

# Gender-Based Violence in Eswatini

Submission for the UN Universal Periodic Review  
39th session of the UPR Working Group (Oct-Nov 2021)

## Introduction

1. The Helena Kennedy Centre for international Justice is a human rights centre based at Sheffield Hallam University in the UK.<sup>1</sup> The Centre supports a range of research and scholarship activity including supervised work by our students. This submission is the product of undergraduate students studying with the Human Rights Law Clinic.
2. The issue of Gender Based Violence (GBV) has been prevalent within Eswatini for a sustained period of time. This report will analyse the progress Eswatini has made in combating GBV against recommendations made in the previous UPR review as well as Eswatini's international treaty obligations. We will then consider the effectiveness of recent government interventions, specifically legal and structural changes, in promoting change and outline any further recommendations necessary to facilitate the government's strategy in overcoming GBV.

## Background

3. Eswatini is located in South Africa and has a population of 1,164,595. It is a landlocked country bordering South Africa and Mozambique.<sup>2</sup>
4. The Country operates a dual legal system, common law which is based on Roman Dutch law and customary law which is based on Swazi cultural law. It has two distinct court systems, the traditional courts, known as Swazi courts and common law courts.<sup>3</sup>
5. In 2004, Eswatini ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) Convention and is also party to a number of additional regional treaties which promote the rights and interests of women such as the African Charter on Human

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<sup>1</sup> See <https://www.shu.ac.uk/helena-kennedy-centre-international-justice>.

<sup>2</sup> The World Bank (2019), <https://data.worldbank.org/indicator/SP.POP.TOTL?locations=SZ>, accessed 7/12/2020.

<sup>3</sup> Invest Eswatini (2019), <https://investeswatini.org.sz/legal-and-regulatory-framework/>, accessed 4/1/2021.

and Peoples Rights on the Rights of Women in Africa (Maputo Protocol).<sup>4</sup>

6. Eswatini has also committed itself to the United Nations Sustainable Development Goals (SDGs) Agenda 2030; SGD 5 aims to achieve gender equality and end all GBV by 2030.
7. Eswatini has the highest prevalence of HIV in the world with 27.3% of adults living with HIV. The perception of women as subordinate to men and resulting gender inequality has increased the vulnerability of women to HIV.<sup>5</sup>

### **Prevalence of Gender Based Violence**

8. Unreliable police statistics and significant underreporting means it is difficult to ascertain the extent of GBV within Eswatini. In its evaluation of Eswatini, the CEDAW Committee expressed concern with the low level of reporting of violence against women, resulting in a culture of silence and impunity.
9. Human Rights Watch estimates identify an alarmingly high rate of GBV, particularly violence and sexual assault towards children, finding that 48% of girls between the ages of 13 to 24 reported to have experienced some form of sexual violence,<sup>6</sup> with 1 in 3 Swazi women experiencing sexual violence by the time they are 18.<sup>7</sup>

### **Progress Made Since Last UPR Report**

10. At the previous UPR review, Eswatini accepted several recommendations concerning GBV against women and children, including to abrogate without delay legislative and regulatory provisions that discriminate against women and to adopt new laws in accordance with the principles of gender equality.<sup>8</sup>
11. Subsequently, it is important to recognise the progress that Eswatini has made in this respect. In 2018, Eswatini enacted the Sexual Offences and Domestic Violence Act which has been universally praised for its comprehensive nature.<sup>9</sup>
12. Prior to enactment of the Act, insufficient legal protection meant that women and children were more susceptible to GBV due to a combination of: inadequate punishment of offenders, a high threshold of the evidence required to establish rape or sexual assault as well as deficiencies within the definitions of rape and other important legal terms.

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<sup>4</sup> Human Rights Council, 'National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21 - Swaziland' (United Nations General Assembly, 13th May 2016 <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/045/45/PDF/G1604545.pdf?OpenElement> (accessed 08/03/2021))

<sup>5</sup> Statista (2019), <https://www.statista.com/statistics/270209/countries-with-the-highest-global-hiv-prevalence/>.

<sup>6</sup> Human Rights Watch (October 2, 2019), <https://www.hrw.org/world-report/2020/country-chapters/eswatini-formerly-swaziland#>, accessed 1/2/2021.

