

\*\*\* INBOUND NOTIFICATION : FAX RECEIVED SUCCESSFULLY \*\*\*

TIME RECEIVED	REMOTE CSID	DURATION	PAGES	STATUS
September 21, 2015 4:38:23 PM GMT+0		300	13	Received

FROM : FAX NO : 06 Mar 2007 10:33AM P 1

## 1. FOLLOW UP ON PREVIOUS REVIEW

A substantial number of recommendations received by Swaziland during the Universal Periodic Review in October, 2011 which related to socio-economic and cultural rights were health, education and water<sup>1</sup>, and with less related to food security, creation of employment, implementation of socio-economic development plans and rural development<sup>2</sup>. The country accepted all these recommendations and rejected only one relating to the elimination of discrimination against workers from ethnic minorities<sup>3</sup>. Swaziland is not party to the International Convention on the Protection of the Rights of all Migrant Workers and Members of Their Families.

In the education sector, government has progressively implemented free primary education (FPE) and it is only in 2015 that all primary grades are accommodated by the FPE fund. This came with its own challenges related to minimal infra-structure such as classrooms and furniture; increased class size number which exceeds the universal teacher-student class ratio. Tertiary scholarship funds have been reduced considerably; in light of the scholarship policy there are certain trades that have been considered government priority with an exclusion of others.

The country has improved its provision of free Anti-Retroviral Treatment (ART) for HIV/AIDS patients; though there has been a limited budget for other health services. Government hospitals have lacked prescription medicines, equipment and personnel; to an extent that hospitals would prescribe and patients will buy prescription medicines from pharmacies.

For the improvement and provision of clean drinking water the country reports that 76% of Swazis now have access to safe water within a distance of 0.5 km<sup>4</sup>. However, there is no clear evidence to this report. Monitoring and evaluation mechanisms and progress report are not readily available for many government projects, water and sanitation projects included.

Decent work, improvement of the standard of living and alleviation of poverty has continuously worsened over the past half-decade. The country has lost Foreign Direct Investment (FDI) leading to massive job losses, worsening standards of living. There is also rampant underemployment in the country, and a number of the population relies on informal employment.

## 2. THE NATIONAL HUMAN RIGHTS FRAMEWORK

The Constitution of Swaziland is very shy on socio-economic and cultural rights. Under the Bill of Rights, the constitution only specifies and guarantees protection of property rights, free primary education, workers' rights and property rights of spouses<sup>5</sup>. Otherwise, relevant sections of socio-economic rights are contained under the directive of state policy and duties of citizens only as economic and social objectives respectively<sup>6</sup>. These are not legally binding on the state.

The state under review has formulated policies or socio-economic guidelines that ostensibly promote social and economic wellbeing of the citizens with a glaring gap for assurance of enjoyment. Such policies include the National Development Strategy (NDS) 2007-2022, Smart Programme on Economic Empowerment and Development (SPEED), Poverty Reduction Strategy and Action Plan (PRSAP), Economic Social Reform Agenda (ESRA). These instruments often remain unimplemented with neither an action plan nor budget allocation for implementation; case in point being the NDS. Often, there are no frameworks for monitoring and evaluation of the policy guidelines. As such, there has been replication of projects over and over in the different policy documents, only with a different name but similar contents - overall aim and objectives. Moreover, the government budget is askew and does not prioritise basic needs for its population. For instance, the African Defence Magazine reported that Swazi government spending on defence equipment in the budget year 2013 – 14 represents a more than 50 fold increase over the previous year<sup>7</sup>.

## 3. HUMAN RIGHTS SITUATION ON THE GROUND

### An Adequate Standard of Living and Poverty Alleviation

Swaziland has an income per capita of USD 3,362; it is classified by the World Bank as the lower middle income country. Poverty levels have worsened over the years from 69% in 2001<sup>8</sup> with a slight increase recently with 70% of the population live below the poverty datum line. National development frameworks to combat poverty have not yielded any positive results. These include the Poverty Reduction Strategy and Action Programme of 2006 (PRSAP), which had a goal to minimise poverty by 50% in 2015 and eradicate it by 2022<sup>9</sup>. Similarly the National Development Strategy (NDS) whose vision was to place the country in the top 10% of the medium human development index group of countries by the year 2022<sup>10</sup>. The issues to be addressed by the NDS were food security, human settlements

and shelter, safe water and sanitation, health, human capital development, development of infrastructure and innovation. However, there was no implementation framework for NDS, hence the launch of the Economic and Social Reform Agenda (ESRA). We note with concern that these frameworks are not budgeted nor monitored and evaluated to track progress and the resources actually allocated and spent on this project.

