



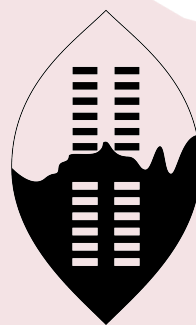
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# Bill 22: Whose Commission?

Why Eswatini needs an independent Human Rights Commission

A section-by-section reading of the Commission on Human Rights and Public Administration Bill (Bill No. 22 of 2025), prepared for public and parliamentary engagement.



*“Would this provision survive an accreditation review?”*

The question Parliament should ask of every clause in this Bill.

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***Parliament should preserve the Commission's strong powers, remove the executive levers that can neutralise them, and make the institution answerable directly to the people through Parliament.***

## Why this Bill matters

Eswatini already has a Commission on Human Rights and Public Administration. It was created by section 163 of the Constitution. What Bill No. 22 of 2025 does is give that existing Commission fuller statutory content: a list of functions, a set of powers, a complaints procedure, a budget line and a reporting duty.

That makes this Bill one of the most consequential pieces of legislation before Parliament. It will decide, for a generation, whether a person whose rights have been violated in Eswatini has somewhere credible to turn.

The Bill is not a bad Bill. It contains real strengths. The problem is a mismatch: it gives the Commission strong powers, then surrounds those powers with controls that the executive holds. Reports are routed through the Minister. The Minister may demand information, approve outside funding, restrict disclosure on broad grounds, make regulations and decide when the Act even starts. The Commission cannot instruct its own external lawyers without the approval of the Attorney-General, including in matters against the executive.

Parliament should keep the powers and remove the levers.

## The benchmark: the Paris Principles and accreditation

The international test for a national human rights institution is the Principles relating to the Status of National Institutions, adopted by the UN General Assembly in resolution 48/134 of 1993, known as the Paris Principles. They require:

- a mandate as broad as possible, set out in law;
- independence from the executive, in membership, operations, policy and control of resources;
- a pluralistic and transparently appointed membership;
- adequate powers of investigation;
- adequate funding;
- freedom to engage directly with regional and international human rights bodies.

Compliance is assessed by peer review through the Global Alliance of National Human Rights Institutions (GANHRI) and its Sub-Committee on Accreditation. Fully compliant institutions receive **A status**, which carries independent participation rights at the UN Human Rights Council and voting membership of GANHRI. Partially compliant institutions receive **B status**, and may attend but not vote.

**Eswatini's Commission has never been accredited.** Eswatini is among a minority of states in the region without an accredited national human rights institution. This Bill can change that, or entrench it.

Almost every concern in this analysis maps onto a specific accreditation requirement: the ministerial reporting gateway (section 31), the disclosure veto (section 22(13)), funding controls (section 26), Attorney-General approval for external counsel (section 32), and the absence of a participatory appointment procedure (section 4).

*One question should be asked of every clause: would this provision survive an accreditation review?*

## What the Bill gets right

These provisions should be defended, not just amended:

- **Section 4(1):** the Judicial Service Commission must make recommendations competitively, transparently and openly, on merit.
- **Section 16(e):** the Commission may consider human rights issues on its own volition.
- **Section 16(f):** it may study the effect of legislation, judicial decisions and administrative provisions.
- **Section 16(h) and section 17(1)(g):** it may inspect custodial facilities, and has unhindered authority to visit prisons and any place of detention, including police cells, with or without notice.
- **Section 17(1)(a)–(f):** subpoenas, questioning, and the power to obtain any information necessary.
- **Sections 19(3) and 20:** anyone with an appropriate interest may complain on behalf of another, and a complaint cannot be refused simply because it is in the wrong form.
- **Section 25(2)(a):** the Commission may recommend a person's release from prison.
- **Section 29:** interference with the Commission is a criminal offence, and all organs of government must cooperate with it.

The detention powers in particular are often described as missing. They are not. The correct argument is that they are a foundation that Parliament should now complete.

