ACHPR 70th Ordinary Session: 23 February – 09 March 2022

Consideration of Concluding Observations and Recommendations on State Periodic Reports

I. INTRODUCTION

1. The Kingdom of Eswatini\(^1\) (Eswatini) is a State Party to the African Charter on Human and Peoples' Rights (the African Charter), having signed it on 20 December 1991, and ratified and deposited its ratification instrument on 15 September and 09 October 1995, respectively.

2. In accordance with Article 62 of the African Charter, Eswatini submitted its Initial Report on 11 May 2000 and this was reviewed by the Commission at its 27\(^{th}\) Ordinary Session which took place on 27 April to 11 May 2000 in Algiers, Algeria. The Initial Report covered Reports due under Article 62 of the Charter from 1995 to 2000.

3. The present Combined Periodic Report is identified by Eswatini as the Combined 1\(^{st}\) to 9\(^{th}\) Periodic Report on the implementation of the African Charter for the period 2001 to 2020, and Initial Report to the Protocol to the African Charter on the Rights of Women in Africa (Maputo Protocol) for the period 2012 to 2020. This Report is therefore submitted in accordance with Article 62 of the Charter and Article 26 of the Maputo Protocol.

4. The Report highlights developments which have taken place in the country in the area of promotion and protection of human and peoples’ rights, and the legislative, administrative and judicial measures put in place to comply with the country's obligations under the African Charter and the Maputo Protocol, for the periods mentioned above.

5. The African Commission on Human and Peoples' Rights (the Commission) reviewed the Report at its 69\(^{th}\) Ordinary Session, held from 15 November to 2 December 2021, which was hybrid in nature.

6. The Report was presented to the Commission by the Delegation from Eswatini, (the Delegation), headed by the Honourable Pholile Shakantu, Minister of Justice and Constitutional Affairs\(^2\), on Monday 24 November 2021.

7. The Commission appreciates the presentation of the Report by the high-level delegation from Eswatini, and the constructive dialogue that followed the presentation.

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\(^1\) As stated in the report, On 19 April 2018, the King of Swaziland changed the name of the country from the Kingdom of Swaziland to Kingdom of Eswatini through Legal Notice 80 of 2018. The Notice stipulates in section 3 that ‘reference in any written law or international agreement or legal document to Swaziland should be read and construed as reference to Eswatini.

\(^2\) The detailed list of delegation is attached (Annex).
8. On 29 December 2021, the Embassy of the Kingdom of Eswatini in Addis Ababa provided the Commission with a written contribution, including additional responses of the State Party.

9. The present Concluding Observations provide an account of the positive aspects and the factors restricting the enjoyment of human rights Eswatini. It also highlights areas of concern identified in the Report; and from additional information provided during the review of the Report.

10. Finally, the Commission makes recommendations to Eswatini on measures needed to strengthen the enjoyment of human rights, as guaranteed by the African Charter, the Maputo Protocol as well as other relevant regional and international human rights instruments.

II. Positive aspects

Reporting Obligations

11. The Commission:

i. Welcomes the commitment of the Government of Eswatini towards the reporting obligation in the African Charter and the Maputo Protocol. This is reflected by the high-level delegation of the State Party throughout the review process.

ii. Takes note of efforts made by Eswatini in preparing and presenting its Combined 1st to 9th Periodic report, in accordance with the provisions of Article 62 of the African Charter, and Initial Report in accordance with Article 26 of the Maputo Protocol.

iii. Takes note of the establishment of the National Mechanism for Reporting and Follow-up (NMRF), which includes all the Government Ministries, academia, Judiciary and Parliament to facilitate the preparation of Eswatini reports on international and regional human rights instruments.

iv. Commends the workshop organized in April 2019 by the Centre for Human Rights / University of Pretoria, in Ezulwini / Eswatini, to provide technical advice on preparation of the National Periodic Report.

Legal framework for the Promotion and Protection of Human Rights

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3 Note Verbale SEA/AU/1, n° NOTE578/2021, dated 29 December 2021.
12. The Commission welcomes the ratification by Eswatini of the following international instruments, during the period under review:

- i. International Covenant on Economic Social and Cultural Rights (ICESCR),
- ii. International Covenant on Civil and Political Rights (ICCPR),
- iii. International Covenant on the Elimination of All Forms of Discrimination Against Women (CEDAW),
- iv. Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT),
- v. Convention on the Rights of Persons with Disabilities (CRPD),
- vi. Optional Protocol to the Convention on the Rights of Persons with Disabilities,
- ix. UN Convention against Transnational Organized Crime,
- x. Protocol against the Smuggling of immigrants by Land, Sea and Air Supplementing the UN Convention against Transnational Organized Crime,
- xi. UN Convention against Corruption,
- xii. Convention concerning the prohibition and immediate Action for the Elimination of the Worst Forms of Child Labor,