Unemployment stands at 40% and this figure does not account for underemployment; the situation is further worsened by the uneven distribution of wealth and poor mechanisms to ensure wealth trickle-down effect resulting to wealth concentration to only 10% of the population<sup>11</sup>. The country has failed to attract and sustain foreign direct investment; and has managed to lose drastically from 2013- 2014<sup>12</sup>. This has been worsened by the country's loss of the African Growth Opportunity Act (AGOA) which allows preferential markets for the country's export in the United States of America. This greatly affected the textile factories leading their closure and relocation, triggering a massive job loss in the country particularly for women. Swaziland often fails to promote and protect the welfare of its citizens. To attract FDI, the country promises cheap labour costs at 1/3 to that of South Africa.

The National Budget of 2015/2016 does not give so much hope for improvement. Inflation rates keep rocketing high for basic services. Food inflation averaged 6.3 percent in 2014 compared to 5.7 percent in the previous year. Transport inflation increased to 8.8 percent in 2014 from 2.4 percent in 2013<sup>13</sup>. Commentators have reported that the high inflation rate in transport by 6.4% can be explained by the fact that some parliamentarians in the 2013/2018 parliament run transport business. Furthermore, the budget speech indicates that expenditure exceeds revenue; as expenditure stood at SZL15.7 billion while revenue is at SZL14.0 billion for 2014/2015<sup>14</sup>. With all this in the face of corruption, the economy is heavily overloaded. In 2012, the Minister of Finance declared that government was losing approximately USD 128 million of public funds to corruption annually. This is a grave concern considering that there is the Anti-Corruption Commission that is mandated to handle matters of corruption, but so far little has been done to ensure accountability.

### **Right to Decent Work**

Unemployment in Swaziland stands at 40% with the highest rate of unemployment affecting the youth at 71%; and this statistic does not account for underemployment figures in subsistence farming and informal sector employment<sup>15</sup>. The private sector accounts for 69% and the public sector 31% of total formal employment<sup>16</sup>.

Generally, the country has poor working conditions and uncompetitive remuneration reported to be only a third in comparison with South Africa both in the public and private sector. Government civil servants; teachers and nurses mostly have resorted to industrial action to push for better pay and improved working conditions<sup>17</sup>. The teachers' strike which ran for five weeks saw 100 teachers being fired by the Ministry of Education for failure to return to work. Labour protests are not met with cooperation from the government side, for civil servants and private sector employees alike. Often, police threaten workers' protest which limits their constitutional rights to freedom of association; and their right to industrial action as granted in the Industrial Relations Act. In 12 April, 2014 police interfered in a peaceful protest march organised by the Trade Union Congress of Swaziland (TUCOSWA) and attended by broader civil society group. TUCOSWA General Secretary and TUCOSWA Deputy President were arrested at a security roadblock mounted at Mhlaleni in Manzini. The police further arrested other groups of workers at all the various security checkpoints mounted on the roadblocks leading to Manzini, detained and later dropped them off in remote places with some having to travel long distances on foot at night to get to the nearest public road. Amongst them were the President of the National Public Services and Allied Workers Union and the General Secretary of the Private and Public, Transport Workers Union.

The legal framework in the country has restrictions on rights of workers to strike. Strikes are only permitted in the case of unresolved disputes which imply that sympathy strike is prohibited<sup>18</sup>. There are also restrictions with respect to type of strike action (e.g. pickets, wild-cat, working to rule, sit-down, go-slow. The Commissioner of Labour carries out a secret ballot to determine whether the majority of employees are in favour of protest action. After a ballot has been successful the union shall give another notice- at least 48 hours before the protest action<sup>19</sup>. Article 89 of the Industrial Relations Act states that the Minister of Labour may ask the Court to declare a strike illegal if s/he considers that it would threaten "national interest".

