

# Eswatini

Population <sup>1</sup>	1,136,191
Area (km <sup>2</sup> ) <sup>1</sup>	17,360
GDP per capita (USD) <sup>1</sup>	4,145.97
TPES (Mtoe) <sup>2</sup>	N/A
Energy intensity (toe/10 <sup>3</sup> 2010 USD) <sup>2</sup>	N/A
CO <sub>2</sub> emissions - energy (MtCO <sub>2</sub> ) <sup>3</sup>	N/A

There is no data by Orbis Crossborder Investment on completed energy projects and deals from 2015-2020

Sources:

1. The World Bank 2018
2. ©IEA, World energy balances, 2020, [www.iea.org/data-and-statistics](http://www.iea.org/data-and-statistics), [webstore.iea.org/key-world-energy-statistics-2019](http://webstore.iea.org/key-world-energy-statistics-2019)
3. ©IEA 2020, CO<sub>2</sub> emissions from fuel combustion, [www.iea.org/data-and-statistics](http://www.iea.org/data-and-statistics), [webstore.iea.org/key-world-energy-statistics-2019](http://webstore.iea.org/key-world-energy-statistics-2019)

Eswatini’s overall risk level against the assessed areas is **moderate**.

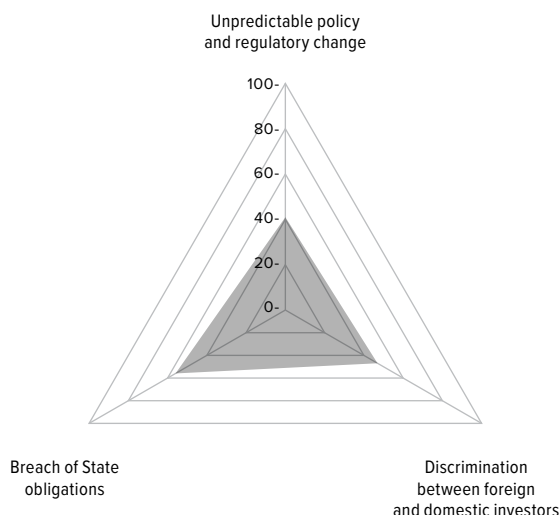
Among the three risks assessed in EIRA, *unpredictable policy and regulatory change* is lower compared to *discrimination between foreign and domestic investors* and *breach of State obligations*.

Eswatini’s performance is moderate on three indicators, and it has a good on one indicator. It has maintained a score of 76 on *foresight of policy and regulatory change*. *Regulatory environment and investment conditions* and *management of decision-making processes* are at 60 and 56, respectively. On *rule of law* it has once again scored 44.

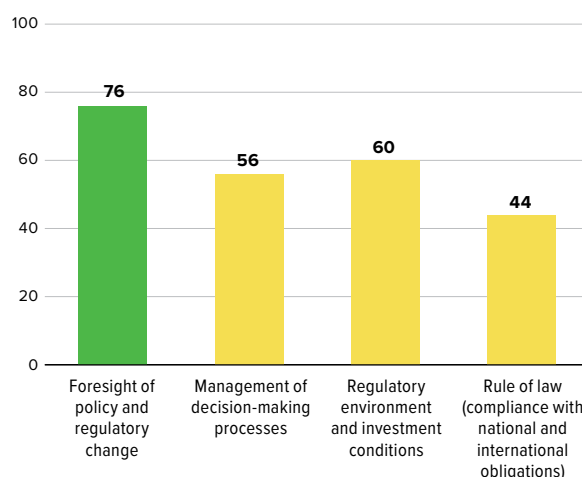
On a more detailed level, Eswatini’s overall sub-indicator performance is moderate. *Communication of vision and policies* is once again the highest-scoring sub-indicator (78), followed by *robustness of policy goals and commitments* and *institutional governance*, both at 75. *Restrictions on FDI* stands at 70, while *management and settlement of investor-State disputes* is at 55. On *regulatory effectiveness* it has scored 50. The sub-indicators *transparency* and *respect for property rights* continue to be the lowest-scoring sub-indicators at 36 and 33, respectively.

