



# General Assembly

Distr.: General  
19 July 2011

Original: English

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**Human Rights Council**  
**Working Group on the Universal Periodic Review**  
**Twelfth session**  
Geneva, 3–14 October 2011

**National report submitted in accordance with paragraph 15  
(a) of the annex to Human Rights Council resolution 5/1\***

**Swaziland**

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## List of acronyms

1. ACHPR African Charter on Human and Peoples Rights
2. ACRWC African Charter on the Rights of the Child
3. ANC Antenatal Care
4. CARMMS Campaign for Accelerated Reduction of Maternal Mortality in Swaziland
5. CEDAW Convention on the Elimination of all Forms of Discrimination Against Women
6. CMAC Conciliation, Mediation and Arbitration Commission
7. CP&E Criminal Procedure and Evidence Act
8. CRC Convention on the Rights of the Child
9. CSO Central Statistical Office
10. DHS Demographic and Health Survey
11. DOTS Directly Observed Treatment Short Course
12. DSW Department of Social Welfare
13. EMSI Education Management Information System
14. FAR Fiscal Adjustment Roadmap
15. FPE Free Primary Education
16. HMCS His Majesty's Correctional Services
17. IE Inclusive Education
18. ILO International Labour Organization
19. IRS Indoor Residual Spray
20. ICCPR International Covenant on Civil and Political Rights
21. ICESCR International Covenant on Economic, Social and Cultural Rights
22. JSC Judicial Service Commission
23. MDG Millennium Development Goals
24. MICS Multi Indicator Cluster Survey
25. NERCHA National Emergency Response Council to HIV and Aids
26. NCD Non-Communicable Diseases
27. NCP Neighborhood Care Points
28. OAG Old Age Grant
29. OVC Orphaned and Vulnerable Children
30. PRSAP Poverty Reduction Strategic and Action Plan
31. PMTCT Prevention of Mother to Child Transmission
32. RSPS Royal Swaziland Police Service

- 33. SACU Southern African Customs Union
- 34. STA Suppression of Terrorism Act
- 35. SWAGAA Swaziland Action Group Against Abuse
- 36. SHIES Swaziland Household Income and Expenditure Study
- 37. Swazi VAC Swaziland Vulnerability Assessment Committee
- 38. SNL Swazi Nation Land
- 39. TDL Title Deed Land
- 40. *Tinkhundla* Constituencies
- 41. TB Tuberculosis
- 42. UDHR Universal Declaration of Human Rights
- 43. USDF Umbutfo Swaziland Defence Force

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## I. Methodology and consultation process

1. Swaziland established a National Steering Committee responsible for coordinating an inter-ministerial effort towards the preparation of the national report submitted for periodic review to the United Nations Human Rights Council. The Committee comprised of Ministries whose mandate implicates human rights issues as well as representatives of Civil Society Organizations.
2. The Ministry of Justice and Constitutional Affairs coordinated the operations of the Committee. A draft report was prepared and compiled by the Ministry of Justice based on information and data received from all Government Ministries and information from research conducted by other relevant stakeholders.
3. National consultative meetings were held with relevant stakeholders to make comments, suggestions and recommendations to the draft of the report. Stakeholders contributions were integrated into this report.