**Institutional and Policy Measures Promoting and Protecting Human Rights**

14. The Commission takes note with appreciation, the adoption, during the period under review, of legislative instruments relating to the promotion and the protection of human rights, *inter alia*:

- ii. The Children Protection and Welfare Act 2012
- iii. The Electronic Communications Act 2013
- iv. The Correctional Services Act of 2017
- v. The Public Order Act of 2017
- vi. The Refugees Act 15 of 2017
- vii. The Persons with Disability Act (PWDA) 2018
viii. The Police Service Act of 2018
ix. The Sexual Offences and Domestic Violence Act 2018
x. Election of Women Members to the House of Assembly Act 2018

Policies, Strategies and Action Plans

15. The Commission takes note with appreciation of the adoption, during the period under consideration, of strategies, policies or action plans relating to the promotion and the protection of human rights, *inter alia*:

i. The Housing Policy 2001
ii. The National Children’s Policy 2008
iii. The National Gender Policy 2010
iv. The Education Sector Policy of 2011 revised in 2018
v. The National Disability Policy in 2013
vi. The Eswatini Health Policy (2016 – 2026)
vii. Education and Training sector Policy 2018
viii. National Water policy 2018

16. Strategies and Action Plans

ii. The National Financial Inclusion Strategy (NFIS) 2017
iii. The National Strategy and Action Plan to End Violence (2017-2022)
iv. The Strategic Road Map 2018-2023
vi. The Eswatini Zero Hunger Strategic Review (EZHSR) 2019
vii. The National Development Plan (NDP) and the Post COVID-19 Economic Recovery Plan 2020
viii. The Sexual Offences and Domestic Violence Operational Regulations 2021
ix. The National Strategy on women's participation in politics and decision-making

17. The Commission takes note with appreciation of the establishment, during the period under consideration, of institutions dealing with the promotion and the protection of human rights, *inter alia*:

i. The Commission on Human Rights and Public Administration
ii. The Conciliation, Mediation and Arbitration Commission (CMAC)
iii. The Small Claims Courts
iv. The Commission on Independence of Elections and Boundaries
III. Factors restricting the enjoyment of human rights guaranteed in the African Charter

18. In the case of Eswatini, limitations in human and financial resources seriously affect the effective implementation and realization of State programs and policies in the context of human rights.

19. Despite the Government’s efforts to comply with the provisions of the African Charter and the Maputo Protocol, through relevant State programmes, policies, laws and institutional reforms, the limited financial, human and infrastructure resources at its disposal, inhibit its ability to ensure that all its citizens enjoy the rights and fundamental freedoms enshrined in ratified or domesticated human rights instruments.

20. The weight of sociological and cultural factors, entrenched patriarchic customary practices, as well as deeply rooted bias, particularly, against women, continue to act as barriers to the full enjoyment of women’s rights.

21. Also, as in many other parts of the world, Covid-19 Pandemic has had adverse effects on the enjoyment of human rights.

22. In addition to its direct effect on the public health and on the national economy, restrictions imposed in order to contain the Pandemic have hindered the full respect for human rights in the country.

23. Other specific circumstances have not facilitated the full respect for human rights in the country, such as measures taken by state operatives and public authorities to quell recent recurrent demonstrations and protests that the country has and continues to experience.

24. The high HIV Prevalence of 27% has remained the same, over the last 14 years. Although the infection rate has declined since 2010, to about 1.36%; and the death rate to less than 2%; HIV remain a challenge for the enjoyment of human rights by all, especially the right to health.

IV. Areas of concern
a. **The African Charter on Human and Peoples’ Rights**

25. While recognising the efforts made by the Government of Eswatini to promote and protect human rights, the Commission is, however, concerned about the following:

**Ratification and domestication of regional and international instruments**

26. Bearing in mind all ongoing efforts, and the fact that ratifications also requires the commitment of resources and capacity to effectively implement regional and international human rights instruments, the Commission is concerned that Eswatini has not ratified the following human rights instruments:

- In the African Union’s framework:
  - i. Protocol to the African Charter on the establishment of an African Court on Human and Peoples’ Rights⁴,
  - ii. Protocol to the African Charter on the Rights of Older Persons (in process),
  - iii. Protocol to the African Charter on the Rights of Persons with Disabilities in Africa (in process),
  - iv. African Charter on Democracy, Elections and Governance⁵,