## Priority asks for Parliament

1. **Direct reporting to Parliament**, with statutory deadlines and no ministerial filtering.
2. **A transparent, participatory and pluralistic appointment process**, with published criteria and civil society input.
3. **Correction of section 17(3)**, so the Bill matches the Constitution word for word, and deletion of the added words in 17(3)(d).
4. **Removal or narrowing of the Minister's disclosure veto** in section 22(13), subject to necessity, reasons, time limits and judicial review.
5. **Financial autonomy**, including a dedicated appropriation covering the whole mandate.
6. **An express preventive detention-monitoring framework**, building on sections 16(h) and 17(1)(g).
7. **Enforcement and follow-up**, including mandatory responses to recommendations and direct access to the High Court.
8. **Comprehensive technical redrafting**, to correct numbering, cross-references, duplicated paragraphs and contradictory penalties.

## Section-by-section analysis

### PART I – PRELIMINARY

#### Section 1 – Short title and commencement

*What it does:* The Act starts on a date the Minister appoints by notice in the Gazette.

*The concern:* An unlimited commencement discretion can delay the Act indefinitely.

##### THE ASK

Commence on assent or publication, or within a fixed period, keeping a limited power only for operational provisions.

#### Section 2 – Interpretation

*What it does:* Defines the Commission, complaint, complainant, human rights violation, visitor and related terms.

*The concern:* Several definitions are defective in substance, not just in style. "Deputy-Commissioner" is defined as a person appointed under section 5 of the Bill, but section 5 concerns vacation of office, and Deputy Commissioners are appointed by the King on the advice of the Judicial Service Commission under section 163 of the Constitution. A statute cannot relocate a constitutional appointment power, and as drafted the definition casts doubt on the office of every serving Deputy Commissioner. "Executive Secretary" is defined by reference to section 13, although section 12 creates the office. "Member of the Commission" is never defined, even though quorum, committee composition, the validity saving and the independence and conflict provisions all depend on it. "Human rights violation" is confined to Chapter III of the Constitution and other Eswatini legislation.

##### THE ASK

Define Deputy-Commissioner by reference to section 163 of the Constitution; define "member of the Commission" as the Commissioner and the Deputy-Commissioners; correct the Executive Secretary cross-reference; and extend "human rights violation" to rights binding on Eswatini under international and regional instruments for the Commission's monitoring, advisory and reporting functions.

#### Section 3 – Core principles

*What it does:* Lists integrity, impartiality, natural justice, efficiency, transparency and accountability.

*The concern:* The lettering is duplicated, and independence is not among the listed principles.

##### THE ASK

Correct the numbering and add independence, accessibility, equality, non-discrimination, pluralism and victim-centred practice.

## PART II – THE COMMISSION

### Section 4 – Appointment of members

*What it does:* Requires the Judicial Service Commission to recommend candidates to the King competitively, transparently and openly, on merit. Makes offices in the Commission public offices.

*The concern:* Section 4(1) is a genuine strength. What is missing is the machinery: no public nomination procedure, no published shortlist, no interviews, no civil society role, no pluralism criteria and no express gender balance. Section 4(2) is a different problem. Applying general public service law to the Commissioner and Deputy Commissioners sits uneasily with the Constitution, which governs their appointment (section 163), their tenure and removal (section 170) and their independence.

#### THE ASK

Preserve open competition and add advertisement, published criteria, shortlist, interviews, reasons and broad participation. Confine section 4(2) to officers and staff, and state expressly that the tenure, removal and conditions of service of the Commissioner and Deputy Commissioners are governed by the Constitution and this Act alone.

### Section 5 – Vacation of office

*What it does:* Lists death, resignation and conviction with imprisonment as vacancy events, subject to section 170 of the Constitution.

*The concern:* The clause is narrow and does not provide a complete, fair removal process. A conviction trigger with no reference to finality or appeal may operate prematurely.

#### THE ASK

Align precisely with the Constitution, require a final conviction, provide notice and an opportunity to be heard, and clarify suspension and acting arrangements.

### Section 6 – Committees

*What it does:* Allows committees including non-members, but excludes Commission staff.

