shall contain particulars as the Minister may by Regulation prescribe.
- (c) all reports made to the SFIU under section 12; and
- (d) enquiries relating to money laundering and financing of terrorism made to it by the SFIU.

(2) The records mentioned in subsection (1) shall be kept for a minimum period of five years from the date-

- (a) the evidence of the identity of a person was obtained;
 - (b) of any transaction or correspondence;
 - (c) the account is closed or business relationship ceases,
- whichever is the later.

(3) The records established and maintained for purposes of subsection (1) shall be-

- (a) Sufficient to enable the transaction to be readily constructed at any time by the SFIU or competent authority to provide, if necessary, evidence for the prosecution of any offence; and
- (b) Maintained in a manner and form that will enable the accountable institution to comply immediately with requests for information from law enforcement or SFIU.

(4) Where any record is required to be kept under this Act, a copy of it, with the appropriate back-up and recovery procedures, shall be kept in a manner as the Minister by Regulation may prescribe.

(5) The records maintained under subsection (1) shall be made available upon request to the SFIU, or a competent authority for purposes of ensuring compliance with this Act and for purposes of an investigation or prosecution of an offence.

" (6) Notwithstanding the provisions of subsection (2), an accountable institution shall maintain particular records beyond the minimum period of five years when requested to do so by –

- (a) the SFIU;
- (b) a Law Enforcement Agency; or
- (c) a Supervisory Authority.

(7) An accountable institution may use the services of a third party for the keeping and maintenance of records.

(8) Where an accountable institution relies on a third party as envisaged in subsection (7) that accountable institution shall be liable for ensuring that the requirements of this section are met."

Section 11 - ACCOUNTABLE INSTITUTION TO MONITOR TRANSACTIONS

(1) An accountable institution shall pay special attention to-

- (a) any complex, unusual or large transactions;
- (b) any unusual patterns of transactions;

that have no apparent or visible economic or lawful purpose;

- (c) business relations and transactions with persons in jurisdictions that do not have adequate systems in place to prevent or deter money laundering or financing of terrorism; and
- (d) electronic funds transfers that do not contain complete originator information.

(2) In relation to subsection (1), an accountable institution shall-

- (a) examine as far as possible the background and purpose of the transactions or business relations and record its findings in writing; and
- (b) upon request, make available such findings to the SFIU or to competent authority, to assist the SFIU or the law enforcement agency in any investigation relating to an unlawful activity, a money laundering offence or an offence of financing of terrorism.

(3) An accountable institution shall monitor its business relationships and the transactions undertaken throughout the course of the relationship to ensure that its obligations under section 6 are met and that the transactions conducted are consistent with the information that the accountable institution has of its customer and the profile of the business of the customer.

Section 12 - ACCOUNTABLE INSTITUTION TO REPORT SUSPICIOUS TRANSACTIONS

(1) Where an accountable institution suspects or has reasonable grounds to suspect that-

- (a) Any transaction or attempted transaction may be related to the commission of an unlawful activity, a money laundering offence or an offence of financing of terrorism;
- (b) Information that may be-
 - (i) relevant to an act preparatory to an offence of the financing of terrorism;

(ii) relevant to an investigation or prosecution of a person or persons for an unlawful activity, a money laundering offence or an offence of financing of terrorism or may otherwise be of assistance in the enforcement of this Act;

the accountable institution shall, forthwith, after forming that suspicion or receiving the information, but not later than two working days, report the transaction or attempted transaction or the information to the SFIU.

(2) A report made in terms of subsection (1) shall-

(a) be in writing and may be given by way of airmail, telephone to be followed up in writing, fax or electronic mail or such other manner as may be prescribed by the SFIU;

(b) be in such form and contain such details as may be prescribed by the SFIU;

(c) contain a statement of the grounds on which the accountable institution holds the suspicion; and

(d) be signed or otherwise authenticated by the accountable institution.

(3) An accountable institution that has made a report in terms of subsection (1) shall give the SFIU or the competent authority that is carrying out an investigation arising from, or relating to the information contained in the report, any further information that it has about the transaction or attempted transaction or the parties to the transaction if requested to do so by the SFIU.

(4) If the SFIU, after consulting an accountable institution required to make a report under subsection (1), has reasonable grounds to suspect that a transaction or a proposed transaction may involve an offence of financing of terrorism, the proceeds of an unlawful activity or a money laundering offence, it may direct the accountable institution in writing or by telephone to be followed up in writing within one working day, not to proceed with the carrying out of that transaction or proposed transaction or any other transaction in respect of the funds affected by that transaction or proposed transaction for a period as may be determined by the SFIU, which may not be more than five working days, in order to allow the SFIU-

(a) to make necessary inquiries concerning the transaction; and

(b) if the SFIU deems it appropriate, to inform and advise a competent authority.

(5) The provisions of this section shall supersede any provision contained in any other law regarding the reporting of suspicious transactions.

Section 13 - SUPERVISORY AUTHORITY OR AUDITOR TO REPORT SUSPICIOUS TRANSACTIONS

Where a supervisory authority or an auditor of an accountable institution suspects or has reasonable grounds to suspect that information that it has concerning any transaction or attempted transaction may be-

(a) related to the commission of a money laundering offence or an offence of financing of terrorism;

(b) of assistance in the enforcement of this Act;

(c) relevant to an act preparatory to the offence of financing of terrorism;

the supervisory authority or the auditor of the accountable institution shall forthwith report the transaction or attempted transaction to the SFIU.

Eswatini's legislation does not differentiate between foreign and domestic PEPs. The MLFPA

defines a PEP as a person who holds, or has held, a prominent public position, whether in Eswatini or in a foreign country.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

Accountable institutions do regularly carry out exercises to verify the identity of customers. In terms of guideline 4.8 of the Anti-Money Laundering and Combating Financing of Terrorism (AML/CFT) Guidelines for Financial Institutions of 2016, financial institutions are advised to update customer files at least once a year.

(b) Observations on the implementation of the article

Section 6 of MLFPA requires accountable institutions to identify and verify their customer and identify the Beneficial Owner, with additional measures to identify and verify the BO in case of transactions conducted by legal entities (section 6(2)(c)). Although section 6 of MLFPA requires financial institutions to use other independent and reliable sources to verify the information provided by the customer, in practice where a customer is not the beneficial owner, financial institutions rely on the information provided by customers in relation to the identity of beneficial owners. Additional due diligence measures apply in the case of high-value transactions (in excess of twenty thousand Emalangeni (E20,000), or of ten thousand Emalangeni (E10,000) for cash transactions), pursuant to section 6(3).

In relation to politically exposed persons, both domestic and foreign including their family members and associates, additional identification, diligence and monitoring requirements are in place (section 6(2)(d)).

The due diligence and monitoring requirements apply with a view to detect suspicious transactions, in accordance with sections 11, 12 and 13 of the Act.

Eswatini has issued Anti-Money Laundering and Combating Financing of Terrorism (AML/CFT) Guidelines for Financial Institutions, 2016 which provide more specific guidance.

Regarding DNFBPs that operate in the Kingdom, such as accountants, real estate, casinos, lawyers and dealers in precious stones and metals, these are subject to supervision by the FIU. However, the FIU does not yet supervise all DNFBPs. Given the FIU's size (3 compliance officers at the time of review) this limits its ability to supervise all sectors. The FIU has only conducted one examination to date. The FIU has conducted over six trainings and workshops for DNFBPs on AML/CFT requirements.

There are some gaps in the coverage of DNFBPs, such as dealers and estate agents.

There are 4 banks (3 foreign-owned) and one building society operating in Eswatini, which were

examined by the Central Bank in 2015 and 2017.

The Financial Services Regulatory Authority was established by the Financial Services Regulatory Authority Act of 2010 and commenced its operations in 2012.

For Guidelines on AML requirements, see subparagraph 2(a) below.

No statistics on examinations conducted and penalties applied by the supervisors were available.

In light of the above, it is recommended that Eswatini ensure that all relevant entities are covered by the AML/CFT requirements, including financial institutions and DNFBPs such as dealers and estate agents, and ensure effective oversight and supervision (including examinations) of all sectors.

Subparagraph 2 (a) of article 52

2. In order to facilitate implementation of the measures provided for in paragraph 1 of this article, each State Party, in accordance with its domestic law and inspired by relevant initiatives of regional, interregional and multilateral organizations against money-laundering, shall:

(a) Issue advisories regarding the types of natural or legal person to whose accounts financial institutions within its jurisdiction will be expected to apply enhanced scrutiny, the types of accounts and transactions to which to pay particular attention and appropriate account-opening, maintenance and record-keeping measures to take concerning such accounts; and

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

The law of Eswatini makes reference to PEPs. The MLFPA defines a PEP as a person who holds, or has held, a prominent public position, whether in Eswatini or in a foreign country, including but not limited to, a head of state or government; a politician on the national level; a senior government, judicial, military or party official on the national level; a senior executive of a state-owned enterprise of national importance; or an individual or undertaking identified as having close family ties or personal or business connections to any of the aforementioned persons.

The **Anti-Money Laundering and Combating Financing of Terrorism (AML/CFT) Guidelines for Financial Institutions of 2016**, in guideline 6, deals directly with PEPs. Guideline 6.1 provides that financial institutions shall verify if a potential customer is a PEP or not by getting to know the potential customer as much as possible, that is, their background, very close associates, including

their partners and children. Having concluded that a potential customer is a PEP, financial institutions are also obligated to verify if the PEP has other business interests and risk rank these. According to guideline 6.2 risk management systems should be in place to enable a financial institution to ascertain if the prospective customer is a PEP or not.

Guideline 6.3 provides that before opening a PEP account, senior management (branch manager or controller) must approve the opening of the account, not front line officers or supervisors. Senior management is entrusted with the responsibility to conduct monitoring of the account. Guideline 6.4 places the following further obligations on a financial institution:

- (a) to take adequate measures to establish the source of wealth and the source of funds which are involved in the proposed business relationship or transaction;
- (b) to determine the purpose of the account or transaction and the expected volume and nature of the account activity; and
- (c) to review public sources of information on the PEP and once the account has been established, to conduct enhanced ongoing monitoring of the relationship.

Guideline 6.5 provides that it is the prerogative of management, especially the compliance officer to monitor each transaction conducted by a PEP. If the source of funds of the PEP is not clear, a financial institution is obligated to report to the FIU within 2 working days. Attempted transactions are also to be reported to the FIU.

Section 6 of the MLFTP A places obligations on accountable institutions to verify the identity of their customers. Subsection (2) (d) deals only with PEPs. It provides that an accountable institution is obligated to have appropriate risk management systems to determine whether a customer is a PEP or not, to obtain the approval of senior management before establishing a business relationship with such a customer, and to conduct regular enhanced monitoring of the business relationship.

Section 8 of the MLFTP A (quoted above) deals with the obligation of accountable institutions to maintain records. Accountable institutions are obligated to maintain records of the following: the identity of their customers; all transactions carried out by it and correspondence relating to the transactions; STRs; and enquiries relating to money laundering and financing of terrorism made by the FIU. According to subsection (2), the records are to be kept for a minimum period of 5 years.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

There are no examples of implementation or statistics.

(b) Observations on the implementation of the article

The FIU has issued Guidelines for reporting on STRs. The Central Bank also issued Guidelines on AML/CFT to financial institutions (2016). The Financial Services Regulatory Authority issued similar Guidelines to DNFBPs.

The AML/CFT Guidelines for Financial Institutions of 2016 contain guidance, inter alia, in relations

to PEPs. Regarding the types of natural or legal person to whose accounts financial institutions must apply enhanced scrutiny, some categories are included in the AML/CFT Guidelines for Financial Institutions of 2016, including foreign customers, legal persons, trusts, third party arrangements, complex or unusual transactions and transactions with jurisdictions with inadequate systems or high-risk jurisdictions. The FIU also issued notices in regards to specific foreign threats or persons and high-risk jurisdictions on its website. There is not yet a list of domestic persons.

Subparagraph 2 (b) of article 52

2. In order to facilitate implementation of the measures provided for in paragraph 1 of this article, each State Party, in accordance with its domestic law and inspired by relevant initiatives of regional, interregional and multilateral organizations against money-laundering, shall:

...

(b) Where appropriate, notify financial institutions within its jurisdiction, at the request of another State Party or on its own initiative, of the identity of particular natural or legal persons to whose accounts such institutions will be expected to apply enhanced scrutiny, in addition to those whom the financial institutions may otherwise identify.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(N) No

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

There is no provision for this.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

There are no examples of implementation.

(b) Observations on the implementation of the article

There is no law or regulation to implement this paragraph, nor has there been any example of the authorities issuing such notifications in practice.

It is recommended that Eswatini adopt a relevant provision of law and procedure to allow the authorities to notify financial institutions of a particular threat, at the request of another State or on their own initiative.

Paragraph 3 of article 52

3. In the context of paragraph 2 (a) of this article, each State Party shall implement measures to ensure that its financial institutions maintain adequate records, over an appropriate period of time, of accounts and transactions involving the persons mentioned in paragraph 1 of this article, which should, as a minimum, contain information relating to the identity of the customer as well as, as far as possible, of the beneficial owner.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

The record keeping obligations placed on accountable institutions under the MLFPA also apply to in relation to PEPs.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

There are no examples of implementation or statistics.

(b) Observations on the implementation of the article

The provision is legislatively implemented.

Paragraph 4 of article 52

4. With the aim of preventing and detecting transfers of proceeds of offences established in accordance with this Convention, each State Party shall implement appropriate and effective measures to prevent, with the help of its regulatory and oversight bodies, the establishment of banks that have no physical presence and that are not affiliated with a regulated financial group. Moreover, States Parties may consider requiring their financial institutions to refuse to enter into or continue a correspondent banking relationship with such institutions and to guard against establishing relations with foreign financial institutions that permit their accounts to be used by banks that have no physical presence and that are not affiliated with a regulated financial group.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

The Financial Institutions Act No. 6 of 2005 provides that financial institutions must register with the Central Bank and must have a registered address in Eswatini. Additional Central Bank requirements apply.

Prohibition against carrying-on of business by a financial institution without a licence.

5. (1) No business shall be transacted, either in Swaziland by a foreign financial institution or agent or in Swaziland or abroad by a local financial institution, unless such financial institution has been licensed in terms of this Act to carry on such business.

(2) A person who contravenes subsection (1) commits an offence and shall be liable on conviction to a fine of not less than one hundred thousand Emalangeni (E100,000) and an additional fine of not less than twenty-five thousand Emalangeni (E25,000) in respect of each day on which the contravention continues.

Application for licence to carry on banking business.

6. (1) No person shall carry on banking business in Swaziland unless he has been granted a license by the Bank.

(2) An application to be licensed shall be made to the Bank in the form prescribed and shall be accompanied by—

- (a) an authenticated copy of the memorandum and articles of association, or, in case of a foreign financial institution, such similar documents regulating its affairs or such other documents as the Bank may require to establish the manner of control and regulation of such institution, and, in the case of a public company, a copy of its prospectus or similar document required under any law relating to companies, and the name, nationality, and address of every promoter;
 - (b) a statement of the address of its head office, and the name, nationality and address of its chairperson, of every director or partner, as the case may be, and of its principal officer;
 - (c) a copy of its balance sheet at a date within ninety days prior to the date of its application;
 - (d) full particulars of the business it proposes to carry on, and of the manner in which it proposes to carry on such business and a business plan covering the first three years of operation;
 - (e) the location of the principal place and other places of business in Swaziland and, in the case of a local financial institution operating outside Swaziland, any place where it proposes to carry on its activities, and in the case of a mobile agency, the area to be served by any mobile agency;
 - (f) evidence, in the case of a foreign financial institution, that it is subject to comprehensive supervision or regulation on a consolidated basis by the appropriate authorities in its home country; and
 - (g) any other information as the Bank may require.
-

The relevant provision on correspondent banking is section 18(4) of the MLFPA (as amended).