<sup>7</sup> Swagaa (2020) <https://www.swagaa.org.sz/gender-based-violence/>, accessed 15/12/2020.

<sup>8</sup> United Nations Human Rights Council, 'Report of the Working Group on the Universal Periodic Review: Swaziland', 13 July 2016, A/HRC/33/14, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/150/90/PDF/G1615090.pdf?OpenElement>.

<sup>9</sup> Demystifying to Achieve Gender Equality, <https://cscuk.fcdo.gov.uk/demystifying-to-achieve-gender-equality/>.

13. The SODV Act 2018 seeks to rectify these issues and bring Eswatini in line with its international human rights obligations, particularly Article 2 of CEDAW which imposes an overarching obligation upon the state “to pursue by all appropriate means and without delay a policy of eliminating discrimination against women, including gender-based violence against women.”<sup>10</sup>
14. One of the goals of the legislation, as stated within the bill, is to protect those most vulnerable in society, including women and children. This is achieved through several provisions within the Act which broaden the legal definition of rape to make the offence gender neutral, establishing the age of consent to 18, criminalising harassment and sexual assault as well as extensive stipulations that protect children from sexual exploitation, also addressing where technology is used in the perpetration and proliferation of abuse.
15. The Act also introduces several provisions which are designed to facilitate structural changes in combatting GBV such as the introduction of specialised Courts, creation of an offender’s registry and outlining guidance for the police, magistrates, and healthcare professionals in how to appropriately deal with cases involving vulnerable individuals. Training sessions on the SODV Act have reportedly been carried out for police officers, including the specialised Domestic Violence and Protection Units, and magistrates under the Deputy Prime Minister’s Office.<sup>11</sup> However, additional training is needed for all police officers, magistrates and medical professionals who may deal with GBV cases to ensure that cases are dealt with appropriately at all levels of intervention. There is also no evidence of the establishment of specialised Courts which would allow the judicial system to deal with cases more effectively, proportionally and more accurately reflect the values of gender equality.
16. Recent Court decisions have also demonstrated the willingness of the judiciary to intervene where the common law is incongruent with Eswatini’s international human rights obligations and national constitution. In the landmark case of *Sacolo and Another v Sacolo and Others* [2019],<sup>12</sup> the Court rescinded the ‘marital powers’ conferred upon male spouses in common law under the Marriage Act 1964, recognising its discriminatory nature in assigning a subordinate role to married women as ‘legally dependant’ minors. This decision provides all married women with economic and legal independence, reducing the reliance of married women upon male spouses and meaning married women are less likely to accept abuse.<sup>13</sup>

## Domestic Violence

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<sup>10</sup> Convention on the Elimination of All Forms of Discrimination against Women (18 December 1979) <https://www.ohchr.org/en/professionalinterest/pages/cedaw.aspx>, accessed 17/03/2020

<sup>11</sup> Eswatini Country Brief (23 November 2018), [https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/SWZ/INT\\_CCPR\\_NGS\\_SWZ\\_33000\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/SWZ/INT_CCPR_NGS_SWZ_33000_E.pdf).

<sup>12</sup> Swazi Legal Information Institute (30 August 2019), <https://swazilii.org/sz/judgment/high-court/2019/166-0>.

<sup>13</sup> Brook, K., Marika, M., Nicolas, M., & Karen, M. (2009). Women’s Equal Property and Land Rights Hold Key to Reversing Toll of Poverty and HIV/Aids in Swaziland: A Human Rights Report and Proposed Legislation.

