



REFERENCE: gh/fup-130

26 November 2020

Excellency,

In my capacity as Special Rapporteur for Follow-up to Concluding Observations of the Human Rights Committee, I have the honour to refer to the follow-up to the recommendations contained in paragraphs 27, 45 and 53 of the concluding observations on the report submitted by Eswatini ([CCPR/C/SWZ/CO/1](#)), adopted by the Committee at its 120<sup>th</sup> session in July 2017.

On 31 July 2019, the Committee received the reply of the State party. At its 130th session (12 October 2020 to 06 November 2020), the Committee evaluated this information. The assessment of the Committee and the additional information requested from the State party are reflected in the Addendum 1 (see [CCPR/C/130/2/Add.1](#)) to the Report on follow-up to concluding observations (see [CCPR/C/130/2](#)). I hereby include a copy of the Addendum 1 (advance unedited version).

The Committee considered that the recommendations selected for the follow-up procedure have not been fully implemented and decided to request additional information on their implementation. Given that the State party accepted the simplified reporting procedure (LOIPR), the requests for additional information will be included, as appropriate, in the list of issues prior to submission of the second periodic report of the State party.

The Committee looks forward to pursuing its constructive dialogue with the State party on the implementation of the Covenant.

Please accept, Excellency, the assurances of my highest consideration.

Marcia V.J. KRAN

Special Rapporteur for Follow-up to Concluding Observations  
Human Rights Committee

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## Report on follow-up to the concluding observations of the Human Rights Committee\*

### Addendum

### Evaluation of the information on follow-up to the concluding observations on Eswatini

<i>Concluding observations (119<sup>th</sup> session):</i>	<a href="#">CCPR/C/SWZ/CO/1</a> , 23 August 2017
<i>Follow-up paragraphs:</i>	27, 45 and 53
<i>Follow-up reply:</i>	<a href="#">CCPR/C/SWZ/CO/1/Add.1</a> , 31 July 2019
<i>Information from non-governmental organizations</i>	<a href="#">Cooperation for the Development of Emerging Countries (COSPE)</a> , <a href="#">Southern Africa Litigation Centre (SALC)</a> and <a href="#">Foundation of Socio Economic Justice (FSEJ)</a> , with the support of the <a href="#">Centre for Civil and Political Rights (CCPR Centre)</a>
<i>Committee's evaluation:</i>	Additional information required on paragraphs 27[B][C], 45[B] and 53[C]

#### Violence against women

##### 27. The State party should:

- (a) Promptly adopt legislation to effectively criminalize and combat sexual offences and domestic violence;
- (b) Provide relevant actors in the police, public prosecution and judiciary with training on sexual and gender-based violence and on evidence-gathering for such cases;
- (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;
- (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;
- (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.

#### Summary of State party's reply

- (a) In 2018, the Sexual Offences and Domestic Violence Act was enacted. The Act provides protection for all persons from harm from sexual acts and acts of domestic violence. It also provides for matters incidental to them.
- (b) Relevant stakeholders have undergone training and the process is still ongoing. A total of 88 officials have been trained, including 74 police officers and 14 prosecutors from the various regions in the country.

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\* Adopted by the Committee at its 130<sup>th</sup> session (12 October to 6 November 2020).



(c) Low reporting remains a challenge. The Department of Gender and Family Issues of the Deputy Prime Minister's Office has expanded its outreach by developing a live phone-in programme on Eswatini TV.

(d) The Royal Eswatini Police Service established a unit dealing specifically with sexual offences and cases of domestic violence and child protection. The office of the Director of Public Prosecutions also has in place a unit specializing in prosecution of and/or dealing with sexual Offences and cases of domestic and of gender-based violence to ensure that they are thoroughly investigated and that perpetrators are prosecuted and convicted, and punished under the Act and related laws.

(e) Stakeholders within government and civil society organizations provide counselling services to survivors of gender-based violence. Plans to roll out one-stop centres in all four regions of the country are at an advanced stage.

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

*Information from Cooperation for the Development of Emerging Countries (COSPE), the Southern Africa Litigation Centre (SALC) and the Foundation of Socio Economic Justice (FSEJ), with the support of the Centre for Civil and Political Rights (CCPR Centre)*

(a) The Sexual Offence and Domestic Violence Act has brought important changes, including the broadening of the definition of rape to make it gender-neutral, and broadening the definition of "sexual penetration".

A number of concerns have been raised. Stalking (part II.10) has been renamed "unlawful stalking" and excludes cases of "acceptable courting"; abduction (part V. 42) is limited to children, thus excluding adult women; and the Act fails to explicitly mention marital rape among unlawful acts (part II.3), and fails to provide a definition of "domestic violence" (part XII), although section 151 states that marital relationships do not constitute a defence to any of the offences in the Act.