The country does not yet have a social security policy and the Occupational Safety and Health Policy is still in draft form. The Ministry of Labour and Social security is only making attempts at drafting an enabling legislation for a proposed pension scheme, in consultation with the shareholders. The country has sought the assistance of the International Labour Organisation (ILO) in this regard. So far there is the Provident Fund for employed persons, which is exclusionary for self-employed persons, casual employees and foreign workers.

Unemployment and or underemployment affect different groups of society disproportionately; youth and women are by far the most affected groups. Women labour force in Swaziland was 39.27% in 2013 according to the World Bank<sup>20</sup> as compared to 43.9% men. The country does not have legislation or policies in place to deal with gender gaps; the law only protects wage discrimination and occupational segregation. However, we note that the law provides room for discrimination in access to housing benefit for married women<sup>21</sup>.

### **Housing and Land Rights**

Within the international bill of human rights—namely, the Universal Declaration of Human Rights (UDHR), and the two binding Covenants, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) which Swaziland is party to - a number of articles are directly tied to rights to land.

Consequently, the right to shelter/housing cannot be looked at in isolation from land rights. Land is the most important resource for the livelihood of people as it is a means for the production of food, housing, sourcing energy, water, work, and it is frequently tied to the spiritual, cultural and social identities of peoples. Access to land is important for development and poverty reduction, but also often necessary for access to numerous economic, social and cultural rights, and as a gateway for many civil and political rights. Another intricate spectrum on issues of shelter and land is the land tenure system in Swaziland. There are four land tenure systems in Swaziland. There is the Swazi Nation Land (SNL) – which is held in trust for the nation by the King<sup>22</sup> accessible and governed under traditional law and custom by the Chiefs who are the footstools of *Ingwenyama* (King) and he rules through them and they are accountable to him<sup>23</sup>. The other land tenures are Title Deed Land (TDL) which is privately owned land, Crown Land (CL) which is land privately owned by government, companies, individuals and there is Concession Land (CL) whose tenure remains unclear. Only 56% of the land is SNL, and the 43% is TDL and less than 1% is for urban development. Population density was estimated to be 69 persons per square kilometre in 2004<sup>24</sup>.

The population distribution in the land tenure is such that 70% of the population reside in SNL, which is rural Swaziland. In essence, this population have no title deed to land they occupy. They often face forced evictions by the state and private individuals and chieftaincy disputes compromises their development and stability. Within this reporting quarter, there

were about 4 communities<sup>25</sup> that have either been evicted or under threat of being evicted. On 20 August 2014, Judge Mpendulo Simelane granted the Swazi government an interim order allowing the evictions of the ten Nokwane homesteads sought by the government to facilitate the construction of the Science Park. On 8 September 2014 this interim order was made final and the residents immediately lodged an appeal to the order. The appeal was ignored, and families were evicted. Victims of evictions do not only lose shelter; but also spiritual, cultural and social identities are violated<sup>26</sup>. Of concern is that this is much against the Constitution<sup>27</sup>; and also much against international law. International law motivates that a lawful eviction must be accompanied by (i) consultations, (ii) informed consent, and (iii) adequate compensation where a person is deprived of their property.

Chief disputes have continually hindered access to land, poverty alleviation and placed citizens within their territories at a disadvantage. As per the tinkhundla governance system<sup>28</sup>; chiefs play a critical role to facilitate access to government services to the people and also allocate land for projects and human settlements. Cases of chieftaincy disputes, issues of succession and absence of chiefs due to an array of reasons frustrate progress for communities hindering the realisation of their human rights. There have been a number of cases of this nature observed in the country. In Mahlalini, a constituency in the Shiselweni region there are questions of succession after the demise of the area's chief, which also led to the killing of Sigwili Sibandze by the opposing faction. In koNtshingila eight people were killed over chieftaincy disputes; following factional war where a temporal chief was appointed and the community was divided. While the constitution states the King may appoint anyone to be chief<sup>29</sup>; the pre-constitutional practice as per traditional law and custom has been that chieftaincy throne is through heritage. Notably, there is now a clash between constitutional law and the traditional law and custom. Some communities have no chiefs appointed as per the constitution such as kaZombodze community in the Manzini region and residents still cite a chief in their national documents who passed away in 1982. At Mkhwakhweni area a Chief's burial was delayed for 5 years as a result of chieftaincy disputes. The dispute was based on the pre-constitutional law, and his burial in the area where he was Chief would have meant that his family would inherit his chieftaincy. The greatest concern here is the failure to evoke the constitutional provisions to resolve such issues. In Mhlane, New Village, Logoba and Mathangeni the confusion in community administration has led to health hazard in the areas as there has been no site planning for houses such that there is even poor sanitation in place.

