

Status of Human Rights in Eswatini for the 39th Session of the Universal Periodic Review

Introduction

1. The European Centre for Law and Justice (ECLJ) is an international, non-governmental organisation dedicated to promoting human rights around the world. The ECLJ holds Special Consultative status before the United Nations Economic and Social Council. The purpose of this report is to discuss the status of human rights in the Kingdom of Eswatini (Eswatini) for the 39th session of the Universal Periodic Review (UPR).

Background

2. Eswatini (known as Swaziland until April 2018) is a country located in southern Africa, bordered by Mozambique and South Africa, with an estimated population of 1.1 million people¹. The population is predominately Christian with an estimated 90% of the population identifying as Christian, 2% as Muslim, and 8% other².

3. Eswatini's previous review was held on 10 May 2016³. As a result of the review, Eswatini received 180 recommendations 131 of which it supported⁴. One recommendation in particular, which Eswatini noted, encouraged the government to “[e]nact legislation to ensure women and girls’ rights are protected, including legislation banning early and forced marriages”. Another similar recommendation, which Eswatini supported, was to “[r]aise the legal minimum age of marriage to 18 years for girls”⁵. Furthermore, it was also recommended that Eswatini “[t]horoughly investigate and prosecute incidents of violence perpetrated against persons with albinism”⁶.

Legal Background

4. Eswatini operates under a dual system of government, with the executive authority vested in the king. Its current constitution dates back to 2005, during which time the country was known as Swaziland. Under Article 27 of Eswatini's constitution:

(1) Men and women of marriageable age have a right to marry and found a family.

(2) Marriage shall be entered into only with the free and full consent of the intending spouses.

(3) The family is the natural and fundamental unit of society and is entitled to protection by the State.

(4) Motherhood and childhood are entitled to special care and assistance by society and the State⁷.

5. Furthermore, under Article 28(1) and (3) “[w]omen have the right to equal treatment with men and that right shall include equal opportunities in political, economic, and social activities,” and “[a] woman shall not be compelled to undergo or uphold any custom to which she is in conscience opposed”⁸.

6. Eswatini is also party to several international conventions and is obligated to honor those commitments. Under Article 34 of the Convention on the Rights of the Child (CRC):

State Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, State Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

(a) The inducement of coercion of a child to engage in any unlawful sexual activity.

(b) The exploitative use of children in prostitution or other unlawful sexual practices;

(c) The exploitative use of children in pornographic performance and materials⁹.

7. Furthermore, under Article 16 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW):

State Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:

(a) The same right to enter into marriage;

(b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;

(c) The same rights and responsibilities during marriage and at its dissolution¹⁰;

8. Additionally under Article 23 of the International Covenant on Civil and Political Rights (ICCPR):

1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

2. The right of men and women of marriageable age to marry and to found a family shall be recognized.

3. No marriage shall be entered into without free and full consent of the intending spouses.

4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage

and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children¹¹.

9. Furthermore, under Article 6 of the ICCPR, “Every human being as the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life”¹².

10. And, in 2012, Eswatini passed the Children Protection and Welfare Act, 2012. Under Part II of the Act:

A child has a right to refuse to be compelled to undergo or uphold any custom or practices that are likely to negatively affect the child’s life, health, welfare, dignity or physical, emotional, psychological, mental and intellectual development.

11. However, despite the commitments Eswatini has made under these international conventions and its own laws, Eswatini’s current marriage law sets different age requirements for men and for women. According to Article 2 of the Marriage Act:

(1) No male person below the age of eighteen years and no female persons below the age of sixteen years may marry:

Provided that if the special circumstances of any case, in the opinion of the Minister, warrant such a marriage, the Minister may grant special dispensation allowing such a marriage.

(2) Minors below the age of twenty-one years but above the ages specified in sub-section (1) may marry with the consent of their legal guardian, but persons who have previously been married, whether in accordance with Swazi law and custom or civil rites, shall not be regarded as minors¹³.

Underage Marriages

12. As previously stated, the legal age for marriage is different for males and females. While individuals are permitted to marry without the consent of a guardian at the age of 21, a girl is permitted to get married as young as 16 so long as she has the consent of a legal guardian. This differs from males who, even with the consent of a legal guardian, are prohibited from getting married below the age of 18. Even if consent of a legal guardian is required, 16 years of age is a very young age for a girl to be married. While 16 is the youngest a girl can legally be married, there are reports that Eswatini girls even younger than 16 are being married, often times by force. These, by definition, are child marriages.

13. Cultural norms and traditions are among the predominant factors that lead to child marriages in Eswatini. One such custom is “inhlanti”¹⁴. Inhlanti is where a woman will have her younger sister serve as a subsidiary wife¹⁵. This situation most often occurs when the first wife cannot bear children¹⁶. However, another troubling and problematic practice is that of arranged marriages or “kwendzisa”. Kwendzisa is the “process where the parent or guardian marries off a girl child to an adult male without her consent”¹⁷. While this practice was outlawed by the Children’s Protection and Welfare Act of 2012, it does still occur.

