

Joint Submission
to the Human Rights Council
at the 39th Session
of the Universal Periodic Review.

ESWATINI

Introduction

1. The Coordinating Assembly of Non-Governmental Organizations (Eswatini), Youth Sustainable Development Centre, Southern African Human Rights Defenders Network, Global Campaign for Equal Nationality Rights and Institute on Statelessness and Inclusion make this joint submission to the Universal Periodic Review (UPR), on the right to a nationality and human rights challenges pertaining to statelessness in Eswatini.
2. This submission focuses on:
 - I. Gender Discrimination in National Laws and Women’s Equal Rights;
 - II. The Child’s Right to Nationality; and
 - III. Sexual Violence and Abuse against Children and Adolescent Girls.
3. The Coordinating Assembly of Non-Governmental Organisations (CANGO) is a membership based, umbrella organisation for NGOs in Eswatini with a membership of more than seventy NGOs. Its mandate is to coordinate, facilitate joint advocacy, build capacity – both institutional and technical and manage grants. The member organisations are clustered into consortia; namely children, youth, gender, food security and livelihoods, media, HIV/AIDS, Human Rights and Governance, and the Elections Support Network.
4. Youth Sustainable Development Centre (YSDC) is a non-profit organisation that is working on youth economic empowerment through sustainable development, which further mobilises youth as sustainable development agents, problem solvers and human rights advocates.
5. The Southern African Human Rights Defenders Network (SAHRDN) is the regional human rights defenders (HRD) network with the primary mandate to coordinate the protection and security of HRDs in the region, and to enhance their ability to work in their particular countries, in the face of state-driven or supported repression. The SAHRDN supports HRDs in engaging with supranational reporting and protection mechanisms.

6. The Global Campaign for Equal Nationality Rights (GCENR) mobilises international action for the removal of gender-discriminatory provisions from all nationality laws, through its coalition of over twenty national, regional and international organisations and activists, including steering committee members Equality Now, Equal Rights Trust, Institute on Statelessness and Inclusion, Women’s Learning Partnership and Women’s Refugee Commission.
7. The Institute on Statelessness and Inclusion (ISI) is the first and only human rights NGO dedicated to working on statelessness at the global level. ISI’s mission is to promote inclusive societies by realising and protecting everyone’s right to a nationality. The Institute has made over 75 country specific UPR submissions on the human rights of stateless persons. ISI has also compiled summaries of the key human rights challenges related to statelessness in all countries under review under the 23rd to the 38th UPR Sessions.¹

Previous UPR of Eswatini under the First and Second Cycle

8. Eswatini² was previously reviewed during the 12th and 25th Sessions of the UPR, in 2011 and 2016 respectively.
9. During the 12th Session, Eswatini did not receive any recommendations relating to the right to nationality or statelessness. However, it did receive recommendations relating to gender inequality and discrimination in laws and practices, including recommendations from: Brazil to combat gender inequality and discriminatory practices and ensure equality before the law; France to adopt new laws in accordance with the principles of CEDAW; Canada to take concrete measures to remove discriminatory laws and practices; and Argentina to ensure equality before the law.³ Eswatini accepted all of these recommendations.
10. During the 25th session, Eswatini received a recommendation from Ghana to “repeal discriminatory provisions in the Constitution and Citizenship Acts”; a recommendation from South Korea to “consider amending its domestic laws to grant women equal rights with men with regard to transmission of their nationality to their children”; from Honduras to “amend legislation that denies Swazi citizenship to children born of foreign fathers”; from Botswana to align national laws in accordance with the principles outlined in CEDAW to address women’s rights, which “include land acquisition, equality and citizenship of children”; from Djibouti to “modify articles 43 and 44 of the Constitution so that Swazi women, in the same way as men, can transmit their nationality to their children and their foreign spouses”; from Australia to “enact legislation to ensure the ability of all Swazi citizens, regardless of their sex, to confer citizenship upon their children”; and from Sierra Leone to “modify its national laws to ensure that mothers can pass on nationality to their offspring regardless of the nationality of the father”.⁴ Eswatini noted all of these recommendations.

