



**International Covenant on
Civil and Political Rights**

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Human Rights Committee

**Concluding observations on Swaziland in the absence
of a report**

Addendum

**Information received from Eswatini* on follow-up
to the concluding observations****

[Date received: 31 July 2019]

* Since 19 April 2018, “Eswatini” has replaced “Swaziland” as the short name used in the United Nations.

** The present document is being issued without formal editing.



1. Pursuant to the 3382nd and 3383rd sessions of the Human Rights Committee in July 2017, wherein the Committee considered the situation of civil and political rights under the International Covenant on Civil & Political Rights, the Kingdom of Eswatini was requested to provide, within one year of the adoption of the Concluding Observations, information on the implementation of the recommendations made by the Committee in paragraphs 27 (Violence against women), 45 (Freedom of expression, assembly and association) and 53 (Participation in public affairs and corruption). The Kingdom of Eswatini herein wishes to respond as follows.

A. Paragraph 27 – Violence against women

(a) Prompt adoption of legislation to effectively criminalize and combat sexual offences and domestic violence

2. The Government of the Kingdom of Eswatini enacted the Sexual offences and Domestic Violence Act No.15 of 2018 which makes provision for sexual offences and domestic violence, prevention and the protection of all persons from harm from other sexual acts and acts of domestic violence and also provide for matters incidental thereto.

(b) Training for relevant actors in the police, public prosecution and judiciary sexual and gender-based violence and on evidence-gathering for such cases

3. The relevant stakeholders have undergone various trainings and the process is still on-going. Recently prosecutors and police undertook trainings on Case Management, Witness Protection and on the Sexual Offences and Domestic Violence Act, 2018.

4. The Act outlines their duties pertaining to sexual offences and domestic violence cases. Since the Act came into force in August 2018 plans to further carry out more trainings are underway, however financial constraints may impede the effectiveness of rolling out this activity. Thus far a total 88 officials have been trained, and these include 74 police officers and 14 prosecutors from the various regions in the country. There was also a high level sensitization for the executive of the police service.

5. The Royal Eswatini Police Service (REPS) Training Academy developed in 2009 a module for Domestic Violence, Child Protection and Sexual Offences that forms part of the courses taken by Police trainees and Police in the service. The REPS has further issued national instruction/policy that serves as a guide to police officers when dealing with children issues. Furthermore, through assistance of development partners, inter alia; University of Eswatini, UNICEF, Regional Psychosocial Support Initiative (REPSSI) the police officers have undertaken a two year long part time Certificate programme on psychosocial support to provide comprehensive and quality services to victims of abuse.

(c) Strengthen its efforts to raise the awareness of the wider public to the adverse impact of sexual and gender-based violence and encourage reporting, inter alia by systematically informing women and children of their rights and of the existing legal avenues through which they can receive protection

6. Low reporting remains a challenge, however due to continuous awareness raising campaigns on gender-based violence, most people are confident to reporting cases of Gender Based Violence (GBV). The Deputy Prime Minister's Office – Department of Gender and Family Issues has expanded its outreach through developing a live-phone-in programme on Eswatini TV, which airs every Thursday evening. The programme unpacks a number of social issues including all forms of violence; legislation on women and children's rights (National Constitution 2005, Children's Protection and Welfare Act 2012, Sexual Offences and Domestic Violence Act, Policies in place). The Programme is aimed at reaching out masses of the Eswatini populace on social issues affecting them as compared to the use of workshops which only accommodates few participants/ beneficiaries.

- (d) **Ensure that all cases of sexual and gender-based violence are thoroughly investigated, that perpetrators are prosecuted and, if convicted, are punished with appropriate sanctions, and that victims receive full reparation**

7. Due to the prevalence of violence against women and children in Eswatini, the Royal Eswatini Police Service (REPS) established a unit specifically dealing with cases of Domestic Violence, Child Protection and Sexual Offences (DCS). The DCS unit is based in all the 24 police stations around the country, with a representation of four specialized personnel in each police station. Further, the office of the Directorate of Public Prosecutions also has in place a unit specializing on prosecution and/or dealing with cases of Sexual Offences, Domestic Violence and Gender Based Violence to ensure that cases of such nature are thoroughly investigated and perpetrators are prosecuted and convicted, and punished under the SODV Act and kindred laws.

