

Eswatini

Population ¹	1,136,191
Area (km ²) ¹	17,360
GDP per capita (USD) ¹	4,106.19
TES (Mtoe) ²	N/A
Energy intensity (toe/10 ³ 2015 USD) ²	N/A
CO ₂ emissions - energy (MtCO ₂) ³	1.1

There is no data by Orbis Crossborder Investment on completed energy projects and deals from 2015-2021

Sources:

1. The World Bank 2018
2. ©IEA (2021), World Energy Balances (<https://www.iea.org/data-and-statistics>). All rights reserved.
3. ©IEA (2021), CO₂ Emissions from Fuel Combustion (<https://www.iea.org/data-and-statistics>). All rights reserved.

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

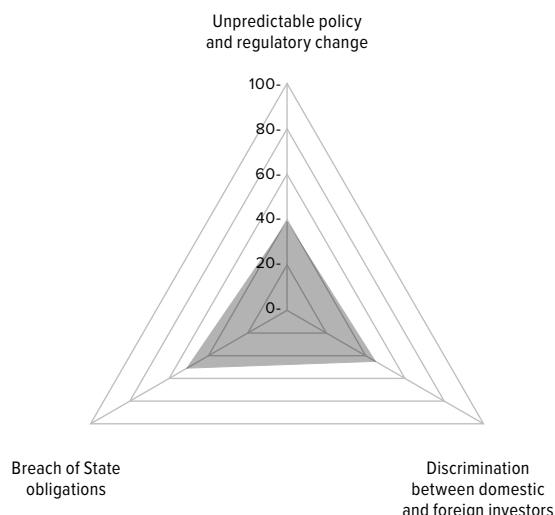
Of the three risks assessed in EIRA, *unpredictable policy and regulatory change* is lower compared to *discrimination between domestic and foreign investors* and *breach of State obligations*.

Eswatini’s score is good on one indicator, and moderate on three indicators. It has a good score on *foresight of policy and regulatory change* (76). Its score on *management of decision-making processes* has increased from 56 to 59, while on *regulatory environment and investment conditions* it is 56. Its score on the indicator *rule of law* has also improved from 44 to 49.

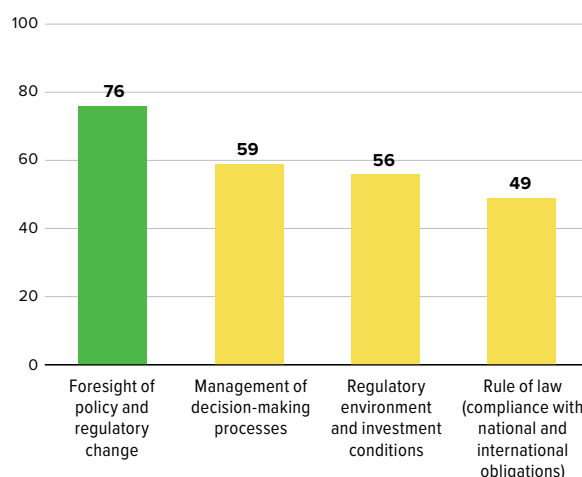
On a more detailed level, Eswatini’s overall sub-indicator performance is moderate. *Communication of vision and policies* is the highest-scoring sub-indicator (78), followed by *robustness of policy goals and commitments* and *institutional governance*, both at 75. Its score on *management and settlement of investor-State disputes* has increased from 55 to 65, while the score on *restrictions on FDI* stands at 60. On *regulatory effectiveness*, its score has improved from 50 to 52, and on *transparency* from 36 to 43. *Respect for property rights* continues to be the lowest-scoring sub-indicator at 33.

While there are some improvements in Eswatini’s performance compared to EIRA 2020, further steps must be taken to build on the work done. Particular attention should be given to reinforcing the respect for property rights.

RISK LEVEL



INDICATOR PERFORMANCE

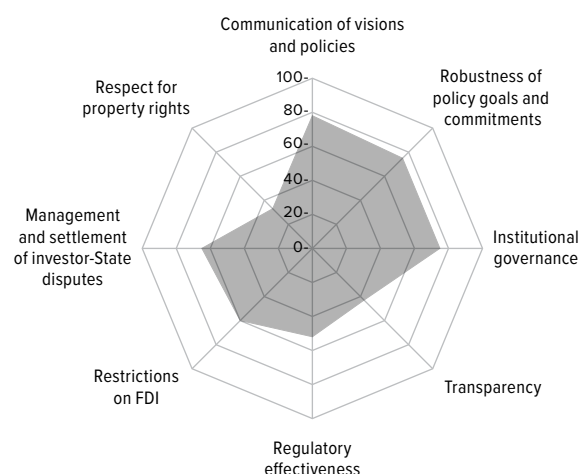


YEAR-ON-YEAR COMPARISON

RISK AREAS	2018	2019	2020	2021
Unpredictable policy and regulatory change	40	41	41	39
Discrimination between domestic and foreign investors	46	47	47	45
Breach of State obligations	56	56	56	51

INDICATORS	2018	2019	2020	2021
Foresight of policy and regulatory change	76	76	76	76
Management of decision-making processes	60	56	56	59
Regulatory environment and investment conditions	57	60	60	56
Rule of law	44	44	44	49

SUB-INDICATOR PERFORMANCE



Foresight of policy and regulatory change

QUICK FACTS

The Government adopted the National Development Strategy in 1999.