- In United Nations and other frameworks:
  - i. Convention for the Protection of All Persons from Enforced Disappearance,
  - ii. International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families,
  - iii. Optional Protocol to the Convention against Torture,
  - iv. CCPR-OP1 - Optional Protocol to the International Covenant on Civil and Political Rights
  - v. CCPR-OP2-DP - Second Optional Protocol to the International Covenant on Civil and Political Rights aiming to the abolition of the death penalty
  - vi. Optional protocol to the International Covenant on Economic, Social and Cultural Rights,

**Legal frameworks, reforms and participation**

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⁴ Signed in 2004
⁵ Signed in 2008
27. The Commission is concerned about:
   
i. The failure and/or the undue delay to domesticate duly ratified human rights treaties and instruments, despite the establishment of a Law Reform Unit in the country in 2020.
ii. The delay in adopting several legislations relating to human rights, such as: Access to Information Bill, revising the Education Act 1981, the Human Rights and Public Administration draft Bill of 2020, the Marriages Bill 2021, and the Matrimonial property Bill 2021.

Cooperation with the Commission

28. The Commission is concerned with:
   
i. The Periodic Report doesn’t include a section on the implementation of the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention), ratified by Eswatini in October 2012.
ii. The lack of cooperation of the Government of Eswatini, in particular regarding the two press Statements issued by the Commission on the Human Rights' situation in Eswatini, respectively of 17 July and 25 October 2021.
iii. The lack of cooperation of the Government of Eswatini, in particular with regard to the letter of appeal sent to the latter on 22 October 2021.

Civil and political rights

Non-discrimination – Article 2

29. Despite the Government of Eswatini’s efforts as highlighted above, the Commission is concerned with the persistence of discrimination, especially against women, persons living with HIV/AIDS, persons with albinism. This includes discrimination based on sexual orientation and gender identity.

Right to Equality before the Law and Equal Protection of the Law - Article 3:
30. The Commission is concerned that:

i. Despite the fact that the Constitution of Eswatini guarantees the principles of the independence of the Judiciary and the doctrine of separation of powers, judicial independence is not guaranteed and still remains a challenge.

ii. The high costs of legal representation constitute a barrier to access to justice, particularly for vulnerable categories of the population.

Death penalty - Article 4: Right to Life

31. The Commission is concerned that:

i. The new Constitution of Eswatini has retained the death penalty as a sentence for the offences of murder and treason; even though on executions have been carried out from 1983 to date.

ii. Even though the Game Act is not consistent with Section 15 of the Constitution, it has not been reviewed or amended, to ensure compliance with the Constitutional guarantee and protection of the right to life.

Prohibition of torture and cruel, inhuman and degrading treatments - Article 5:

32. The Commission is concerned with:

i. The absence of concrete information or evidence regarding investigations of allegations of human rights violations, particularly the use of excessive force by security forces, in the context of the civil unrest of July 2021.

ii. The persistence and continued use of excessive force in the maintenance of law and order, and the absence of an Independent Police investigating body.

iii. The absence of appropriate legislation to define and criminalise the act and offence of torture.

Prisons, Conditions of Detention and Policing

33. The Commission is concerned with:

i. Overcrowding in prisons (Prison population is 126,62% of the detention facilities’ capacity, according to the figures provided by the Government of Eswatini).

ii. The fact that the country’s Criminal Code and Law 67 of 1938 maintains the criminalization of petty offenses, such as imprisonment for wandering the streets or being suspected of having abandoned some military unit of the King.

iii. The fact that this law maintains crimes with a very vague factual description that are disciplined by the discretion of the forces of public order and security.
Freedom of Expression, Access to Information and Freedom of Assembly - Article 9:

34. The Commission wishes to refer to the concerns regarding the right to freedom of expression in Eswatini, already expressed in 2014 through its resolution Res.286 (EXT.OS/XVI) 2014. The Commission is also concerned with:

   i. The absence of a legislative framework on the right to access to information.
   ii. Restrictions on the access to internet under certain circumstances.
   iii. Reported attacks on journalists.

Right to Participate in Government - Article 13:

35. The Commission is concerned with:

   i. The absence of a culture of political pluralism, including participation through opposition political parties; based on the fact that participation in political life in Eswatini is only on an individual basis, under the principle of “individual merit”.
   ii. Reports on the lack of independence and the limited resources of the Elections and Boundaries Commission.

Human Rights Defenders

36. The Commission is concerned with:

   i. Restrictions imposed on Civil Society Organizations and other Non-State Actors, particularly on the right to freedom of assembly and association.
   ii. The absence of impartial, independent and transparent investigation, regarding allegations of use of excessive force against human rights defenders, in the context of the July 2021 pro-democracy protests.

