



Submission to the Universal Periodic Review of Eswatini

Human Rights Watch

March 2021

Introduction

This submission highlights concerns about Eswatini's compliance with its constitutional and international human rights obligations. It focuses on Eswatini's failure to implement reforms and the recent, drastic deterioration in the human rights situation. Since 1973, political parties are banned, the judiciary is severely compromised, and repressive laws have been used to target independent organizations and harass civil society activists. The submission also addresses children's right to education, particularly in light of Covid-19-related school closures.

There has been no progress on essential rights reforms, including the removal of all legislative and practical restrictions to free exercise of civil and political rights, in particular those related to freedom of association and expression to allow the registration and operation of political parties; introducing greater political freedoms through free, fair, transparent democratic elections; ensuring the right to health without discrimination on the basis of sexual orientation or gender identity; abolition of the death penalty; and decriminalization of same-sex relations and prevention of discrimination based on marital status and sexual orientation. The government has yet to ratify the Optional Protocol to the Convention Against Torture, despite previously agreeing to do so.

Freedom of Association and Assembly

The Eswatini government has previously agreed, but failed to "align the national legislation with international standards to guarantee freedom of assembly and association, in particular as regards the notification of the organization of peaceful assemblies" (77.49).¹

The government has yet to repeal, or amend as appropriate, a number of repressive laws that restrict basic rights to freedom of association and assembly guaranteed in Eswatini's 2005 constitution. Police have sweeping powers under the Public Order Act. The king's 1973 decree banning political parties remains in force despite repeated calls from local political activists to have it revoked. The constitution does not address the formation or role of political parties. Section 79 of the constitution provides that Eswatini practices an electoral system based on individual merit and excludes the participation of political parties in elections. Traditional leaders and chiefs have powers to restrict access to their areas, and have often used these powers to bar civil society groups and political groups like the Ngwane National Liberatory Congress (NNLC) and the People's United Democratic Movement (PUDEMO).

Restrictions on freedom of association and assembly continue. On October 20, 2020, the High Court heard a court challenge by the Eswatini Sexual and Gender Minorities (ESGM), a human rights community-based advocacy organization which aims to advance the protection of human rights of lesbian, gay, bisexual transgender and intersex persons. In September 2019, the Eswatini Registrar of Companies had refused to register ESGM as a company saying that "ESGM's objectives were unlawful because same-sex sexual acts are illegal in the country."

In challenging the Registrar's refusal to register the organization, ESGM argued that constitutional rights in Eswatini belong to everybody, that everyone has a right to have their dignity respected and protected, and that persons' freedom to associate should not be denied based on arbitrary grounds, including their sexual orientation. At time of writing the case had not been finalized in court.

Eswatini should:

- Guarantee freedoms of association, assembly, and expression, including freedom of association on the basis of sexual orientation.

¹ Paragraph cites are to United Nations General Assembly, Human Rights Council, Report of the Working Group on the Universal Periodic Review: Eswatini, A/HRC/19/6 (December 2011). Recommendations accepted by Eswatini can be found here: https://www.upr-info.org/sites/default/files/document/swaziland/session_12_-_october_2011/recommendations_to_swaziland_2012.pdf.

- Revoke the king's 1973 decree on political parties, allow the registration and operation of political parties, and introduce multi-party democratic elections.

Freedom of Expression and the Media

Eswatini has yet to establish a legislative framework which guarantees freedom of expression and freedom of the press despite previously accepting recommendations to do so (for e.g. 107.55, 109.61).² Nevertheless, although section 24 of the Eswatini constitution guarantees freedom of expression, including media freedom, there are high levels of media censorship with the authorities regularly barring the media from reporting issues deemed sensitive. Many journalists practice self-censorship, especially with regards to reports involving the king, to avoid harassment by the authorities. There is no freedom of information act or other law providing for a right of citizens to access to information held by the government.

In 2020, Reporters Without Borders [ranked](#) Eswatini as 141 out of 180 countries on media freedom. Eswatini's low ranking in media freedom is partly because journalists are constrained from working freely in the absolute monarchy and courts are not permitted to prosecute representatives of the monarchy.

Eswatini should:

- Enact media laws that allow full freedom of expression as per international standards.
- Consider positively the request for a visit by the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and extend a standing invitation to all special procedures of the Human Rights Council

Rule of Law

Although the Constitution provides for three separate organs of government—the executive, legislature, and judiciary—under Swazi law and custom, all powers are vested in the king. Since King Mswati III came to power in 1986, he has run Swaziland as an absolute monarchy, exercising absolute authority over the cabinet, parliament, and judiciary. The king appoints 20 members of the 30-member senate, 10 members of the house of assembly, and approves all legislation passed by parliament.

The government has not taken steps to ensure the Human Rights and Public Administration Commission (established in 2009) complies with the international standards regarding the independence of national human rights institutions.

Colonial-era common law continues to criminalize sodomy, defined as same-sex sexual relations between men, although there is no clear sentence specified for this offence.

Eswatini has yet to ratify the Rome Statute and implement the statute in national legislation.