¹ For more information, see <https://www.institutesi.org/core-activities/human-rights-advocacy>

² Please note that in previous cycles Eswatini was known as Swaziland. It was officially renamed Eswatini on 19 April 2018.

³ UN Human Rights Council, ‘Report of the Working Group on the Universal Periodic Review: Swaziland’ A/HRC/19/6 (12 December 2011), paras 76.23; 77.20; 77.21; 76.24.

⁴ UN Human Rights Council, ‘Report of the Working Group on the Universal Periodic Review: Swaziland’ A/HRC/33/14 (13 July 2016), paras 109.28; 109.33; 109.36; 109.31; 109.34; 109.32; 109.35.

Eswatini's International obligations

11. Eswatini acceded to the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness in 1999. Eswatini also has international obligations to protect the right to a nationality, without discrimination including on the basis of sex, and protect the rights of stateless persons on the basis of other UN and regional treaties to which it is a party. These include, among others, the International Covenant on Civil and Political Rights (see article 24.3), the Convention of the Rights of the Child (see articles 2, 3, 7 and 8), the Convention on the Elimination of All Forms of Discrimination against Women (see article 9), the International Convention on the Elimination of All Forms of Racial Discrimination (see article 5(d)(iii)), the Convention on the Rights of Persons with Disabilities (see article 18), the International Covenant on Economic, Social and Cultural Rights (see articles. 2.2 and article 3), and the International Convention for the Protection of All persons from Enforced Disappearance (signed, not ratified) (see article 25).⁵ Furthermore, the right to a nationality is protected under Article 15 of the Universal Declaration on Human Rights.
12. Eswatini does not have any relevant reservations to these treaties.
13. Eswatini is a party to the following regional conventions:
 - I. The African Charter on Human and Peoples' Rights, which calls for the elimination of all discrimination on the basis of sex;
 - II. The 2003 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Article 6); and
 - III. The 1990 African Charter on the Rights and Welfare of the Child (Article 6).
14. In 2017, the Human Rights Committee, while noting measures taken by the State party to ensure that all births are registered, expressed concern about the large number of births that remain unregistered, violating Articles 16 and 24 of the ICCPR. The Committee recommended that Eswatini "expedite its efforts to register all births on its territory and continue to mount public and family awareness-raising campaigns concerning birth registration, particularly in rural areas".⁶ The Committee also recommended, *inter alia*, that Eswatini "review its Constitution and domestic laws, including customary laws, on the status of women and repeal or amend all provisions that are inconsistent with the Covenant, including those relating to marriage, inheritance, property rights and transfer of citizenship".⁷
15. In addition, the Committee on the Elimination of Discrimination against Women recommended in 2014 that Eswatini "repeal the discriminatory provisions in the Constitution and the Citizenship Act to ensure that Swazi women married to foreign men can transfer their nationality to their husbands and children on the same basis as

⁵ See: <https://treaties.un.org/Pages/ParticipationStatus.aspx?clang=en>.

⁶ UN Human Rights Committee, 'Concluding Observations on Swaziland in the absence of a report' CCPR/C/SWZ/CO/1 (23 August 2017), paras 48; 49.

⁷ UN Human Rights Committee, 'Concluding Observations on Swaziland in the absence of a report' CCPR/C/SWZ/CO/1 (23 August 2017), para 25.

Swazi men married to foreign women, in line with article 9 of the Convention.” Furthermore, the Committee recommended that “the State party undertake programmes aimed at ensuring that children born to Swazi women married to non-Swazi men are not rendered stateless and have equal access to education, health care and other basic services”.⁸

16. The Committee on the Rights of the Child also noted with concern that children do not derive citizenship through the mother unless the child is born outside of marriage and is not adopted or claimed by the father. The Committee recommended that Eswatini “take the necessary legislative measures to ensure that a child can derive nationality not only from the father, but also from the mother”. The Committee also noted the State’s efforts to improve birth registration, but remained concerned at the considerable number of children not registered at birth (or later). The Committee recommended that “in the light of article 7 of the Convention, the State party strengthen and further develop measures to ensure that all children born within the national territory are registered by, *inter alia*, making birth registration easy and free of charge and introducing mobile units, especially in rural areas.” The Committee further urged Eswatini to “proceed with the registration of those children who have thus far not been registered”.⁹