A financial institution shall -

- (a) not enter into, or continue, a correspondent banking relationship with a shell bank; and
- (b) develop and implement sufficient policies and procedures to guard against establishing relations with a respondent financial institution that permits their accounts to be used by shell banks.

In terms of section 2, “shell bank” means a bank incorporated in a jurisdiction in which it has no physical presence and which is unaffiliated with a regulated financial group.

The Anti-Money Laundering and Combating Financing of Terrorism (AML/CFT) Guidelines for Financial Institutions of 2016 also prohibit dealing with shell banks. Guideline 8 provides that a reporting institution shall not-

- (a) Open a foreign account with a shell bank;

- (b) Permit its accounts to be used by a shell bank; or
- (c) Enter into or continue a correspondent financial relationship with -
 - (i) a shell bank; or
 - (ii) a respondent financial institution that permits its accounts to be used by a shell bank.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

There are no applicable examples or statistics.

(b) Observations on the implementation of the article

The Financial Institutions Act No. 6 of 2005 provides that financial institutions must register with the Central Bank and must have a registered address in Eswatini. Additional Central Bank requirements apply.

The requirement on correspondent banking is implemented in section 18(4) of the MLFPA.

Paragraph 5 of article 52

5. Each State Party shall consider establishing, in accordance with its domestic law, effective financial disclosure systems for appropriate public officials and shall provide for appropriate sanctions for non-compliance. Each State Party shall also consider taking such measures as may be necessary to permit its competent authorities to share that information with the competent authorities in other States Parties when necessary to investigate, claim and recover proceeds of offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes, in part

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

The relevant provisions relating to this paragraph are provided by the Constitution of the Kingdom of Swaziland Act, 2005 (the Constitution).

Section 241 - DECLARATIONS OF ASSETS AND LIABILITIES

(1) A person who holds an office mentioned in subsection (2) shall submit to the Integrity Commission, a written declaration of all property, assets owned by, or any benefit gained or liabilities owed by the holder of that office whether directly or indirectly -

(a) within six months after the commencement of the Integrity Commission or before taking office as the case may be;

(b) at the end of every two years; and

(c) at the end of his term of office.

(2) Sections 240 and 241(1) apply to the holders of the following offices -

(a) Prime Minister, Deputy Prime Minister and Minister;

(b) member of the King's Advisory Council;

(c) member of Parliament including the Presiding Officers;

(d) Chairman and member of a Service Commission or Board;

(e) Army Commander and Deputy Army Commander;

(f) Commissioner of Customs;

(g) Commissioner of Police and Deputy Commissioner of Police;

(h) Commissioner of Labour;

(i) Commissioner of Correctional Services and Deputy Commissioner of Correctional Services;

(j) Commissioner of Taxes;

(k) Justice of the Superior Court of Judicature and all judicial officers;

(l) Ambassador, High Commissioner, and Head of Diplomatic or Consular Mission;

(m) Secretary to the Cabinet;

(n) Commissioner and Deputy Commissioner of the Integrity Commission;

(o) Member of the Elections and Boundaries Commission;

(p) Attorney-General and Deputy Attorney-General;

(q) Head of Ministry of Government or department;

(r) Director of Public Prosecutions and Deputy Director of Public Prosecutions;

(s) Managing Director, general manager and departmental head of a public corporation or company in which the Government has a controlling interest; and

(t) in the public service and any other public institution as Parliament may prescribe.

(3) The Commissioner and Deputy Commissioner of the Integrity Commission shall make the declaration under this section to the Judicial Service Commission.

(4) The declaration made under this section shall, on demand be produced in evidence before -

(a) a court of competent jurisdiction; or

(b) an investigator appointed by the Integrity Commission.

(5) Any property or assets acquired by an officer after initial declaration required under this section and which is not reasonably attributable to income, Government loan, inheritance or any other legitimate source shall be deemed to have been acquired in contravention of this Chapter unless duly declared.

(6) An allegation that an officer referred to in this section has contravened or has not complied with a provision of this Chapter shall be made to the Integrity Commission and in the case of a member of the Integrity Commission, to the Judicial Service Commission which shall, unless the person concerned makes a written admission of the contravention or non-compliance, cause the matter to be investigated.

(7) The Integrity Commission or the Judicial Service Commission, as the case may be, may take such action as the Commission considers appropriate in respect of the results of the investigation or admission.

Section 242 - FAILURE TO COMPLY WITH CODE

(1) An officer who contravenes the Code may, after due process of law, be dismissed or removed from office by reasons of such breach or abuse and may be disqualified from holding any public office either generally or for a specified period.

(2) Any property or assets acquired after the initial declaration under this Chapter and which is not reasonably attributable to income, Government loan, inheritance or any other legitimate source, shall, after due process of law, be forfeited to Government.

Section 243 - THE INTEGRITY COMMISSION

(1) The Commission on Human Rights and Public Administration established in terms of section 163 of this Constitution shall for purposes of this Chapter, constitute the Integrity Commission.

(2) The Integrity Commission is responsible for receiving from time to time, declarations in writing of assets and liabilities of persons referred to in section 240(2), for enforcing the Code and supervising all matters connected with the Code as may be prescribed.

Section 244 - PENALTIES, ETC.

Parliament may make law —

(a) prescribing penalties additional to those prescribed for breach of the Code;

(b) prescribing procedures, guidelines and practices for ensuring the effective enforcement of the Code;

(c) necessary for ensuring the promotion and maintenance of honesty, probity, impartiality and integrity in public affairs;

(d) for the proper custody of declarations and other documents delivered to the Commission;

(e) for the maintenance of secrecy in respect of all information received by the Commission in the course of its duties with respect to the assets, liabilities and income of any person referred to in section 240(2); and

(f) for a suitable judicial code of conduct.

Section 163 - COMMISSION ON HUMAN RIGHTS AND PUBLIC ADMINISTRATION

(1) There shall be established within a year of the first meeting of Parliament after the commencement of this Constitution, a Commission on Human Rights and Public Administration in this Chapter referred to as “the Commission”.

(2) The Commission shall consist of -

(a) a Commissioner for Human Rights and Public Administration; and

(b) at least two Deputy Commissioners for Human Rights and Public Administration as may be necessary for the effective discharge of the functions of the Commission.

(3) The members of the Commission shall be appointed by the King on the advice of the Judicial Service Commission.

(4) Subject to subsection (5)(a), a person shall not qualify for appointment as Commissioner unless that person qualifies for appointment as Judge of the superior courts.

(5) A person shall not be eligible for appointment as Deputy Commissioner unless that person -

(a) is of high moral character and proven integrity; and

(b) possesses considerable experience and demonstrated competence in the conduct of public affairs; or

(c) is of high calibre in the conduct of public affairs.

(6) The first persons to be appointed Commissioner and Deputy Commissioner shall hold office for a term not exceeding seven years and five years respectively and may be re-appointed for a single term of five years each.

(7) A person appointed subsequent to the first appointment as Commissioner or Deputy Commissioner respectively shall hold office for a term not exceeding five years and may be re-appointed for a single term.

Section 165 - POWERS OF THE COMMISSION

(1) The powers of the Commission shall include the following -

(a) to issue subpoenas requiring the attendance of any person before the Commission and the production of any document, record or thing required for the investigation by the Commission;

(b) to fine any person for contempt of any subpoena or order, or cause that person to be brought by a competent court for the enforcement of the subpoena or order of the Commission;

(c) to question any person in respect of any subject matter under investigation before the Commission;

(d) to require any person to disclose truthfully and frankly any information within the knowledge of that person relevant to any investigation by the Commission.

(2) The Commission may during the course of its proceedings or as a consequence of its findings, make such orders and give such directions as are necessary and appropriate in the circumstances.

(3) The Commission shall not investigate -

(a) a matter which is pending before a court;

(b) a matter involving the relations or dealings between the Government and any other Government

or an international organisation; or

(c) matter relating to the exercise of any royal prerogative by the Crown.

(4) Subject to the provisions of subsection (3) the Commission may investigate an authority that has been established to investigate a matter where in the opinion of the Commissioner the authority is failing to carry out its mandate with due speed.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

Upon taking office the relevant officers are expected to comply with the Constitution.

(b) Observations on the implementation of the article

Eswatini has partially implemented this provision. It has considered but not implemented the requirements of this provision.

Through the Leadership Code of Conduct Bill 2011, Eswatini has proposed measures to prohibit those in leadership, whether elective or appointive, from engaging in conduct that is likely to lead to corruption in public affairs or from engaging in conduct involving potential conflict of interest. These proposed measures include a requirement for public leaders to declare assets and liabilities and are enshrined in the Constitution of Eswatini (Chapter XVI, sections 239-244). The Bill, however, would not cover spouses and does not specify a compliance mechanism or penalties for non-compliance.

Pursuant to the Bill reports would be filed with the Integrity Commission (The Commission on Human Rights and Public Administration) upon assuming office, every two years thereafter, and upon termination. The Integrity Commission would also be empowered to take action in case of alleged contraventions of these requirements. Penalties for failure to comply with the Code are spelled out in section 242 of the Constitution.

It was confirmed by the Integrity Commission that the above-referenced Leadership Code is still a bill that has not yet been adopted. Accordingly, its requirements on asset disclosure are not yet operational. While the Integrity Commission has been established, the asset declaration requirements have not been implemented and the Commission has not begun receiving and verifying declarations from all relevant persons. No projected timeframe for the adoption of the Bill and operationalization of reporting requirements was available.

No further details were available on other details, such as the specific verification mechanism, possibility of electronic filing, etc. It was explained, however, that there was no intention for declarations to be made public as the declarations would only be made available to government agencies. Furthermore, disclosure of information is regulated by Section 241(4) of the Constitution in cases where the information is required to be presented as evidence in a court or before an investigator appointed by the Integrity Commission.

Apart from Public Leaders, there are no present plans to extend asset declaration requirements to other public officials. At present, public officials are subject to a requirement to disclose conflicts of interest, under section 15 of the Public Service Act, 2018 (see art. 8(5) above)).

It is recommended that Eswatini reconsider the requirements under this provision and re-examine the proposed framework for asset declarations under the 2011 Leadership Bill in line with international best practices to ensure, in particular, the comprehensive scope and effectiveness of the reporting and verification mechanism.

Paragraph 6 of article 52

6. Each State Party shall consider taking such measures as may be necessary, in accordance with its domestic law, to require appropriate public officials having an interest in or signature or other authority over a financial account in a foreign country to report that relationship to appropriate authorities and to maintain appropriate records related to such accounts. Such measures shall also provide for appropriate sanctions for non-compliance.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(N) No

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

There is no provision for this.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

There are no applicable examples or statistics.

(b) Observations on the implementation of the article

The provision is not implemented.

It is recommended that Eswatini consider adopting a provision requiring appropriate public officials to report any interest in or authority over a foreign financial account to appropriate authorities, to maintain appropriate records, and establishing sanctions for non-compliance.

Article 53. Measures for direct recovery of property

Subparagraph (a) of article 53

Each State Party shall, in accordance with its domestic law:

(a) Take such measures as may be necessary to permit another State Party to initiate civil action in its courts to establish title to or ownership of property acquired through the commission of an offence established in accordance with this Convention;

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(N) No

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

There is no provision in the law for this.

Section 162 of the Constitution creates the office of the Director of Public Prosecutions (DPP). The section states the power of the DPP which includes to institute and undertake criminal proceedings against any person before any court (other than a court martial) in respect of any offence alleged to have been committed by that person, take over and continue any criminal proceedings that may have been instituted or undertaken by any other person or authority and discontinue, at any stage before judgment is delivered, any criminal proceedings instituted or undertaken by the DPP or any person or authority. This power includes the power to initiate or institute civil proceedings which emanate from criminal activity or a criminal offence.

However, there is section 4 of the CMMAA which provides that nothing in the Act shall prevent the provision or obtaining of international assistance in criminal matters otherwise than in accordance with the Act. Effectively, this means that even though the CMMAA does not provide for what article 53(a) deals with, mutual legal assistance which is outside the ambit of this Act may be provided or received. This could be done on the basis of specific provisions of UNCAC like this very subparagraph. This is particularly possible because section 236 (1)(d) of the Constitution provides that in dealing with other nations, Eswatini shall endeavour to uphold the principles, aims and ideals of among others, the United Nations. Practically, this can happen by the DPP initiating the proceedings by way of notice of motion and founding affidavit accompanied by a supporting affidavit of an official of similar standing in the requesting State.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

There are no examples of implementation since we do not have such provisions.

(b) Observations on the implementation of the article

Article 53 (a) concerns measures for direct recovery of assets through civil action. This provision complements the recovery of proceeds from corruption by way of confiscation and obliges States to recognise in their legal systems the right of harmed States to seek direct recovery through private civil actions of property, compensation or damages. Such civil litigation could be asset-based (claims in rem) or tort-based.

Eswatini has not implemented this paragraph.

While the DPP may initiate proceedings on the basis of a foreign request, there is no provision in the law that allows a foreign State to initiate civil proceedings in the domestic courts.

It is recommended that Eswatini specify in the law recovery mechanisms for injured parties to establish title or ownership of property, through domestic proceedings, to fully align its legislation with this part of the Convention.

Subparagraph (b) of article 53

Each State Party shall, in accordance with its domestic law: ...

(b) Take such measures as may be necessary to permit its courts to order those who have committed offences established in accordance with this Convention to pay compensation or damages to another State Party that has been harmed by such offences; and

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

This subparagraph is provided for by section 62.ter(2) of the MLFPA (as amended) which provides that the Confiscated and Forfeited Asset Fund Committee may authorise payments out of the Confiscated and Forfeited Funds Account in order to compensate victims who have suffered losses as a result of criminal offences, terrorism or unlawful activity. A State Party is not excluded as a victim under the Act. A victim of terrorism for example could be a State Party and would be entitled to compensation under the Act.

Receipts and Disbursements

62.ter (1) There shall be credited to the Fund -

- (a) all moneys derived from the fulfilment of confiscation or forfeiture orders under this Act or any other Act;
- (b) any sums of money allocated to the Fund from time to time by parliamentary appropriation;
- (c) any voluntary payment, grant or gift made by any person for the purposes of the Fund;
- (d) any income derived from the investment of any amount standing to the credit of the Fund;
- (e) the balance of all moneys derived from the execution of foreign confiscation orders in terms of the Criminal Matters (Mutual Assistance) Act, 2001 (Act 7 of 2007), after payments have been made to requesting States in terms of that Act;
- (f) any property or amount of money lawfully received or acquired from any source; and
- (g) all property or moneys transferred to the Fund in terms of this Act.

(2) The Committee may authorise payments out of the Fund to –

- (a) compensate victims who suffered losses as a result of criminal offences, terrorism unlawful activity;
- (b) satisfy a compensation order under sub-sections 57(6) or (8);
- (c) enable the appropriate law enforcement agencies to continue their fight against serious offences, terrorism and unlawful activities;
- (d) share confiscated property with foreign States pursuant to any relevant treaties or arrangements.

Part XI of POCA further establishes a Criminal Assets Recovery Fund whose funds may be utilized to compensate victims who suffered losses as a result of offences under the Act, among other

purposes. See article 57 below.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

The powers under this section have not yet been exercised.

(b) Observations on the implementation of the article

There are measures in place to enable victims of crime to be compensated from the Confiscated and Forfeited Funds Account and the Criminal Assets Recovery Fund as a result of criminal offences. A State Party is not excluded as a victim under the law.

There have not yet been any examples exercising the powers of this section or cases where the State has claimed compensation as victim of a criminal offence.

Subparagraph (c) of article 53

Each State Party shall, in accordance with its domestic law: ...