## II. Background: Normative and institutional framework

### A. Country background

4. The Kingdom of Swaziland is situated in the south east of the Southern African region. It is the smallest country in the region with a total geographical area of 17,364 square kilometres and is one of two kingdoms in the region. Swaziland is completely landlocked, surrounded on the north, west and south by the Republic of South Africa and bordered by Mozambique to the east. The Kingdom is a former British protectorate – having being declared as such on 7 August 1903 – and gained her independence on 6<sup>th</sup> September 1968 under the leadership of King Sobhuza II.
5. Swaziland is a monarchy whose current head of State is His Majesty King Mswati III who ascended to the throne on 25 April 1986.
6. According to the 2007 Population and Housing Census, Swaziland's current population is 1 018 449 inhabitants, comprising 481,428 males and 537,021 females. In terms of the characteristics of the population, it is very young with 39.6% being below the age of 15 years, 52% being below the age of 20 years and less than 4% being 65 years or above. 793,156 people reside in rural areas and the urban population comprises of 225,293 inhabitants.
7. The Constitution of Swaziland Act No. 001/2005 (the Constitution) came into force on 26 July 2005. The Constitution is the supreme law of the land. The Constitution provides for three organs of Government: the Executive, a bicameral Legislature and the Judiciary.
8. The executive authority of Swaziland vests in His Majesty the King and He may exercise that authority either directly or through the Cabinet or a Minister. The Cabinet consists of the Prime Minister, the Deputy Prime Minister and Ministers. The King appoints the Prime Minister, from among members of the House of Assembly, acting on the advice of the King's Advisory Council (*Liqoqo*). The other members of the Cabinet are appointed by the King, on the advice of the Prime Minister, from both chambers of Parliament.
9. The Parliament of Swaziland is a bicameral chamber consisting of a Senate and a House of Assembly. Swaziland practices a *tinkhundla*-based Electoral system of

Government. Section 79 of the Constitution provides that the *tinkhundla* system is a democratic and participatory system which emphasizes devolution of power from central government to *tinkhundla* (constituencies) areas and individual merit as a basis for election or appointment to public office.

10. Section 94(1) of the Constitution states that the Senate shall consist of not more than thirty one members. Currently, the Senate consists of thirty members. Ten Senators, at least half of whom must be female, are elected by members of the House so as to represent a cross-section of Swazi Society. Twenty Senators, at least eight of whom must be female, are appointed by the King acting in His discretion after consultation with such bodies as He may deem appropriate.

11. In terms of section 95(1) of the Constitution the House of Assembly shall consist of a maximum of seventy six members. The House currently consists of sixty-six members, fifty-five of whom were elected from *tinkhundla* areas serving as constituencies and ten members were nominated by the King. The sixty-sixth member is the Speaker of the House who was elected from outside the House as sanctioned by section 102 of the Constitution.

12. The last General Elections were held in September 2008. The voting age is 18 years, based on the 2007 census the number of people who were eligible to vote in those elections was 536,504. According to the Elections and Boundaries Commission National Elections Report 349,507 people registered to vote. The number of registered voters constituted 65% of eligible voters and the voter turnout was 201,339 which is 58% of the registered voters.

13. In terms of section 138 of the Constitution the judiciary shall be independent and subject only to the Constitution. The country's judiciary comprises of Courts of general jurisdiction: the Supreme Court, High Court and Magistrates Courts. In addition there is the Industrial Court of Appeal and Industrial Court which are specialist tribunals whose jurisdiction is confined to Labour disputes. The judges of the superior courts (Supreme and High Courts) and the specialist tribunals are appointed by the King on the advice of the Judicial Service Commission (JSC) and Magistrates are appointed by the JSC. Further there are Swazi Courts which administer Swazi law and custom.

14. The law of Swaziland consists of Statutory Law, Roman Dutch Common Law as applicable to Swaziland since 22 February 1907 and the principles of Swazi customary law (Swazi Law and Custom). The country therefore operates a dual legal system comprising of Statutory Law and the Common Law on the one hand and Swazi Law and Custom on the other hand. The Swazi Courts Act states that the courts' jurisdiction is limited to cases where all the disputants are Swazis and they consent to the jurisdiction of the court. There is no right to legal representation in the Swazi Courts but parties who want legal representation are entitled to apply for the case to be transferred to the courts of general jurisdiction.

15. Chapter III of the Constitution (the bill of rights) protects and promotes Fundamental Rights and Freedoms. The rights guaranteed by the Constitution are drawn from the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Rights of the Child (CRC), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) the African Charter on Human and Peoples Rights (ACHPR) and the core International Labour Organization (ILO) Conventions. Enjoyment of the Chapter III rights is subject to respect for the rights and freedoms of others and for the public interest.