- (e) **Ensure that victims have access to effective remedies and means of protection, including to an adequate number of psychological and educational centres, and that other support services, such as accommodation or shelters, are available in all parts of the country**

8. Various stakeholders within government and civil society organizations provide counselling services to survivors of gender based violence. The Deputy Prime Minister's Office- Department of Social Welfare deployed Clinical Social Workers in hospital, in all the regions to provide counselling services to survivors as well. The Government of Eswatini has also established One Stop Centres as a strategy to deal with secondary trauma, services provided under this platform includes Police services, Social services, Medical and Psychological services. Plans to roll out the One Stop Centres in all the four regions of the country are at an advanced stage.

9. Children who have survived violence and those who require protection are placed in children's home or at the halfway house. However this only applies to children. Women survivors are accommodated by relatives due to the lack of safe houses.

B. Paragraph 45 – freedom of expression, assembly and association

The State party should prevent and redress attacks on human rights defenders and other social activists and promptly adopt legislation to ensure that any restriction on the exercise of freedom of expression, assembly and association complies with the strict requirements in the Covenant. The State party should take all measures necessary to protect the rights to freedom of expression, association and peaceful assembly and ensure that police officials, judges and prosecutors receive adequate training regarding such protection.

10. The country believes that it adopted sufficient legislation to ensure that any restriction on the exercise of the right to freedom of expression, association and peaceful assembly by labour formations (Trade Unions, Staff Associations and Federations) complies with the strict requirements of the Covenant.

11. In this regard, reference is made to Section 40 of the Industrial Relations Act, No. 1 of 2000 (as amended) which guarantees the right of any Organization registered with the Office of the Commissioner of Labour to embark upon a protest action in pursuit of any socio-economic complaint against the State or any State Ministry or Department. This legislation was adopted to domesticate ILO Convention No. 87 (Freedom of Association and Protection of the Right to Organize (1948) (ratified by the country on 26th April, 1978) as well as the ILO Convention No. 98 (The Right to Organize and Collective Bargaining Convention) (1949) (also ratified by the Country on 26th April, 1978).

12. By way of demonstration, Section 4 of the Industrial Relations Act provides that the Purpose of the Act, amongst others, is to:

- (i) Promote fairness and equity in labour relations;
- (ii) Promote freedom of association and expression in labour relations;

- (iii) Protect the right to collective bargaining;
- (iv) Ensure adherence to international labour standards.

13. The Industrial Relations Act has been supplemented by the promulgation of the Code of Practice for Industrial and Protest Actions adopted in 2015 and published through Legal Notice No. 202 of 2015. This Code was drafted under technical assistance received from the ILO and subsequent to comprehensive consultations with the tripartite constituent partners as well as tripartite plus, including Municipal Councils, The Royal Eswatini Police Service, The Correctional Services Department, the Conciliation, Mediation and Arbitration Commission (CMAC) and Humanitarian Organizations, amongst others.

14. The main objectives of the Code are contained in Article 3(2) and these are to:

- (i) Provide a framework for the orderly and peaceful conduct and management of protest and industrial actions;
- (ii) Regulate the conduct of the Parties during protest and industrial actions; and
- (iii) Promote public order, safety and industrial harmony to ensure that the right to protest and industrial action is respected.

15. Through technical assistance received from ILO, several workshops were held to capacitate numerous key stakeholders on the purposes and spirit of the Code. These capacity building sessions are still on-going. Stakeholders who have already benefitted from these advocacy workshops include leadership of the labour formations (that is, both workers' and employers' federations in the country), Municipal Councils, Police and Correctional Services Staff, Humanitarian Organizations (Red-Cross), Politicians (that is, Portfolio Committee Members for the House of Assembly and House of Senate), amongst others. Judges and Prosecutors will be considered for inclusion in due course in these capacity building workshops on the Code.