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

STRENGTHS

Eswatini has made significant progress toward ensuring universal electricity access by 2022 under the Network Reinforcement and Access Project (NRAP). The recently enacted Petroleum Act 2020 contains measures to strengthen energy security. For instance, it requires the Government to prepare, along with wholesalers, an emergency supply plan for petroleum products and maintain national strategic stocks to address interruptions or serious distortions in supply. In April 2021, the Eswatini Energy Regulatory Authority (ESERA) published an intention to award Globeleq and its consortium partner, Sturdee Energy Southern Africa, a bid for two 15MW solar plants. Moreover, African Clean Energy Developments will be awarded a bid for a 15 MW photovoltaic project. These projects, situated in Balekane and Ngwenya, are the first utility-scale solar projects in the country and will help to improve the power system's resilience, increase domestic power generation, and reduce electricity imports. The consortium will also build the infrastructure to connect the plants to the Eswatini Electricity Company (EEC). Moreover, in 2020, the Civil Aviation Authority launched a call for expressions of interest to construct a solar photovoltaic plant on a Build-Own-Operate-Transfer basis. The 850 kWp capacity plant will be located at the King Mswati III International Airport and connected to an 11 kV underground cable distribution system.

The Ministry of Natural Resources and Energy (MNRE) is responsible for planning and monitoring energy policies and projects. Under the Petroleum Act 2020, the National Petroleum Company (ENPC) implements targets on energy security by carrying out surveys to determine key development areas and building and managing crude oil and petroleum logistics investments. Licence holders must make a security deposit with the Petroleum Fund against any environmental damage caused due to their operations. Independent inspectors and the Eswatini Environmental Authority monitor compliance with relevant standards and impose sanctions in case of violations.

AREAS FOR IMPROVEMENT

The Government has set an ambitious target to increase electrification rates from 80% in 2020 to 85% by 2022. To achieve this target, the MNRE should revise the rural electrification plan giving more attention to off-grid solutions such as micro-grids and rooftop photovoltaic.

The Government should ensure that independent entities, similar to those envisaged in the NRAP, monitor the progress made under the National Energy Policy 2018.

Management of decision-making processes

QUICK FACTS

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

The Ministry of Commerce, Industry and Trade is in charge of formulating the national investment policy.

The Energy Department of the MNRE is responsible for administering the Petroleum Act 2020.

STRENGTHS

In 2021, the Initiative for Climate Action Transparency invited proposals from independent institutions to provide technical support in sectoral monitoring, reporting and verification systems. The project aims to increase the technical capacity of the Ministry of Tourism and Environmental Affairs, its line departments, and national experts such as the University of Eswatini in developing a reliable data collection process for future inventory compilation. Moreover, it will conduct a renewable energy policy assessment to model the economic and social impact of various scenarios on the economy, especially in land use, land-use change and forestry (LULUCF) and agriculture sectors.

The Government has consolidated and fully updated its official website, where electronic copies of national legislation are now available. In 2021, the Public Procurement Regulations were issued in line with international best practices to render the relevant process more transparent. Public entities are required to publish important information related to their activities. In keeping with this, ESERA recently made a public request for consultancy proposals to develop its three-year (2023-2026) strategic plan. Moreover, in March 2021, the Auditor General of Eswatini issued a report on the consolidated Government accounts. The new Petroleum Act 2020 also requires the publication of all decisions related to licensing, pricing, and sanctions in the Official Gazette and the Petroleum Register. During the licence term, the holder must forward a detailed and audited annual report to the Minister responsible for Petroleum Affairs.

AREAS FOR IMPROVEMENT

It is commendable that the Government has integrated transparency requirements in the Petroleum Act 2020. That said, it still needs to enact an overarching law on access to information as soon as possible. This law should have a clear scope of application, outline the procedure for the public to obtain information, and contain a definitive list of exceptions to information access. Moreover, it must set timelines for consulting with the public and receiving feedback from stakeholders.

Regulatory environment and investment conditions

QUICK FACTS

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

The Eswatini Investment Promotion Act 1998 provides for equal treatment of domestic and foreign investors.

STRENGTHS

Following the adoption of the Petroleum Act 2020, ESERA's functions encompass licensing downstream petroleum activities, while upstream and midstream operations fall under the Ministry responsible for Petroleum Affairs. An Advisory Committee of eight members assists the Ministry of Petroleum Affairs in its tasks. The Committee members receive remuneration directly from the Petroleum Fund, and their term of office cannot exceed six years. In 2021, ESERA and a consortium of South African-based companies developed guidelines on ring-fencing power sector activities and supporting the development of the small-scale embedded generation policy.