(c) Take such measures as may be necessary to permit its courts or competent authorities, when having to decide on confiscation, to recognize another State Party's claim as a legitimate owner of property acquired through the commission of an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes, in part

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

The interests of third parties are protected under sections 43, 54 and 56 of the Prevention of Organised Crime Act, 2018 (POCA) and MLFTP.A.

Notice of preservation of property order

43. (1) If the High Court makes a preservation of property order, the Director of Public Prosecutions shall, as soon as practicable after the making of the order—

(a) give notice of the order to all persons known to have an interest in the property which is subject to the order; and

(b) publish a notice of the order in the Gazette.

(2) A notice under subsection (1) (a) shall be served in the manner in which a summons commencing civil proceedings in the High Court is served or in any manner prescribed by the Minister.

(3) Any person who has an interest in the property which is subject to the preservation of property order may give written notice of intention to oppose the making of a forfeiture order or apply, in writing, for an order excluding the interest in the property concerned from the operation of the preservation of property order.

(4) A notice under subsection (3) shall be delivered to the Director of Public Prosecutions within, in the case of—

(a) a person on whom a notice has been served under subsection (1)(a), twenty one days after the service; or

(b) any other person, twenty one days after the date on which a notice under subsection (1)(b) was published in the Gazette.

(5) A notice under subsection (3) shall contain full particulars of the chosen address for the delivery of documents concerning further proceedings under this Part and shall be accompanied by an affidavit stating—

(a) the full particulars of the identity of the person giving notice;

(b) the nature and the extent of the interest in the property concerned;

(c) whether the person intends to—

(i) oppose the making of the order; or

(ii) apply for an order—

(aa) excluding the interest in that property from the operation of the order; or

(bb) varying the operation of the order in respect of that property;

(d) whether the person admits or denies that the property concerned is an instrumentality of an offence or the proceeds of unlawful activities; and

(e) the—

(i) facts on which the person intends to rely on in opposing the making of a forfeiture order or applying for an order referred to in subparagraph (c)(ii); and

(ii) basis on which the person admits or denies that the property concerned is an instrumentality of an offence or the proceeds of unlawful activities.

(6) A person who does not give notice in terms of subsection (3), accompanied by an affidavit in terms of subsection (5), within the period referred to in subsection (4) is not entitled—

(a) to receive, from the Director of Public Prosecutions, notice of an application for a forfeiture order in terms of section 50(2); or

(b) subject to section 51, to participate in proceedings concerning an application for a forfeiture order.

Exclusion of interests in property

54. (1) The High Court may, on application—

(a) under section 50(4)(b); or

(b) by a person referred to in section 51(1),

and when it makes a forfeiture order, make an order excluding certain interests in property which is subject to the order from the operation of the order.

(2) The High Court may make an order under subsection (1) in relation to the forfeiture of the proceeds of unlawful activities, if it finds on a balance of probabilities that the applicant for the order—

(a) had acquired the interest concerned legally and for a consideration, the value of which is not significantly less than the value of that interest; and

(b) where the applicant had acquired the interest concerned after the commencement of this Act, that the applicant neither knew nor had reasonable grounds to suspect that the property in which the interest is held is the proceeds of unlawful activities.

(3) The High Court may make an order under subsection (1) in relation to the forfeiture of an instrumentality of an offence referred to in the Schedule, if it finds on a balance of probabilities that the applicant for the order had acquired the interest concerned legally, and—

(a) neither knew nor had reasonable grounds to suspect that the property in which the interest is held is an instrumentality of an offence referred to in the Schedule; or

(b) where the offence concerned had occurred before the commencement of this Act, the applicant has since the commencement of this Act taken all reasonable steps to prevent the use of the property concerned as an instrumentality of an offence referred to in the Schedule.

(4) If an applicant for an order under subsection (1) adduces evidence to show that the applicant did not know or did not have reasonable grounds to suspect that the property in which the interest is held is an instrumentality of an offence referred to in the Schedule, the State may submit a return of the service on the applicant of a notice issued under section 53(4) in rebuttal of that evidence in respect of the period since the date of the service.

(5) If the State submits a return of the service on the applicant of a notice issued under section 53(4) as contemplated in subsection (4), the applicant for an order under subsection (1) shall, in addition to the facts referred to in subsection (3), also prove on a balance of probabilities that, since that service, the applicant has taken all reasonable steps to prevent the further use of the property concerned as an instrumentality of an offence referred to in the Schedule.

(6) The High Court when making an order for the exclusion of an interest in property under subsection (1) may, in the interest of the administration of justice or in the public interest, make that order on conditions that the court deems appropriate including a condition requiring the person who applied for the exclusion to take all reasonable steps, within a period that the court may determine, to prevent the future use of the property as an instrumentality of an offence referred to in the Schedule.

Protection of interests of third parties in forfeited property

56. (1) Any person affected by a forfeiture order who was entitled to receive notice of the application for the order under section 50(2), but did not receive that notice may, within thirty days after the

notice of the making of the order is published in the gazette, apply for an order excluding the interest of that person in the property concerned from the operation of the order, or varying the operation of the order in respect of that property.

(2) The application referred to in subsection (1) shall be accompanied by an affidavit setting out—

- (a) the nature and extent of the applicant's right, title or interest in the property concerned;
- (b) the time and circumstances of the applicant's acquisition of the right, title, or interest in the property;
- (c) any additional facts supporting the application; and
- (d) the relief sought.

(3) The hearing of the application shall, to the extent practicable and consistent with the interests of justice, be held within thirty days of the filing of the application.

(4) The High Court may consolidate the hearing of the application with a hearing of any other application filed by a person under this section.

(5) At the hearing, the applicant may testify and present evidence and witnesses and may cross-examine any witness who appears at the hearing.

(6) The Director of Public Prosecutions, the curator bonis concerned or a person authorised in writing by one of them, may present evidence and call witnesses in rebuttal and in defence of their claim to the property and may cross-examine a witness who appears at the hearing.

(7) In addition to the testimony and evidence presented at the hearing, the High Court may, on application by the Director of Public Prosecutions, the curator bonis concerned or a person authorised in writing by one of them, order that the testimony of any witness relating to the property forfeited be taken by commission and that any document or other material not privileged be produced at the taking down of that testimony by commission.

(8) The High Court may make an order under subsection (1) in relation to the forfeiture of the proceeds of unlawful activities if it finds on a balance of probabilities that the applicant for the order—

- (a) had acquired the interest concerned in good faith and for a consideration; and
- (b) where the applicant had acquired the interest concerned after the commencement of this Act, neither knew nor had reasonable grounds to suspect that the property in which the interest is held is the proceeds of unlawful activities.

(9) The High Court may make an order under subsection (1) in relation to the forfeiture of an instrumentality of an offence referred to in the Schedule if it finds on a balance of probabilities that the applicant for the order had acquired the interest concerned legally, and—

- (a) neither knew nor had reasonable grounds to suspect that the property in which the interest is held is an instrumentality of an offence referred to in the Schedule; or
- (b) where the offence concerned had occurred before the commencement of this Act, the applicant has since the commencement of this Act taken all reasonable steps to prevent the use of the property concerned as an instrumentality of an offence referred to in the Schedule.

(10) Where a person who testifies under this section—

- (a) fails to answer fully and to the best of ability any question lawfully put; or
- (b) gives false evidence knowing that evidence to be false or not believing it to be true, commits an

offence.

(11) Where a person who furnishes an affidavit under subsection (2) makes a false statement in the affidavit knowing that statement to be false or not believing it to be true, commits an offence.

(12) A person convicted of an offence under this section is liable to a fine not exceeding one thousand Emalangeneni or to imprisonment for a period not exceeding five years or to both.

On the other hand, there is section 57(7) of the MLFPA which provides that if a Court is satisfied that a person:

(a) has an interest in the property which is the subject of the application; and

(b) has exercised reasonable care to ensure that the property is not the proceeds of a crime, or terrorist property, or would not be used to commit or facilitate the commission of an act of terrorism and would not be used by a terrorist group; and

(c) is not a member of a terrorist group,

the Court shall order that the interest shall not be affected by the order and the order shall stipulate the nature and extent of the interest in question.

A State Party is not precluded from the protection given by these sections. If the State Party concerned seeks the protection of these sections, it may invoke any of the sections or both.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

These sections have not yet been invoked and as such there are no examples and statistics available.

(b) Observations on the implementation of the article

The paragraph requires States parties to provide legal standing (civil or criminal) to other States parties to claim, as legitimate owner in a confiscation procedure, ownership over assets acquired through the commission of a Convention offence.

There are no measures that mandate the recognition of a foreign State as a legitimate owner in confiscation proceedings, except that in any given proceeding a State party could be a bona fide third party.

In Eswatini the rights of bona fide third parties are sufficiently protected. The cited provisions of POCA deal with the effect of a forfeiture order on third parties. Likewise, section 57(7) of the MLFPA protects the interests of any person claiming an interest in property in respect of which a forfeiture application has been made.

The cited provisions address third party interests in confiscation proceedings rather than recognition of a foreign country as primary claimant in confiscation proceedings.

Therefore, it is recommended that Eswatini specify in the law recovery mechanisms for States parties to establish title or ownership be awarded compensation or damages for injuries, through domestic proceedings.

Article 54. Mechanisms for recovery of property through international cooperation in confiscation

Subparagraph 1 (a) of article 54

1. Each State Party, in order to provide mutual legal assistance pursuant to article 55 of this Convention with respect to property acquired through or involved in the commission of an offence established in accordance with this Convention, shall, in accordance with its domestic law:

(a) Take such measures as may be necessary to permit its competent authorities to give effect to an order of confiscation issued by a court of another State Party;

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

This is provided for by section 26 of the Criminal Matters (Mutual Assistance) Act, 2001 (CMMAA) read together with POCA (Parts IV, VI and VIII). Section 26 provides as follows.

Section 26. Seizure and confiscation of proceeds of serious offence

(1) Where

(a) the appropriate authority in a designated country requests the Minister to make arrangements for the enforcement of-

(i) a forfeiture order made in respect of a serious offence against property that is believed to be located in Swaziland; or

(ii) a pecuniary penalty order made in respect of a serious offence where some or all of the property available to satisfy the order is believed to be located in Swaziland; and

(b) the Minister is satisfied that -

(i) the person has been convicted of the offence; and

(ii) conviction and the order are not subject to further appeal in the designated country,

the Minister may authorise the Director of Public Prosecutions in writing to apply for the registration of the order in the High Court.

(2) Where the appropriate authority in a designated country requests the Minister to make arrangements for the enforcement of a restraining order made in that country in respect of a serious offence against property that is believed to be located within Swaziland, the Minister may authorise the Director of Public Prosecutions in writing to apply for the registration of the order in the High Court.

(3) where the Director of Public Prosecutions has applied for the registration in the High Court of a forfeiture order or a pecuniary penalty order under subsection (1) or a restraining order under subsection (2), the High Court shall register the order accordingly.

The effect of registration is provided for by section 27 of the same Act which provides:

Section 27. Effect of registration of forfeiture order, pecuniary penalty order or restraining order

A forfeiture order, a pecuniary penalty order or a restraining order registered under section 26 shall have effect and may be enforced as if it were a forfeiture order, a pecuniary penalty order or a restraining order made by the High Court under the Serious Offences (Confiscation of Proceeds) Act, 2000.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

The country has not yet received any request for registration of a foreign order or orders.

(b) Observations on the implementation of the article

Eswatini's legislation is in compliance with this provision, subject to the limitations noted under article 51 above regarding application of the law to countries designated under the Act and the references to "serious offences" and the repealed provisions of the Serious Offences (Confiscation of Proceeds) Act, 2001. The recommendations made above apply equally to the present article.

It was confirmed that there have been no requests for enforcement of a foreign order.

Subparagraph 1 (b) of article 54

1. Each State Party, in order to provide mutual legal assistance pursuant to article 55 of this Convention with respect to property acquired through or involved in the commission of an offence established in accordance with this Convention, shall, in accordance with its domestic law:

...

(b) Take such measures as may be necessary to permit its competent authorities, where they have jurisdiction, to order the confiscation of such property of foreign origin by adjudication of an offence of money-laundering or such other offence as may be within its jurisdiction or by other procedures authorized under its domestic law; and

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

The offence of money laundering is created by section 4 of MLFTP which creates an offence out of conduct which has occurred in Eswatini or outside Eswatini. Moreover, section 57 which empowers a court to order the forfeiture of property in respect of which a court is satisfied has been derived, obtained or realised, directly or indirectly from the offence of money laundering makes no distinction between property which is originally from Eswatini or elsewhere. Once the property is linked with the crime it is subject to forfeiture.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

There has not yet been a case where the offence of money laundering adjudicated upon resulted in the confiscation of property of foreign origin.

(b) Observations on the implementation of the article

Money-laundering and corruption are offences that may be locally prosecuted and result in the confiscation of property of foreign origin. Sections 4 and 57 of MLFTP makes no distinction between property of local origin and foreign origin. If the property is in Eswatini and is the subject of a forfeiture order it will be forfeited.

The procedure for confiscation of property is spelled out in Parts IV, VI and VIII of POCA. The law does not distinguish between foreign and domestic proceeds (see section 11, definition of realisable property).

Eswatini's legislation is in compliance with this subparagraph.

Subparagraph 1 (c) of article 54

1. Each State Party, in order to provide mutual legal assistance pursuant to article 55 of this Convention with respect to property acquired through or involved in the commission of an offence established in accordance with this Convention, shall, in accordance with its domestic law:

...

(c) Consider taking such measures as may be necessary to allow confiscation of such property without a criminal conviction in cases in which the offender cannot be prosecuted by reason of death, flight or absence or in other appropriate cases.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

This is provided for by the MLFPA (as amended).

Section 44 - Applications

(1) An application brought under this Act for a restraining order or for a forfeiture order may be brought whether or not a person has been charged or convicted of an offence and whether or not an application has been brought for a confiscation order, pecuniary penalty order or a forfeiture order or a criminal conviction. ...

Section 61 - Forfeiture where a person dies or absconds

(1) Subject to section 60 (3), where an application is made to the Court under section 60 (1) for a forfeiture order against any tainted property in consequence of a person having died or absconded in connection with an unlawful activity and the Court is satisfied that-

- (a) any property is tainted property in respect of the offence;
- (b) an information has been laid alleging the commission of the offence by that person and a warrant for the arrest of that person has been issued in relation to that information; and,
- (c) the accused charged with the offence referred to in subsection (b) has died or absconded,

the Court may order that the property or such property as is specified by the Court in the order be forfeited.

The Act defines “tainted property” as the property intended for use in, or used in or in connection with the commission of an unlawful activity and the proceeds of crime.

The forfeiture of proceeds of corruption in cases under the Prevention of Corruption Act is possible only where a person has been convicted of an offence under the Act, in accordance with section 36(1).

Additional penalty

36. (1) Where a person is convicted of an offence under this Part, the court shall in addition to any penalty it may impose under section 35 order the person convicted to pay to the rightful owner the amount or value, as determined by the court, of any advantage actually received by that person.

(2) Where after reasonable inquiry, the rightful owner cannot be ascertained or traced or is implicated in the commission of that particular offence under this Part, the court shall order that the amount or value of that advantage be forfeited to the Government.

(3) In addition to the fine a court may impose in terms of section 35, the court may impose a fine equal to five times the value of the advantage involved in the offence.

Under the Prevention of Organised Crime Act, 2018 (POCA), the court may, on application of the DPP, order the confiscation of proceeds where a person absconds or dies if a confiscation order could otherwise have been made against the person.