Economic, Social & Cultural Rights
**Right to Property - Article 14**

37. The Commission is concerned with:

i. The lack of an appropriate land policy or legal framework, to address the plight of persons confronted with forced evictions.

ii. The unresolved conflict between Customary Law and Roman Dutch Common Law, on the issue of forced evictions.

**Right to Work - Article 15**

38. The Commission is concerned with:

The existence of inequalities in terms of access to the labour market, the informal labour market and the high rate of unemployment.

**Right to Health - Article 16**

39. The Commission is concerned with:

i. The negative impact of the Covid-19 Pandemic on the right to health, especially on maternal and child health and on the access to contraceptives in rural areas.

ii. The limited national budget allocated to healthcare (12% in 2022).

**Right to Education - Article 17**

40. The Commission is concerned with:

i. The low enrolment rate, especially at secondary level (60 %), due essentially to the prohibitive cost of secondary school education, cultural stereotypes, early marriage and teenage pregnancies, the high HIV infection rates, and violence against children.

ii. The limited human resources and infrastructure dedicated to education.

**Right to Health HIV/AIDS - Article 16**

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41. The Commission is concerned:

i. That over the last 14 years, Eswatini has the highest HIV prevalence in the world, (at 26% among the sexually active population, with a 5% rate of recent infections).

ii. That women remain disproportionately affected by the disease, with a higher percentage of infection than men (32.5% for females and 20.4% for males aged 15 years and older).

iii. With the very high rate of female widows living with HIV, (74.6%), and incarcerated females, (60%).

iv. With the continuing stigma, discriminatory attitudes, and harassment, against persons with HIV/AIDS, despite awareness raising efforts.

Rights of vulnerable groups

Persons with Disabilities and Older persons - Article 18:

42. The Commission is concerned with:

i. The restricted accessibility to healthcare for people with disabilities and the limited capacity of communication with persons with disabilities.

ii. The limited human and financial resources and facilities dedicated to persons with disabilities and older persons.

Children - Article 18:

43. The Commission is concerned with:

i. The lack of effective implementation and application of laws and programs relating to children.

ii. The persistence of the use of corporal punishment in certain sectors, in particular at schools.

iii. The absence of a dedicated toll-free line to support and facilitate reporting of incidences of violence against children, especially the girl child.

Refugees, Asylum Seekers, Internally Displaced Persons and Migrants

44. The Commission is concerned with:

i. Limitations on refugees’ freedom of movement that may result from Article 15 of the Refugees Bill interpretation by public authorities.
ii. The fact that the Government of Eswatini has not ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

iii. The absence of a national legislation that protects people against statelessness.

Peoples’ rights

Right to Self-Determination - Article 20

45. While recognising that every State Party adopts its policies according to its interests, the Commission remains concerned with the fact that certain decisions of the Government of Eswatini have not been consistent with the provisions of Article 20(3) of the African Charter.

Extractive Industries - Article 21: Right to Free Disposal of Wealth and Natural Resources

46. The Commission is concerned with:

i. The absence of information regarding the adoption of a follow-up legislation on the Mines and Minerals Act (2013), as recommended during the Commission’s promotion mission in 2016.

ii. The absence of strong legal guarantees to ensure that receipts accruing from the minerals subsector are rationally utilised for the benefit of local populations.

iii. The fact that environmental and social impact assessment studies are conducted after the grant of mineral rights, and not before granting them.

iv. The lack of information regarding processes of prior consultation with communities affected by extractive industries

Human rights institutions

NHRI and other institutions - Art 26

47. The Commission is concerned with:

i. The non-compliance of the Commission on Human Rights and Public Administration with the Principles relating to the status of National Institutions for the promotion and protection of Human Rights (the Paris Principles).
ii. The non-compliance with the Commission’s Affiliate Status standards, by Eswatini’s Commission on Human Rights and Public Administration.

iii. The limited human and financial resources available to Commission on Human Rights and Public Administration to ensure effective implementation of its mandate as a NHRI.

iv. The fact that the Office of the Ombudsman, in the Kingdom of Eswatini, had not been operational since 1985.

b. The Maputo Protocol

- **Articles 2 and 3 - Equality and Non-Discrimination**

48. The Commission is concerned with:

i. The undue delays and/or failure to, review, amend, repeal existing legal framework, and to enact new laws, that have negative implications on the rights of women.

ii. The lack of adequate budget, human and the necessary institutional resources to facilitate effective implementation of the mandate of the Department of Gender and Family Issues.

iii. The persistence of pervasive structural disparities and deep-rooted harmful gender stereotypes, despite existing efforts to eliminate them.