14. Overall, Eswatini has done a good job in combatting child marriages and as a result they have one of the lowest rates of child marriages in Africa. However, it is clear that this practice is still being observed in certain parts of the country. According to a UNICEF report approximately 1% of girls in Eswatini were married before the age of 15 and 5% before the age of 18, making it one of the lowest rates of child marriages in Africa¹⁸. However, in the eastern and northern regions of the country, in Lubombo and Hhohho, the rates are much higher. In the eastern region of Lubombo the rate of girls ages 20-24 who were married before 18 is as high as 14% and the rate of girls of that same age in Hhohho is 12%¹⁹.

Albinos in Eswatini

15. Within Eswatini, and much of southern Africa, people with albinism are discriminated against and even killed because of their condition. Much of this stems from false beliefs that their condition is a supernatural phenomenon and that their condition is a form of curse²⁰. Furthermore, witch doctors have been known to use the body parts of albinos for charms and potions and claim they bring about wealth, power, and good luck. As a result it is estimated that within Africa the body of an albino is worth the equivalent of \$75,000²¹.

16. In 2019 the Swaziland Association for Persons with Albinism (SAPA) with the assistance of the Eswatini National Council of Arts and Culture (ENCAC) organised a Miss/Mr Albinism Beauty Pageant to raise awareness and destigmatize albinos²². Furthermore in 2019 the government also banned a witchcraft competition within the country²³. According to a government spokesman, “Government cannot sit back and watch while the lives of citizens of this country are exposed to illegal and weird practices that have the potential to poison the minds of (Swazi people), especially children”²⁴. As previously stated, witch doctors in the region have been known to use body parts of albinos for their mystical abilities.

Conclusion

17. We urge Eswatini to revise its marriage laws in order to meet international norms by raising the minimum age of marriage to 18. Under the law, males are already required to be 18 in order to marry and we ask that the government protect females in the same way. We further urge Eswatini to enforce the laws to protect vulnerable young girls from forced marriages. We are also encouraged by the work Eswatini has done to combat the negative stereotypes and beliefs associated with albinism and would like to encourage the government to continue this work.

¹ *Eswatini*, THE WORLD FACTBOOK, available at <https://www.cia.gov/the-world-factbook/countries/eswatini/>.

² *Id.*

³ Universal Periodic Review – Eswatini, available at

<https://www.ohchr.org/EN/HRBodies/UPR/Pages/SZindex.aspx>.

⁴ UPR of Swaziland – Second Cycle – Thematic List of Recommendations, available at

<https://www.ohchr.org/EN/HRBodies/UPR/Pages/SZindex.aspx>.

⁵ UPR of Swaziland – Second Cycle – Thematic List of Recommendations A/HRC/33/14/Add.1 – Para. 21, available at

http://lib.ohchr.org/HRBodies/UPR/Documents/Session25/SZ/UPR25_Eswatini_recommendations.docx.

⁶ *Id.* at A/HRC/33/14/Add.1 – Para. 15.

⁷ Constitution of Swaziland, art. 27, available at <https://www.wipo.int/edocs/lexdocs/laws/en/sz/sz010en.pdf>.

⁸ *Id.* at art. 28.

⁹ Convention on the Rights of the Child, 20 Nov. 1989, GA Res. 44/25, art. 34, available at <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>.

¹⁰ Convention on the Elimination of All Forms of Discrimination Against Women, 18 Dec. 1979, art. 16, available at <https://www.un.org/womenwatch/daw/cedaw/text/econvention.htm#article16>.

¹¹ International Covenant on Civil and Political Rights, Dec. 16, 1966, S. Treaty Doc. No. 95-20, 6 I.L.M. 368 (1967), 999 U.N.T.S. 171, art. 23.

¹² *Id.* at art. 6.

¹³ The Marriage Act 1964, art. 2.

¹⁴ Kwanele Dhladhla, *Kwendzisa Is An Offence*, TIMES OF SWAZILAND (10 Sept. 2012), available at <http://www.times.co.sz/news/79502.html>.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *The State of the Worlds Children*, UNICEF (Oct. 2019), available at <https://www.unicef.org/media/63016/file/SOWC-2019.pdf>.

¹⁹ *Swaziland: Child Marriage Rates*, GIRLS NOT BRIDES, available at <https://www.girlsnotbrides.org/child-marriage/swaziland/>.

²⁰ Report of the Independent Expert on the Enjoyment of Human Rights by Persons with Albinism, U.N. Doc. A/74/190 (18 Jul. 2019), available at <https://undocs.org/pdf?symbol=en/A/74/190>.

²¹ Julian Kossoff, *People With Albinism Are Being Blamed for the Spread of the Coronavirus in Africa Because of Their “Whiteness”*, BUSINESS INSIDER (13 Jun. 2020, 9:36 AM), available at <https://www.businessinsider.com/coronavirus-africans-with-albinism-are-blamed-because-of-whiteness-2020-6>.

²² *Eswatini: Albinos, Beauty Pageants and Tackling Stereotypes*, APA NEWS (5 Jul. 2020, 5:32 AM), available at <http://www.apanews.net/en/news/eswatini-using-beauty-pageant-to-change-perceptions-about-albinos>.

²³ *Eswatini Bans “Witchcraft and Magic” Competition*, NEWS 24 (11 Jul. 2019), available at <https://www.news24.com/news24/africa/news/eswatini-bans-witchcraft-and-magic-competition-20190710>.

²⁴ *Id.*