16. The Constitution provides institutions for redress for persons whose rights have been, are being, or are likely to be contravened. These institutions are the Courts of law and the Commission on Human Rights and Public Administration. Outside of the

Constitution, legislation empowers public officers such as the Labour Commissioner and statutory bodies such as the Conciliation, Mediation and Arbitration Commission (CMAC) to remedy infringement of rights.

## **B. National jurisprudence**

17. *Sphasha Dlamini And Others v The Commissioner of His Majesty's Correctional Services And Another* Civil Case No. 4548/2008. The applicants in that case were friends of an awaiting trial prisoner who sought to visit the detainee in prison. The department of Correctional Services denied them access to the detainee on the ground that Section 16(6)(b) of the Constitution limited access to a detainee to the next-of-kin, legal representative and personal Doctor of that person. The High Court rejected the Commissioner's interpretation of Section 16(6) and held that the categories of persons mentioned in the section make up the standard minimum conditions rather than the exclusive categories of persons who have a right to visit a detainee.

18. *Swaziland National Ex-Miners Workers Association and Another v The Minister of Education And Others* Civil Case No. 335/2009. The applicants were a voluntary association and a natural person. The applicants approached the court for an order directing the Government to provide free primary education to every Swazi as provided for in Section 29(6) of the Constitution. The Court declared that every Swazi child of whatever grade attending primary school is entitled to education free of charge, at no cost and not requiring any contribution from any such child regarding tuition, supply of textbooks, and all inputs that ensure access to education. The court further declared that the Government has the constitutional obligation to provide education free of charge, at no cost, to every child so entitled. In a subsequent case between the same parties, the Supreme Court held that the Government's obligation was dependent on the availability of resources and that the Government's programme of rolling out free primary education incrementally was constitutional.

19. *The Attorney-General v Mary Joyce Doo Aphane* Appeal Case No. 12/2010. In this case the Court struck down legislation (the Deeds Registry Act), which prohibited women married in community of property from registering property in their own names or in the joint names of themselves and their husbands; on the ground that the law violated the right to equality guaranteed by Section 20 of the Constitution. The Court ordered Parliament to enact remedial legislation within 1 year from the date of its order. In compliance with the court order, the Government has tabled a bill amending the Deeds Registry Act.

20. *Sikhumbuzo Masinga v Director of Public Prosecutions And Others* Criminal Case No. 21/2007 concerned the constitutionality of minimum sentence legislation in so far as it applied to children. The Court held that the legislation in so far as it applied to children who were below the age of 18 at the time of commission of the offence was inconsistent with the child's freedom from cruel, inhuman or degrading treatment or punishment protected by section 29(2) read with sections 18(2) and 38(e) of the Constitution.

## **C. National human rights institutions**

21. The Constitution establishes an independent Commission on Human Rights and Public Administration in Section 163. The Commission has powers to investigate complaints concerning alleged violations of fundamental rights and freedoms. The Commission has powers to make findings on human rights complaints against private and public institutions to remedy, correct or reverse instances of human rights violations. In executing its functions the Commission may on its own accord investigate and make

findings on a matter on the ground that some person or a body of persons has or may have sustained an injustice. His Majesty King Mswati III appointed the Commission on the 11<sup>th</sup> of September 2009.

#### **D. Scope of international obligations**

22. Swaziland is party to the following International Human Rights Instruments:

*Core United Nations Human Rights Treaties*

(a) International Convention on the Elimination of All Forms of Racial Discrimination acceded to on 7 May 1969.

(b) Convention on the Rights of the Child ratified on 6 October 1995.

(c) Convention on the Elimination of All Forms of Discrimination Against Women acceded to on 25 April 2004.

(d) Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment acceded to on 25 April 2004.

(e) International Covenant on Economic, Social and Cultural Rights acceded to on 26 June 2004.

(f) International Covenant on Civil and Political Rights acceded to on 26 June 2004.

23. On 25 September 2007 Swaziland signed the Convention on the Rights of People with disabilities. The Constitution requires ratification of international agreements by a resolution of at least two third of the members of Parliament in a joint sitting. The CRPD has been tabled before Parliament for ratification.

#### **E. Regional instruments**

24. Swaziland is party to the following regional instruments:

(a) OAU Convention Governing the Specific Aspects of Refugee Problems in Africa acceded to on 16 January 1989.