- **Articles 4 and 5 - Violence against Women**

49. The Commission is concerned with:

i. The lack of effectiveness and implementation of the National Strategy and Action Plan to End Violence against women and the Sexual Offences and Domestic Violence Act of 2018.

ii. The fact that the Human Rights and Public Administration Commission is neither well resourced, nor well involved in combatting violence against women.

- **Articles 6 and 7 - Marriage / Separation, divorce and annulment of marriage**
50. The Commission is concerned with:

i. The problem of dual registration and deregistration of marriages, and delays in enacting the Marriage Bill, to address this and other relevant challenges.

ii. The fact that, the Constitution does not guarantee or afford married women the right to transmit nationality to their children.

iii. The fact that property rights of women married under customary law regimes are not adequately protected, in terms of property acquired during the subsistence of the marriage, and upon dissolution or separation, in accordance with Article 7.

iv. The fact that a widowed woman cannot administer the family's property and that this function is passed on to the first-born son.

- Article 8 - Access to Justice and Equal Protection before the Law

51. The Commission is concerned with:

i. The delay in enacting the Legal Aid Bill, which provides for the establishment of an office of the Registrar that may strengthen access to justice and protection before the Law for vulnerable women.

ii. The high cost of legal representation and the absence of a National Legal Aid system.

- Article 9- Participation in Political and Decision-Making Process

52. The Commission is concerned with:

i. The failure to attain the minimum prescribed representation and quota of women in Parliament.

ii. Continued exclusion and discrimination against rural women with regards to their effective participation in political and decision-making processes (Inkhundla and/or Tinkhundla System).

- Articles 10 and 11 -Right to peace; and protection of women in armed conflict

53. The Commission is concerned with the absence of information on the participation of women in peace-building educational programs and peace initiatives.

- Articles12, 13, 14, 15, 16 and 17 - Economic, Social and Cultural Rights
54. The Commission is concerned with:
   
i. The acute high rates of girls drop out from school, especially at secondary level, and their inability to make smooth progression in the education/school cycle.
   
ii. Challenges related to effective systems to ensure the in integration / reintegration of pregnant girls into the education system.

iii. The fact that women remain disproportionately affected by HIV / AIDS, with a higher percentage of infection than men (32.5% for females and 20.4% for males aged 15 years and older).

iv. Delays in enacting the Employment Bill.

v. Delays in enacting the Eswatini Nation Land Commercialisation Bill.

- **Articles 19 the Right to sustainable development**

55. The Commission is concerned with undue delays in enacting the Citizen Economic Empowerment Bill.

- **Articles 20-24 - Protection of specially protected groups of women**

56. The Commission is concerned about the very high rate of female widows living with HIV (74.6%), and incarcerated females (60%).

V. **Recommendations**

   a. **The African Charter on Human and Peoples’ Rights**

_Cooperation with the Commission_: 

57. Eswatini should:

   i. Include in its next periodic report a section on the implementation of the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention), ratified by the country in October 2012.

   ii. Engage and interact with the Commission on the implementation of the recommendations included in the two press Statements issued by the

iii. Engage and interact with the Commission with regard to its letter of appeal of the 22 October 2021.

*Ratification and domestication of regional and international instruments*

58. Eswatini should:

Conclude the signature and ratification process of the two Protocols to the African Charter on the Rights of Persons with Disabilities and on the Rights of Older Persons.

59. Eswatini should ratify the following instruments:

i. Protocol to the African Charter on the establishment of an African Court on Human and Peoples’ Rights,

ii. African Charter on Democracy, Elections and Governance,

iii. Protocol on the Statute of the African Court of Justice and Human Rights,

iv. Convention for the Protection of All Persons from Enforced Disappearance,

v. International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families,

vi. Optional Protocol to the Convention against Torture,

vii. CCPR-OP1 - Optional Protocol to the International Covenant on Civil and Political Rights

viii. CCPR-OP2-DP - Second Optional Protocol to the International Covenant on Civil and Political Rights aiming to the abolition of the death penalty

ix. Optional protocol to the International Covenant on Economic, Social and Cultural Rights,

x. 3rd Optional Protocol to the Convention on the Rights of the Child.

*Legal frameworks, reforms and participation*

60. Eswatini should:

i. Strengthen the domestication of duly ratified treaties pertaining to human rights, and accelerate the adoption of legislative instruments relating to human rights.

ii. Ensure the consistency of the customary law, recognised and enforced as part of the laws of Eswatini, with the country’s international commitments relating to human rights.