While Eswatini has maintained its performance from last year, further steps must be taken to build on the work done. Particular attention should be given to reinforcing respect for property rights.

### RISK LEVEL



### INDICATOR PERFORMANCE



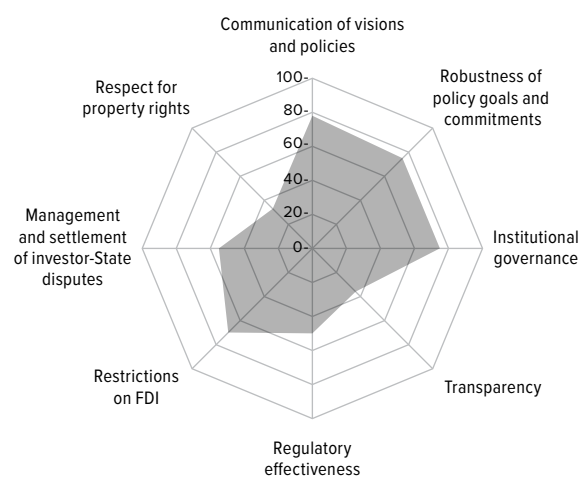
### YEAR-ON-YEAR COMPARISON

RISK AREAS	2018	2019	2020
Unpredictable policy and regulatory change	40	41	41
Discrimination between foreign and domestic investors	46	47	47
Breach of State obligations	56	56	56

INDICATORS	2018	2019	2020
Foresight of policy and regulatory change	76	76	76
Management of decision-making processes	60	56	56
Regulatory environment and investment conditions	57	60	60
Rule of law	44	44	44

### SUB-INDICATOR PERFORMANCE



## Foresight of policy and regulatory change

### QUICK FACTS

The National Development Strategy, adopted in 1999, addresses challenges to the energy sector's transformation and the overall development of the country.

The updated National Energy Policy 2018, and the National Energy Policy Implementation Strategy 2018, reflect the vision for the energy sector until 2030.

The National Climate Change Policy 2016 guides the country's approach to climate change mitigation and adaptation, in line with its NDC.

### STRENGTHS

In the last year, the Government intensified its efforts to ensure universal access to modern energy by 2022, as envisioned in the National Energy Policy. The Network Reinforcement and Access Project (NRAP), launched in 2019, will be funded by the World Bank and implemented by the Eswatini Electricity Company (EEC). It targets the least developed region in the country and is likely to strengthen the transmission and distribution network, expand rural electrification, and create employment opportunities for the local workforce. In parallel, the country is working towards utilising its domestic renewable energy resources. The Eswatini IPP Policy intends to stimulate the deployment of IPP capacity, and it addresses issues of funding and bankability, power sector planning, rural electrification, and mini-grids.

The Ministry of Natural Resources & Energy (MNRE) is ultimately responsible for developing and monitoring the country's strategy documents. The EEC aims to establish specific units that will ensure compliance with environmental and social standards and the effective implementation of the NRAP. The units are expected to issue appropriate instructions and systematically report on their performance. Surveillance of the project will be conducted by the Eswatini Environment Authority, based on the supervision monitoring reports.

### AREAS FOR IMPROVEMENT

The Government has adopted progressive reforms to tackle some critical challenges, such as regional power shortages, untapped energy resources, and scarcity of private investment in electricity generation. However, actual progress continues to be hindered by various factors, including an inadequate number of action plans to implement, monitor, and evaluate policies. The Government should adopt the pending action plans to address these challenges better, achieve its energy-efficiency goals, and support the IPP policy.

The MNRE should monitor and evaluate its progress on the actions and objectives stated in the National Energy Policy 2018. It must establish monitoring and evaluation units, such as the ones envisaged in the NRAP, to assist it with tracking the implementation of the country's national and international targets.