There are also concerns regarding the coexistence of the Act alongside traditional laws and customs, which might prevent women from filing a report if they have been raped by their husband, abducted or subjected to stalking with the intention to marry.

(b) There is a need for additional training to reach all police officers and ongoing training for judicial officers, medical services personnel and social welfare officers.

(c) Awareness-raising campaigns on the impact of sexual and gender-based violence have been occasionally promoted by the State through radio and television, and they have been conducted by civil society to the extent of their capacity. Reporting of gender-based violence remains inadequate.

(d) The Act represents a legislative framework that, if correctly enforced, will allow investigation, prosecution and appropriate punishment of cases of gender-based violence.

There is a need for specialized courts with relevant experience and training as indicated in the Act. Moreover, the Act does not provide positive changes for some discriminated and vulnerable groups in their access to justice. Although sex work itself is not criminalized, activities relating to sex work are criminalized; sex workers have limited access to justice when they have been physically or sexually abused. The continued criminalization of consensual relations between same-sex partners ("sodomy") under common law could risk causing persons convicted for consensual sex to be listed in the new national register for sexual offenders.

(e) Protection orders are included in the Act. However, there are no provisions in the Act for other remedies, reparation measures or support services.



### Committee's evaluation

**[B]:** (a), (b) and (c): The Committee welcomes the enactment of the Sexual Offences and Domestic Violence Act (No.15) in 2018. It requests further information on (i) the coverage of the crime of “unlawful stalking” (part II.10) and the and the exception of “acceptable courting”; (ii) the reason for limiting the crime of abduction only to children, excluding adult women; (iii) whether marital rape is considered an unlawful act in the legislation; and (iv) the definition of “domestic violence” (part XII) and whether it complies with the Covenant.

The Committee welcomes the State party's efforts to conduct training sessions. It requests however more information on the demonstrated impact of these sessions and additional planned initiatives to train police officers, judicial officers, medical services personnel and social welfare officers.

The Committee welcomes the continuous awareness-raising campaigns on gender-based violence. It requires information on (i) the live-phone programme on Eswatini TV and how confidentiality is ensured to victims of gender-based violence; (ii) the accessibility and impact of such a campaign; and (iii) statistics from the past three years on the number of complaints received related to sexual and gender-based violence.

**[C]** (d) and (e): The Committee requires information on the dates of the establishment of the unit for sexual offences, cases of domestic violence and child protection in the Royal Eswatini Police Service and the specialized unit on protection and in charge of sexual offences and cases of domestic and gender-based violence in the office of the Director of Public Prosecutions. The Committee also requires statistical information on the number of investigations, prosecutions and convictions of cases of sexual and gender-based violence, the sanctions imposed and the reparations granted to victims.

The Committee requires information on the measures taken by the State after the Committee adopted its concluding observations to ensure that all victims have access to effective remedies and means of protection. In this regard, the Committee requires updated information on plans to establish one-stop centres in the four regions of the country and the measures taken to ensure that women victims of violence are provided with support services, including with accommodation and shelters in all parts of the country.

### Freedom of expression, assembly and association

**45. 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.**

### Summary of State party's reply

The State party has adopted legislation that complies with the strict requirements of the Covenant. It has adopted Public Order Act No. 12 (2017), which is supplemented by the Code of Practice on Gatherings Notice No. 201 (2017). In promulgating this law, the State party received technical assistance from the International Labour Organization (ILO) to prepare the draft legislation.

Through the technical assistance received from ILO, several workshops were held to inform numerous key stakeholders on the purposes and spirit of the Code of Practice for Industrial and Protest Actions. These capacity-building sessions are still ongoing.

The Police Act No. 116 (2018) ensures that the principles of human rights are observed by police officers. Under the Act, actions by police officers that violate human rights constitute a disciplinary offence. Police recruits and officers are instructed through modules on human rights.



*Information from Cooperation for the Development of Emerging Countries (COSPE), the Southern Africa Litigation Centre (SALC) and the Foundation of Socio Economic Justice (FSEJ), with the support of the Centre for Civil and Political Rights (CCPR Centre)*

The organizations indicated a number of examples of limitations to the rights of assembly, association and freedom of expression of human rights defenders applied since the adoption by the Committee of its concluding observations.

Although the Public Order Act has been commended as a positive step towards ensuring the rights to freedom of expression, association and assembly, it is being implemented with cumbersome requirements and restrictions. The police sometimes take measures, beyond the provisions in the Act, that limit the freedom of assembly.