*The concern:* A useful mechanism for bringing in expertise, but an absolute staff exclusion is impractical, and there are no pluralism or conflict safeguards.

#### THE ASK

Allow staff to support committees without voting, and require balanced composition, confidentiality and conflict declarations.

### Section 7 – Co-opted persons

*What it does:* Allows experts or bodies to assist inquiries and deliberations without voting.

*The concern:* No transparent selection, confidentiality, independence or conflict rules.

#### THE ASK

Set criteria for appointment, disclosure of interests, confidentiality and protection of sensitive information.

## PART III – MEETINGS

### Section 8 – Meetings

*What it does:* Regulates meetings, notice, quorum and voting, and caps meetings at six per month.

*The concern:* A statutory ceiling contradicts the requirement to meet "as often as necessary" and can obstruct urgent work.

#### THE ASK

Delete the cap, permit secure remote and hybrid meetings, preserve emergency notice, and clarify quorum and public access.

### Section 9 – Chairperson of committees

*What it does:* Requires a member of the Commission to chair committees.

*The concern:* Generally appropriate.

#### THE ASK

Clarify appointment and acting-chair arrangements.

### Section 10 – Minutes

*What it does:* Requires minutes, and treats signed minutes as proof of proceedings and decisions.

*The concern:* Sound, but there is no publication rule and no protection for confidential material.

#### THE ASK

Require timely approval and publication of non-confidential decisions, with lawful redactions.

### Section 11 – Decisions of the Commission

*What it does:* Preserves decisions taken without a quorum or with a disqualified person participating, and says the High Court may enforce decisions.

*The concern:* Section 11(1)(a) undermines the quorum requirement in section 8. Section 11(2) is promising but vague: "may be enforced" does not say who applies, or which decisions are enforceable.

#### THE ASK

Delete the validation of decisions taken without a quorum, and specify who may apply to the High Court, by what procedure, and over which orders.

## PART IV – ADMINISTRATION

### Section 12 – Executive Secretary

*What it does:* Creates the office of Executive Secretary, under the direction and control of the Commission, with sound qualification criteria.

*The concern:* The Bill creates the office but never confers the power to appoint to it. Section 2 points to section 13, which only lists functions. Section 14(1) covers "staff", which is unlikely to include the head of the secretariat, and section 14(4) simply assumes the office already exists. An appointment with no identifiable statutory source is open to challenge, and it is unclear who sets terms, who disciplines and who removes.

#### THE ASK

Insert an express appointment power: appointment by the Commission through a transparent, merit-based process, on terms the Commission determines within its approved budget, with grounds and a fair procedure for removal.

### Section 13 – Functions of the Executive Secretary

*What it does:* Sets out administrative functions.

*The concern:* Mostly sound, but it refers to an oath of secrecy while the Schedule contains an oath of office for members.

#### THE ASK

Correct the cross-reference and create a confidentiality oath for staff that does not suppress protected disclosures.

### Section 14 – Officers of the Commission

*What it does:* Allows the Commission to appoint staff, and to terminate where the Commissioner considers it in the Commission's interest.

*The concern:* Staffing autonomy is positive, but termination power is concentrated in one office and rests on a vague test.

#### THE ASK

Require a fair labour process, objective grounds, a decision at Commission level or under a proper delegation, and rights of review.

### Section 15 – Attendance of meetings by staff

*What it does:* Allows designated staff to attend, deliberate and record minutes without voting.

*The concern:* Generally sound.

#### THE ASK

Clarify confidentiality and when staff should be excluded for conflicts or protected deliberations.

## PART V – FUNCTIONS AND POWERS

### Section 16 – Functions of the Commission

*What it does:* Lists the Commission's functions, including corruption complaints, public education, promotion of the rights of vulnerable groups, own-motion consideration of human rights issues, review of legislation, review of detention, inspection of custodial facilities, monitoring, and assistance with treaty reporting.

*The concern:* Three defects stand out.