## Food Security

The International Fund for Agricultural Development has reported 66% of the population in Swaziland is unable to meet their basic food needs<sup>30</sup>. Traditional subsistence agriculture is failing due to worsening climatic conditions and farmers being too poor to purchase basic agricultural inputs and due also to a reduced farm labor force weakened by under-nutrition and decimated by disease<sup>31</sup>. Arable land is only 11%, which is only 17,360 square kilometres of Swaziland. A survey in 2013 by the World Food Program and the Swazi Government found that Swaziland loses 3.1 percent of its gross domestic product (GDP), or some USD 92 million annually, from the long-term impact of chronic childhood hunger. Some 270,000 adults, or more than 40 per cent of the labour force, suffer from physical stunting as a result of chronic malnutrition in early childhood<sup>32</sup>.

Food security has become a deepening problem for child headed households most of whom are orphans and vulnerable children. The government has attempted to establish Neighbourhood Care Points (NCPs) which creates an environment for care, access to food, shelter, formal and informal education and psychological support. Further, vegetable gardens were set up in the centres through the support of the National Emergency Response for HIV/AIDS (NERCHA) and other development partners. However, this effort was unsustainable; without permanent personnel and reliance on volunteers to run the centres, lack of budget from the national coffers to ensure sustainable food supply and other relevant necessities. To date, some NCPs are lying idle and no longer serving their purpose in some parts of the country.

To mitigate issues of food security, through the Ministry of Agriculture and Cooperatives, the government had anticipated to construct earth dams and to commercialise agriculture on Swazi Nation Land (SNL) to improve its 6% contribution to GDP amongst other things<sup>33</sup>. A budget was supposed to be made for these projects. However, government has not made any efforts over the years to allocate a budget for these much needed resources; hence they have not been implemented to improve food production and food security for rural communities. At minimal, the government has attempted to provide subsidised farm inputs and machinery for agriculture. However the worsening climate conditions often leading to poor rainfall and other related issues have down played these efforts.



### **Water and Sanitation**

While there is no readily available data and statistics on water and sanitation coverage in country; government development policies and water and sanitation implementers presuppose that water and sanitation remains a challenge in the country. The issue of monitoring and evaluation remains a challenge within government. Currently the country has a draft National Water Policy which identifies the Water Department at Ministry of Natural Resources and Energy as the custodian of water issues in Swaziland; the policy however, does not compel water and sanitation implementers to submit reports to the department.

According to World Health Organization (WHO) and the United Nations Children Education Fund (UNICEF) Joint Monitoring Programme for Water Supply and Sanitation in Swaziland conducted in March, 2012; 25.3% of homesteads in rural areas had access to piped water, 59.4% had improved water sources, and 25.8% were using surface water. In urban Swaziland there are 75% of homes have piped water, 90.6% an improved water source, and only 5% are using surface water. Surface water is not treated, and exposes users to health hazards. It is also notable that some citizens' access sub-standard surface water supply meant for irrigation purposes; and these are the communities around the sugar belt in the Lubombo region. A community set up 1973, Mgidzangcunu in the Lubombo region, where the farm workers reside use water sourced from sugar drains for drinking and other domestic purposes. This community cannot afford to pay the relevant water service authority as they earn USD3.2 a day to harvest the sugar cane fields, and this is seasonal work.

Government spending on water and sanitation projects has been very minimal. The budget was 2011-2012 was SZL19 million and 2012 – 2013 was at SZL 24 million. Swaziland will need to upscale it's funding as it is currently below the WHO benchmark of 0.5% of the GDP.

