

Universal Periodic Review of Eswatini¹
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Joint Stakeholder Submission



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The African Sex Workers Alliance (ASWA) is the Pan African alliance of sex worker-led organisations formed in 2009 with membership from 33 countries. The organisation's mission is to amplify the voices of sex workers as well as advocate for the health and human rights of the diverse community of sex workers working and living in Africa.

and



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The Sexual Rights Initiative is a coalition of national and regional organizations based in Canada, Poland, India, Argentina, and South Africa that work together to advance human rights related to sexuality at the United Nations.

Key Words: sex work; sex workers' rights; right to health; sexual and reproductive health and rights; criminalization of adult sex work; COVID-19 pandemic

¹ Eswatini/eSwatini was formally known as Swaziland, including in previous UPR cycles.

Executive Summary

1. This report has been jointly prepared by the African Sex Workers Alliance (ASWA) and the Sexual Rights Initiative (SRI). It seeks to highlight the existing and ongoing human rights violations against sex workers due to restrictive and punitive laws in Eswatini. It also outlines Eswatini's obligations to respect, protect and fulfil rights under various national and international mechanisms, including the previous cycle of the Universal Periodic Review (UPR) and the relevant recommendations.
2. Section 20 of the Constitution of Eswatini states that "all persons are equal before and under the law in all spheres of political, economic, social and cultural life and in every respect and shall enjoy equal protection of the law," and that no person may be discriminated against or treated differently on the grounds of their "gender, race, colour, ethnic origin, tribe, birth, creed or religion, or social or economic standing, political opinion, age or disability."²
3. Constitutional rights apply to everyone, including sex workers. However, sex workers' basic rights are violated on a daily basis. Many acts related to sex work are criminalized in Eswatini, and as such, sex work is hidden, marginalized and stigmatized. Violence, both physical and sexual, is commonly perpetrated against sex workers, especially female sex workers. Given the legal status of sex work, violence is rarely reported to the police, who are frequently the perpetrators themselves.
4. Eswatini is an absolute monarchy and many laws and policies are enacted directly by the King, and not through meaningful consultation and engagement of people affected by those laws and policies. Government officials often give verbal commands to law enforcement, contrary to existing laws, creating confusion in the legal system and undermining the protection of rights. Legal literacy is also limited to legal professionals and high-ranking government officials. Most people in the country are not even familiar with their constitutional rights.
5. Moralistic shaming of sex work is highly prevalent, and the rhetoric of "purity" is reinforced by Swazi government officials. Further, health systems are not built to respond to health needs or human rights of sex workers. Sex workers cannot get appropriate sexual and reproductive health care, services or information. Discrimination and stigmatization of sex workers by health care professionals is also widespread, and this results in sex workers resorting to either not seeking health care out of shame and fear or having to endure discriminatory experiences from health care professionals, risking their own health and safety.
6. This submission delves into the following areas of concern: criminalizing and punitive implementation of the law; violence and stigmatization; access to health services and information; and the struggles of sex workers under the COVID-19 pandemic. The relevant UPR recommendations from the last cycle and recent remarks from other UN mechanisms are referenced throughout the submission.