The Public Service Act No. 37 (2018), which makes it a disciplinary offence to intimidate or use violence or unnecessary force against persons with whom officers may be in contact in the execution of their duty, represents a positive step forward.

The Broadcasting Guidelines (2017) were approved by Parliament in 2018. It was expected that this would lead to the issuing of broadcasting licenses by the end of 2018. However, the fees required for the application and registration of radios might make it difficult for community radio stations to apply.

A positive development in the past year has been the launch of a second mobile network operator, Swazi Mobile, thus expanding the media space. The ownership and control of the only major radio and television stations are, however, still very strict.

#### **Committee's evaluation**

**[B]:** The Committee welcomes the adoption of the Public Order Act No. 12 (2017) and the Code of Practice on Gatherings Notice No. 201 (2017). It requests, however, information on the application of such legislation and that the State comment on information received that additional requirements and restrictions, not included in the Act, are also applied in the case of gatherings. It also requests information on measures taken to prevent and redress attacks on human rights defenders and other social activists.

The Committee also requests information on the adoption of the Swaziland Broadcasting Bill 2016, currently under review, and updated information on the issuing of broadcasting licenses. In this regard, it requires information on the planned fees that will be imposed for the application and registration of radios, particularly of community radio stations and whether they are compatible with the Covenant. The Committee notes the launch of a second mobile network operator, expanding the media space, although it still requires information on the rules imposed on the ownership and control of radio and television stations, and whether they comply with the Covenant.

#### **Participation in public affairs, and corruption**

**53. The State party should bring its constitutional framework into compliance with the Covenant, including with article 25, inter alia by:**

**(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;**

**(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;**

**(c) Guaranteeing free and fair elections;**

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



### Summary of State party's reply

- (a) There is no hostility to the registration of political parties.

It is not true that the King retains far more power than the electorate, making it difficult for the electorate to hold Parliament accountable. The King consults the relevant bodies in respect of such appointments of the Prime Minister, the Cabinet and two-thirds of members of the Senate. This is in accordance with the Constitution Act (2005).

The system of government, established by the Constitution, emphasizes individual merit as a criterion for participation in elections. People are allowed to vote only through their chiefdoms/polling divisions in their respective *Tikhundla* areas and regions that form their constituencies.

Candidates of political party are able to contest elections in their personal capacities. Moreover, Parliament is accountable to the electorate.

- (b) Constitutional reform is a matter that only the citizens of Eswatini can deliberate and decide on, a matter that must also satisfy the requirements outlined in the Constitution.

- (c) Elections conducted in compliance with the terms of the Constitution (2005) and relevant electoral laws are free and fair.

- (d) The State Party acknowledges that this as an area of improvement, hence the Prevention of Corruption Act is being amended. While the independence of these bodies is guaranteed by the Constitution and other laws, it implies operational, not financial, independence.

*Information from the COSPE, the Southern Africa Litigation Centre (SALC) and the Foundation of Socio Economic Justice (FSEJ), with the support of the Civil and Political Rights Centre (CCPR Centre)*

- (a) There is no evidence of changes in the promotion of pluralism in the political space, as the State remains hostile to the registration of political parties.

Section 79 of the Constitution has been interpreted to exclude political parties from the electoral process, although individual members of political parties are able to contest the elections in a personal capacity.

- (b) There is no constitutional reform process in place nor is there evidence of a significant devolution of powers.

- (c) National elections were held in September 2018. The legitimacy and credibility of the elections was significantly undermined by the design of the constitutional powers and electoral mechanisms.

- (d) Many commissions are heavily reliant on the State for financial resources, and the appointment procedure makes the independence of their members questionable.

### Committee's evaluation

[C]: (a), (b), (c) and (d): The Committee takes note of the information provided by the State party, but requests more information on measures taken, since the adoption by the Committee of its concluding observation, to ensure a culture of political pluralism, to ensure a genuine and pluralistic political debate, and to allow the registration of opposition political parties, including to contest elections, field candidates and participate in the formation of the Government.

The Committee takes note of the information provided. It reiterates its recommendation with respect to the need to undertake 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.



While taking note of the information provided by the State party, the Committee requests information on the measures taken since its adoption of its concluding observations to guarantee free and fair elections.

The Committee takes note of the information provided by the State party, particularly on the current lack of financial independence of bodies in charge of elections and anti-corruption measures. It requests information on the measures taken since the adoption of its concluding observations to ensure the operational and financial independence of the said bodies. The Committee reiterates its recommendation.

**Recommended action:** A letter should be addressed to the State party to inform it of the discontinuation of the follow-up procedure. The information requested should be addressed by the State party in its next periodic report.

**Next periodic report due:** 28 July 2021

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