16. Most recently, the country also adopted the Public Order Act, No. 12 of 2017 which is supplemented by a Code of Practice on Gatherings Notice No. 201 of 2017, respectively. The adoption of this legislation was pertinent for the country in an effort to ensure that any restriction on the exercise of the right to freedom of expression, association and peaceful assembly by any person or group of persons (including labour formations), complies with the strict requirements of the Covenant. This is because for several years, the 1963 Public Order Act was impugned for its apparent infringement on the exercise of the right to association, expression and assembly. The 1963 Act has since been repealed by the recently adopted legislation regulating gatherings and events held in a public space, including protest and industrial actions.

17. In promulgating this law, the country received technical assistance from the ILO in preparation of the draft legislation. The ILO commented on the draft legislation together with civil society and other development partners of the country, something which rendered the final draft legislation to be a product of extensively wide consultations and input. The Code of Practice on Gatherings has since been made part of the advocacy workshops in line with the Code of Practice for Industrial and Protest Actions.

18. During the 2018 regular reporting cycle in terms of Article 22 of the ILO Constitution to the ILO Committee of Experts on Application of Conventions and Recommendations (CEACR), the country has been reporting about the status of implementation of the two (2) fundamental or core Conventions of the International Labour Organization mentioned herein above, being Conventions 87 and 98, respectively. When filling its Article 22 reports for Conventions 87 and 98 in October, 2018 and under separate cover, the country comprehensively dealt with the allegations of violations of Union's rights to peaceful assembly and protest action which are mentioned in the CSO assessment. Realizing that both the Human Rights Committee and the International Labour Organization (ILO) are specialized agencies of the United Nations, albeit under separate and distinct mandates, it is hoped that this Committee can have access to the Reports which have been presented by the country to the ILO Committee of Experts on Application of Conventions and Recommendations (CEACR).

19. The Police Act No. 116 of 2018 ensures that Human Rights principles are observed by Police officers. The Police Act incorporates law enforcement objectives from section 57 of the Constitution of the Kingdom of Eswatini 2005, as guiding principles and values of the organisation in section 10. The Police Act makes it a disciplinary offence actions of police officers that violates human rights.

20. To ensure that members of the Police Service adhere to human rights principles, Police recruits and officers are taught module on human rights. Furthermore, the Directorate of Legal Affairs in the Police Service ensures that lectures are conducted periodically to all Police officers in their respective Police Stations on the protection of human rights.

C. Paragraph 53 – Participation in public affairs & corruption

(a) Fostering a culture of political pluralism, ensuring freedom of genuine and pluralistic political debate, and allowing the registration of opposition political parties, including to contest elections, field candidates and participate in the formation of government

21. The State Party notes the recommendation and states that there is no hostility to the registration of political parties as indicated in the CSO assessment of the implementation of follow up recommendations. In addition whilst the assessment alleges that the King personally appoints the Prime Minister, the Cabinet and two-thirds of members of the Senate, the assessment however neglects to mention that Cabinet members are drawn from both the elected members (who for all intent and purpose carry the mandate of the people in their constituencies) as well as the appointed members. This is in accordance with Part VI&VII of the Constitution Act, 2005.

22. In this regard, the allegation that the King maintains far more power than the electorate, making it difficult for the electorate to hold parliament accountable is not true. In actual fact, the King consults the relevant bodies in respect of such appointments. By way of example during the appointment of the Prime Minister in October 2018, the King stretched his consultations to the nation assembled at Sibaya/Cattle Byre.

23. On another note, the assessment further neglects to mention that the King appoints less than a fifth of the members of the House of Assembly, whilst the rest are elected by the people and the House of Assembly respectively.

24. It is true that the system of government is entrenched in Section 79 of the Constitution which emphasis individual merit as a criteria for participation in election. This is particularly more so because Eswatini's electoral process is constituency based arranged under chiefdoms/polling divisions, *Tinkhundla* areas as well as regions. This essentially means that people are only allowed to vote through their chiefdoms/polling divisions in their respective *Tikhundla* areas and regions which form their constituencies.