32. Procedure where person absconds or dies

(1) If a court is satisfied—

(a) that—

(i) a person had been charged with an offence;

(ii) a person had been convicted of any offence;

(iii) a restraint of property order had been made against a person; or

(iv) there is sufficient evidence for putting a person on trial for an offence;

(b) that a warrant for the arrest of that person had been issued and that the attendance of that person in court could not be secured after all reasonable steps were taken to execute that warrant;

(c) that the proceedings against the person cannot be resumed within a period of six months due to the continued absence of that person; and

(d) that there are reasonable grounds to believe that a confiscation order would have been made against that person were it not for the continued absence,

the court may, on application by the Director of Public Prosecutions, enquire into any benefit the person may have derived from that offence.

(2) Whenever a respondent who has been convicted of an offence dies before a confiscation order is made, the court may, on the application by the Director of Public Prosecutions, enquire into any benefit the person may have derived from that offence if the court is satisfied that there are

reasonable grounds to believe that a confiscation order would have been made against the person were it not for the death.

(3) The executor of the estate of the deceased person referred to in subsection (1) is entitled to appear before the court and make representations for purposes of the enquiry referred to in that subsection.

(4) The court conducting an enquiry under this section may–

(a) if the court finds that the person referred to in subsection (1) or (2) has so benefited, make a confiscation order;

(b) if a curator bonis has not been appointed in respect of any of the property concerned, appoint a curator bonis in respect of realisable property; and

(c) authorise the realisation of the property concerned.

(5) A court shall not exercise its powers under subsection (4) (a) and (c) unless it has afforded all persons having any interest in the property concerned an opportunity to make representations to it in connection with the making of those orders and the Minister shall prescribe the manner in which those persons are to be informed of the proposed orders.

(6) A court conducting an inquiry under this section shall not apply sections 36 and 37.

(7) If a person, excluding a person contemplated in subsection (1)(a)(ii), against whom a confiscation order had been made under subsection (4) is subsequently tried and–

(a) convicted of one or other of the offences in respect of which the order had been made, the court convicting that person may conduct an enquiry under section 23 and make an appropriate order; or

(b) acquitted of the offence in respect of which the order had been made, the court acquitting the person may make an appropriate order.

In all other cases, the confiscation system is conviction-based (see section 23, POCA).

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

There has not yet been any case where confiscation of property was ordered without a criminal conviction in cases in which the offender could not be prosecuted by reason of death, flight or absence.

One case was pending in court under Section 45 of MLFTPA at the time of review and involving restraint of property pending an application for civil forfeiture.

(b) Observations on the implementation of the article

Eswatini's legislation is in compliance with the provision under review. There have been no completed cases of civil forfeiture or confiscation in the absence of a conviction of the offender.

Subparagraph 2 (a) of article 54

2. Each State Party, in order to provide mutual legal assistance upon a request made pursuant to paragraph 2 of article 55 of this Convention, shall, in accordance with its domestic law:

(a) Take such measures as may be necessary to permit its competent authorities to freeze or seize property upon a freezing or seizure order issued by a court or competent authority of a requesting State Party that provides a reasonable basis for the requested State Party to believe that there are sufficient grounds for taking such actions and that the property would eventually be subject to an order of confiscation for purposes of paragraph 1 (a) of this article;

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

This is provided for by the Criminal Matters (Mutual Assistance) Act, 2001 (CMMAA), read together with the provisions of POCA on seizure and restraint (Parts V, VIII and XIII).

Section 26 - Seizure and confiscation of proceeds of serious offence

(1) Where -

(a) the appropriate authority in a designated country requests the Minister to make arrangements for the enforcement of -

(i) a forfeiture order made in respect of a serious offence against property that is believed to be located in Swaziland; or

(ii) a pecuniary penalty order made in respect of a serious offence where some or all of the property available to satisfy the order is believed to be located in Swaziland; and

(b) the Minister is satisfied that -

(i) the person has been convicted of the offence; and

(ii) conviction and the order are not subject to further appeal in the designated country,

the Minister (for Justice and Constitutional Affairs) may authorise the Director of Public Prosecutions in writing to apply for the registration of the order in the High Court.

(2) Where the appropriate authority in a designated country requests the Minister to make arrangements for the enforcement of a restraining order made in that country in respect of a serious offence against property that is believed to be located within Swaziland, the Minister may authorise

the Director of Public Prosecutions in writing to apply for the registration of the order in the High Court.

(3) Where the Director of Public Prosecutions has applied for registration in the High Court or a forfeiture order or a pecuniary penalty order under subsection (1) or a restraining order under subsection (2), the High Court shall register the order accordingly.

Section 27. Effect of registration of forfeiture order, pecuniary penalty order or restraining order

A forfeiture order, a pecuniary penalty order or a restraining order registered under section 26 shall have effect and may be enforced as if it were a forfeiture order, a pecuniary penalty order or a restraining order made by the High Court under the Serious Offences (Confiscation of Proceeds) Act, 2000.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

There has not yet been any case or cases which have resulted in the invocation of the provisions falling under this subparagraph.

(b) Observations on the implementation of the article

The cited measures address the requirements of this paragraph on asset seizure.

The enforcement of a foreign restraining order (defined in Section 2 of CMMAA as “an order made by a court restraining dealings with any property in respect of which there is reasonable cause to believe that it has been derived or obtained, whether directly from, or used in, or in connection with, the commission of a serious offence”) is possible under Section 26(2) of CMMAA.

The provision is implemented, subject to the limitations noted under article 51 regarding application of the CMMAA to designated countries and the references to “serious offences” and the repealed provisions of the Serious Offences (Confiscation of Proceeds) Act, 2001. The recommendations made above apply equally to the present article.

Subparagraph 2 (b) of article 54

2. Each State Party, in order to provide mutual legal assistance upon a request made pursuant to paragraph 2 of article 55 of this Convention, shall, in accordance with its domestic law:

...

(b) Take such measures as may be necessary to permit its competent authorities to freeze or seize property upon a request that provides a reasonable basis for the requested State Party to believe that

there are sufficient grounds for taking such actions and that the property would eventually be subject to an order of confiscation for purposes of paragraph 1 (a) of this article; and

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

This is provided for by section 56 of MLFPA (as amended).

Search for and seizure of property in relation to foreign offences

Where a foreign State requests assistance to locate or seize property suspected to be tainted property in respect of an offence within its jurisdiction or property suspected to be terrorist property, the provisions of sections 52, 53 and 54 apply in so far as is applicable, provided that the Minister of Justice and Constitutional Affairs has, under the Criminal Matters (Mutual Assistance) Act, 2001, authorised the giving of assistance to the foreign State.

Section 52 - SEARCH WARRANTS MAY BE GRANTED BY TELEPHONE, ETC

(1) Where by reason of urgency a law enforcement agent considers it necessary to do so, that law enforcement agent may make application for a search warrant under section 51 by telephone or by other means of communication.

(2) A Magistrate, to whom an application for the issue of a warrant is made by telephone or other means of communication, may sign a warrant if that Magistrate is satisfied that it is necessary to do so, and shall inform the law enforcement agent of the terms the warrant so signed.

(3) The law enforcement agent shall complete a form of warrant in the terms furnished by the magistrate.

(4) The law enforcement agent to whom a warrant is granted by telephone or other means of communication shall, not later than the next working day following the execution of the warrant, give the magistrate a duly sworn information and the form of warrant completed by the law enforcement agent.

Section 53 - SEARCHES IN EMERGENCIES

(1) Where a law enforcement agent suspects on reasonable grounds that-

(a) particular property is tainted property or terrorist property;

(b) it is necessary to exercise the power of search and seizure in order to prevent the concealment,

loss or destruction of the property; and

(c) the circumstances are so urgent that they require immediate exercise of the power without the authority of a warrant or the order of a court,

the law enforcement agent may-

(i) search a person;

(ii) enter upon land, or upon or into premises and search for the property; and

(iii) if property is found, seize the property.

(2) If during the course of a search conducted under this section, a law enforcement agent finds-

(a) property that the law enforcement agent believes on reasonable grounds to be tainted property or terrorist property; or

(b) anything the law enforcement agent believes on reasonable grounds will afford evidence as to the commission of an unlawful activity,

the law enforcement agent may seize that property or thing.

Section 54 - RECORD OF SEIZED PROPERTY

A law enforcement agent who seizes property under section 49 or section 50 shall detain the property seized, make a written record thereof, and take reasonable care to ensure that the property is preserved.

Broad investigative powers are spelled out in Part XIII of POCA (Investigations), including property tracking orders, warrants to search for and seize tainted property, and requests for information. Restraint orders are addressed in Part V and additional powers related to seizure in Part VIII of POCA.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

Two (2) requests have been received recently but were not executable. One request for the freezing of a bank account had insufficient information in that the account number it referred to did not exist in the relevant bank in Eswatini. The other request was not in compliance with local laws in that it was written in a foreign language and could not be understood; thus the DPP returned it for amendment and resubmission.

(b) Observations on the implementation of the article

Section 56 MLFPA implements this provision. Its application, however, is subject to Ministerial approval under CMMAA. The CMMAA only applies to States designated via gazettal notice, and South Africa is the only State that has been designated so far. Implementation in urgent cases could be problematic in practice, although the authorities reported that there have been no such impediments to date.

As noted under article 51, it is recommended that Eswatini consider removing the limitation in terms of application of the CMMAA to designated countries (currently only South Africa); this would also allow for the search for and seizure of property in relation to foreign offences under MLFPA on the basis of a foreign request.

Subparagraph 2 (c) of article 54

2. Each State Party, in order to provide mutual legal assistance upon a request made pursuant to paragraph 2 of article 55 of this Convention, shall, in accordance with its domestic law:

...

(c) Consider taking additional measures to permit its competent authorities to preserve property for confiscation, such as on the basis of a foreign arrest or criminal charge related to the acquisition of such property.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

This is provided for by POCA.

Anti-disposal order by court

24. (1) A public prosecutor, with the written authority of the Director of Public Prosecutions, may apply to any court which has convicted a respondent for an order referred to in subsection (2).

(2) A court may make an anti-disposal order prohibiting any person, subject to any conditions and exceptions as may be specified in the order, from dealing in any manner with any property to which the order relates if—

(a) that court has decided to conduct an enquiry in terms of section 23(1) into any benefit which a respondent may have derived from an offence or related criminal activity;

(b) no restraint order is in force in respect of the respondent or any property in which the respondent holds an interest; and

(c) the proceedings against the respondent have not been concluded.

(3) An order under subsection (2) may be made in respect of any realisable property specified in that order and which is held by the person against whom the order is being made.

- (4) A court making an order under subsection (2) may—
- (a) make an order authorising the seizure of the property concerned by a member of the police who must thereafter deal with the property in accordance with the directions of that court; or
 - (b) direct that a staff member will, subject to the directions of that court, take care of the property concerned.
- (5) An order made under subsection (2) expires when the proceedings against the respondent are concluded, unless the order is rescinded before the proceedings are concluded.

Preservation of property orders

42. (1) The Director of Public Prosecutions may apply to the High Court for a preservation of property order prohibiting any person, subject to such conditions and exceptions as may be specified in the order, from dealing in any manner with any property.

(2) The High Court shall make an order referred to in subsection (1) without requiring that a notice of the application be given to any other person or the adducing of any further evidence from any other person if the application is supported by an affidavit indicating that the deponent has sufficient information that the property concerned is—

- (a) an instrumentality of an offence referred to in the Schedule; or
- (b) the proceeds of unlawful activities, and the court is satisfied that that information shows on the face of it that there are reasonable grounds for that belief.

(3) When the High Court makes a preservation of property order it shall at the same time make an order authorising the seizure of the property concerned by a member of the police, and any other ancillary orders that the court considers appropriate for the proper, fair and effective execution of the order.

(4) Property seized under subsection (3) shall be dealt with in accordance with the directions of the High Court.

Notice of preservation of property order

43. (1) If the High Court makes a preservation of property order, the Director of Public Prosecutions shall, as soon as practicable after the making of the order—

- (a) give notice of the order to all persons known to have an interest in the property which is subject to the order; and
- (b) publish a notice of the order in the Gazette.

(2) A notice under subsection (1) (a) shall be served in the manner in which a summons commencing civil proceedings in the High Court is served or in any manner prescribed by the Minister.

(3) Any person who has an interest in the property which is subject to the preservation of property order may give written notice of intention to oppose the making of a forfeiture order or apply, in writing, for an order excluding the interest in the property concerned from the operation of the preservation of property order.

(4) A notice under subsection (3) shall be delivered to the Director of Public Prosecutions within, in the case of—

- (a) a person on whom a notice has been served under subsection (1)(a), twenty one days after the

service; or

(b) any other person, twenty one days after the date on which a notice under subsection (1)(b) was published in the Gazette.

(5) A notice under subsection (3) shall contain full particulars of the chosen address for the delivery of documents concerning further proceedings under this Part and shall be accompanied by an affidavit stating—

(a) the full particulars of the identity of the person giving notice;

(b) the nature and the extent of the interest in the property concerned;

(c) whether the person intends to—

(i) oppose the making of the order; or

(ii) apply for an order—

(aa) excluding the interest in that property from the operation of the order; or

(bb) varying the operation of the order in respect of that property;

(d) whether the person admits or denies that the property concerned is an instrumentality of an offence or the proceeds of unlawful activities; and

(e) the—

(i) facts on which the person intends to rely on in opposing the making of a forfeiture order or applying for an order referred to in subparagraph (c)(ii); and

(ii) basis on which the person admits or denies that the property concerned is an instrumentality of an offence or the proceeds of unlawful activities.

(6) A person who does not give notice in terms of subsection (3), accompanied by an affidavit in terms of subsection (5), within the period referred to in subsection (4) is not entitled—

(a) to receive, from the Director of Public Prosecutions, notice of an application for a forfeiture order in terms of section 50(2); or

(b) subject to section 51, to participate in proceedings concerning an application for a forfeiture order.

Seizure of property subject to preservation of property order

45. (1) In order to prevent property subject to a preservation of property order from being disposed of or removed contrary to that order, any member of the police may seize that property if there are reasonable grounds to believe that that property will be so disposed of or removed.

(2) Property seized under subsection (1) shall be dealt with in accordance with the directions of the High Court.

Appointment of *curator bonis* in respect of property subject to preservation of property order

46. (1) Where the High Court has made a preservation of property order, it shall, if it considers it appropriate, at the time of the making of the order or at a later date—

(a) appoint a curator bonis to do, subject to the directions of the High Court, any one or more of the following on behalf of the person against whom the preservation of property order has been made,

namely–

- (i) to assume control over the property;
 - (ii) to take care of the property;
 - (iii) to administer the property and to do any act necessary for that purpose; and
 - (iv) where the property is a business or undertaking, to carry on, with due regard to any law which may be applicable, the business or undertaking; and
- (b) order any person holding property subject to the preservation of property order to surrender forthwith, or within such period as the court may determine, that property into the custody of the *curator bonis*.

Functions of *curator bonis*

81. (1) Immediately after a *curator bonis* is appointed in terms of this Act, the *curator bonis* shall take into custody all the property in respect of which the *curator bonis* was appointed, as well as any document in the possession or custody or under the control of any person referred to in section 19(1), 34(2)(c), 46(1)(b) or 58(3) if that document relates to the property.

(2) Except as otherwise provided in this Act, the Administration of Estates Act, 1902 (Act 28 of 1902), does, with the necessary changes, apply in respect of a *curator bonis* appointed in terms of this Act.

(3) The High Court may dispense with any requirement in terms of any law that applies to the appointment of a *curator bonis* or to the execution of any power or function by a *curator bonis*, including a requirement for a *curator bonis* to provide security.

Staff member may take care of property

82. Where a court may appoint a *curator bonis* in terms of this Act, the court may dispense with such an appointment and direct instead that a staff member will, subject to the directions of the court, take care of the property concerned.

The above-mentioned sections read together with the provisions of section 4 of the CMMAA bring the legal regime under the provisions of the Article. Section 4 states that nothing in this Act shall prevent the provision or obtaining of international assistance in criminal matters otherwise than in accordance with this Act.