Eswatini should:

- Respect and implement Swaziland's constitution, ensure the independence of the judiciary and Parliament, and revise or amend legislation providing excessive powers to the king.

² Paragraph cites are to United Nations General Assembly, Human Rights Council, Report of the Working Group on the Universal Periodic Review: Eswatini, A/HRC/33/14 (July 2016). Recommendations accepted by Eswatini can be found here: https://www.upr-info.org/sites/default/files/document/swaziland/session_25_-_avril_2016/recommendations_and_pledges_swaziland_2016.pdf.

- Ensure the country’s national human rights institution, the Commission on Human Rights and Public Administration meets international standards. Since its inception the commission has not complied with the international standards in the [Paris Principles](#) as it operated without legislation which clearly defines the parameters for how it operates.
- Ratify the Rome Statute and implement the statute in national legislation, including by incorporating provisions to cooperate promptly and fully with the International Criminal Court and to investigate and prosecute genocide, crimes against humanity and war crimes before its national courts in accordance with international law.
- Repeal the colonial-era law that criminalizes sodomy.

Women’s Rights

Eswatini has committed itself to taking all necessary measures to eliminate discrimination and violence against women (107.20), as well as to regional and international instruments to promote gender equality, including the Convention for the Elimination of All Forms of Discrimination Against Women, and the Southern African Development Community (SADC) Declaration on Gender and Development. It has signed but not ratified the Maputo Protocol.

Article 20 of the Eswatini Constitution provides for equality before the law and prohibits discrimination on several grounds, including gender, but it does not specifically prohibit discrimination on the basis of sex, marital status, or sexual orientation and gender identity. Eswatini’s dual legal system where both Roman Dutch common law and Eswatini customary law operate side by side has resulted in conflicts leading to numerous violations of women’s rights, including to nondiscrimination.

Women and girls face high rates of gender-based violence, with 18 percent of ever-married women and girls between ages 18 and 49 reporting domestic violence in the previous 12 months. In 2018, Eswatini adopted the Sexual Offences and Domestic Violence Act, which introduced a comprehensive and gender-neutral definition of rape, and criminalized marital rape and domestic violence. A 2020 report by the International Commission of Jurists highlights significant obstacles to implementation, including gender bias in the justice system including police and judges’ stereotypes of husbands’ ability to chastise their wives, and consideration of evidence and witness testimony provided by women as unreliable.

Women and girls, especially those living in rural areas under traditional leaders and governed by highly patriarchal Swazi law and custom, are often subjected to discrimination and harmful practices. For example, one gender stereotype is that a married woman becomes the ‘first-born child’ of her husband. Married women remain “perpetual minors” and are subject their husbands making key decisions for them as their “guardians.” Young women and girls are forced to take part in highly-stereotyped cultural activities like the annual reed dance festival and may be punished or fined by traditional leaders if they resist.

Eswatini should:

- Ratify the Maputo Protocol, the Optional Protocol to the Convention Against Torture and the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women.
- Implement the 2018 Sexual Offenses and Domestic Violence Act, including through public awareness campaigns, accessible and safe reporting mechanisms, training police, prosecutors, and judges, and providing adequate victim support services.

- Prohibit discrimination on the grounds of sex, marital status, and sexual orientation and gender identity.
- Identify and fight discriminatory social and customary practices, and resolve conflicts between civil law and traditional law and values to ensure protection of women’s human rights.
- Commit to ensuring enjoyment of the right to health without discrimination based on sexual orientation or gender identity; decriminalization of same-sex relations.

Loss of Already Limited Right to Education due to Covid-related School Closures

At its first review in October 2011 and its second review in May 2016, Eswatini supported at least 13 recommendations aimed at improving access to education.³ Under article 29 of Eswatini’s constitution, “Every Swazi child shall...have the right to free education in public schools at least up to the end of primary school, beginning with the first grade.” The Free Primary Education Act (2010) states: “Except as provided in this Act every Swazi child enrolled at a public primary school is entitled to free education at that public primary school beginning with grade 1 up to and including Grade 7.” Parents are required under the Act “to cause” the regular attendance of their child at primary school, or be liable to a fine or community service.

In an effort to slow the spread of the Covid-19 virus, governments around the world, including Eswatini, have closed schools and barred students from their classrooms. Children—who tend to escape the worst symptoms of Covid-19—were forced to sacrifice the education they were entitled to, and often their friendships and mental health, to help protect the lives of adults in their communities.

In Eswatini, the first cases of Covid-19 were reported on March 14, 2020, and all schools were closed on March 19. Almost 370,000 pre-primary, primary, and secondary school students were unable to go to school.⁴

Some schools reopened for children of certain grades on July 6, whereas other children continued to be kept from school. On January 1, 2021 all schools were again closed in the country. At the time of writing on March 10, in total, schools were closed for 178 school days, and partially closed for 148 days.

