



**Conference of the States Parties  
to the United Nations  
Convention against Corruption**

Distr.: General  
19 September 2019

Original: English

---

**Implementation Review Group  
Second resumed tenth session  
Abu Dhabi, 17 and 18 December 2019  
Agenda item 2  
Review of implementation of the United Nations  
Convention against Corruption**

**Executive summary**

**Note by the Secretariat**

**Addendum**

**Contents**

	<i>Page</i>
II. Executive summary .....	2
Eswatini .....	2



## II. Executive summary

### Eswatini

#### 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 (CHRP), 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 (MLFPA), 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., whistle-blower 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 mandate 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 PPRAs 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). PPRAs 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 PPRAs 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 PPRAs 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 PPRAs 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, MLFPA).

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.

MLFPA 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 emalangeni (approx. US\$ 1,000) (s. 41, MLFPA), 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), MLFPA).

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 MLFPA.

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 MLFPA 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 MLFPA 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, MLFPA).

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 A 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 A (*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 A). 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 MLFPA 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 MLFPA. 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 MLFTPAA 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)
-