Section 54 of MLFPA (quoted under the preceding paragraph) is also relevant to the preservation of property.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

There has not yet been an instance where property was preserved for confiscation on the basis of a foreign arrest or criminal charge related to the acquisition of such property.

(b) Observations on the implementation of the article

It was confirmed that under the POCA seized property shall be managed and preserved for confiscation in accordance with the direction of the Court upon application of the DPP (section 42 POCA). Relevant measures may include the issuance of property preservation orders or the appointment of a *curator bonis*, depending on the complexity of the asset and the circumstances of each case. In practice, each law enforcement agency has its own procedure for administering seized properties.

A Criminal Assets Recovery Fund is also being established (see article 57 below).

Based on the above it appears that Eswatini is able to take additional measures to preserve property for confiscation in appropriate cases, including in the case of foreign proceeds.

(c) Challenges, where applicable

Please outline actions required to ensure or improve the implementation of the article under review and describe any specific challenges you might be facing in this respect.

There are no challenges which may be raised at this stage.

(d) Technical assistance needs

None to specify.

Is any technical assistance already being provided to you? If so, please provide a general description of the nature of the assistance, including donor information.

Assistance is provided by ARINSA in relation to the implementation of asset recovery legislation.

Article 55. International cooperation for purposes of confiscation

Paragraph 1 of article 55

1. A State Party that has received a request from another State Party having jurisdiction over an offence established in accordance with this Convention for confiscation of proceeds of crime,

property, equipment or other instrumentalities referred to in article 31, paragraph 1, of this Convention situated in its territory shall, to the greatest extent possible within its domestic legal system:

(a) Submit the request to its competent authorities for the purpose of obtaining an order of confiscation and, if such an order is granted, give effect to it; or

(b) Submit to its competent authorities, with a view to giving effect to it to the extent requested, an order of confiscation issued by a court in the territory of the requesting State Party in accordance with articles 31, paragraph 1, and 54, paragraph 1 (a), of this Convention insofar as it relates to proceeds of crime, property, equipment or other instrumentalities referred to in article 31, paragraph 1, situated in the territory of the requested State Party.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

As mentioned earlier under article 54(1)(a), section 26 of the CMMAA provides for the registration of foreign forfeiture, pecuniary penalty or restraining orders on the basis of a request from a foreign competent authority. The procedure for making the request is provided for by section 17 of the CMMAA read together with POCA (Parts IV, VI and VIII).

17. Request for assistance generally

(1) All requests by a designated country for assistance shall be transmitted to the Minister or authorised officer.

(2) A request shall normally be made in writing except in the case of emergency when it shall be made orally and confirmed in writing forthwith.

(3) A request shall -

(a) specify the nature of the assistance required;

(b) contain information appropriate to the assistance sought as specified in this Part;

(c) state any time limit within which compliance with the request is desired and reasons therefor;

(d) contain the following information:

(i) the identity of the agency or authority initiating the request; (ii) the identity of the accused person; and

(iii) whether or not criminal proceedings have been instituted;

(e) where criminal proceedings have been instituted, it shall contain the following information: (i) the court exercising jurisdiction in the proceedings;

- (ii) the identity of the accused person;
 - (iii) the offence of which that person stands accused, and a summary of the facts; (iv) the stage reached in the proceedings;
 - (v) any date fixed for further stages in the proceedings;
 - (f) where criminal proceedings have not been instituted, state the offence which the designated country has reasonable grounds to believe have been committed, with a summary of the known facts; and
 - (g) any other information that may assist in giving effect to the request.
- (b) This is provided for by the Mutual Assistance Act. Section 26 deals with the seizure of proceeds of serious offences. This section provides that:
- (1) where -
 - (a) the appropriate authority in a designated country requests the Minister to make arrangements for the enforcement of -
 - (i) a forfeiture order made in respect of a serious offence against property that is located in Swaziland; or
 - (ii) a pecuniary penalty order made in respect of a serious offence where some or all of the property available to satisfy the order is believed to be located in Swaziland; and
 - (b) the Minister is satisfied that -
 - (i) the person has been convicted of the offence; and
 - (ii) the conviction and the order are not subject to further appeal in the designated country, the Minister may authorise the Director of Public Prosecutions in writing to apply for the registration of the order in the High Court.
 - (2) Where the appropriate authority in a designated country requests the Minister to make arrangements for the enforcement of a restraining order made in that country in respect of a serious offence against property that is believed to be located within Swaziland, the Minister may authorise the Director of Public Prosecutions in writing to apply for the registration of the order in the High Court.
 - (3) Where the Director of Public Prosecutions has applied for registration in the High Court of a forfeiture order or pecuniary penalty order under subsection (1) or a restraining order under subsection (2) the High Court shall register the order accordingly.

In terms of section 27 of the Act, a forfeiture order, a pecuniary penalty order or a restraining order registered under section 26 shall have effect and may be enforced as if it were a forfeiture order, a pecuniary penalty order or a restraining order made by the High Court under the Serious Offences (Confiscation of Proceeds) Act, 2001.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

Two requests were received recently but both were not executable. One lacked sufficient information in respect of the cited account number. The account number did not exist at the relevant

local bank. The other request lacked compliance with local laws in that it was written in a language not widely spoken in Eswatini. It also lacked sufficient documentation in that it was not accompanied by a Note Verbale and there were also no accompanying affidavits.

(b) Observations on the implementation of the article

Sections 26 and 27 of the CMMAA provide for the registration and enforcement of foreign forfeiture, pecuniary penalty or restraining orders on the basis of a request from a foreign competent authority. The procedure for making the request is provided for in section 17 of the CMMAA.

It was confirmed that Eswatini may provide assistance as outlined under this paragraph either on the basis of a foreign court order or on the basis of a foreign request.

Eswatini's legislation is in compliance with this provision, subject to the limitations noted under article 51 regarding application of the CMMAA to designated countries and the references to "serious offences" and the repealed provisions of the Serious Offences (Confiscation of Proceeds) Act, 2001. The recommendations made above apply equally to the present article.

Paragraph 2 of article 55

2. Following a request made by another State Party having jurisdiction over an offence established in accordance with this Convention, the requested State Party shall take measures to identify, trace and freeze or seize proceeds of crime, property, equipment or other instrumentalities referred to in article 31, paragraph 1, of this Convention for the purpose of eventual confiscation to be ordered either by the requesting State Party or, pursuant to a request under paragraph 1 of this article, by the requested State Party.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

This is provided for by sections 26 and 27, together with sections 17 and 25 of the CMMAA, read together with the provisions on asset tracing, seizure and restraint under POCA (Parts V, VIII and XIII).

Section 17 - REQUEST FOR ASSISTANCE GENERALLY

- (1) All requests by a designated country for assistance under this Part shall be transmitted to the Minister or an authorised officer.
- (2) A request shall normally be made in writing except in the case of emergency when it shall be made orally and confirmed in writing forthwith.
- (3) A request shall -
 - (a) specify the nature of the assistance requested;
 - (b) contain information appropriate to the assistance sought as specified in this Part;
 - (c) state any time limit within which compliance with the request is desired and reason therefor;
 - (d) contain the following information:
 - (i) the identity of the agency or authority initiating the request;
 - (ii) the identity of the accused person; and
 - (iii) whether or not criminal proceedings have been instituted;
 - (e) where criminal proceedings have been instituted, it shall contain the following information:
 - (i) the court exercising jurisdiction in the proceedings;
 - (ii) the identity of the accused person;
 - (iii) the offence of which that person stands accused, and a summary of the facts;
 - (iv) the stage reached in the proceedings;
 - (v) any date fixed for further stages in the proceedings;
 - (f) where criminal proceedings have not been instituted, state the offence which the designated country has reasonable grounds to believe have been committed, with a summary of the known facts; and
 - (g) any other information that may assist in giving effect to the request.

Section 25 - ASSISTANCE IN TRACING THE PROCEEDS OF SERIOUS OFFENCES

- (1) The appropriate authority in a designated country may request for assistance in identifying, locating and assessing the value of any property believed to have been derived or obtained either directly or indirectly from, or to have been used in, or in connection with, the commission of a serious offence, and believed to be within Swaziland.
- (2) Any such request shall contain information concerning the nature and location of the property and any person in whose possession or control the property is believed to be held in Swaziland.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

There have been two recent mutual legal assistance requests. Both were not executable. One lacked sufficient information in respect of the cited account number. The account number given did not exist at the relevant local bank. The other request lacked compliance with local laws in that it was written in a language not widely spoken in Eswatini. Also, it lacked sufficient documentation in

that it was not accompanied by a Note Verbale and there were also no accompanying affidavits.

(b) Observations on the implementation of the article

Sections 26 and 27 of the CMMAA provide for the registration and enforcement of foreign forfeiture, pecuniary penalty or restraining orders on the basis of a request from a foreign competent authority. The procedure for making the request is provided for in sections 17 and 25 of the CMMAA.

Eswatini's legislation is in compliance with this provision, subject to the limitations noted under article 51 regarding application of the CMMAA to designated countries and the references to "serious offences" and the repealed provisions of the Serious Offences (Confiscation of Proceeds) Act, 2001. The recommendations made above apply equally to the present article.

Paragraph 3 of article 55

3. The provisions of article 46 of this Convention are applicable, mutatis mutandis, to this article. In addition to the information specified in article 46, paragraph 15, requests made pursuant to this article shall contain:

(a) In the case of a request pertaining to paragraph 1 (a) of this article, a description of the property to be confiscated, including, to the extent possible, the location and, where relevant, the estimated value of the property and a statement of the facts relied upon by the requesting State Party sufficient to enable the requested State Party to seek the order under its domestic law;

(b) In the case of a request pertaining to paragraph 1 (b) of this article, a legally admissible copy of an order of confiscation upon which the request is based issued by the requesting State Party, a statement of the facts and information as to the extent to which execution of the order is requested, a statement specifying the measures taken by the requesting State Party to provide adequate notification to bona fide third parties and to ensure due process and a statement that the confiscation order is final;

(c) In the case of a request pertaining to paragraph 2 of this article, a statement of the facts relied upon by the requesting State Party and a description of the actions requested and, where available, a legally admissible copy of an order on which the request is based.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

(a) This is provided for the CMMAA.

Section 17 - REQUEST FOR ASSISTANCE GENERALLY

(1) All requests by a designated country for assistance under this Part shall be transmitted to the Minister or an authorised officer.

(2) A request shall normally be made in writing except in the case of emergency when it shall be made orally and confirmed in writing forthwith.

(3) A request shall -

- (a) specify the nature of the assistance requested;
- (b) contain information appropriate to the assistance sought as specified in this Part;
- (c) state any time limit within which compliance with the request is desired and reason therefor;
- (d) contain the following information:
 - (i) the identity of the agency or authority initiating the request;
 - (ii) the identity of the accused person; and
 - (iii) whether or not criminal proceedings have been instituted;
- (e) where criminal proceedings have been instituted, it shall contain the following information:
 - (i) the court exercising jurisdiction in the proceedings;
 - (ii) the identity of the accused person;
 - (iii) the offence of which that person stands accused, and a summary of the facts;
 - (iv) the stage reached in the proceedings;
 - (v) any date fixed for further stages in the proceedings;
- (f) where criminal proceedings have not been instituted, state the offence which the designated country has reasonable grounds to believe have been committed, with a summary of the known facts; and
- (g) any other information that may assist in giving effect to the request.

(b) This is also provided for by the CMMAA.

Section 26 - SEIZURE AND CONFISCATION OF PROCEEDS OF SERIOUS OFFENCE

(1) Where -

- (a) the appropriate authority in a designated country requests the Minister to make arrangements

for the enforcement of -

(i) a forfeiture order made in respect of a serious offence against property that is believed to be located in Swaziland; or

(ii) a pecuniary penalty order made in respect of a serious offence where some or all of the property available to satisfy the order is believed to be located in Swaziland; and

(b) the Minister is satisfied that -

(i) the person has been convicted of the offence; and

(ii) conviction and the order are not subject to further appeal in the designated country,

the Minister (for Justice and Constitutional Affairs) may authorise the Director of Public Prosecutions in writing to apply for the registration of the order in the High Court.

(2) Where the appropriate authority in a designated country requests the Minister to make arrangements for the enforcement of a restraining order made in that country in respect of a serious offence against property that is believed to be located within Swazi-land, the Minister may authorise the Director of Public Prosecutions in writing to apply for the registration of the order in the High Court.

(3) Where the Director of Public Prosecutions has applied for registration in the High Court or a forfeiture order or a pecuniary penalty order under subsection (1) or a restraining order under subsection (2), the High Court shall register the order accordingly.

Section 27 - EFFECT OF REGISTRATION OF FORFEITURE ORDER, PECUNIARY PENALTY OR RESTRAINING ORDER

A forfeiture order, a pecuniary penalty order or a restraining order registered under section 26 shall have effect and may be enforced as if it were a forfeiture order, a pecuniary penalty order or a restraining order made by the High Court under the Serious Offences (Confiscation of Proceeds) Act, 2001.

(c) This is also provided for by the CMMAA.

Section 25 - ASSISTANCE IN TRACING THE PROCEEDS OF SERIOUS OFFENCES

(1) The appropriate authority in a designated country may request for assistance in identifying, locating and assessing the value of any property believed to have been derived or obtained either directly or indirectly from, or to have been used in, or in connection with, the commission of a serious offence, and believed to be within Swaziland.

(2) Any such request shall contain information concerning the nature and location of the property and any person in whose possession or control the property is believed to be held in Swaziland.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

The country has not yet received any request for the registration and enforcement of a foreign forfeiture order.

(b) Observations on the implementation of the article

Eswatini's legislation is in compliance with this provision, subject to the limitations noted under article 51 regarding application of the CMMAA to designated countries and the references to "serious offences" and the repealed provisions of the Serious Offences (Confiscation of Proceeds) Act, 2001. The recommendations made above apply equally to the present article.

Paragraph 4 of article 55

4. The decisions or actions provided for in paragraphs 1 and 2 of this article shall be taken by the requested State Party in accordance with and subject to the provisions of its domestic law and its procedural rules or any bilateral or multilateral agreement or arrangement to which it may be bound in relation to the requesting State Party.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

This is provided for by the CMMAA.

Section 17 - REQUEST FOR ASSISTANCE GENERALLY

(1) All requests by a designated country for assistance under this Part shall be transmitted to the Minister or an authorised officer.

(2) A request shall normally be made in writing except in the case of emergency when it shall be made orally and confirmed in writing forthwith.

(3) A request shall -

(a) specify the nature of the assistance requested;

(b) contain information appropriate to the assistance sought as specified in this Part;

(c) state any time limit within which compliance with the request is desired and reason therefor;

- (d) contain the following information:
 - (i) the identity of the agency or authority initiating the request;
 - (ii) the identity of the accused person; and
 - (iii) whether or not criminal proceedings have been instituted;
- (e) where criminal proceedings have been instituted, it shall contain the following information:
 - (i) the court exercising jurisdiction in the proceedings;
 - (ii) the identity of the accused person;
 - (iii) the offence of which that person stands accused, and a summary of the facts;
 - (iv) the stage reached in the proceedings;
 - (v) any date fixed for further stages in the proceedings;
- (f) where criminal proceedings have not been instituted, state the offence which the designated country has reasonable grounds to believe have been committed, with a summary of the known facts; and
- (g) any other information that may assist in giving effect to the request.

Section 25 - ASSISTANCE IN TRACING THE PROCEEDS OF SERIOUS OFFENCES

- (1) The appropriate authority in a designated country may request for assistance in identifying, locating and assessing the value of any property believed to have been derived or obtained either directly or indirectly from, or to have been used in, or in connection with, the commission of a serious offence, and believed to be within Swaziland.
- (2) Any such request shall contain information concerning the nature and location of the property and any person in whose possession or control the property is believed to be held in Swaziland.