² See section 20: <https://www.wipo.int/edocs/lexdocs/laws/en/sz/sz010en.pdf>

Legal and Policy Framework

7. Although, the act of exchanging sex for money is not a criminal offence, the Crimes Act of 1889,³ an outdated piece of law, is often used to criminalize and regulate sex workers. Part V of this Act, *Immorality and Offences in Public Places or Places of Public Resort and Control of Places of Public Resort*, has a long list of offences related to sex work. This includes “keeping of brothel;” and living on “earnings of prostitution.”
8. Section 49 of the Crimes Act specifically criminalises the act of loitering in public for the purpose of “prostitution or solicitation or to the annoyance of the public.” These offences place the responsibility on accused sex workers to explain their “loitering,” contravening the constitutional right to presumption of innocence. These offences are often handled through informal/traditional courts, and the rights of the accused to have a fair trial and to acquire a lawyer are not accorded or respected.⁴ Upon arrest, sex workers are often forced to sign admissions of guilt without an explanation or understanding of the consequences of doing so. This Act continues to be used as a guise by police for arbitrary arrests, extortion and perpetrating violence against sex workers.
9. The Sexual Offences and Domestic Violence Act of 2018 also lists some offences related to sex work, including, “commercial sexual exploitation;” “procuring prostitution;” “benefitting from prostitution;” “living from the earnings of prostitution;” and “keeping a brothel.”⁵ Although these offences do not apply to sex workers or their dependents, the criminalization of these acts results in overly restricted ways of working, forcing sex workers to go underground, without any support or protection. In practice, sex workers continue to be criminalized for working as sex workers.
10. Under the implementation of the Crimes Act and the Sexual Offences and Domestic Violence Act by law enforcement and courts, sex workers cannot fulfill or enjoy their right to personal liberty; dignity; freedom from torture, inhuman or degrading treatment; equality; fair hearing; protection from arbitrary search; freedom of expression; freedom of association; privacy; and, freedom of movement, all of which are guaranteed under the Constitution of Eswatini.
11. The Sexual Offences and Domestic Violence Act (*the Act*) also lists legal protections for victims of violence, especially for victims of sexual violence:⁶
 - They must be “attended to properly;”
 - Their cases must be prioritised by the police;
 - The police must inform victims of the availability of counselling and other support services, including post-exposure prophylaxis;
 - No person may force someone not to report a sexual offence or to withdraw a charge;

³ See: <http://www.osall.org.za/docs/2011/03/Swaziland-Crimes-Act-61-of-1889.pdf>

⁴ See: https://www.southernafricalitigationcentre.org/wp-content/uploads/2019/08/SALC-Sex-workers-rights-pamphlet_eSwatini-draft-5_POLICE.pdf

⁵ See: <https://www.southernafricalitigationcentre.org/wp-content/uploads/2019/10/SALC-New-Sexual-Offences-Legislation-SD-FINAL-WEB-version.pdf>

⁶ *Ibid.*

- The court cannot make a judgment about the credibility of a witness based on her sexual history; and,
- The court must take measures to protect victims' safety, physical and psychological well-being, dignity and privacy.

12. The sex work section of this Act is often relied upon by police and courts to criminalize, arrest, detain, abuse and harass sex workers. But, if a sex worker experiences sexual violence, the section on protection of victims of violence of this Act, and all of its clauses listed above, are ignored. Sex workers who are sexually assaulted have no recourse. Instead of protection of rights, reporting to police comes with the threat of arrest, detention and further victimization.

Violence and Stigmatization

13. During the previous UPR cycle, Eswatini received and accepted the following recommendations:

- Urgently enact the Sexual Offences and Domestic Violence Bill, and ensure that all domestic legislation is brought into conformity with the country's commitments under the CEDAW. (Norway)
- Adopt a new comprehensive legislation to prevent and combat all forms of discrimination and violence against women. (Italy)
- Adopt a broad definition of discrimination against women in line with the CEDAW. (Honduras)
- Step up work to combat stigmatization, discrimination, inequality and gender-based violence in the national legislation and policy of Swaziland. (Mexico)
- Take action to align all laws and policies with the principle of equality and non-discrimination as stated in the Constitution and in accordance with CEDAW. (Uganda)

14. Eswatini has enacted the Sexual Offences and Domestic Violence Act, however, in its current implementation, it violates the rights of sex workers. As stated in the previous section, this Act criminalizes aspects of sex work, and sex workers are not accorded the rights of victims of violence. Even though this Act does not criminalize sex workers and their dependents, in practice, sex workers' participation in sex work is criminalized; it is sex workers who suffer at the hand of the police and are shamed through the court system. They are arrested, detained, not allowed to work but expected to pay large fines. The police create arbitrary amounts for these fines and rarely provide receipts for payment of fines, essentially blackmailing, threatening and extorting sex workers. The section on sex work in the Sexual Offences and Domestic Violence Act was theorized to protect sex workers from third party exploiters, such as pimps forcing someone to work for them. In practice, sex workers continue to be victimized and abused by law enforcement relying on this Act. Street-based sex workers are the most affected by these problems as they do not have access to a protective and safe work establishment.