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6 Signed in 2004
7 Signed in 2008
Civil and political rights

Non-discrimination – Article 2

61. Eswatini should:

i. Carry out a comprehensive review of its legal and policy framework, and to repeal and amend all policies and laws that are discriminatory against women and other vulnerable persons.

ii. Redouble efforts to implement the HIV stigma index report 2019 recommendations, in order to combat the high level of HIV/AIDS-related stigma and discrimination.

Article 3: Right to Equality before the Law and Equal Protection of the Law

62. Eswatini should endeavor to: make efforts to:

i. Implement the constitutional guarantees of independence of the Judiciary.

ii. Address the issue of lengthy pre-trial detentions, particularly through alternative sentencing policies and non-custodial sentences.

iii. Establish a Legal Aid system to strengthen access to justice, particularly for vulnerable categories of the population.

iv. Increase Judiciary resources, especially human resources, for more efficiency and effective access to justice.

v. Ensure that the Judiciary remains impartial and independent, and to effectively play its role in the prevention of impunity.

vi. Ensure the effective prosecution of cases, to avoid impunity, especially in the context of prosecuting human rights violations committed during the civil unrest of July 2021.

vii. Ensure that the Judiciary plays its role in combatting impunity, especially in the context of adjudicating human rights violations committed during the civil unrest of July 2021.

Death penalty - Article 4: Right to Life

63. Eswatini should:
i. Maintain its moratorium *de facto* on the death penalty.
ii. Commute death sentences to life imprisonment.
iii. Take necessary measures towards the total abolition of the death penalty.
iv. Amend the Game Act to be consistent with Section 15 of the Constitution, in order to allow for the prosecution of all perpetrators of human rights violations and to better protect the right to life.

**Prohibition of torture and cruel, inhuman and degrading treatments - Article 5:**

64. Eswatini should:

i. Ensure that there are prompt, transparent, effective, independent and impartial investigations on allegations of human rights violations, particularly the use of excessive force by security forces, in the context of the civil unrest of July 2021.

ii. Strengthen the training on human rights provided to Law Enforcement Agencies, to prevent excessive use of force and ensure full respect for the rights to peaceful assembly.

iii. Establish an Independent Police investigating body to investigate allegations of human rights violations by security forces.

iv. Amend its legislation to provide a detailed definition of torture, and to expressly criminalise the act torture.

**Prisons, Conditions of Detention and Policing**

65. Eswatini should:

i. Address the issue of overcrowding in prisons, particularly through alternative sentencing policies and non-custodial sentences.

ii. Ensure that prisons’ infrastructure meets the minimum international standards on detention and address overcrowding by completing the construction of unfinished or new facilities.

iii. Ensure that those sections of the Criminal Code and Act 67 of 1938 that continue to criminalize petty offenses are amended, proceeding in accordance with the Principles on Decriminalization of Petty Offenses adopted by the Commission and which are in line with international rules.

**Freedom of Expression, Access to Information and Freedom of Assembly - Article 9:**

66. Eswatini should:
i. Accelerate the adoption process of the Access to Information Bill

ii. Ensure that limitations of the right to freedom of expression are reasonable and required to protect rights and freedoms of others, under the principle of justifiable limitations.

iii. Ensure that the media sector and media landscape include key elements like trade unions, code of ethics, regulatory bodies, etc.

iv. Ensure that advertising market is fair and not utilised by the Government against Medias not favourable to its policies.

v. Respect and guarantee access to internet, under all circumstances.

vi. Take concrete measures to enhance the protection of journalists from all kinds of attacks or harassment.

**Right to Participate in Government - Article 13:**

67. Eswatini should:

i. Engage a national dialogue to enhance the participation in political life either on an individual or a collective basis.

ii. Resource and enhance the capacities and the independence of the Elections and Boundaries Commission.

**Human Rights Defenders**

68. Eswatini should:

i. Address the restrictions imposed on Civil Society Organisations and other Non-State Actors.

ii. Conduct impartial, independent and transparent investigation regarding allegations of use of excessive force against human rights defenders in the context of July 2021 pro-democracy protests.

**Economic, Social & Cultural Rights**
**Right to Property - Article 14**

69. Eswatini should strengthen the legal framework to safeguard against forced evictions, and to guarantee the rights of farm dwellers and farm owners.

**Right to Work - Article 15**

70. Eswatini should:

   i. Accelerate the process of reviewing the Employment Act 1980, in order to guarantee equal treatment and equal payment for equal work without discrimination.
   
   ii. Make efforts to address the issue of unemployment, in particular through the existing governmental development policies.