Section 4 - ACT NOT PRECLUDE OTHER FORMS OF ASSISTANCE

Nothing in this Act shall prevent the provision or obtaining of international assistance in criminal matters otherwise than in accordance with this Act.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

There have not been any recent requests complied with. Two recent requests were not executable, as described above.

(b) Observations on the implementation of the article

Eswatini's legislation is in compliance with this provision, subject to the limitations noted under article 51 regarding application of the CMMAA to designated countries and the

references to “serious offences” and the repealed provisions of the Serious Offences (Confiscation of Proceeds) Act, 2001. The recommendations made above apply equally to the present article.

Paragraph 5 of article 55

5. Each State Party shall furnish copies of its laws and regulations that give effect to this article and of any subsequent changes to such laws and regulations or a description thereof to the Secretary-General of the United Nations.

a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please provide a reference to the date these documents were transmitted, as well as a description of any documents not yet transmitted.

Relevant laws were provided during the review.

(b) Observations on the implementation of the article

Eswatini provided copies of its legislation during the course of the review.

Paragraph 6 of article 55

6. If a State Party elects to make the taking of the measures referred to in paragraphs 1 and 2 of this article conditional on the existence of a relevant treaty, that State Party shall consider this Convention the necessary and sufficient treaty basis.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

The CMMAA does not make the provision of mutual legal assistance under this article conditional on the existence of a relevant treaty. However, this does not necessarily mean that mutual legal assistance cannot be rendered on the basis of this Convention.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

There are no applicable examples of implementation.

(b) Observations on the implementation of the article

Mutual assistance can be provided under the CMMAA without the need to rely on a treaty provision. The issue of lack of designation, however, could affect provision of assistance without undue delay.

The observations under article 51 are referred to.

Paragraph 7 of article 55

7. Cooperation under this article may also be refused or provisional measures lifted if the requested State Party does not receive sufficient and timely evidence or if the property is of a de minimis value.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

This is provided for by the CMMAA.

Section 4 - ACT DOES NOT PRECLUDE OTHER FORMS OF ASSISTANCE

Nothing in this Act shall prevent the provision or obtaining of international assistance in criminal matters otherwise than in accordance with this Act.

Section 18 - REFUSAL OF REQUEST FOR ASSISTANCE

(1) The Minister may refuse a request by a designated country for assistance under this Part if in the opinion of the Minister the criminal matter concerns -

- (a) conduct which would not constitute an offence under the law of Swaziland;
- (b) an offence or proceedings of a political character; or
- (c) conduct in relation to which the person accused or suspected of having committed an offence has been acquitted or convicted by a court in the designated country.

(2) Without prejudice to subsection (1), the Minister may refuse to comply in whole or in part with a request under this Part -

- (a) if it appears to the Minister that granting of the request would be contrary to the laws of Swaziland or would prejudice the security, international relations or other essential public interest of Swaziland;
- (b) if the Minister has reasonable grounds to believe that granting the request would facilitate the prosecution or punishment of a person on account of that person's race, religion, nationality or political opinions or would cause prejudice for any of these reasons to any person affected by the request;
- (c) if the Minister is satisfied that the steps required to be taken in order to comply with the request cannot under the laws of Swaziland be taken in respect of the criminal matter to which the request relates if it has arisen in Swaziland.

(3) For the purposes of subsection (1), an offence shall be of a political character if it is an offence within the scope of any international convention to which both Swaziland and the designated country are parties and which imposes on the parties thereto an obligation either to extradite or prosecute the person accused of the commission of that offence.

Although these are the specific grounds on which the country may refuse to provide mutual legal assistance, a refusal may be justified on the basis of the provisions of the Convention in light of section 4 of the Act.

Section 4 states that any other kind of mutual legal assistance which is outside the ambit of the Act is not precluded from being given or received. For instance, mutual legal assistance may be given or received in terms of the provisions of this Convention.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

The country has never refused any request for mutual legal assistance.

(b) Observations on the implementation of the article

Eswatini's law does not provide for the refusal of assistance on the grounds described in paragraph 7 of article 55.

Eswatini's legislation is in compliance with this non-mandatory provision of the Convention.

Paragraph 8 of article 55

8. Before lifting any provisional measure taken pursuant to this article, the requested State Party shall, wherever possible, give the requesting State Party an opportunity to present its reasons in favour of continuing the measure.

a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

The CMMAA sets out how Eswatini may give and receive mutual legal assistance to designated countries.

Section 4 states that even though that is the case, any other kind of mutual legal assistance which is outside the ambit of the Act is not precluded from being given or received. For instance, mutual legal assistance may be given or received in terms of the provisions of the Convention.

This position is strengthened by the Constitution of the Kingdom of Swaziland Act No. 1, 2005 (the Constitution). Section 61 (1) (c) provides that in its dealings with other nations, the Government shall promote respect for international law, treaty obligations and the settlement of international disputes by peaceful means. Further subsection (2) states that Eswatini shall actively participate in international and regional organisations that stand for peace and for the well-being and progress of humanity. Moreover, section 236 (1) (d) provides that in dealing with other nations, Eswatini shall endeavour to uphold the principles, aims and ideals of the United Nations.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

Eswatini has never refused any request for mutual legal assistance.

(b) Observations on the implementation of the article

The cited provisions are general in nature and collectively are compliant with this paragraph, despite lack of a specific provision in CMMAA obliging Eswatini to give a requesting State an opportunity to provide reasons in support of continuing provisional measures. Consideration could be given to having this provision explicitly embedded in the law, procedure or relevant guidelines to be adopted (see art. 51).

Paragraph 9 of article 55

9. The provisions of this article shall not be construed as prejudicing the rights of bona fide third parties.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

The rights of bona fide third parties are protected under sections 43, 54 and 56 of the Prevention of Organised Crime Act, 2018 (POCA).

Notice of preservation of property order

43. (1) If the High Court makes a preservation of property order, the Director of Public Prosecutions shall, as soon as practicable after the making of the order—

(a) give notice of the order to all persons known to have an interest in the property which is subject to the order; and

(b) publish a notice of the order in the Gazette.

(2) A notice under subsection (1) (a) shall be served in the manner in which a summons commencing civil proceedings in the High Court is served or in any manner prescribed by the Minister.

(3) Any person who has an interest in the property which is subject to the preservation of property order may give written notice of intention to oppose the making of a forfeiture order or apply, in writing, for an order excluding the interest in the property concerned from the operation of the preservation of property order.

(4) A notice under subsection (3) shall be delivered to the Director of Public Prosecutions within,

in the case of—

(a) a person on whom a notice has been served under subsection (1)(a), twenty one days after the service; or

(b) any other person, twenty one days after the date on which a notice under subsection (1)(b) was published in the Gazette.

(5) A notice under subsection (3) shall contain full particulars of the chosen address for the delivery of documents concerning further proceedings under this Part and shall be accompanied by an affidavit stating—

(a) the full particulars of the identity of the person giving notice;

(b) the nature and the extent of the interest in the property concerned;

(c) whether the person intends to—

(i) oppose the making of the order; or

(ii) apply for an order—

(aa) excluding the interest in that property from the operation of the order; or

(bb) varying the operation of the order in respect of that property;

(d) whether the person admits or denies that the property concerned is an instrumentality of an offence or the proceeds of unlawful activities; and

(e) the—

(i) facts on which the person intends to rely on in opposing the making of a forfeiture order or applying for an order referred to in subparagraph (c)(ii); and

(ii) basis on which the person admits or denies that the property concerned is an instrumentality of an offence or the proceeds of unlawful activities.

(6) A person who does not give notice in terms of subsection (3), accompanied by an affidavit in terms of subsection (5), within the period referred to in subsection (4) is not entitled—

(a) to receive, from the Director of Public Prosecutions, notice of an application for a forfeiture order in terms of section 50(2); or

(b) subject to section 51, to participate in proceedings concerning an application for a forfeiture order.

Exclusion of interests in property

54. (1) The High Court may, on application—

(a) under section 50(4)(b); or

(b) by a person referred to in section 51(1),

and when it makes a forfeiture order, make an order excluding certain interests in property which is subject to the order from the operation of the order.

(2) The High Court may make an order under subsection (1) in relation to the forfeiture of the proceeds of unlawful activities, if it finds on a balance of probabilities that the applicant for the order—

(a) had acquired the interest concerned legally and for a consideration, the value of which is not

significantly less than the value of that interest; and

(b) where the applicant had acquired the interest concerned after the commencement of this Act, that the applicant neither knew nor had reasonable grounds to suspect that the property in which the interest is held is the proceeds of unlawful activities.

(3) The High Court may make an order under subsection (1) in relation to the forfeiture of an instrumentality of an offence referred to in the Schedule, if it finds on a balance of probabilities that the applicant for the order had acquired the interest concerned legally, and—

(a) neither knew nor had reasonable grounds to suspect that the property in which the interest is held is an instrumentality of an offence referred to in the Schedule; or

(b) where the offence concerned had occurred before the commencement of this Act, the applicant has since the commencement of this Act taken all reasonable steps to prevent the use of the property concerned as an instrumentality of an offence referred to in the Schedule.

(4) If an applicant for an order under subsection (1) adduces evidence to show that the applicant did not know or did not have reasonable grounds to suspect that the property in which the interest is held is an instrumentality of an offence referred to in the Schedule, the State may submit a return of the service on the applicant of a notice issued under section 53(4) in rebuttal of that evidence in respect of the period since the date of the service.

(5) If the State submits a return of the service on the applicant of a notice issued under section 53(4) as contemplated in subsection (4), the applicant for an order under subsection (1) shall, in addition to the facts referred to in subsection (3), also prove on a balance of probabilities that, since that service, the applicant has taken all reasonable steps to prevent the further use of the property concerned as an instrumentality of an offence referred to in the Schedule.

(6) The High Court when making an order for the exclusion of an interest in property under subsection (1) may, in the interest of the administration of justice or in the public interest, make that order on conditions that the court deems appropriate including a condition requiring the person who applied for the exclusion to take all reasonable steps, within a period that the court may determine, to prevent the future use of the property as an instrumentality of an offence referred to in the Schedule.

Protection of interests of third parties in forfeited property

56. (1) Any person affected by a forfeiture order who was entitled to receive notice of the application for the order under section 50(2), but did not receive that notice may, within thirty days after the notice of the making of the order is published in the gazette, apply for an order excluding the interest of that person in the property concerned from the operation of the order, or varying the operation of the order in respect of that property.

(2) The application referred to in subsection (1) shall be accompanied by an affidavit setting out—

(a) the nature and extent of the applicant's right, title or interest in the property concerned;

(b) the time and circumstances of the applicant's acquisition of the right, title, or interest in the property;

(c) any additional facts supporting the application; and

(d) the relief sought.

(3) The hearing of the application shall, to the extent practicable and consistent with the interests of

justice, be held within thirty days of the filing of the application.

(4) The High Court may consolidate the hearing of the application with a hearing of any other application filed by a person under this section.

(5) At the hearing, the applicant may testify and present evidence and witnesses and may cross-examine any witness who appears at the hearing.

(6) The Director of Public Prosecutions, the curator bonis concerned or a person authorised in writing by one of them, may present evidence and call witnesses in rebuttal and in defence of their claim to the property and may cross-examine a witness who appears at the hearing.

(7) In addition to the testimony and evidence presented at the hearing, the High Court may, on application by the Director of Public Prosecutions, the curator bonis concerned or a person authorised in writing by one of them, order that the testimony of any witness relating to the property forfeited be taken by commission and that any document or other material not privileged be produced at the taking down of that testimony by commission.

(8) The High Court may make an order under subsection (1) in relation to the forfeiture of the proceeds of unlawful activities if it finds on a balance of probabilities that the applicant for the order—

(a) had acquired the interest concerned in good faith and for a consideration; and

(b) where the applicant had acquired the interest concerned after the commencement of this Act, neither knew nor had reasonable grounds to suspect that the property in which the interest is held is the proceeds of unlawful activities.

(9) The High Court may make an order under subsection (1) in relation to the forfeiture of an instrumentality of an offence referred to in the Schedule if it finds on a balance of probabilities that the applicant for the order had acquired the interest concerned legally, and—

(a) neither knew nor had reasonable grounds to suspect that the property in which the interest is held is an instrumentality of an offence referred to in the Schedule; or

(b) where the offence concerned had occurred before the commencement of this Act, the applicant has since the commencement of this Act taken all reasonable steps to prevent the use of the property concerned as an instrumentality of an offence referred to in the Schedule.

(10) Where a person who testifies under this section—

(a) fails to answer fully and to the best of ability any question lawfully put; or

(b) gives false evidence knowing that evidence to be false or not believing it to be true, commits an offence.

(11) Where a person who furnishes an affidavit under subsection (2) makes a false statement in the affidavit knowing that statement to be false or not believing it to be true, commits an offence.

(12) A person convicted of an offence under this section is liable to a fine not exceeding one thousand Emalangenis or to imprisonment for a period not exceeding five years or to both.

Section 57(7) of the MLFTPA (quoted above) is also relevant.

57. Forfeiture of property

(7) If a Court is satisfied that a person referred to in sub-section (5)—

(a) has an interest in the property which is the subject of the application; and

(b) has exercised reasonable care to ensure that the property is not the proceeds of a crime, or

terrorist property, or would not be used to commit or facilitate the commission of an act of terrorism and would not be used by a terrorist group; and

(c) is not a member of a terrorist group,

the Court shall order that the interest shall not be affected by the order and the order shall stipulate the nature and extent of the interest in question.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

The case of *Wesbank a Division of First National Bank of Swaziland v National Commissioner of Police & Another* (344/15) [2015] SZHC208 (1 December 2015) is an example. The bona fide third party was a bank which had given the accused a loan and he had used proceeds of crime to settle his personal debt with the bank. More specifically, the accused had committed theft by stealing an amount of 11 million Emalangeni from the bank account of Roots Construction (Pty) Ltd and then engaged in a scheme to move money to different destinations in South Africa and eventually back to Eswatini to settle his personal debt. The bank filed a claim under section 55 of MLFPA for release of the assets that had been seized, claiming its rightful ownership of the assets in question. The court granted the motion on the ground that the Crown has failed to establish a reasonably direct link showing that the assets were allegedly tainted money. A copy of the judgment was provided: *Wesbank a Division of First National Bank of Swaziland v National Commissioner of Police & Another* (344/15) [2015] SZHC208 (1 December 2015).

(b) Observations on the implementation of the article

Section 29 CMMAA states that the provisions of SOCPA apply *mutatis mutandis* to disposal or release of any property forfeited or obtained as a result of a pecuniary penalty made under the CMMAA. However, the CMMAA has not yet been amended to refer to the new Prevention of Organised Crime Act, 2018. As mentioned under article 51 above, it is recommended that Eswatini do so.

Collectively, the afore-mentioned provisions implement this paragraph. The cited case is an example showing the protection of third party interests in forfeiture proceedings in practice.

The provision is implemented.

(c) Challenges, where applicable

Please outline actions required to ensure or improve the implementation of the article under review and describe any specific challenges you might be facing in this respect.

Closer cooperation is recommended between States Parties to ensure that requests made are executable. It is particularly important to ensure that information supplied is verified. A challenge that may be mentioned is the inability to ensure that supplied information has been verified as being valid at the time a request is made.

(d) Technical assistance needs

No technical assistance required.

Is any technical assistance already being provided to you? If so, please provide a general description of the nature of the assistance, including donor information.

Technical assistance is provided by ARINSA in relation to the implementation of asset recovery legislation.