17. Eswatini made four pledges at the 2019 UNHCR High Level Segment on Statelessness:

- I. To introduce a provision in nationality law to grant nationality to all children of unknown origin found in Eswatini territory and those born in Eswatini territory who would otherwise be stateless by 2024;
- II. To undertake national consultations on gender equality in nationality laws and initiate the necessary reforms to uphold citizens’ equal ability to confer nationality on spouses and children by end of 2024;
- III. To establish by 2022 a procedure to determine the status of stateless migrants in line with the 1954 Convention; and
- IV. To undertake and publish a qualitative and quantitative study by 2021 to better understand the situation of groups and individuals who are stateless or at risk of statelessness in the territory with a view to finding a solution to their situation.

Snapshot of Statelessness in Eswatini

18. Statelessness in Eswatini is primarily caused by women’s inability to confer nationality on their children and spouse on an equal basis with men, and the absence of provisions to safeguard against statelessness in the nationality law. Low levels of birth registration also contribute to increased risks of statelessness as being registered at birth and having a birth certificate are often the first step towards acquiring a nationality.

19. The number of stateless persons in Eswatini is currently unknown, according to UNHCR. UNHCR figures from 2016 recorded only three stateless persons, who were

⁸ CEDAW, ‘Concluding observations on the combined initial and second periodic reports of Swaziland’ CEDAW/C/SWZ/CO/1-2 (24 July 2014), para 29.

⁹ CRC, ‘Concluding observations: Swaziland’ CRC/C/SWZ/CO/1 (16 October 2006), para. 27.

descendants of refugees. However, this is not an indication of the reality on the ground. Though not documented or recorded, there are children who were rendered stateless during the height of the HIV/AIDS pandemic, when both parents died without having registered their birth as well as children of Swazi women who were unable to acquire their mother's nationality due to gender discrimination in the law, and were unable to access their father's nationality for a variety of reasons. There have been cases of children being unable to access services due to lack of documentation and the Ministry of Home Affairs has attempted to make special provision which is not standardised or official policy.

20. Populations at risk of statelessness also include women and children. Even though no provisions in the Constitution or Citizenship Act stipulate deprivation of nationality of women upon marriage to a foreign national, cases of such loss of nationality have been documented in practice. This practice is steeped on cultural norms that assume the woman has acquired or will acquire her husband's nationality through marriage, along with following her husband's domicile, taking her husband's surname, adapting to his culture and other aspects attendant to it. Women who have thus been deprived of their Eswatini nationality, face the risk of statelessness, particularly if they do not acquire their husband's nationality or subsequently lose it and cannot reacquire their Swazi nationality. Children born of these marriages could also face challenges to access Eswatini nationality through their mother, and therefore can face risks of statelessness.
21. Orphaned and Vulnerable Children (OVC) whose parents passed away without registering their births are at risk of becoming stateless. The CANGO children consortium engaged in advocacy efforts with the relevant Ministry to enroll OVC in schools. However, their acceptance into the educational system was not secured. Such children are also at risk of being denied access to various other social services.
22. Due to the lack of awareness of statelessness, related protection concerns and access to justice, those rendered stateless/at risk of statelessness/with compromised nationality rights are often unable to obtain support from civil society organisations or government authorities, with their cases largely remaining undocumented and unresolved.

National Law

23. Citizenship in Eswatini is governed by Chapter IV of the 2005 Constitution,¹⁰ and by the 1992 Citizenship Act.¹¹ The Constitution provides for gender equality in transmission of citizenship to children born *before* it came into effect, but provides that only the father can transmit citizenship to children born after the Constitution came into force, (Art 43.1) unless the child of a Swazi woman was born outside of marriage and was not adopted or recognised by the father (Art 43.4). The Constitution also denies women the right to transmit citizenship to her foreign spouse, a right

¹⁰ The Constitution of the Kingdom of Swaziland Act 2005. Available at: <https://www.wipo.int/edocs/lexdocs/laws/en/sz/sz010en.pdf>

¹¹ Swaziland Citizenship Act, 1992 [Eswatini], Act 14/1992, 1 December 1992, available at: <https://www.refworld.org/docid/4c5696752.html> [accessed 22 March 2021]

reserved for Swazi men (Art. 44 of the Constitution and Art. 8 of the Citizenship Act).