**Right to Health - Article 16**

71. Eswatini should:

   i. Endeavour to contain the negative impact of the Covid-19 Pandemic on the right to health.
   
   ii. Make efforts to increase the national budget allocated to healthcare to the required 15%.
   
   iii. Continue to place a high priority on access to contraceptives for the youth in rural areas.

**Right to Education - Article 17**

72. Eswatini should:

   i. Address the challenge of low enrolment rate, especially at secondary level, by addressing its root reasons: *inter alia*: the high cost of secondary school education, the low demand for education by learners, the early marriage and teenage pregnancies, the high HIV infection rates and violence against children in and around schools.
   
   ii. Continue efforts to raise awareness about early and teenage pregnancy and its adverse effects on school dropout.
   
   iii. Strengthen efforts to allocate adequate financial and human resources and to expand or construct more schools or classrooms to accommodate learners.

**Right to Health - HIV/AIDS - Article 16**
73. Eswatini should:
   i. Strengthen its efforts to contain HIV/AIDS as a matter of priority, and allocate adequate human and financial resources for this purpose.
   ii. Take concrete measures to pay particular attention to women, including widows and incarcerated women, in designing and implementing policies and strategies against HIV/AIDS.
   iii. Make efforts to combat stigma, discriminatory attitudes and harassment against persons with HIV/AIDS.

Rights of vulnerable groups

Persons with Disabilities and Older persons - Article 18:

74. Eswatini should:
   i. Improve access to healthcare facilities for people with disabilities and older persons.
   ii. Provide adequate resources, and built the necessary capacity to facilitate effective communication with people with disabilities and older persons.
   iii. Continue to support accessibility for persons with disabilities, by providing adequate resources.
   iv. Allocate adequate human and financial resources, and facilities to persons with disabilities and older persons.

Children - Article 18:

75. Eswatini should:
   i. Prohibit the use of corporal punishment in all sectors, especially in schools.
   ii. Ensure an effective implementation of the Children Protection and Welfare Act 2012.
   iii. Reactivate the National Child Coordination Unit for better coordination of programmes relating to children.
   iv. Finalise the establishment of the dedicate Child Line (116).

Refugees, Asylum Seekers, Internally Displaced Persons and Migrants
76. Eswatini should:
   i. Ensure that the interpretation and application of Article 15 of the Refugees Bill, by public authorities, does not result in limitations on refugees’ freedom of movement.
   ii. Consider the ratification of the International Convention on the Protection of the Rights of all Migrant Workers and Members of Their Families.
   iii. Adopt specific national legislation to protect people against statelessness.

Peoples’ rights

Right to Self-Determination - Article 20

77. Eswatini should take full account of the relevant provisions of the African Charter, in particular Article 20(3), in designing and implementing its foreign policy.

Extractive Industries - Article 21: Right to Free Disposal of Wealth and Natural Resources

78. Eswatini should:
   i. Adopt the follow-up legislation on the Mines and Minerals Act (2013), as recommended by the Commissions promotion mission of 2016.
   ii. Ensure that incomes accruing from the minerals subsector are rationally utilised for the benefit of local populations.
   iii. Conduct environmental and social impact assessment studies prior to granting mineral rights, (as opposed to the prevalent practice conducting them after the mineral right is granted).
   iv. Strengthen prior consultation processes with communities affected by extractive industries.

Human rights institutions

NHRI and other institutions - Art 26

79. Eswatini should:
   i. Pursue efforts to fully operationalise and strengthen the Commission on Human Rights and Public Administration.
ii. Allocate adequate human and financial resources to the Commission on Human Rights and Public Administration.

iii. Ensure compliance of the Commission on Human Rights and Public Administration with the Paris Principles, and the Commission’s Affiliate Standards.

iv. Reactivate the institution of Ombudsman, which had not been operational since 1985.

b. The Maputo Protocol

- Articles 2 and 3 - Equality and Non-Discrimination

80. Eswatini should:

i. Redouble efforts to accelerate the review, amendment, and repeal of laws that are discriminatory against women, and enacting new laws to give effect to commitments under the Maputo Protocol and other women’s rights instruments.

ii. Pursue its efforts in order to allocate adequate budget, human and other resources for the Department of Gender and Family Issues.

iii. Strengthen its efforts to combat deep-rooted harmful gender stereotypes.

- Articles 4 and 5 - Violence against Women

81. Eswatini should:

i. Ensure the full implementation of the National Strategy and Action Plan to End Violence against women and the Sexual Offences and Domestic Violence Act of 2018.

ii. Allocate adequate resources to the Human Rights and Public Administration Commission to enable it fulfill its mandate to combat violence against women.