### **Social Security**

There is no legal framework for social security in the country; though the government caters for the elderly grants and disability grants. Elderly persons get a sum of SZL300.00 which is equivalent to USD 25.00<sup>34</sup> per quarter. This money is very insufficient to meet the daily basic needs for elderly people over four months. Often, a substantial amount would be spent on transport travelling to and from the distribution centres. Moreover, the quarterly disbursements of the elderly grants are sometimes defaulted by government

## **Health**

The country has attempted to expand health centres in the country by establishing six hospitals, ten health centres and eight public health units over this reporting period. However, these facilities cannot maintain quality of services due to shortage of staff, equipment, supplies and drugs<sup>35</sup>. The national budget is continually of concern as it fails to priorities basic services as health. In 2013/2014, the government budgeted USD 28 million for health care for 1.2 million people - only a little more than USD 23 per person<sup>36</sup>. Local media has reported that the country is running short of ARVs; and the Principal Secretary in the Ministry of Health and Social Welfare has been reported saying that 6 000 people are at risks of being affected by this shortage<sup>37</sup>. Shortages of essential medicines and supplies at public hospitals and clinics have become routine while erratic water supplies at rural health facilities sometimes forces nurses to fetch water from nearby rivers in order to wash their patients<sup>38</sup>. In 2012/13, the health sector was under a lot of strain; clinics and hospitals lacked medical supplies and drugs such that patients only got prescriptions from doctors and nurse from the public hospitals to buy privately. Though, this anomaly is still prevalent, it is slowly normalising. Often affording citizens have preferred to utilise neighbouring countries hospitals, South Africa mainly.

Health personnel compound the problems in the health sector. Patient rights are not adhered to by health personnel. In government hospitals mostly, the patient's right to information is not respected. Doctors and nurses will administer drugs without informing the patient; and this practice is encroaching into private practice as well. Health practitioners would usually take offense when you enquire about the prescription.

The only one mental health facility in the country dilapidated with water leakages on the walls. Overcrowding places both health personnel and patients at risk of getting infections. Staffs have low morale and greatly demotivated; and there has not been any visits by relevant Minister in a long time to this facility.

## **Education**

Swaziland's literacy rate was at 87.33% in 2011<sup>39</sup>, which is generally better as compared to other countries in the region. However, there are threats that will negatively affect this fair standing on literacy rate. There is a provision for formal and non-formal education. Non-formal education is provided for the adult population through Sebenta National Institute.

Government had envisioned expanding non-formal education in approximately 142 locations by 2010, but that has not come into fruition due to, amongst other things the lack of permanent staff and infra-structure.

The government has only made minimal efforts in primary education following the role-out of Free Primary Education<sup>40</sup>. However, ever since the implementation of FPE, tertiary scholarships have been affected; with lower and lower numbers of pupils get scholarships<sup>41</sup>. In higher learning (high school) the government only provides for tuition fees for orphaned and vulnerable children only.

There is also a confusion and or clash of guiding frameworks; that being the scholarship policy of 2010; and the constitution that holds that a person has a right to practise a profession and carry on any lawful occupation, trade or business<sup>42</sup>. The policy on the other hand, has stipulated preferred professions for scholarship funding which limits the independent choice of beneficiaries. It has been developed with exclusion of stakeholders, and attracted a lot of protests action by tertiary institutions students; and so far there have not been any attempts to incorporate the voice of stakeholders.

#### **4. RECOMMENDATIONS FOR ACTION BY SWAZILAND**

1. Implement poverty reduction and development strategies that respond to the basic needs of the population; and also put in place monitoring and evaluation mechanisms.
2. Align labour laws to international standards and ensure that the welfare and rights of workers are a priority.
3. Make attempts towards closing the gap between rural and urban communities in water and sanitation services to mitigate issues of health hazard for the poorest population.
4. Prioritise basic services for the population in the national budget to ensure that their basic needs to food, health and education are met.
5. Endeavour to resolve issues of land in the country, and issues related to chieftaincy disputes as these exacerbate poverty and affects the poor population of the country in terms realising their human rights.
6. Introduce a social security system, particularly a state pension.