First, **the corruption mandate is narrowed**. Section 16(a) confines complaints to corruption "by public officer or public official", and 16(b) defines corruption as public administration corruption. This appears narrower than section 164 of the Constitution, to which the clause is expressly subject, and it overlaps with the Anti-Corruption Commission's mandate with no demarcation or referral rule.

Second, **own-motion power is ambiguous**. Section 16(e) is a power to consider and recommend, not an unambiguous power to investigate on the Commission's own initiative.

Third, **detention review is half-implemented**. Section 16(g) covers review of detention under section 36 of the Constitution (emergency powers), but omits section 26(4), under which a person whose freedom of movement has been restricted may require a review by the Commission. Freedom of movement is the wider and more useful trigger.

*The ask:* Restate the corruption function in the terms of section 164 and define its boundary with the Anti-Corruption Commission; expressly authorise own-motion investigations and systemic inquiries; add review under section 26(4) to section 16(g); and modernise the vulnerable-groups list without making it exhaustive.

### Section 16(j) – International reporting

*What it does:* Makes the Commission's only international function to "assist the Minister" in preparing State reports to regional and international bodies.

*The concern:* This inverts the international standard. The Paris Principles require a national institution to contribute to State reports and, where necessary, to express its own opinion, with due respect for its independence, and to cooperate with the UN, regional institutions and other national institutions in its own right. Treaty bodies invite information from national institutions precisely because it is not the Government's account. An institution that can speak internationally only through the executive would face adverse findings on accreditation. This is an accreditation defect, not a stylistic one.

#### THE ASK

Replace section 16(j) so that the Commission may submit information, reports and opinions on its own initiative and in its own name to regional and international human rights bodies and cooperate with them, and may comment on any report the Government is required to submit.

## Section 17 – Powers of the Commission

*What it does:* Grants subpoenas, questioning, information gathering, unannounced detention visits, relationships with non-governmental organisations, and the power to make orders and give directions. It then excludes certain matters from investigation.

*The concern:* The investigative core is strong. Three things need attention. The Commission may impose fines for contempt without clear safeguards. The numbering is defective: paragraph (i) is repeated and subsection (3) appears twice. Most importantly, the exclusions need to be read carefully. **Sections 17(3)(a) to (c) are not creations of this Bill.** They reproduce section 165(3) of the Constitution, although (b) omits the constitutional words "or dealings". **Section 17(3)(d) is different.** It renders section 169 of the Constitution with added words that have no constitutional source, converting a narrow bar on questioning government policy into a blanket bar on investigating any matter connected with a Minister's decision.

### THE ASK

Retain the powers and add due-process safeguards, with contempt sanctions imposed by the courts rather than by the Commission. Reproduce the constitutional text of sections 165(3) and 169 exactly, restoring "or dealings" and deleting the added words in 17(3)(d). Record that removing the exclusions themselves would require constitutional amendment. This is both legally correct and tactically harder to oppose than a demand for deletion.

## PART VI – HEARINGS, INVESTIGATIONS AND REMEDIES

## Section 18 – Procedure for hearings

*What it does:* Lets the Commission determine its own rules of procedure.

*The concern:* Useful flexibility, but fairness and predictability require public rules.

### THE ASK

Require accessible published rules made after consultation, covering urgent measures, accessibility and witness protection.

## Section 19 – Hearings and who may complain

*What it does:* Allows a person affected by an actual or perceived violation to complain, allows complaints by representatives and organisations, and sets limits on which complaints may be investigated.

*The concern:* Broad representative standing is a strength. But the three-year limit has no extension for good cause or continuing violations, and "actual or perceived" is unclear. The serious problem is **section 19(5)(a) read with the definition of "visitor" in section 2**. Investigation is permitted only where the aggrieved person is a citizen, resident or visitor, and a "visitor" is someone ordinarily resident outside Eswatini who travels to, within or through the country for any reason *other than* immigration or employment remunerated from Eswatini. A migrant worker, an asylum seeker or an immigration detainee falls into none of the three categories and cannot complain at all, however grave the violation, and even where it occurs in State custody. Section 19(5) also ends with "or" after paragraph (c), suggesting a missing paragraph.