24. The law is discriminatory both on the basis of marital status and gender as Articles 43 and 44 of the 2005 Constitution do not allow a Swazi woman to transfer her nationality to her children or foreign spouse on an equal basis with Swazi men. This discriminatory provision violates the state's obligations as a state party to CEDAW, CRC, and the ICCPR and results in the inability of some children to enjoy their right to a nationality.¹²
25. Moreover, Eswatini's domestic law does not contain any safeguard to ensure that children born in the country who would otherwise be stateless are granted Eswatini nationality. There are cases of children born to Swazi mothers and foreign fathers who are stateless as they are unable to obtain nationality from either parent. Although customary law considers children to belong to the father and his family if the couple divorces, custody of the children of unmarried parents typically remains with the mother, unless the father claims paternity. Such practices further undermines divorced women's equal status in the family and their parental rights.
26. A number of other laws are also relevant to the right to a nationality, including the 1983 Birth, Marriage and Death Registration Act, and the 2012 Children Protection and Welfare Act. Swazi women do have an equal right with men to register births and access birth and marriage certificates for themselves and their children.
27. Unmarried women can register children in their own right; however, problems arise if the woman wishes to register the child in the father's name, which would require him to be present for the registration. Unmarried men may not register a child on their own in the absence of the mother, or a relative with legal authority to assist with the registration. Unmarried men's inability to register the child reflects discrimination on the basis of gender and marital status, contrary to international law in its own right, and also potentially contributing to statelessness. Married women and men do not face this issue.
28. When it comes to the right to a nationality for OVC, Article 46 of the 2005 Constitution and Article 16 of the 1992 Citizenship Act stipulate that a child born after the death of the father shall be deemed to be a citizen under this Chapter on the same conditions as if the father were alive when that child was born. Children born to Swazi mothers and foreign fathers are at risk of statelessness, especially if the (deceased) foreign father cannot confer his nationality.
29. With regard the right to a nationality for foundlings, Art. 47 of the 2005 Constitution stipulates that a deserted child of not more than seven years found in Swaziland shall, unless the contrary is proved, be deemed to have been born in Swaziland and shall be treated for the purposes of this Chapter as a citizen by birth. The 1992 Citizenship Act, Article 17 states that every deserted infant first found in Swaziland shall, unless the contrary is proved, be deemed to have been born in Swaziland and shall be treated for the purpose of this Act as if his mother were a citizen of Swaziland. The child may be registered as a citizen under section 7(4), which states that Swazi mothers can confer their nationality onto children born out of wedlock if they are not 'claimed' by the Swazi father. The Citizenship Act seems to have more restrictive provisions pertaining

¹² UNHCR, 'Submission by the United Nations High Commissioner for Refugees For the Office of the High Commissioner for Human Rights' Compilation Report Universal Periodic Review: 2nd Cycle, 25th Session: Swaziland', available at

to the nationality of foundlings and should, at minimum, be brought into alignment with Art 47 of the Constitution. However, in line with the country's obligations to uphold the best interest of the child, foundlings should have the right to acquire Eswatini nationality up to the age of majority.