25. It is also true that political party candidates are able to contest elections in their personal capacities, however, it is speculative to allege that there are limited checks and balances of the executive as well as heightened possibilities that decisions relating to the need to improve human rights are taken with little debate. By way of example, the during the enactment of the Sexual Offences and Domestic Violence Act, where it was apparent that parliament was inclined to strike out the four contentious clauses namely abduction, incest, flashing and unlawful stalking, organisations and the general electorate applied the necessary pressure for a reconsideration which resulted in the four clauses being included in the Act. This is one example that parliament is accountable to the electorate.

26. Whilst it is true that the country has not yet ratified the African Charter on Democracy, Elections and Governance, the umbrella statement that the SADC Elections protocol has not been adhered to is not a true reflection, if anything, it lacks particularity and the specific areas where the country has complied and/or not complied.

27. The issue on the appointment by the King is a non-issue based on the fact that Section 95 (1) (b) of the Constitution gives the King discretion after consultation with the relevant bodies to appoint ten members which he may deem appropriate.

28. In respect of *Shabangu and Others V Elections and Boundaries Commission and Others Case No: 805/2018 SZHC*, it is true that the High Court of Eswatini dismissed the application, challenging the Government to allow candidates to campaign as members of political parties, on the basis that it was fatally defective. There were a number of reasons namely, the 1st Applicant failed to make any prayers, whilst 2nd Applicant only made prayers under the Interim Relief but failed to prayer for an order under Final Relief, the 3rd Applicant made prayers under both the interim and final relief but had no founding or properly drafted affidavits for his case.

29. It is important to state that before the court dismissed the Application, the Applicants were alerted of the defects and the court was inclined to afford them time to amend their papers but they opted to proceed on the basis of the defective papers, leaving the court with no option but to dismiss the application.

30. On appeal still proceeding on the basis of the defective papers, the Applicants sought to argue issues which should have been argued in the court of first instance which fell outside the mandate of the Supreme Court as the final court of appeal in terms of Section 146 (1) of the Constitution.

31. In this regard, because an appeal shall lie to the Supreme Court from a judgment, decree or order of the High court, the question before the Supreme Court was whether or not the court *a quo* erred in dismissing the application on the basis of being defective and not to argue issues which were not argued in the court of first instance. Therefore the impression that the court dismissed this application out of hostility for political parties is further from the truth.

(b) Undertaking a constitutional reform process with the objective of devolving power to democratically elected branches of government, and guaranteeing the right of every citizen to take part in the conduct of public affairs and have access to public service on general terms of equality

32. The State Party notes the recommendation and further notes paragraph 2 of the General Comment no: 25 on the right to participate in public affairs, voting rights and the rights of equal access to public service (Art. 25). Specifically that “*the rights under article 25 are related to, but distinct from, the right of peoples to self-determination. By virtue of the rights covered by article 1 (1), peoples have the right to freely determine their political status and to enjoy the right to choose the form of their constitution or government. Article 25 deals with the right of individuals to participate in those processes which constitute the conduct of public affairs. Those rights, as individual rights, can give rise to claims under the first Optional Protocol*”.

33. In this regard, it is common cause that the rights under Article 25 are individual rights but however are related to but distinct from the right to self-determination. To this end, undertaking a constitutional reform process cannot be taken lightly, it is a matter that only the citizens of Eswatini can deliberate and decide on, which must also satisfy the requirements outlined in terms of Sections 245–247 of the Constitution, which expressly provides for the mode of amendment, anything short of that would be unconstitutional.

(c) Guaranteeing free and fair elections

34. The State Party submits that elections conducted in terms of the Constitution 2005 and relevant Electoral laws are free and fair. It must be noted that the majority of the country’s citizens made a deliberate choice of the present system of governance and electoral process during the consultation processes of the current constitution and electoral laws.

(d) Ensuring the independence and effectiveness of the bodies in charge of elections and anti-corruption

35. The State Party further notes this recommendation and states that whilst independence of these bodies is guaranteed in terms of the Constitution and the Elections and Boundaries Act 3/2013 and the Prevention of Corruption Act 3/2006 respectively, this independence translates to operational independence and not financial independence. Therefore the State Party acknowledges that this as an area of improvement, hence the amendment of the Prevention of Corruption Act is on the cards.