### THE ASK

Delete the visitor limb so that jurisdiction depends on the conduct rather than the complainant: the Commission should be able to investigate any act or omission attributable to the Government or occurring within Eswatini's jurisdiction or effective control. Allow extension of the time limit for good cause, continuing violations and vulnerability. The definition of "visitor" then becomes unnecessary and should be deleted.

*Why it is not a technicality:* Chapter III of the Constitution guarantees rights to "a person" and "the individual", not to citizens alone. Equality before the law under section 20 makes a standing rule that turns on immigration purpose constitutionally suspect. The exclusion also inverts risk, because migrant workers and immigration detainees face elevated exposure to arbitrary detention, exploitation and ill-treatment, and the Convention against Torture, to which Eswatini is a party, requires access to complaint mechanisms for everyone within its jurisdiction. The Paris Principles require a mandate as broad as possible; a carve-out of a vulnerable class is exactly what the Sub-Committee on Accreditation identifies.

## Section 20 – Procedure for making a complaint

*What it does:* Prevents refusal of a complaint solely because of form or missing documentation.

*The concern:* A strong accessibility safeguard.

### THE ASK

Add duties of reasonable assistance, disability access, language support, oral complaints and child-sensitive procedures.

## Section 21 – Refusal to investigate

*What it does:* Allows refusal or discontinuance where the Commission is not authorised to act, requires written reasons, and provides investigation tools including police assistance.

*The concern:* Reasons and referral advice are positive. There is no internal reconsideration mechanism, and police assistance could compromise independence or complainant safety where police conduct is the subject of the complaint.

### THE ASK

Provide reconsideration and information about judicial review. Require a risk assessment and independent alternatives where police are implicated.

## Section 22 – Procedure for conducting hearings

*What it does:* Sets flexible evidence rules, procedural fairness, summons, privilege, open and closed hearings, confidentiality and offences. It also allows the Minister to prohibit disclosure of evidence on grounds of external relations, internal security or economic interests.

*The concern:* Most of the clause is useful. **Section 22(13) is one of the Bill's most serious independence defects:** broad grounds, a subjective ministerial opinion, no reasons, no time limit, no independent test and no express review. It also prohibits disclosure not only by or to the Commission but **to the complainant**, so a person can be cut off from the evidence in their own case, including evidence the respondent authority has already seen and answered. That is a breach of equality of arms as well as of institutional independence.

There is a second, quieter problem. Section 22(7) makes every person questioned compellable to answer all questions and produce all documents, with no privilege against self-incrimination and no immunity for compelled answers, while section 22(8) imports only the privilege rules applicable to a criminal trial witness. The two sit in unresolved tension, and nothing protects a person from having compelled answers used against them later.

*The ask:* Replace the disclosure power with a narrow test of legality, necessity and proportionality, requiring written reasons, minimum redaction, time limits and urgent High Court review, and delete the words "or to the complainant". On compellability, the better course is to keep section 22(7), which gives the Commission teeth, and add use-immunity: compelled answers should not be admissible against the person in criminal, civil or disciplinary proceedings, except in proceedings for perjury or for giving false evidence. Add witness and complainant protection against reprisals.

## Section 23 – Order of attachment and removal

*What it does:* Provides temporary court-supervised custody of material claimed to be privileged. The order lapses if no court ruling is made within thirty days.

*The concern:* Sealing disputed material pending a judicial ruling is right. But the clause refers to executing "a warrant under this Part" when no provision confers a warrant power, and the lapse rule is aimed at the wrong party. The person claiming privilege is the only one who benefits from lapse, and so has every incentive to delay enrolment or seek postponements. Court congestion then achieves what a failed privilege claim could not, and the material returns to the premises it came from with no judicial determination at all. Thirty days is in any event too short.

### THE ASK

Enact an express warrant power with judicial authorisation. Require the Commission to apply for a ruling within fourteen days, keep the material sealed until the court decides, and let the order lapse only where the Commission itself is at fault, with ninety days as the outer limit, extendable by the court for good cause.