Article 56. Special cooperation

Article 56

Without prejudice to its domestic law, each State Party shall endeavour to take measures to permit it to forward, without prejudice to its own investigations, prosecutions or judicial proceedings, information on proceeds of offences established in accordance with this Convention to another State Party without prior request, when it considers that the disclosure of such information might assist the receiving State Party in initiating or carrying out investigations, prosecutions or judicial proceedings or might lead to a request by that State Party under this chapter of the Convention.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

This is provided for by the MLFPA.

Section 32 - DISCLOSURE TO FOREIGN INSTITUTIONS AND AGENCIES

The SFIU may disclose any report or information as set out under section 31 (n) to an institution or agency of a foreign state or of an international organisation or body or other institution or agency

established by the governments of foreign states that has powers and duties similar to those of the SFIU-

(a) on such terms and conditions as set out in the agreement or arrangement between the SFIU and that foreign state or international organisation regarding the exchange of such information; or

(b) where such an agreement or arrangement has not been entered into between the SFIU and that foreign state or international organisation or body, on such terms and conditions as may be agreed upon by the SFIU and the institution or agency at the time of disclosure, which terms and conditions shall include the stipulation that the report or information be used for intelligence purposes only and be treated in a confidential manner and not be further disclosed without the express consent of the SFIU.

Section 31 (n) provides that the SFIU may disclose any report, any information derived from such report or any other information it receives to an institution or agency of a foreign state or of an international organisation established by the governments of foreign states that has powers and duties similar to those of the SFIU as set out in section 32, if on the basis of its analysis and assessment, the SFIU has reasonable grounds to suspect that report or information would be relevant to investigating or prosecuting a money laundering offence or a terrorist financing offence;

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

Eswatini shares such information with South Africa mainly, but at the time of compiling this checklist there were no available statistics.

(b) Observations on the implementation of the article

Domestic law permits the SFIU to share financial intelligence with foreign counterparts and other relevant foreign agencies. Other law enforcement agencies are permitted under their respective legislation to share intelligence with their foreign counterparts and do so in practice.

In practice, officials say this article is implemented mainly through sharing of information with South Africa but could not provide statistics.

Article 57. Return and disposal of assets

Paragraph 1 of article 57

1. Property confiscated by a State Party pursuant to article 31 or 55 of this Convention shall be disposed of, including by return to its prior legitimate owners, pursuant to paragraph 3 of this article, by that State Party in accordance with the provisions of this Convention and its domestic law.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

This is provided for by the Prevention of Organised Crime Act, 2018.

Section 23. Confiscation orders

...

(3) The court making an order under subsection (2) may include in that order any further orders it may consider fit to ensure the effectiveness and fairness of that order, including orders as to compensation arising from an agreement between the public prosecutor and a person who has suffered damages to or loss of property or injury as a result of an offence or related criminal activity referred to in subsection (1) which was committed by the respondent.

Section 35. Orders concerning realised property

(1) Without limiting the generality of section 34(2)(b), any person who has suffered damage to, or loss of property, or injury as a result of an offence or related criminal activity referred to in section 23(1) which was committed by the respondent may apply to the High Court for an order under subsection (3).

(2) A court may make an order under subsection (3) if it is satisfied that—

(a) the applicant referred to in subsection (1)—

(i) has suffered damage to or loss of property or injury as a result of an offence or related criminal activity referred to in section 23(1) which was committed by the respondent;

(ii) did not willingly take part in that offence or related criminal activity; and

(iii) has acted reasonably and in good faith in so far as the applicant is concerned in that offence or related criminal activity; and

(b) that it is in the public interest to make such an order.

(3) The High Court when considering an application in terms of subsection (1) may make any order it deems appropriate concerning the manner in which the proceeds of any realisable property,

realised by virtue of section 34, is to be applied in terms of section 35, including an order to direct the *curator bonis*—

(a) to make a payment out of those proceeds to the applicant referred to in subsection (1); or

(b) to suspend the application of those proceeds in terms of section 36 for a period which the court deems appropriate, with a view to satisfying a claim out of those proceeds in respect of which that person—

(i) has instituted civil proceedings;

(ii) intends to institute civil proceedings within a reasonable time; or

(iii) has obtained a judgment against the respondent.

(4) A person intending to bring an application in terms of subsection (1) shall give fourteen days notice of that application to the Director of Public Prosecutions.

(5) Section 30(5), (6) and (7) applies with the necessary changes when a court makes an order under subsection (3).

Section 36. Application of certain sums of money

(1) The *curator bonis* shall apply the proceeds of any realisable property, realised by virtue of section 34 on behalf of the respondent—

(a) to pay any unpaid amount in terms of an award or order for compensation in terms of the Criminal Procedure and Evidence Act, 1938 (No. 67 of 1938) in force at the time when the property is realised by virtue of section 34;

(b) to pay the amounts which a court may have directed to be paid out of those sums of money, including amounts to—

(i) pay the fees and expenditure of the *curator bonis*;

(ii) be paid in terms of an order under section 23(2);

(iii) be paid in terms of an order under section 35(3)(a); and

(iv) to satisfy a claim referred to in section 35(3)(b);

(c) to make such payments as the court may approve to recover disbursements by the Director of Public Prosecutions in connection with proceedings in terms of the Act; and

(d) to satisfy the confiscation order made against the respondent.

(2) If sums of money remain in the hands of the *curator bonis* after the amounts payable in terms of sub-section (1) have been paid in full, the *curator bonis* shall distribute those sums of money among the persons who held realisable property which has been realised by virtue of section 34 and in the proportions, as the court may direct, after affording those persons an opportunity to make representations to it in connection with the distribution of those sums of money.

PART XI. CRIMINAL ASSETS RECOVERY FUND

Section 65. Establishment of Criminal Assets Recovery Fund

(1) There is hereby established a special fund to be known as the Criminal Assets Recovery Fund.

(2) The Minister, after consultation with the Minister responsible for finance, shall, by notice in the

Gazette, designate a staff member or appoint a person to be the accounting officer of the Fund.

(3) The staff member or person referred to in subsection (2) is accountable to the Committee.

(4) The staff member designated or person appointed in terms of subsection (2) shall, with the approval of the Accountant-General, open a bank account at the Central bank and all money received on behalf of the Fund shall be deposited into that account.

(5) The Committee is responsible for exercising control over the Fund and the bank account opened under subsection (4).

Section 66. Finances of the Fund

(1) Notwithstanding anything to the contrary contained in any other law—

(a) all moneys derived from the fulfillment of confiscation and forfeiture orders contemplated in Parts IV and VIII;

(b) all amounts paid in terms of cost orders made in favour of the Director of Public Prosecutions;

(c) the balance of all moneys derived from the execution of foreign confiscation orders in terms of the Criminal Matters (Mutual Assistance) Act, 7 of 2001, or its successor, after payments have been made to requesting States in terms of that Act;

(d) fines imposed by any court in terms of this Act;

(e) money payable to the State in terms of section 23(2) of this Act;

(f) any property or moneys appropriated by Parliament, or paid into, or allocated to the Fund in terms of any other Act;

(g) domestic and foreign grants to the Fund;

(h) any property or amount of money lawfully received or acquired from any source; and

(i) all property or moneys transferred to the Fund in terms of this Act,

shall be paid into the Fund.

(2) The Fund shall be administered by the Minister responsible for Finance in consultation with the Minister.

Section 67. Utilisation of Fund and accountability

(1) The property and money allocated to or standing to the credit of the Fund may be utilised by Cabinet after considering the recommendations of the Committee for—

(a) the allocation of property and amounts of money from the Fund to specific law enforcement agencies which shall, for the purposes of such allocation, be deemed to also include the Eswatini Financial Intelligence Unit and the National Task Force on Anti-Money Laundering as established in sections 19 and 38, respectively, of the Money Laundering and Financing of Terrorism (Prevention) Act of 2011;

(b) the allocation of property and amounts of money from the Fund to any institution, organisation or fund contemplated in section 70(c) of this Act.

(2) The Committee may authorize payments out of the Fund to-

(a) compensate victims who suffered losses as a result of offences under this Act and as specified

in this Act;

(b) satisfy court orders made under this Act; and

(c) satisfy or share forfeiture property with foreign States pursuant to any relevant treaties or arrangements.

(3) Whenever Cabinet allocates property or money under subsection (1) to a specific law enforcement agency or to an institution, organisation or fund contemplated in section 70(c), Cabinet shall indicate the specific purpose for which that property or money is to be utilised.

(4) Property or money allocated under subsection (1) shall not be utilised for any other purpose than that specified in terms of subsection (3).

(5) An allocation of property or money shall not be made under subsection (1) to an institution, organisation or fund contemplated in section 70(c), unless an accounting officer for that institution, organisation or fund is appointed or designated for that institution, organisation or fund.

(6) An accounting officer appointed or designated under subsection (5) is charged with the responsibility of accounting for all money allocated under subsection (1), the acquisition, receipt, custody and disposal of all property so allocated and all payments made in respect of the purpose for which the allocation had been made.

(7) The Committee may, after consultation with the Minister responsible for finance and the Auditor-General, issue guidelines to accounting officers appointed or designated under subsection (5) in connection with the systems of book-keeping and accounting to be followed by them.

(8) Accounting by a law enforcement agency or institution, organisation or fund for property and money allocated to it from the Fund under subsection (1) shall be done separately from accounting for money and property received from any other source.

(9) The Auditor-General shall audit the books of accounts, accounting statements, financial statements and financial management of each law enforcement agency or institution, organisation or fund to which property or money had been allocated under subsection (1) in respect of that allocation.

(10) The Auditor-General shall submit a copy of the report of an audit done under subsection (9) to the Committee.

(11) The Minister shall, not later than the first sitting of Parliament after the expiry of 90 days from the end of the financial year, table a report in Parliament detailing the –

(a) amounts or allocated property credited to the Fund;

(b) payments or allocated from the Fund, including the specific purpose for which each payment or allocation was made and to whom it was made.

This is also provided for by the MLFPA (as amended).

Section 55 - RETURN OF SEIZED PROPERTY

(1) Where property has been seized under section 51 or section 53 (otherwise than because it may afford evidence of the commission of an offence), a person who claims an interest in the property may apply to the Court for an order that the property be returned to the person.

(2) Where a person makes an application under subsection (1) and the Court is satisfied that-

- (a) the person is entitled to possession of the property;
- (b) the property is not tainted property or terrorist property; and
- (c) in the case of tainted property, the person in respect of whose conviction, charging or proposed charging the seizure of the property was made has no interest in the property, the Court shall order the return of the property to the person.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

The case of *Wesbank a Division of First National Bank of Swaziland v National Commissioner of Police & Another* (344/15) [2015] SZHC208 (1 December 2015) is an example. Assets in an amount of Six Million and Five Hundred Thousand Emalangeni had been stolen from a company called Roots Construction and were then attached and seized as proceeds of crime (*Roots Construction v Andrea Nassi & Others*, Case No. 114212014 (11 December 2014)). The bank filed a claim under section 55 of MLFPA for release of the assets that had been seized, claiming its rightful ownership of the assets in question. The court granted the motion on the ground that the Crown has failed to establish a reasonably direct link showing that the assets were allegedly tainted money. A copy of the judgment was provided: *Wesbank a Division of First National Bank of Swaziland v National Commissioner of Police & Another* (344/15) [2015] SZHC208 (1 December 2015).

(b) Observations on the implementation of the article

Domestic law is in compliance with this provision given that POCA allows for the compensation of victims and for sharing confiscated and forfeited property with foreign States pursuant to any relevant treaties or arrangements (section 67(2)(c)). Section 65 further provides that the balance of all moneys derived from the execution of foreign confiscation orders after payments have been made to requesting States in terms of the CMMAA, shall be paid into the Criminal Assets Recovery Fund. Offences relating to corruption are covered in POCA.

Further, section 29 CMMAA states that the provisions of SOCPA apply *mutatis mutandis* to disposal or release of any property forfeited or obtained as a result of a pecuniary penalty made under the CMMAA. However, the CMMAA has not yet been amended to refer to the asset recovery provisions under the new Prevention of Organised Crime Act, 2018. As mentioned under article 51 above, it is recommended that Eswatini do so.

Collectively, the afore-mentioned provisions implement this paragraph.

The case of *R v Andrea Nassi & Anor* (cited above) is a case in point where property was ordered to be returned to its rightful, legitimate owner during the course of forfeiture proceedings.

Paragraph 2 of article 57

2. Each State Party shall adopt such legislative and other measures, in accordance with the fundamental principles of its domestic law, as may be necessary to enable its competent authorities to return confiscated property, when acting on the request made by another State Party, in accordance with this Convention, taking into account the rights of bona fide third parties.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes, in part

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

This is provided for by the CMMAA

Section 26 - SEIZURE AND CONFISCATION OF PROCEEDS OF SERIOUS OFFENCE

(1) Where -

(a) the appropriate authority in a designated country requests the Minister to make arrangements for the enforcement of -

(i) a forfeiture order made in respect of a serious offence against property that is believed to be located in Swaziland; or

(ii) a pecuniary penalty order made in respect of a serious offence where some or all of the property available to satisfy the order is believed to be located in Swaziland; and

(b) the Minister is satisfied that -

(i) the person has been convicted of the offence; and

(ii) conviction and the order are not subject to further appeal in the designated country,

the Minister (for Justice and Constitutional Affairs) may authorise the Director of Public Prosecutions in writing to apply for the registration of the order in the High Court.

(2) Where the appropriate authority in a designated country requests the Minister to make arrangements for the enforcement of a restraining order made in that country in respect of a serious offence against property that is believed to be located within Swazi-land, the Minister may authorise the Director of Public Prosecutions in writing to apply for the registration of the order in the High Court.

(3) Where the Director of Public Prosecutions has applied for registration in the High Court or a forfeiture order or a pecuniary penalty order under subsection (1) or a restraining order under subsection (2), the High Court shall register the order accordingly.

This is also provided for by the provisions of the POCA cited under paragraph 1 of this article.

This is also provided for by the MLFTPA (as amended) in terms of section 57 (7) which provides that if a Court is satisfied that a person referred to in subsection (5)-

- (a) has an interest in the property which is the subject of the application; and
- (b) has exercised reasonable care to ensure that the property is not the proceeds of a crime, or terrorist property, or would not be used to commit or facilitate the commission of an act of terrorism and would not be used by a terrorist group; and
- (c) is not a member of a terrorist group,

the Court shall order that the interest shall not be affected by the order and the order shall stipulate the nature and extent of the interest in question.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

The case of *Wesbank a Division of First National Bank of Swaziland v National Commissioner of Police and Another* (344/15) [2015] SZHC 208 (1 December 2015) is an example. The rights of a bona fide third party were taken into account in this matter. The bona fide third party was a bank which was the owner of vehicles or equipment leased to an individual, Andrea Nassi, who was charged with fraud committed against a company.

(b) Observations on the implementation of the article

Domestic law is in compliance with this provision given that section 26 of CMMA allows property to be confiscated on the basis of a foreign request. Further, section 29 CMMAA states that the provisions of SOCPA apply *mutatis mutandis* to disposal or release of any property forfeited or obtained as a result of a pecuniary penalty made under the CMMAA. However, the CMMAA has not yet been amended to refer to the asset recovery provisions under the new Prevention of Organised Crime Act, 2018. As mentioned under article 51 above, it is recommended that Eswatini do so.

POCA allows for the compensation of victims and for sharing confiscated and forfeited property with foreign States pursuant to any relevant treaties or arrangements (section 67(2)(c)). Offences relating to corruption are covered in POCA.

Collectively, the afore-mentioned provisions implement this paragraph.