17. Despite these recent judicial and structural changes, intimate partners and husbands are still most likely to be perpetrators of sexual violence against women.<sup>14</sup> Research conducted in 2001 to assess the incidence of violence against women uncovered that discrimination was persistent across many women's entire lives due to their socialisation and cultural status, resulting in internalised feelings of inferiority.<sup>15</sup>
18. Further research has indicated that the remnants of historical patriarchal oppression means that subservience amongst women is still very common, limiting the effectiveness of the additional legal rights conferred upon women.<sup>16</sup> A study to discover the prevalence of sexual violence amongst female University students in Eswatini after the adoption of the SODV Act found that only 1 in 5 women interviewed, whose experiences conformed with the new legal definition of rape, actually identified their experiences as such.<sup>17</sup> In many of these instances, the perpetrator of the violence against the women was a person whom they identified as longer term sexual partner, highlighting the underlying issues surrounding the perception of GBV and the status of women.<sup>18</sup>
19. The SODV Act 2018 also does not explicitly criminalise marital rape. Although, s151 of the Act does identify that marriage cannot be a defence to any crime; the absence of clear identification of marital rape as a prosecutable offence detracts from its seriousness. When considering the occurrence of intimate partner violence, this lack of clear messaging may be less effective in combatting engrained cultural values.
20. Underreporting is also a significant issue for all types of GBV, arising from a variety of issues such as ignorance of reporting mechanisms, cultural barriers and a lack of protection systems. The SODV Act contains no provisions which outline the structure for an effective response mechanisms for victims and there is no comprehensive government strategy in this regard. The Swaziland Action Group Against Abuse (SWAGAA) identified that out of all the incidences of GBV: only 3% of cases were reported to the police; only 7% of women accessed counselling services and only 2.1% of women accessed a clinic or hospital following the accident compared with 62.3% who reported that they would have liked to access support.<sup>19</sup>

### **GBV Against Children**

21. The ongoing prevalence and acceptance of GBV against children is also extremely concerning, with underreporting a deeply troubling issue. It is estimated that for every girl known to Social

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<sup>14</sup> GENDER-BASED VIOLENCE <http://www.swagaa.org.sz/gender-based-violence/#:~:text=Intimate%20partners%2C%20such%20as%20husbands,often%20a%20very%20dangerous%20place>.

<sup>15</sup> Aphane, M.-J. D., & Women and Law in Southern Africa Trust. (2001). Multiple jeopardy: Domestic violence and women's search for justice in Swaziland. Mbabane, Swaziland: Women and Law in Southern Africa Research and Educational Trust Swaziland.

<sup>16</sup> Mavundla S. D., Strode A., & Dlamini D. C. (2020). Marital Power Finally Obliterated: The History of the Abolition of the Marital Power in Civil Marriages in Eswatini. Potchefstroom Electronic Law Journal, 23, 1-19. <https://doi.org/10.17159/1727-3781/2020/v23i0a7504>

<sup>17</sup> Fielding-Miller, R., Shabalala, F., Masuku, S., & Raj, A. (2019). Epidemiology of Campus Sexual Assault Among University Women in Eswatini. Journal of Interpersonal Violence.

<sup>18</sup> Ibid.

<sup>19</sup> Swagaa (2020), <http://www.swagaa.org.sz/gender-based-violence/>, accessed 4/1/2021.

Welfare, there are an additional 400 who have never received assistance or support.<sup>20</sup> In their report on Eswatini, the UN Committee on the Rights of the Child identified that although some government supported community prevention and awareness programmes do exist, many have limited reach as they are run by NGO's.<sup>21</sup>

22. UNICEF's 2016 study into the drivers of violence in association with the Government of Eswatini identified that cultural barriers were one of the main reasons for underreporting.<sup>22</sup> The attitude of '*Tibi Tendu*' (family secrets) substantially interferes with reporting from concerned individuals outside the family unit.<sup>23</sup> This is especially damaging as most violent acts are committed by individuals who are part of the child's immediate environment,<sup>24</sup> with 33% of sexual violence occurring in a girls own home.<sup>25</sup>
23. The dual legal system also creates issues, particularly in rural areas. Whilst the SODV Act establishes a legal age of marriage of 18, under customary law there is no minimum age set. Currently, it is estimated that 5% of all married women aged 20-24 entered into marriage before they were 18.<sup>26</sup>