## Section 24 – Proceedings after investigation

*What it does:* Requires the Commission to report its opinion and recommendations to the respondent, and to send a copy to the Minister.

*The concern:* Mandatory copying to the Minister can compromise confidentiality and independence.

### THE ASK

Report to the relevant parties and to Parliament where appropriate, and notify the Minister only where institutionally necessary, subject to confidentiality safeguards.

## Section 25 – Remedies

*What it does:* Provides conciliation, advice, referral, law-reform recommendations, referral to the Director of Public Prosecutions, recommendations for release or compensation, and follow-up requests.

*The concern:* The remedies are useful but almost entirely recommendatory. There is no mandatory response deadline, no public compliance register and no direct tabling route, and section 11(2) leaves it unclear which decisions a court can enforce.

### THE ASK

Require reasoned responses within fixed periods, publish a compliance record, send special reports directly to Parliament, and provide expressly for High Court enforcement of binding procedural orders.

## PART VII – FINANCIAL PROVISIONS

### Section 26 – Funding of the Commission

*What it does:* Provides money appropriated from the Consolidated Fund, plus donations and other monies. Donations and investments require ministerial approval.

*The concern:* Parliamentary appropriation does exist, so the problem is control and sufficiency rather than total absence. The deeper defect is in section 26(1)(a) itself: the appropriation covers only "the salaries and allowances payable to members of the Commission and the recurrent administrative expenses". On its face that excludes almost everything the Bill requires the Commission to do: investigations, hearings, travel for detention visits, the regional offices contemplated by section 33, public education under section 16(c), publications, equipment and all capital expenditure. Every unlisted category then depends on donations, which require the Minister's approval, so the Commission's ability to investigate would be rationed by executive consent to outside funding. This is an institution funded to exist, but not to function.

There are further defects: subsection (1)(b) and subsection (2) refer to two different ministers without signalling it; "in consultation with finance and planning" names no defined person or body; and both (1)(c) and (2) are grammatically incomplete.

*The ask:* Redraft so that a separate head of appropriation covers all expenditure required for the Commission's functions, including salaries, operational costs, regional offices and capital expenditure, based on estimates the Commission itself prepares. Replace blanket ministerial approval of donations with published criteria that safeguard independence and are disclosed in the annual report. Section 60(1) of the Constitution already obliges the State to provide institutions protecting human rights with adequate resources to function effectively.

### Section 27 – Accounts of the Commission

*What it does:* Requires proper accounts and submission of statements to the Minister.

*The concern:* Financial accountability is necessary, but ministerial direction over accounting periods and submission solely to the Minister are not.

### THE ASK

Use the ordinary financial year, submit simultaneously to the Auditor-General and Parliament, and publish audited statements.

## Section 28 – Audit of accounts

*What it does:* Provides for audit by the Auditor-General, and offences for obstruction or false information.

*The concern:* External audit is appropriate; the drafting on internal audit is unclear.

### THE ASK

Clarify the audit framework, preserve the Auditor-General's independence, and require publication and parliamentary consideration.

## PART VIII – GENERAL

## Section 29 – Independence of the Commission

*What it does:* Requires members and staff to serve independently and impartially, makes interference with the Commission a criminal offence, and requires all organs of government to cooperate.

*The concern:* This is one of the Bill's genuine strengths and should be defended. But a formal independence clause cannot cure the ministerial controls elsewhere in the Bill. The penalty in subsection (5) reads "five (2) years", an irreconcilable contradiction, and the amount is modest for obstructing a constitutional body. Subsection (3) refers to removal of a member "in accordance with this Act", although the Act contains no removal procedure and removal is governed by section 170 of the Constitution, which an Act cannot supplement.

### THE ASK

Correct the penalty and raise it to reflect the gravity of the offence. Replace the removal reference with suspension from participation pending the constitutional and criminal processes. Strengthen institutional independence, not only individual independence, and harmonise sections 22, 26, 27, 31, 32 and 34 with this clause.