Paragraph 3 of article 57

3. In accordance with articles 46 and 55 of this Convention and paragraphs 1 and 2 of this article, the requested State Party shall:

(a) In the case of embezzlement of public funds or of laundering of embezzled public funds as referred to in articles 17 and 23 of this Convention, when confiscation was executed in accordance with article 55 and on the basis of a final judgement in the requesting State Party, a requirement that can be waived by the requested State Party, return the confiscated property to the requesting State Party;

(b) In the case of proceeds of any other offence covered by this Convention, when the confiscation was executed in accordance with article 55 of this Convention and on the basis of a final judgement in the requesting State Party, a requirement that can be waived by the requested State Party, return the confiscated property to the requesting State Party, when the requesting State Party reasonably establishes its prior ownership of such confiscated property to the requested State Party or when the requested State Party recognizes damage to the requesting State Party as a basis for returning the confiscated property;

(c) In all other cases, give priority consideration to returning confiscated property to the requesting State Party, returning such property to its prior legitimate owners or compensating the victims of the crime.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes, in part

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

This is provided for by the CMMAA.

Section 26 - SEIZURE AND CONFISCATION OF PROCEEDS OF SERIOUS OFFENCE

(1) Where -

(a) the appropriate authority in a designated country requests the Minister to make arrangements for the enforcement of -

(i) a forfeiture order made in respect of a serious offence against property that is believed to be located in Swaziland; or

(ii) a pecuniary penalty order made in respect of a serious offence where some or all of the property available to satisfy the order is believed to be located in Swaziland; and

(b) the Minister is satisfied that -

(i) the person has been convicted of the offence; and

(ii) conviction and the order are not subject to further appeal in the designated country,

the Minister (for Justice and Constitutional Affairs) may authorise the Director of Public Prosecutions in writing to apply for the registration of the order in the High Court.

(2) Where the appropriate authority in a designated country requests the Minister to make arrangements for the enforcement of a restraining order made in that country in respect of a serious offence against property that is believed to be located within Swaziland, the Minister may authorise the Director of Public Prosecutions in writing to apply for the registration of the order in the High Court.

(3) Where the Director of Public Prosecutions has applied for registration in the High Court or a forfeiture order or a pecuniary penalty order under subsection (1) or a restraining order under subsection (2), the High Court shall register the order accordingly.

This is provided for by section 17.

REQUEST FOR ASSISTANCE GENERALLY

(1) All requests by a designated country for assistance under this Part shall be transmitted to the Minister or an authorised officer.

(2) A request shall normally be made in writing except in the case of emergency when it shall be made orally and confirmed in writing forthwith.

(3) A request shall -

- (a) specify the nature of the assistance requested;
- (b) contain information appropriate to the assistance sought as specified in this Part;
- (c) state any time limit within which compliance with the request is desired and reasons therefor;
- (d) contain the following information:
 - (i) the identity of the agency or authority initiating the request;
 - (ii) the identity of the accused person; and
 - (iii) whether or not criminal proceedings have been instituted;
- (e) where criminal proceedings have been instituted, it shall contain the following information:
 - (i) the court exercising jurisdiction in the proceedings;
 - (ii) the identity of the accused person;
 - (iii) the offence of which that person stands accused, and a summary of the facts;
 - (iv) the stage reached in the proceedings;
 - (v) any date fixed for further stages in the proceedings;
- (f) where criminal proceedings have not been instituted, state the offence which the designated country has reasonable grounds to believe have been committed, with a summary of the known facts; and
- (g) any other information that may assist in giving effect to the request.

The application of these sections is broad in terms of the offences in respect of which registration

of a forfeiture order may be effected and the kind of assistance a requesting State may require.

Further, section 4 of the CMMAA does not restrict the application of the Act. This section states that mutual legal assistance which is beyond the ambit of the Act may be given or received.

The MLFPA (as amended) has created the Confiscated and Forfeited Assets Fund Committee. One of the main duties of this committee in terms of section 62 ter (2)(a) is to compensate victims who have suffered losses as a result of a criminal offence, terrorism or unlawful activity.

Part XI of POCA further establishes a Criminal Assets Recovery Fund whose funds may be utilized to compensate victims who suffered losses as a result of offences under the Act, to satisfy court orders made under the Act, and to satisfy orders or share forfeited property with foreign States pursuant to relevant treaties or arrangements.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

There have been no case examples of implementation.

(b) Observations on the implementation of the article

Eswatini has not implemented this provision.

There is no provision in the domestic legislation providing for the mandatory return of confiscated assets to a requesting State in cases of corruption, that is embezzlement of public funds or of laundering of embezzled public funds, as required by paragraph 3 of article 57. This is the unique aspect of article 57 of this Convention.

As stated by Eswatini, the measures cited here, sections 26 and 17 CMMAA, are broad in terms of the offences in respect of which a forfeiture order may be enforced and the kind of assistance a requesting State may require. However, they do not provide for the mandatory return to a requesting State in corruption cases, nor do they address the final disposition of property.

Indeed under POCA section 67(2), the Criminal Assets Recovery Committee may authorize payments out of the Criminal Assets Recovery Fund to compensate victims who suffered losses as a result of offences under the Act, to satisfy court orders made under the Act, and to satisfy orders or share forfeited property with foreign States pursuant to relevant treaties or arrangements. This gives wide discretion to the Committee to advise on matters of asset disposal, with no reference to the binding obligations under article 57 of this Convention in cases related to corruption offences. In particular, one of the powers of the Committee established under section 68 of POCA is to make recommendations to Cabinet with regard to the policy to be adopted concerning the confiscation, forfeiture and realisation of property and the transfer of that property to the Fund in terms of the Act or any other Act.

While the Committee *may* authorize the return of property to a foreign State pursuant to relevant treaties or arrangements in place, this is one of several permissible dispositions that may be authorized by the Committee.

In the absence of any reference to the binding obligations under article 57, it is recommended that Eswatini adopt a law, regulation or written policy document that makes clear reference to the obligation to return property as provided under this paragraph.

A further relevant provision is MLFPA (as amended) section 62, which creates the Confiscated and Forfeited Assets Fund. Section 62.ter (e) provides that there shall be credited to the Fund the balance of all moneys derived from the execution of foreign confiscation orders in terms of the Criminal Matters (Mutual Assistance) Act, 2001 after payments have been made to the requesting States in terms of that Act. The CMMAA, however, refers to the provisions of the now-repealed SOCPA on asset disposal, which are not in compliance with article 57(3), a mandatory requirement in corruption cases.

(c) Successes and good practices

The establishment by Eswatini of the Confiscated and Forfeited Funds Account and the Criminal Assets Recovery Fund to enable victims of crime to be compensated as a result of criminal offences, among other purposes, is noted as a positive measure.

Paragraph 4 of article 57

4. Where appropriate, unless States Parties decide otherwise, the requested State Party may deduct reasonable expenses incurred in investigations, prosecutions or judicial proceedings leading to the return or disposition of confiscated property pursuant to this article.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes, in part

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

This is provided for by the MLFPA (as amended) in terms of section 62 which creates the Confiscated and Forfeited Assets Fund. Section 62.ter (e) provides that there shall be credited to the Fund the balance of all moneys derived from the execution of foreign confiscation orders in terms of the Criminal Matters (Mutual Assistance) Act, 2001 after payments have been made to the

requesting States in terms of that Act.

The POCA provides for the recovery of costs related to confiscation proceedings to law enforcement. This does not address the expenses of asset recovery through international cooperation.

Section 83. Costs

(1) A court may make an order as to costs as it deems appropriate in favour of the Director of Public Prosecutions in respect of any proceedings arising out of Part IV or VIII.

(2) Any amount paid in terms of an order referred to in subsection (1) shall be deposited into the Fund.

Likewise, the CMMAA does not address the issue of costs of asset recovery.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

There have been no examples to illustrate the application of this provision.

(b) Observations on the implementation of the article

There is no law or regulation on the costs of asset recovery through international cooperation. During the country visit the national authorities expressed their interest in adopting such a regulation.

It is recommended that Eswatini adopt a law or regulation on the costs of asset recovery through international cooperation, in line with this paragraph.

Paragraph 5 of article 57

5. Where appropriate, States Parties may also give special consideration to concluding agreements or arrangements, on a case-by-case basis, for the final disposal of confiscated property.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is

planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

This has happened in the case of *Roots Construction (Pty) Ltd v Andrea Patrick Nassi & Others* (Case No. 1142/2014) (11 December 2014), involving the return funds from South Africa, in which the court stated, “following a final determination or settlement of the action declaring that the first respondent does not enjoy any lawful entitlement to the funds, the funds will be distributed in accordance with the order of this Honourable court or such settlement and if necessary will be repatriated to Swaziland in the event that it is determined that the applicant is entitled to the funds.” In the subsequent case of *Roots Construction (Pty) Limited v Andrea Patrick Nassi & Others* (Case No. 106/2015) (25 November 2016) it was agreed that the order issued by the local court would be used to return the funds from South Africa and the court ordered the local branch of the South African Bank to return the funds from the South African bank.

There are no asset sharing agreements in place.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

Roots Construction (Pty) Ltd v Andrea Patrick Nassi & Others.

(b) Observations on the implementation of the article

The provision is implemented.

(c) Challenges, where applicable

Please outline actions required to ensure or improve the implementation of the article under review and describe any specific challenges you might be facing in this respect.

Orders have to be executed speedily to ensure that property which is the subject of an order does eventually get returned or disposed of in an appropriate manner.

(d) Technical assistance needs

No technical assistance required.

Is any technical assistance already being provided to you? If so, please provide a general description of the nature of the assistance, including donor information.

Technical assistance is provided by ARINSA in relation to implementation of asset recovery legislation.

Article 58. Financial intelligence unit

Article 58

States Parties shall cooperate with one another for the purpose of preventing and combating the transfer of proceeds of offences established in accordance with this Convention and of promoting ways and means of recovering such proceeds and, to that end, shall consider establishing a financial intelligence unit to be responsible for receiving, analysing and disseminating to the competent authorities reports of suspicious financial transactions.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Section 19 of the MLFPA (as amended) creates the SFIU.

Section 31 - FUNCTIONS AND POWERS OF SFIU

The SFIU

(a) shall receive reports made under sections 12, 13 and 41(7) and information provided to the SFIU by any agency of another country, information provided to the SFIU by a competent authority or a government institution or agency, and any other information voluntarily provided to the SFIU about suspicions of an unlawful activity, a money laundering offence or the offence of financing of terrorism;

(b) shall have the authority to collect any information that the SFIU considers relevant to an unlawful activity, money laundering activities or financing of terrorism and that is publicly available, including commercially available databases, or information that is collected or maintained, including information that is stored in databases maintained by the government;

(c) shall have the authority to request information from accountable institutions, any supervisory agency and any law enforcement agency for purposes of this Act;

(d) shall analyse and assess all reports and information and shall in the process conduct operational and strategic analysis;

(e) shall carry out examinations of accountable institutions for the purposes of this Act;

- (f) shall send any information derived from such report or any other information it receives to the appropriate competent authority or supervisory authority if, on the basis of its analysis and assessment, the SFIU has determined that there is an element of money laundering, financing of terrorism, proliferation of weapons of mass destruction or criminal activity or unlawful activity;
- (g) shall have the authority to instruct any accountable institution to take such steps as may be appropriate in relation to any information or report received by the SFIU, to enforce compliance with this Act or to facilitate any investigation anticipated by the SFIU;
- (h) shall compile statistics and records and may disseminate information within Swaziland or elsewhere, as well as make recommendations arising out of any information received;
- (i) shall issue guidelines to an accountable institution not under the jurisdiction of a supervisory authority relating to risk based supervision, customer identification, record keeping, reporting obligations, identification of suspicious transactions, politically exposed person and such other related actions required for that accountable institution to be in compliance with this Act;
- (j) may obtain further information on parties or transactions referred to in a report made to it under this Act;
- (k) may provide training programs for accountable institutions in relation to customer identification, record keeping and reporting obligations and the identification of suspicious transactions;
- (l) may conduct research into trends and developments in the area of money laundering and financing of terrorism and improved ways of detecting, preventing and deterring money laundering and financing of terrorist activities;
- (m) may educate the public and create awareness on matters relating to money laundering and financing of terrorism;
- (n) may disclose any report, any information derived from such report or any other information it receives to an institution or agency of a foreign state or of an international organisation established by the governments of foreign states that has powers and duties similar to those of the SFIU as set out in section 32, if on the basis of its analysis and assessment, the SFIU has reasonable grounds to suspect that report or information would be relevant to investigating or prosecuting a money laundering offence or a terrorist financing offence;
- (o) may enter into any agreements or arrangements with any domestic government institution or agency regarding the exchange of information;
- (p) may require police and other investigative or prosecutorial bodies to report progress and outcomes on matters referred to them;
- (q) shall provide feedback to accountable institutions on reports made to the SFIU;
- (r) shall implement a registration system for accountable institutions; and
- (s) may perform such other acts as may be necessary to fulfil the objectives of the SFIU.

Section 32 deals with disclosure to foreign institutions and agencies.

The SFIU may disclose any report or information as set out under section 31 (n) to an institution or agency of a foreign state or of an international organisation or body or other institution or agency established by the governments of foreign states that has powers and duties similar to those of the SFIU-

- (a) on such terms and conditions as set out in the agreement or arrangement between the SFIU and

that foreign state or international organisation regarding the exchange of such information; or

(b) where such an agreement or arrangement has not been entered into between the SFIU and that foreign state or international organisation or body, on such terms and conditions as may be agreed upon by the SFIU and the institution or agency at the time of disclosure, which terms and conditions shall include the stipulation that the report or information be used for intelligence purposes only and be treated in a confidential manner and not be further disclosed without the express consent of the SFIU.

The SFIU is a member of ESAAMLAG, a regional FATF-style body.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

In the period 2017 to 2018, the SFIU received 2,809 STRs. Of these, 318 were followed up on, namely 134 were referred to the police, 19 were referred to the ACC and 165 were referred to the Eswatini Revenue Authority.

(b) Observations on the implementation of the article

The SFIU is newly established. This means there are a number of challenges to get SFIU fully resourced and functional. It is recommended that Eswatini continue efforts to provide adequate resources and capacity for the FIU to effectively carry out its mandate.

(c) Challenges, where applicable

Please outline actions required to ensure or improve the implementation of the article under review and describe any specific challenges you might be facing in this respect.

The SFIU is in its early days. For this reason, some technical assistance may be needed.

(d) Technical assistance needs

Legislative assistance: The kind of assistance required would be to determine if the current legislation is adequate and strengthen it if there is such a need.

Is any technical assistance already being provided to you? If so, please provide a general description of the nature of the assistance, including donor information.

There is currently assistance provided by the South African FIU. This relates mainly to the setting up of the unit.

Article 59. Bilateral and multilateral agreements and arrangements

Article 59

States Parties shall consider concluding bilateral or multilateral agreements or arrangements to enhance the effectiveness of international cooperation undertaken pursuant to this chapter of the Convention.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

The country is a signatory to the SADC Protocol on Mutual Assistance in Criminal Matters. There are no bilateral MLA treaties in place.

Additional cooperation arrangements are listed under paragraph 5 of article 14.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

There are no applicable examples of implementation and statistics.

(b) Observations on the implementation of the article

This article is being implemented by Eswatini signing the SADC Protocol on Mutual Assistance in Criminal Matters and the agreements and arrangements listed under paragraph 5 of article 14. This is sufficient in the absence of bilateral treaties, which in any case Eswatini does not require to render assistance. In practice, there is no experience in implementing this article.

(c) Challenges, where applicable

Please outline actions required to ensure or improve the implementation of the article under review and describe any specific challenges you might be facing in this respect.

Closer cooperation is required to ensure that there are no delays in obtaining evidence across borders and executing orders which may have been obtained.

(d) Technical assistance needs

No technical assistance required.

Is any technical assistance already being provided to you? If so, please provide a general description of the nature of the assistance, including donor information.

Technical assistance is provided by ARINSA in relation to implementation of asset recovery legislation.

UNODC