### Impact of Covid-19

24. Covid-19 and related restrictions have substantially hampered Eswatini's progress in reducing the incidence of GBV. Eswatini has been in partial lockdown since the 17<sup>th</sup> March 2020. In the first month following implementation of movement restrictions, SWAGAA recounted that the number of GBV cases referred to them had doubled.<sup>27</sup> The Deputy Prime Minister, Themba Masuku, also reported that GBV cases saw a stark increase from 1,420 to 9,399 in the 9 months following restrictions.<sup>28</sup>
25. This increase in GBV cases is primarily caused by the containment of women and children in households with abusers, compromising their safety. Oksana Bryzhovata, project manager of the NGO, Pact, in Eswatini, stated that the confinement caused by the lockdown created real psychosocial stress on women and children, and that families that did not experience gender-based violence before the virus, were now subjected to it.<sup>29</sup>

<sup>20</sup> ESWATINI, <https://www.togetherforgirls.org/wp-content/uploads/TFG-Eswatini-OnePager-10.pdf>.

<sup>21</sup> CRC, National Report of Swaziland ( 8 July 2019 )  
<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRICAqhKb7yhsttlGRuuQ17T5Usc0B0NqgUVMwiv6zApKKDV5x10Cy3TWzrxZxEMu7SVHoT68Oh3AalrxAZFqT4hwNHjeRLeoAPkr0g6UzO0GTd6aGMu7Wg7>.

<sup>22</sup> Uncovering drivers of violence against children in Swaziland (3 August 2017)  
<https://www.unicef-irc.org/article/1660-uncovering-drivers-of-violence-against-children-in-swaziland.html>,

<sup>23</sup> *ibid*

<sup>24</sup> n18

<sup>25</sup> n16

<sup>26</sup> Swaziland (2020) <https://evaw-global-database.unwomen.org/fr/countries/africa/swaziland#1>, accessed 10/02/2022

<sup>27</sup> SWAGAA (2020),  
<http://www.swagaa.org.sz>, accessed 4/1/2021.

<sup>28</sup> International Commission of Jurists (2 June 2020),  
<https://www.icj.org/icj-webinar-highlights-difficulties-in-responding-to-gender-based-violence-during-the-covid-19-pandemic/>.

<sup>29</sup> PACT (13 April 2020), <https://www.pactworld.org/blog/'-some-women-and-children-home-not-safest-place'-responding-family-and-gender-based-violence>.

26. At the start of the lockdown, support, or assistance available to victims of abuse was limited due to the classification of this service as non-essential. UNFPA executive director, Dr Natalia Kanem, highlighted the potential severity of additional GBV cases during this time of additional pressure, hypothesising a possible 15 million additional cases of GBV if no support was offered to women.<sup>30</sup> Since then, the government has relaxed certain movement restrictions, permitting NGO's to offer support to vulnerable women. However, access for many women, particularly in rural areas, to support services is still limited due to distance and the constant presence of abusers.

## Recommendations

27. Following our report, it is recommended that Eswatini:

- Invest funding into the judicial system to speed up the processing of the backlog of cases relating to gender-based violence caused by Covid-19 with the aim to have this backlog cleared within the next two years to ensure that offenders do not receive impunity and victims have access to justice.
- Introduce immediate support mechanisms for women who have suffered GBV as a result of the Covid-19 and the introduction of safe houses for women and children suffering from GBV so they do not have to remain with abusers.
- Create a national community prevention and behavioural change programme that educates men about the rights of women to help improve the cultural perception of women in Eswatini. This platform should be designed immediately and aim to be operational and start having men enrolled this by January 2023.
- Create a national community prevention and behavioural change programme that educates that educates women from a young age to empower them and overcome internalisation of historical patriarchal oppression. This platform should aim to be operational and have a significant number of women enrolled across all ages by January 2023.
- Raise awareness of legal provisions within the rural areas for disadvantaged women through targeted campaigns, this should be implemented immediately and work alongside the learning platform for women and men.
- Create a comprehensive response strategy for victims of GBV including access to sheltered housing immediately after abuse, ongoing psychotherapy and access social support services. This should be facilitated by increased funding to the Deputy Prime Minister's Office in Eswatini's Budget Report in March 2022 to ensure that these measures can be implemented as soon as possible.
- Create a single toll-free hotline to report GBV and domestic violence to ensure the reporting of offences is more accessible.

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<sup>30</sup> UNFPA (22 May 2020), <https://eswatini.unfpa.org/en/news/unfpas-plan-tackling-gender-based-violence-communities-during-covid-19>.

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