## Management of decision-making processes

### QUICK FACTS

The Energy Department of the MNRE is responsible for implementing the national energy policy, and for the overall management of the country's energy resources.

The Ministry of Commerce, Industry & Trade is responsible for formulating the country's investment policy.

The Eswatini Investment Promotion Authority (EIPA) informs investors about business opportunities and facilitates permits and company registrations.

### STRENGTHS

During the EIRA assessment year, the Government took proactive steps to secure external funding for the NRAP. The MNRE is obliged to coordinate with the EEC, the Eswatini Energy Regulatory Authority (ESERA), as well as with the regional administrators and traditional authorities throughout the project preparation phase. The EEC recently completed an environmental and social impact assessment (ESIA) of the NRAP, in line with the Eswatini Environment Act of 2002 and international standards.

Electronic copies of national legislation are available on the Government's portal, and the official websites of the ministries and the State entities. For instance, the EEC has published the ESIA of the NRAP on its website. The ESIA is accompanied by a stakeholder engagement plan (SEP), which defines technical and culturally appropriate means for consultation and disclosure. Based on international best practice, the SEP provides a variety of engagement techniques and target audiences, spanning ministries, State agencies, NGOs, and local communities. Additionally, it envisages a grievance mechanism to resolve complaints raised by any individual or group whose culture, heritage, health, or safety may be adversely affected by project activities.

### AREAS FOR IMPROVEMENT

The Government should continue its efforts to improve transparency in the decision-making process. It should develop a legal framework for this purpose with a defined scope of application and a narrow list of exceptions to the freedom of information rule. Moreover, an online version of the Official Gazette will facilitate access to legal documents for interested parties. The Government is also encouraged to ensure greater public participation in the law- and policy-making process. Instead of holding ad hoc discussions, it should set a legally binding procedure and timelines for soliciting and receiving feedback from stakeholders.

## Regulatory environment and investment conditions

### QUICK FACTS

ESERA was established under the Energy Regulatory Act of 2007 to regulate the electricity sector.

The Minerals Management Board (MMB), under the MNRE, administers the mining and minerals industry, and it monitors compliance with the relevant legislation.

The Eswatini Investment Promotion Act of 1998 guarantees equal treatment to foreign and domestic investments.

### STRENGTHS

ESERA is trying to increase private entity participation in electricity generation. As part of its statutory mandate, ESERA, in collaboration with the MNRE, must prepare and run competitive tenders for new generation capacities. Bidders should then be contracted, in line with the regulations published by ESERA, and approved by the MNRE. In 2019, ESERA issued a request for the qualification of a 40MW solar photovoltaic plant to be developed via the First Tranche Procurement Programme.

The Government seeks to give more investment opportunities to foreign companies. It has already introduced an incentive scheme through the Special Economic Zones Act of 2018. In particular, new enterprises enjoy tax allowances and deductions, as well as the duty-free import of machinery and equipment, and full refunds of customs duties. The entry into force of the Agreement Establishing the African Continental Free Trade Agreement (AfCFTA) in 2019, which Eswatini has signed and ratified, is expected to pave the way to a single continental market for goods and services, with free movement of business persons and investments. As part of the Southern African Development Community (SADC), Eswatini profits from the Economic Partnership Agreement with the EU. Moreover, in 2019, Eswatini signed a new BIT with Taiwan.

### AREAS FOR IMPROVEMENT

The Government has already implemented some much-needed reforms by liberalising the energy market, establishing ESERA, and laying the foundation for renewable energy and IPP market entry. Nevertheless, some challenges remain, including the high cost of initial investment in power infrastructure, financing obstacles, and licensing issues. As a starting point, ESERA's functional and financial independence should be reinforced to give the existing and potential investors greater clarity on the power market structure and the associated rights of market participants.

Given that two-thirds of land surface is considered national property, governed by different rules and procedures, the Government should ease restrictions and overcome land tenure problems to make incentive schemes more meaningful.