15. The Act states that, nobody may force a person to engage in a sexual act through coercive means, such as violence or threats of violence or through any other form of physical or psychological manipulation. A victim of physical or sexual violence, has the right to complain to the police. Police cannot dismiss the allegation or blame or threaten to arrest a sex worker who is a victim of violence – however, that is far from the truth. Sex workers who experience

violence, are not “attended to properly” by police, as expected under the Act, with police officers often being the perpetrators of violence. The cases of sex workers who have experienced violence are not prioritized by the police; they are not informed of the availability of counselling and other support services, including post-exposure prophylaxis, putting their life and health at risk; courts certainly make judgments about the credibility of a witness based on their sexual history; and, courts do not take sufficient measures to protect victims’ safety, physical and psychological well-being, dignity and privacy when that victim is a sex worker. They are shamed and ridiculed through informal and formal court systems. The Sexual Offences and Domestic Violence Act does not serve sex workers, as persons, or as victims of violence –it is only used by criminal and justice systems to punish sex workers.

16. There is also a lack of availability and accessibility of comprehensive information on legal rights of sex workers. Technically, under the law, the police cannot arrest someone simply for being a sex worker or being associated with sex workers; they cannot treat sex workers in an inhuman or degrading way; they cannot search sex workers without a valid reason; they cannot arrest sex workers for being in or moving through a certain area; they cannot arrest sex workers without a reason or detain them without trial; and they cannot treat sex workers in a disrespectful, undignified or cruel manner.⁷ It is a disciplinary offence for them to contravene the law and rights accorded to all. If mistreated by law enforcement, sex workers can lodge a criminal case or a complaint about specific police officers, and the National Commissioner must address it.⁸ It is absurd to expect sex workers to lodge a complaint about the police to the police. Law enforcement, through their consistent but arbitrary punitive and violent actions have instilled fear in sex workers, making them reluctant to exercise their rights.
17. Negative stereotypes about sex workers are also pervasive in Eswatini, such as: sex workers are crooks, they don’t provide receipts and “eat” clients’ money; they are sex addicts; they are in the profession because they were raped or sexually abused; and, that they are carriers of HIV and other STIs. This is solidified by politicians and government officials publicly stating, contrary to the law, that sex work is illegal and not allowed. Churches, holding immense power in society, continue to maintain the moralistic perspective that sex work is a sinful act and a disgrace to Swazi traditions.
18. The media in the country has published both positive and negative perspectives on sex work. They have publicized organizations helping sex workers, putting their safety in jeopardy. They have also exposed sex workers’ rights being violated during arbitrary arrests by police and the risky behaviours they have to engage in to stay off police’s radar.

Access to Health Services and Information

19. Eswatini received and accepted numerous recommendations on access to health care and services during the last UPR cycle:

⁷ *Ibid.*

⁸ *Ibid.*

- Give emphasis on allocating adequate National Funding for the response of the HIV/AIDS problems to implement all required actions in the country (Ethiopia)
- Redouble its efforts on HIV/AIDS response, particularly on prevention strategies, and take steps to address discrimination against persons living with HIV/AIDS. (Ghana)
- Repeal without delay all legal and regulatory provisions that are not in conformity with the CEDAW, ratified by Swaziland in 2004, and actively combat violence and discrimination against women. (France)
- Ensure and guarantee non-discriminatory access to health services, education, justice and employment for all persons, irrespective of their actual or perceived sexual orientation or gender identity. (Spain)

20. Eswatini has yet to implement these recommendations, especially in regards to sex workers' health care. Sex workers, like every other person in Eswatini, have the right to sexual and reproductive health and rights. Eswatini was also urged to "ensure access for men, women, boys and girls to comprehensive reproductive health education and services throughout the country, particularly in rural areas, including access to affordable contraceptives, and increase awareness-raising programmes on the importance of using contraceptives and on sexual and reproductive rights and choices," by the Committee on the Elimination of Discrimination against Women, in their concluding observations on the combined initial and second periodic reports of Swaziland.

21. Sex workers are not able to access accurate information or safe, effective, affordable and acceptable contraception method of their choice. The state continues to fail to inform or empower them to protect themselves from sexually transmitted infections including HIV. In Eswatini, more than 50% of sex workers are living with HIV. HIV prevalence is close to 50 times higher among sex workers than in the general population. This is due to increased likelihood of being financially vulnerable, unable to negotiate consistent condom use with clients, and experiencing violence, criminalization and marginalization.