## Section 30 – Conflict of interest

*What it does:* Regulates conflicts of interest and allows affected proceedings to be reviewed or set aside.

*The concern:* Generally sound, but it duplicates section 29(2) and (3). The same conduct, a conflicted member taking part in a meeting, attracts disciplinary action under one clause and criminal liability under the other, and the criminal provision extends to co-opted committee members who are not members of the Commission.

### THE ASK

Consolidate the conflict rules into one clause with disclosure, recusal, a register of interests, quorum consequences and proportionate remedies: administrative sanctions for procedural breaches, criminal liability reserved for interference and corrupt conduct.

### Section 31 – Annual reports to Parliament

*What it does:* Requires annual and other reports to the Minister, who then tables them in Parliament, and allows the Minister to require any other information.

*The concern:* This is the ministerial gateway. Nothing requires the Minister to table a report within any period, and the power to demand information is open-ended. Direct reporting to the legislature rather than the executive is a specific indicator the Sub-Committee on Accreditation applies.

#### THE ASK

Require direct and simultaneous submission to the Speaker of the House of Assembly and the President of the Senate, with publication, and tabling within fourteen days. Remove or tightly define ministerial information demands, and require parliamentary or committee consideration within a fixed period.

### Section 32 – Legal representation

*What it does:* Requires the Commission to request the Attorney-General, or to obtain the Attorney-General's approval, before instructing any other legal practitioner.

*The concern:* The Attorney-General advises the Government. Requiring the Government's lawyer to approve the Commission's choice of counsel creates a conflict precisely where independence matters most: when the Commission is investigating or litigating against the executive.

#### THE ASK

Authorise the Commission to appoint and instruct independent legal practitioners of its choice from its own budget, subject to transparent procurement, without executive approval.

### Section 33 – Regional offices

*What it does:* Says the Commission shall "endeavour" to establish a principal office and regional offices as it considers fit.

*The concern:* Too weak for national accessibility. A person in a rural area cannot reach an institution that exists only in principle. The clause also contains a stray typographical error.

#### THE ASK

Require an accessibility plan, regional presence, mobile and digital services and reasonable accommodation, subject to adequate resources.

### Section 34 – Regulations

*What it does:* Allows the Minister to make regulations for carrying out the Act.

*The concern:* Executive regulation-making can shape the Commission's own procedure and autonomy.

#### THE ASK

Give the Commission rule-making power over its own procedures after consultation, limit ministerial regulations to administrative matters, and require consultation and parliamentary scrutiny.

## Section 35 – Transitional provisions

*What it does:* Continues the affairs, property, rights, liabilities, pending proceedings and staff of the existing Commission.

*The concern:* This confirms institutional continuity: this is not a new institution. Staff continuity is useful, but independence and accrued rights need protection.

### THE ASK

Preserve continuity, protect accrued rights, and provide for a transition plan covering assets, budget, records, pending complaints and security of tenure.

## Detention oversight: completing the foundation

The Bill is not silent on detention. Section 16(h) authorises inspection of custodial facilities and places of detention or restriction. Section 17(1)(g) gives unhindered authority to visit prisons and any place of detention, including police cells, with or without notice. Section 25(2)(a) permits a recommendation for release.

The better parliamentary argument is that this foundation is incomplete. Parliament should add:

- access to every place under Eswatini's jurisdiction or control where a person is, or may be, deprived of liberty, whatever its formal classification;
- confirmation that the right to complain and to be interviewed extends to every detained person regardless of citizenship or immigration status, which requires the amendments to sections 2 and 19(5)(a) above;
- freedom to choose the places, timing, frequency and persons to interview, including private interviews without staff present;
- access to all areas, registers, custody records, medical information subject to appropriate safeguards, video records and data on numbers and treatment;
- protection from sanctions, reprisals or prejudice for anyone who communicates with the Commission;
- multidisciplinary visiting teams, including legal, medical, psychosocial, disability and child-protection expertise;
- confidentiality and informed-consent safeguards;
- urgent recommendations, written responses within fixed periods, follow-up visits and publication of findings;
- notification and independent investigation of deaths, disappearances, serious injuries and allegations of torture or ill-treatment in custody;
- a framework capable of future designation as a national preventive mechanism.