## Rule of law

### QUICK FACTS

Eswatini ratified the Settlement of Investment Disputes between States and Nationals of Other States in 1971.

Eswatini is not a signatory to the New York Convention of 1958 on the Recognition and Enforcement of Foreign Arbitral Awards.

Eswatini has been a WTO member since 1 January 1995.

The Constitution Act of 2005 guarantees the right to property.

### STRENGTHS

The Government accepts foreign investment agreements with an enforceable clause stipulating the seat of arbitration and the governing law. The Government has adopted the SADC Model Bilateral Investment Treaty, which provides for the mediation of grievances. Part IV of the AfCFTA and the Protocol on the Settlement of Disputes, currently under negotiation, may allow the Member States of the AfCFTA to opt for State-to-State arbitration as an alternative or complement to the ISDS mechanism. Complaints against administrative decisions regarding the electricity sector can be heard by the Electricity Disputes Tribunal.

Eswatini continues to uphold the property rights of investors. There are no instances where the State initiated contract renegotiation with foreign investors. The Government's commitment to strengthening the protection of IP rights is reflected in the recent revision of some key legal instruments, such as the Intellectual Property Tribunal Act, the Patent Act, and the Copyrights and Neighbouring Rights Act. The enactment of these Acts brings the country in line with its international obligations under the Patent Cooperation Treaty, and its membership of the African Regional Intellectual Property Organisation (ARIPO). The latter has introduced a harmonised filing system which allows applicants to be registered in any of the Contracting states by filing a single patent/trademark application.

### AREAS FOR IMPROVEMENT

The Government should move forward with its legal reforms by updating important pieces of legislation, such as the Trade Marks Act of 1981 and the Arbitration Act of 1904. It may draw inspiration from the Energy Charter Model Instrument on Management of Investment Disputes, which aims to assist States in handling investment disputes while keeping in mind their own particular needs and circumstances.

While investment disputes are uncommon, the Government should develop legal guarantees against expropriation, so that investors have more clarity on the activities considered of "public interest" in the compulsory acquisition of property.

# IMPLEMENTATION STATUS



## Eswatini

PROPOSED IN	EIRA AREAS FOR IMPROVEMENT	IMPLEMENTATION STATUS AS OF 1 APRIL 2020
<b>Indicator 1</b>		
2018	Adopt action plans to implement the national energy priorities, such as improving energy efficiency, and policies such as the IPP Policy.	<b>Pending</b>
	Establish policy monitoring and evaluation mechanisms to track the progress made against planned actions and objectives.	<b>Work ongoing.</b> The Network Reinforcement and Access Project (NRAP) contains a monitoring and evaluation mechanism that should be replicated in other strategic documents.
<b>Indicator 2</b>		
2018	Adopt a legislative framework on the freedom of information, create an online version of the Official Gazette, and solicit feedback from stakeholders on legal and regulatory decisions.	<b>Work ongoing.</b> In 2019, the Eswatini Electricity Company (EEC) completed an Environmental and Social Impact Assessment (ESIA) that was published on the EEC's website. The ESIA was accompanied by a Stakeholder Engagement Plan (SEP), which defines technical and culturally appropriate means for consultation, disclosure, and grievance redressal.
<b>Indicator 3</b>		
2018	Reinforce the functional and financial independence of the Eswatini Energy Regulatory Authority (ESERA).	<b>Work ongoing.</b> ESERA has made attempts to increase private entity participation in the generation of electricity, which is in line with its statutory mandate to prepare and run competitive generation-capacity tendering processes in collaboration with the Ministry of Natural Resources & Energy.
	Relax restrictions on land tenure.	<b>Pending</b>
<b>Indicator 4</b>		
2018	Modernise the legal framework for IP rights and investment arbitration.	<b>Work ongoing.</b> The Government has enacted the Intellectual Property Tribunal Act of 2018 and the Patent Act of 2018.
	Update the national law to define the term "public purpose" in the context of expropriation.	<b>Pending</b>