Since 2018, the Government has intensified its efforts to increase competitiveness and attract foreign investment. It has prioritised the energy and the ICT sector by developing a Grid Code and a policy on renewable energy and independent power producers. The digital migration programme of the Southern African Development Community also presents ICT opportunities. Other positive developments include the ratification of the African Continental Free Trade Agreement, and the country's reinstatement under the African Growth and Opportunity Act. Moreover, Eswatini has received financial support from the World Bank and the International Monetary Fund to help ease fiscal challenges posed by the COVID-19 pandemic.

AREAS FOR IMPROVEMENT

ESERA's involvement in the licensing of downstream activities and its funding from fees and levies are positive developments. Further functional autonomy of its members through open competition will enhance the independence of its decision-making power.

The Government may consider easing FDI-related restrictions to render incentive schemes more meaningful. Its substantial role in regulating the mining sector may already be perceived as restrictive by investors. Compounding this perception is the fact that two-thirds of the land surface is considered national property.

Public-private sector cooperation can help to strengthen the competitiveness of local companies significantly. For this reason, collaborative partnerships among State authorities and the industry should accompany the local content requirements in both the Public Procurement Act 2011 and the Petroleum Act 2020.

Rule of law

QUICK FACTS

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

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

Eswatini has been a WTO member since 1 January 1995.

STRENGTHS

The Petroleum Act 2020 provides favourable conditions for alternative resolution of disputes. More specifically, aggrieved licence holders may submit their case to arbitration. Amicable negotiations, mediation, and expert determination are also available to investors. Pending the outcome of the dispute resolution procedure, the suspension or termination of licence produces no effect unless confirmed by the award or the decision resulting from such procedure. A separate process is established for complaints against any public agent operating under the Petroleum Act 2020. An appeal can be lodged with the Minister of Petroleum Affairs as an initial step. Should the complainant disagree with the Minister's findings, they have recourse to the national High Court.

Expropriation and nationalisation is a rare occurrence. Deprivation of private property is possible only where necessary, following a court order and upon compensation. There are no instances where contractual terms or obligations have been renegotiated. The Petroleum Act 2020 states that the rights and obligations under a licence obtained before the entry into force of this Act cannot be any less favourable than those accruing from a licence granted after it enters into force. Over the past five years, the Government has enacted laws to reinforce IP protection, such as the Copyright and Neighboring Rights Act 2014, the Intellectual Property Tribunal Act 2015, and the Trademarks (Amendment) Act 2015.

AREAS FOR IMPROVEMENT

The Government should consider updating the Arbitration Act 1904. In doing so, 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.

Although investment disputes are uncommon, the Government may wish to further develop legal guarantees against expropriation in line with international best practices. It may also consider giving investors more clarity on what activities are considered "public interest" in the context of compulsory property acquisition.

IMPLEMENTATION STATUS



Eswatini

PROPOSED IN	EIRA AREAS FOR IMPROVEMENT	IMPLEMENTATION STATUS AS OF 1 APRIL 2021
Indicator 1		
2018	Adopt an independent power production policy and detailed action plans for other energy priorities, such as energy efficiency. Revise the rural electrification plan paying closer attention to off-grid solutions such as mini-grids, microgrids and rooftop photovoltaic.	Work ongoing. In 2019, the Government launched the Network Reinforcement and Access Project to strengthen the transmission and distribution network in the least developed region in the country. Additional targets and actions in terms of energy security are set in the Petroleum Act of 2020.
	Create robust monitoring and evaluation mechanisms to track the progress made on planned actions and evaluate it against the national energy objectives.	Work ongoing. The Network Reinforcement and Access Project contains a monitoring and evaluation mechanism that is being replicated in other strategic documents.
Indicator 2		
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.	Work ongoing. The Government has consolidated and fully updated its official portal where electronic copies of national legislation are now available. Moreover, the Eswatini Energy Regulatory Authority (ESERA) made a public request for consultancy proposals to develop its three year (2023-2026) strategic plan. Similarly, in March 2021, the Auditor General issued a report on the consolidated Government accounts. Finally, the 2020 Petroleum Act requires the publication of any decision related to licensing, pricing, and sanctions in the Official Gazette as well as in the Petroleum Register.
Indicator 3		
2018	Reinforce the functional and financial independence of ESERA.	Work ongoing. ESERA is now responsible for the licensing of downstream petroleum activities and is funded from the National Petroleum Fund.
	Relax restrictions on land tenure.	Pending
2021	Reduce the role of the State in regulating the mining and petroleum sectors.	Improvement suggested in 2021. Status will be updated in 2022.
	Local content requirements in the Public Procurement Act 2011 and the Petroleum Act 2020 should be accompanied by collaborative partnerships among State authorities and the industry to strengthen the competitiveness of local companies.	Improvement suggested in 2021. Status will be updated in 2022.
Indicator 4		
2018	Modernise the legal framework for IP rights and investment arbitration.	Work ongoing. The Government has enacted laws to reinforce protection of IP rights, such as the Copyright and Neighboring Rights Act 2014, the Intellectual Property Tribunal Act 2015, and the Trademarks (Amendment) Act 2015.
	Update the national law to define the term "public purpose" in the context of expropriation.	Pending