7. Continue investment in the public education sector as education is a significant factor for development.

<sup>1</sup> Report of the Working Group of the Universal Periodic Review of Swaziland, October 2011

(A/HRC/WG.6/12/L.4). Paragraph 76, recommendations 17, 49, 51, 52, 56, 57, 58, 61, 62, 63, 64 (Canada, Zimbabwe, Singapore, Holy See, Morocco, Malaysia, Portugal, Qatar and the United Republic of Tanzania)

<sup>2</sup> Ibid, Paragraph 76, recommendations 47, 50, 60 and 61 (Cuba, Zimbabwe and Malaysia)

<sup>3</sup> Ibid, paragraph 78, recommendation 2 (Brazil)

<sup>4</sup> National Budget Speech 2015/2016

<sup>5</sup> Swaziland Constitution, 2006: Sections 19, 29 (6), 32 and 34

<sup>6</sup> Ibid; Sections 59 and 60

<sup>7</sup> Swaziland: A Failed Feudal State, September 2013

<sup>8</sup> Yingcamu: A Poverty Reduction Strategy and Action Plan – Towards a Shared Growth and Empowerment

<sup>9</sup> Ibid

<sup>10</sup> Human Development and the New Order in Swaziland: is it a tall order. Countries placed in the top 10 HDI rank are Norway at 1, Germany at 5 and United States of America at 3. Currently, Swaziland is at 141 HDI rank. Human

<sup>11</sup> Swaziland: A Failed Feudal State, September 2013 Freedom House Publication

<sup>12</sup> <http://www.tradingeconomics.com/swaziland/foreign-direct-investment>

<sup>13</sup> Swaziland National Budget Speech 2015/2016

<sup>14</sup> Ibid

<sup>15</sup> Swaziland: A Failed Feudal State, September 2013

<sup>16</sup> A Poverty Reduction Strategy and Action Programme, June 2007

<sup>17</sup> The Swaziland National Association of Teachers (SNAT) went on strike in 2012 to demand for 4.5% wage increase. In the same year, Swaziland Democratic Nurses Union (SWADNU) embarked on a two day strike.

<sup>18</sup> Art.86 Industrial Relations Act

<sup>19</sup> Art. 41 Industrial Relations Act

<sup>20</sup> Labour Force comprises people ages 15 and older who meet the International Labour Organization's definition of the economically active population

<sup>21</sup> Section 152 of the Employment Act

<sup>22</sup> Swaziland Constitution, 2006 Section 211(1)

<sup>23</sup> Ibid, Section 233

<sup>24</sup> A Poverty Reduction Strategy and Action Programme (2006)

<sup>25</sup> KaShali community- about 300 families were to be evicted; the evictions were motivated by chieftaincy boarder disputes. Madonsa about 46 families (2012), Hlathikhulu (not yet implemented, but news of the possible evictions started in 2015), Nokwane (September, 2014), Malkerns 150 families evicted (2013)

<sup>26</sup> Ancestral rituals cannot be performed anymore as they are forcefully removed from their ancestral land and leaving behind established graveyards is some cases. In Ngonini Estates for instance, communities were displayed and separated from their graveyards following Ngonini's boarder adjustment. They have no access to the graveyards as they were fenced in on Ngonini Estates property boarders. As private property, trespassing leads to arrest. Most families are either arrested or fined for trespassing even after they had tried explaining their trespass was due to certain cultural rituals.

<sup>27</sup> Swaziland Constitution 2006, section 211 (3): which states that a person shall not be deprived of land without due process of the law and where a person is deprived, that person shall be entitled to prompt and adequate compensation.

<sup>28</sup> Tinkhundla system of governance: facilitates the decentralisation of government services to the people through local authorities

<sup>29</sup> Section 233 (2)

<sup>30</sup> Swaziland: A Failed Feudal State, September 2013 Freedom House Publication

<sup>31</sup> Ibid

<sup>32</sup> Ibid

<sup>33</sup> A Poverty Reduction Strategy and Action Programme

---

<sup>34</sup> SZL 12.00 = USD 1.00

<sup>35</sup> National Plan of Action for Orphan and Vulnerable Children

<sup>36</sup> Swaziland: A Failed Feudal State, September 2013 Freedom House Publication

<sup>37</sup> Times of Swaziland Sunday, 7 June, 2015

<sup>38</sup> A report from Mliba Clinic in the Manzini Region

<sup>39</sup> World Bank Rankings

<sup>40</sup> Free Primary Education is not comprehensively free, guardians still need to top up tuition fees for pupils and buy uniform and other school supplies that fall out of government's provision.

<sup>41</sup> Only half the number of high school graduates has been able to access scholarships for tertiary education.

<sup>42</sup> Section 32 (1)