Issue I. The Impact of Gender Discriminatory Nationality Laws

30. Gender discrimination in Eswatini's nationality law results in wide-ranging human rights violations and hardships faced by Swazi women and their families. Gender discrimination in the nationality law jeopardizes family unity, and undermines affected persons' equal access to education, healthcare, formal employment, financial services, inheritance, property rights, and freedom of movement. When a woman is exposed to the risk of statelessness due to abandonment by a foreign husband, she also faces difficulties in obtaining maintenance for her children and to provide for their needs.
31. In addition to women's inability to confer nationality on children on an equal basis with men, Article 50 pertaining to the renunciation of nationality, further undermines the rights of women and girls. By requiring citizens attain the age of majority to renounce citizenship, unless the person is a girl seeking to marry a foreigner and acquire their nationality, Article 50 exposes girls to risk of child marriage.
32. Gender discrimination in nationality laws is a leading cause of statelessness globally. The Swazi nationality law includes gender discriminatory provisions that contribute to statelessness, yet there is no statistical information on the scope or extent of statelessness in the country. The lack of statistical information in itself points to a significant need for the state to prioritise and address the issue of the right to nationality and the rights of stateless persons in the country. This is particularly so, when considering the various legal provisions which undermine the right to nationality, thereby increasing the likelihood of statelessness being generated and perpetuated. Although the Eswatini Government made a pledge at the 2019 UN Refugee Agency's High-Level Segment on Statelessness (HLS) committing to support reforms to achieve a gender-equal nationality laws, technical work has yet to be conducted to ensure that this commitment is fulfilled by 2024.
33. The denial of equal nationality rights leads to both the denial of proof of legal identity and the denial of the right to a nationality. Furthermore, discrimination in Eswatini's nationality laws inhibits women's ability, in practice, to freely choose a spouse, in violation of CEDAW Article 16. This further entrenches traditional stereotypes regarding the primacy of male legal identity, and contributes to women's inequality within the family and society at large.¹³ Further entrenchment of such stereotypes is in breach of Eswatini's obligations under CEDAW Article 5(a).

Discrimination against Swazi women in the nationality law further contributes to

¹³ Global Campaign for Equal Nationality Rights – UNHCR, "CEDAW Quick Reference Guide: Statelessness and Human Rights Treaties," 2017, available at: <http://equalnationalityrights.org/images/zdocs/CEDAW-Quick-Reference-Guide.pdf>

gender-based violence, as recognised in CEDAW General Comment No. 19. Affected women are denied family stability, and their children are denied citizenship, stable residency, the right to equal education and healthcare, and social services. This amounts to a form of legally-sanctioned gender-based violence, depriving Swazi women and their children of equal protection under the law.¹⁴

Issue II - Children's right to nationality

34. A combination of gender-discriminatory provisions in the nationality law, lack of safeguards against childhood statelessness for children born in the country and the low levels of birth registration result in many children being denied the right to nationality, in violation of Eswatini's obligations under the CRC, as well as other treaties such as CEDAW, ICCPR, and CERD, to which Eswatini is also a state party.
35. Lack of access to the right to a nationality results in a range of human rights violations impacting children. These include the denial of the right to a nationality and resultant statelessness over generations (Art. 7 CRC); lack of access to public education (Art. 28 CRC), healthcare (Art. 24 CRC) and other services. Subsequently, such restrictions violate the Guiding Principles of the CRC as set out in Article 2 (non-discrimination), Article 3 (best interests of the child), Article 6 (child's development) and Article 12 (the right to be heard).
36. Regarding access to education specifically, it is now a requirement for all children to have a birth certificate to enter the first grade. Children are also required to present their national identity number in order to sit exams. In the absence of these documents, children encounter difficulties in school enrolment or in registering for and sitting their final exams. Pending the issuance of these documents, many children spend time out of school in violation of Article 28 and Article 6 CRC.
37. Birth registration is fundamental to the protection of children and prevention of statelessness. As birth registration legally establishes the place of birth, proof of age, and parental affiliation, it serves as an important documentary proof to acquire the parents' nationality or the nationality of the State in which the child is born. Birth registration can also be a pre-requisite to access other human rights.
38. While the denial of birth registration does not always amount to statelessness, there is a crucial link between birth registration and statelessness, with birth registration operating as a key form of proof of the link between the individual and the State. Lack of birth registration greatly increases the risk of statelessness, especially among populations whose belonging is under question by the state. Impoverished and vulnerable groups may face particular barriers in to birth certificates due to a registration system that is perceived as onerous and costly.
39. Although there have been efforts undertaken to improve the rate of birth registration, the levels of birth registration remain low, a concern noted by the Committee on the Rights of the Child. The Committee recommended continuing to facilitate access to