- Articles 6 and 7: Marriage / Separation, divorce and annulment of marriage

82. Eswatini should:
i. Accelerate the enactment and the implementation of Marriage Bill, particularly to deal with the problem of dual registration and deregistration of marriages.
ii. Eliminate all existing restrictions and allow married women to transmit nationality to their children.
iii. Take effective measures to adequately protect the property rights of women married under customary law regimes, in line with the Maputo Protocol.
iv. Promote and protect the right of widowed women to administer their family's assets.

• Article 8 - Access to Justice and Equal Protection before the Law

83. Eswatini should accelerate the enactment of the Legal Aid Bill and ensure that its implementation will strengthen access to justice and protection before the Law for vulnerable women.

• Article 9 - Participation in Political and Decision-Making Process

84. Eswatini should:
   i. Ensure the full implementation of the Election of Women Members to the House of Assembly Act 2018 and the National Strategy on women's participation in politics and decision-making.
   ii. Give greater attention to promoting the participation of rural women in political and decision-making processes.
   iii. Ensure that Inkhundla and the Tinkhundla System are extirpated from the country's legal framework, allowing Women to participate in public life in their community and in the country.

• Articles 10 and 11 - Right to Peace; and protection of women in armed conflict

85. Eswatini should strengthen the participation of women in peace-building educational programs and peace initiatives in line with the Maputo Protocol and United Nations Resolution 1325.

• Articles 12, 13, 14, 15, 16 and 17 - Economic, Social and Cultural Rights

86. Eswatini should:
i. Pay particular attention to the retention of girls in school, by implementing the 2019 Strategy to address the dropout and class repetition.

ii. Accelerate the adoption and the implementation of the Policy and Guidelines on the pregnancy prevention and management 2021, in order to enhance the integration/reintegration of pregnant learners into the education system.

iii. Pay special attention to women in all policies and initiatives aimed at combatting HIV/AIDS.

iv. Ensure that women’s specific rights are taken into account in the framework of the establishment and the implementation of the National Social Security Policy and the Unemployment Benefit Fund.

v. Strengthen the right of women to have access to land and sources of food, in particular, through the enactment and the implementation of the Eswatini Nation Land Commercialisation Bill.

- **Articles 19 the Right to Sustainable Development**

87. Eswatini should strengthen the empowerment of women, in particular through the enactment and the implementation of the Citizen Economic Empowerment Bill.

- **Articles 20-24 - Protection of Specially Protected Groups of Women**

88. Eswatini should pay special attention to:

i. The plight of widows, incarcerated women, women headed households, elderly women and women in distress, and adopt a national social protection policies to protect their interest.

ii. Widows and incarcerated women in policies and initiatives aimed at combatting HIV/AIDS.

The Commission requests the Government of the Kingdom of Eswatini to submit its next periodic report within two years from the notification date of these Concluding Observations.

Adopted by the African Commission on Human and Peoples’ Rights at its 70th Ordinary Session, held from 23 February – to 09 March 2022 in Banjul, Republic of The Gambia
Annex


ACHPR 69th Ordinary Session: 15 November – 05 December 2021.

List of the Kingdom of Eswatini’s delegation to the review
Monday 24 November 2021

- Honourable Pholile Shakantu, Minister of Justice and Constitutional Affairs
- Ms. Gugu Nsibande, Under Secretary - Ministry of Justice and Constitutional Affairs
- Mr. Mndeni Vilakati, Assistant Attorney General - Attorney General Office
- Dr. Ntombenhle Dlamini, Director of Education - Ministry of Education and Training
- Mr. Robert Bhiyela, Chief Mining Engines - Ministry of Natural Resources and Energy
- Mr. Vuyile Dlamini, Legal Advisor - Ministry of Foreign Affairs and International Cooperation
- Mrs. Lungile Magagula -Magongo, Legal Advisor - Elections and Boundaries Commission
- Mr. Tholi Vilakati, Legal Advisor - Ministry of Labour and Social Security
- Mrs. Bonsile Nhlabatsi, Program Manager under Sexual Reproductive Unit - Ministry of Health
- Ms. Nonhlanhla Shongwe, Senior Economist Ministry of Economic Planning and Development
- Mrs. Nozipho Nzuza-Motsa, Gender Coordinating Officer, Ministry of Health
- Mr. Mpendulo Masuku, Monitoring and Evaluation Analyst (Gender) - Deputy Prime Ministers Office
- Ms. Nomzamo Dlamini, Gender Analyst - Deputy Prime Minister's Office
- Ms. Nozipho Mazibuko, State Reporting Coordinator - Ministry of Justice and Constitutional Affair
- Mr. Mlondi Nsibandze, Senior State Reporting Officer - Ministry of Justice and Constitutional Affairs