22. Even if HIV prevention or treatment programs are available, sex workers are not able to access them due to stigmatizing, violent and discriminatory health systems and professionals. Sex workers are afraid of engaging with health professionals due to fear of being reported to law enforcement, and potential arrest, detention and violence. Criminalisation results in driving sex work underground and makes sex workers reluctant and afraid to access services.

23. Being on the margins of society, sex workers are often excluded from the health discourse in the state – and they are rarely provided with accurate information or services regarding their health concerns. The high prevalence of HIV cannot be addressed without addressing violence against sex workers; fully decriminalizing sex work; meaningfully consulting sex workers in decision-making processes; and funding health and social services specifically for sex workers.

24. The government of Eswatini, through the Ministry of Health has created many partnerships with international bodies and organizations to bring aid to key populations in the country. The government actively lists sex workers as a key population when applying for or negotiating international or regional aid or services. However, there is no delivery of health or social services to sex workers, and there is no accountability or transparency of distribution of aid meant for sex

workers. Sex workers are used as “bait” for aid, sometimes even invited to consultation meetings, but they are rarely allowed to express their concerns, inform policy and decisions, or contribute in a meaningful way.

The Covid-19 Pandemic

25. The Human Rights Committee, in its concluding observations, recommended that Eswatini should “continue and step up intervention to address the needs of key populations, in particular women, youth, sex workers and the lesbian, gay, bisexual, transgender and intersex community, including persons in rural areas.” This recommendation has been ignored by the state, and sex workers’ needs continue to be unaddressed. The implementation of this recommendation has become particularly important under the COVID-19 pandemic.
26. The COVID-19 pandemic has exposed the inequality of social, health and legal systems globally, revealing gaps that further marginalize people. The contagious nature of the COVID-19 virus has created specific issues for sex work requiring contact/close proximity with clients. Many sex workers are struggling to get basic personal protective equipment, like masks. A reduced access to condoms, as well as reduced access to HIV treatments has also been reported.
27. Abiding by strict curfews, and without access to safe working conditions, sex workers are struggling to work and to sustain themselves financially. Although organizations supporting sex workers are trying to secure emergency funding for their communities, the government is providing zero help and continuing to exclude them from relief programmes and health services.

Recommendations

1. Fully decriminalize sex work. Repeals all sections that criminalise any aspect of sex work in the The Crimes Act of 1889 and the Sexual Offences and Domestic Violence Act of 2018.
2. Ensure that protections and support accorded to victims of violence in the Sexual Offences and Domestic Violence Act of 2018 are respected for sex workers who have experienced violence. Collect and publicly present data to show compliance by law enforcement and courts.
3. Guarantee meaningful consultations with sex workers in decision-making about laws and policies on sex work, and in relation to managing and spending of international aid.
4. Facilitate legal literacy trainings on the interpretations and implementation of all laws used to criminalize, arrest, detain and harass sex workers. The government needs to publicly condemn and take disciplinary action against public officials sharing misinformation about the legality of sex work.
5. Organize sensitization campaigns to raise awareness on sex workers’ rights in Eswatini. Specifically target members of parliament, health care workers, law enforcement, chiefs/municipality leaders, all government ministries and departments, and make it accessible for the general public.

6. Organize capacity-building, legal literacy trainings, and self-development activities for individuals to learn about their rights, participate in forums to inform laws and policy, and to better support them economically.
7. Allocate budget to ensure HIV prevention and treatment services are sex-worker led and community based. Ensure access to post-exposure prophylaxis for victims of violence as a right protected under the Sexual Offences and Domestic Violence Act of 2018.
8. Create an affordable and accessible forum to anonymously lodge complaints against law enforcement's treatment of sex workers. The National Commission must address all complaints in a timely manner and take the necessary disciplinary actions.
9. To ensure transparency and accountability for international and regional aid meant to support sex workers, publicly release all documents on spending on key populations.
10. Ensure that sex workers are included in COVID-19 relief programmes and maintain their access health information and services, including personal protective equipment, condoms and HIV treatment.