¹⁴ See Comm. on the Elimination of All Forms of Discrimination against Women, General Recommendation No. 19, Violence against Women, Paragraph 1, 4, 6, 7-e and f, and 8 (11th session, 1992)

birth registration, including by making it free of charge and introducing mobile units, especially in rural areas, and to actively register children who have thus far not been registered.¹⁵ In this respect, the Human Rights Committee also recommended conducting public awareness campaigns on the importance of birth registration.¹⁶

40. The State has made it mandatory that every child is registered at birth through providing these services at hospitals and major clinics. However, some children are born in smaller clinics or at home and have no access to these services. Another challenge is that although children may be registered at birth, parents may not be able – for various reasons – to follow up on the registration and trigger the issuance of birth certificates for their children. Birth certificates are not issued at birth, but have to be processed at the Birth, Marriage and Death Registration Department.

Issue III - Sexual Violence and Abuse Against Children and Adolescent Girls

41. Eswatini is a signatory to the Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child and also enacted the Children's Protection and Welfare Act 2012 and the Sexual Offences and Domestic Violence Act 2018. Despite the legislative measures in place, children and adolescent girls are still vulnerable to sexual abuse and exploitation, teenage pregnancy and child marriage.
42. According to a 2018 national study, 48 percent of women and girls between the ages of 13 to 24 reported having experienced some form of sexual violence, with 1 in 3 girls experiencing some form of sexual violence before the age of 18.¹⁷
43. Domestic and gender-based violence are among the issues children and adolescent girls face as they stay home during the COVID-19 pandemic. A recent incident of child marriage made headlines where a 15-year-old girl got married in one of the rural areas in the Hhohho region. This may be attributed to the effect of COVID-19 leading to school closures leaving children idle and exposed to such harmful practices. Such incidents, require heightened attention during the pandemic. Those living close to the border areas are at risk of human trafficking and sexual exploitation. The pandemic has also increased children's vulnerability to exploitation, abuse, neglect and violence by directly affecting their caregivers or causing the loss of their families' and communities' livelihoods.
44. COVID-19 has a detrimental impact on stateless persons specifically. Due to children's inability to access their mother's nationality in some cases, barriers to women extracting themselves from abusive relationships are increased, a risk that is further exacerbated due to the notable increases in Gender Based Violence globally linked with pandemic lockdowns.

¹⁵ CRC, 'Concluding observations: Swaziland' CRC/C/SWZ/CO/1 (16 October 2006), para. 27.

¹⁶ UN Human Rights Committee, 'Concluding Observations on Swaziland in the absence of a report' CCPR/C/SWZ/CO/1 (23 August 2017), para 49.

¹⁷ Together for Girls, "Eswatini" overview available at: <https://www.togetherforgirls.org/wp-content/uploads/TFG-Eswatini-OnePager-10.pdf>

45. In terms of governmental response to the pandemic, COVID-19 relief packages and services were meant for Swazi nationals only. In order to access them, one was required to register through their constituencies (traditional structures) and to present national identity cards, further marginalising stateless persons.

Recommendations

46. Based on the above information, the co-submitting organisations urge reviewing States to make the following recommendations to Eswatini:

- I. Amend the Constitution and Citizenship Act to ensure that women have equal nationality rights as men, in particular, in relation to the acquisition and retention of their own nationality, and the conferral of their nationality on their children and non-national spouses.
- II. Protect every child's right to acquire and preserve their nationality and introduce legal safeguards to ensure the right to nationality for otherwise stateless children on the territory.
- III. Ensure that otherwise stateless children born in Eswatini acquire Eswatini nationality as soon as possible after birth, regardless of the status or identity of their parents.
- IV. Strengthen and further develop measures to ensure that all children born within the national territory are registered by, *inter alia*, making birth registration equally accessible to either parent regardless of marital status, easy and free of charge, introducing mobile units, and conducting public awareness campaigns and civic education, especially in rural areas.
- V. Strengthen efforts to mitigate the non-registration of births and proceed with the registration of those children who have yet to be registered, including orphaned and vulnerable children.
- VI. Strengthen institutions responsible for detecting and preventing gender discrimination, statelessness and sexual abuse of minors.
- VII. Do not discriminate in COVID-19 responses on any grounds including nationality, documentation or migration status.