The government of Eswatini primarily established alternative learning methods through television and radio to facilitate continued learning from home for grades facing national examinations: grade 7 (the final year of primary education), Form 3, and Form 7. More than 80 percent of the population

³ From cycle 1: “Continue and reinforce current efforts aimed to increase the access to and quality of services to health and education for all its citizens” (recommended by Cuba); “Pursue the implementation of the right to education for all with a particular attention given to the realization of this right for girls” (Algeria); and “Pursue the efforts to establish and carry-out national programmes in relation to the right to education and the quality of education at every level through-out the country” (Qatar). From Cycle 2: “Step up efforts to pursuing the right to education for all, particularly in the realization of the right to education for girls” (Indonesia); “Continue to provide access to education to children” (Pakistan); “Continue to implement measures to improve and facilitate access to education” (Angola); “Take the necessary steps to improve access to education at all levels” (Armenia); “Redouble efforts for the full realization of the “Education for All” policy” (Burundi); “Improve school enrolment rates by removing all obstacles to access to primary education” (Republic of Congo); “Further continue efforts to remove all barriers to access primary education” (Ethiopia); “Overcome the challenges and constraints in the free primary education programme, particularly the social factors that limit enrolment for primary education and shortage of appropriately qualified teachers” (Nigeria); “Give priority to the objective of attaining an inclusive and equitable education system that affords all citizens of the country access to high quality free primary education” (Cuba); and “Eliminate factors preventing boys and girls to enjoy secondary school education and reduce the dropout of school rate” (Turkey).

⁴ UNESCO Institute for Statistics (UIS), “UIS.Stat.” April 2020; and UNESCO, “Covid-19 Educational Disruption and Response,” 2020.

has access to the radio. Elective lessons were also published in two newspapers.⁵

Barriers to Education Faced by Pregnant Girls and Adolescent Mothers

Teenage pregnancy is among the most common reason girls drop out of school, particularly secondary school, in Eswatini.⁶ UN Population Fund data shows that around 9 percent of girls aged 15 to 19 gave birth between 2003 and 2018.⁷ Eswatini's 2011 Education Policy states that "Every child, irrespective of their life circumstances (teenage mothers...)... has the right to be re-integrated into the same institution that the child was attending."⁸ The policy also states that "the education system accepts difference, exercises no discrimination and respects the individuality of each child," and "sufficient financial, physical and human resources are provided to educate every child, whatever their life circumstances."⁹ Although the policy protects pregnant students and adolescent mothers' education, the lack of policy clarity leads to very disparate practices at the school level: reports show that some schools exclude pregnant girls and student parents and fail to re-admit these children. The interpretation of the 2011 policy is therefore left to teachers and school officials.¹⁰

Human Rights Watch research on policies and practices that support or block education for pregnant girls and adolescent mothers across the African Union, shows that governments must adopt clear national policies that outline girls' right to remain enrolled in schools, and provide for "continuation" of their education; ensuring they are not forced to interrupt their schooling, and are able to sit assessments and exams. Human Rights Watch calls on governments to adopt human rights-compliant policies that permit pregnant students to remain in school for as long as they would like, and not require compulsory maternity leave after giving birth. Governments should also issue official regulations that provide clear instructions to schools on how to operationalize the policy, including how to ensure schools are environments free from stigma and discrimination, and adopting flexible approaches to ensure children who become parents are supported to stay in school, and complete primary and secondary education.¹¹

Eswatini should:

- In order to ameliorate, mitigate, and correct the disruption of children's right to education caused by Covid-related school closures, Eswatini should provide all children enrolled in free primary education during the duration of the pandemic, an entitlement to a minimum of two additional years of free education, beyond the seven years currently guaranteed under law.
- Legislate to make a minimum of nine years of education free and compulsory for all in light of its commitment to the Sustainable Development Goals.
- Publish a time-bound plan to make secondary education free for all by its next Universal Periodic Review.

⁵ Victor Nkambule, "UNICEF support to Covid-19 response in Eswatini," May 7, 2020.

⁶ UNICEF, "Report on Out-of-School Children in Eswatini," July 2018, p. 46.

⁷ UN Population Fund, World Population Dashboard "Eswatini," <https://www.unfpa.org/data/world-population/SZ>.

⁸ Swaziland Ministry of Education and Training, "The Swaziland Education and Training Sector Policy," April 2011, section 7.3.

⁹ *Ibid.*, section 6.3.3.

¹⁰ UNICEF, "Report on Out-of-School Children in Eswatini," p. 50; Simelane Q.G.S.N. et al., "An assessment of the implementation of the re-entry policy for girls in Swaziland: school practices and implications for policy development," *Problems of Education in the 21st Century*, Vol. 56, 2013, pp. 123 – 124.

¹¹ See Human Rights Watch, Leave No Girl Behind in Africa, Discrimination in Education Against Pregnant Girls and Adolescent Mothers, June 2018, <https://www.hrw.org/report/2018/06/14/leave-no-girl-behind-africa/discrimination-education-against-pregnant-girls-and>.

- Promptly adopt a national policy that outlines pregnant girls' and adolescent parents' right to education, and publish official regulations issuing clear instructions to schools to ensure they fully support adolescent parents' to stay in school so that they complete primary and secondary education.