**A note on OPCAT.** Eswatini is a party to the Convention against Torture. The treaty-status material reviewed does not record ratification or accession to the Optional Protocol. It would therefore be wrong to say Eswatini is presently obliged to designate this Commission as a national preventive mechanism. What can properly be urged is that Parliament and Government ratify the Optional Protocol and make this Bill compatible with future designation.

## Technical defects requiring correction

These are not stylistic preferences. Each one creates legal uncertainty:

- Section 2 refers to a Deputy-Commissioner appointed under section 5, which concerns vacation of office, and to an Executive Secretary appointed under section 13, while section 12 creates the office.
- Section 3 duplicates paragraph (b).
- The arrangement of sections and the internal Part numbering do not match the body of the Bill.
- Section 8(1) requires meetings as often as necessary, but not more than six a month.
- Section 11 validates decisions taken without the quorum required by section 8.
- Section 13(3) refers to an oath of secrecy in the Schedule, which contains an oath of office for a member.
- Section 17 repeats paragraph (i), repeats subsection (3), and contains malformed wording in the ministerial-policy exclusion.
- Section 19(5) ends with "or" after paragraph (c), suggesting a missing paragraph.
- Section 22(3) refers to a summons issued under subsection (1), which concerns evidence rules.
- Section 23 refers to execution of a warrant with no warrant power in the preceding provisions.
- Sections 25(4), 26(1)(c), 26(2) and 27(1) are grammatically incomplete.
- Section 29(5) refers to imprisonment "not exceeding five (2) years".
- Section 33 contains the stray text "Pas".

## What you can do

Parliamentarians are moved by the people they represent. The Sexual Offences and Domestic Violence Act took years, and it passed in the form it did because civil society kept pushing.

- **Read the Bill** and the sections that affect you most.
- **Write to or meet your Member of Parliament** while the Bill is still before Parliament, and raise the priority asks above.
- **Make a submission** to the relevant portfolio committee, or join a collective submission.
- **Ask the Committee to publish** any revised Bill or amendments before final consideration.
- **Keep the conversation going** in your community, on radio and online.

An independent Commission is not a technical matter. It decides whether a person in detention, a migrant worker, a pensioner turned away from a government office or a family seeking answers has somewhere credible to go.

**Parliament should preserve the Commission's strong powers, remove the executive levers that can neutralise them, and make the institution answerable directly to the people through Parliament.**

## Sources and verification note

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This analysis is based on the published text of the Commission on Human Rights and Public Administration Bill, 2025 (Bill No. 22 of 2025). Parliamentary listings confirm continued consideration of the Bill, but the official bills page reviewed did not expose a later amended clause text. This document therefore does not claim that the version analysed is the final or latest amended text.

- Parliament of Eswatini, Bills in the House of Assembly: <https://www.parliament.gov.sz/bills/houseofassembly/>
- UN OHCHR treaty-body ratification status for Eswatini: [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=167](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=167)
- GANHRI accreditation principles and process: <https://ganhri.org/accreditation/>
- GANHRI membership list: <https://ganhri.org/membership/>
- Commission on Human Rights and Public Administration: <https://chrpa.org.sz/>
- AfricanLII, SADC Model Law on Prison Oversight collection: <https://africanlii.org/taxonomy/african-law-compendiums/african-law-compendiums-sadc-model-law-on-prison-oversight>

Legal standards relied on: UN General Assembly resolution 48/134 (Paris Principles); the Convention against Torture; the Optional Protocol to the Convention against Torture as a future ratification benchmark; the African Commission's Robben Island Guidelines, Luanda Guidelines and General Comment No. 3; and the Nelson Mandela Rules.

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## About this publication

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### LICENCE

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### ABOUT LILUNGELO LAKHO

Lilungelo Lakho is a civic space and human rights project implemented in Eswatini by a partnership of civil society organisations, co-funded by the European Union.

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