(b) African Charter on Human and Peoples Rights acceded to on 15 September 1995.

(c) African Charter on the Rights and Welfare of Children signed on 29 June 1999.

25. In addition Swaziland has ratified the 8 core ILO Conventions.

### **III. Promotion and protection of human rights**

#### **A. Food security**

26. Swaziland is committed to ensuring that all her people have access to adequate quality *food at all times in order for them to live healthy and productive lives*. To this end Swaziland is a signatory to, among others, the Rome Declaration on World Food Security, the Declaration on the World Food Summit, the Maputo Declaration on Agriculture and Food Security in Africa and the Sirte Declaration on the Challenges of Implementing Integrated and Sustainable Development on Agriculture and Water in Africa. Further in



2008 Government adopted a Poverty Reduction Strategy and Action Programme (PRSAP), which presents a poverty reduction framework. Food security is one of the pillars of the framework. Between 2008 and 2010, the financial resource allocation from Government sources to the Ministry of Agriculture has increased from about 5% to 8% of the national budget.

27. The food-secure proportion of the population varies from year to year; it is estimated to be between 75 and 80 percent. The annual livelihood and vulnerability assessments carried out by the Swaziland Vulnerability Assessment Committee (Swazi VAC) show a declining trend in food insecurity from 345,012 people in 2007 to 160,989 in 2010. The main causes of the fluctuation in food security are attributable to persistent drought, changes in commodity prices and HIV and AIDS.

28. Production of the staple food crop (maize) has increased by close to 50% in the same period. This growth however is not an indication of surplus production as the levels have been extremely low due to protracted drought.

29. There are sectoral policies that have been developed to increase household and national food security include the following:

(a) National Food Security Policy, which seeks to develop programmes and strategies for food security at National level.

(b) Comprehensive Agriculture Sector Policy, which seeks to streamline all activities, aimed at agricultural promotion in the country.

(c) Livestock Development Policy, which seeks to ensure commercialization of the livestock sub-sector.

(d) Irrigation policy, which seeks to ensure sustainable development and efficient utilization of the country's water resources.

(e) Fisheries Policy, which seeks to promote the development of the fresh water fish industry as the country is landlocked.

(f) Forest policy, which seeks to promote the sustainable use and development of natural and commercial forest resources.

30. National programmes aimed at addressing food insecurity emergencies largely attributable to drought have been driven through the United Nations World Food Programme and the National Disaster Management Agency. Transitory food insecurity has been addressed through the distribution of food hampers to ensure vulnerable households have access to basic commodities such as cereals and pulses.

## **B. Access to education**

31. Section 29(6) of the Constitution provides for the right of children to free education in public primary schools. In 2002 the Government, in a bid to ensure access to education for all children irrespective of their socio-economic status, introduced the Orphaned and Vulnerable Children (OVC) scheme. That scheme involves the Government providing bursaries to OVC in order to make school affordable for them.

32. According to the Swaziland Millennium Development Goals Progress Report, produced by the Ministry of Economic Planning and Development, funding for the OVC initiative has increased from E16 million in 2002 to E123 million in 2010.

33. To further improve access to primary education, the Government introduced the provision of free text and workbooks, free stationery, free exercise books, school furniture, feeding programmes and improved infrastructure. These measures led to an increase in the

net enrolment ratio in primary school that is the number of children that are of official primary school-age and enrolled in primary school over the total population of children in official primary school age. The Education Management Information System (EMIS) survey report for 2008/2009 records that the primary school net enrolment ratio in 2000 was 79% rising to 82% in 2004 and 87% in 2007.

34. A major milestone occurred in 2009 when the Government launched the Free Primary Education (FPE) programme in grades 1 and 2. FPE is the implementation of the right guaranteed by section 29(6) of the Constitution. FPE is designed to extend to an additional grade every year so that by 2015 all grades are covered. However the roll out of FPE may be affected by fiscal crisis that the country is currently experiencing. The fiscal crisis is caused by a decline in revenue payments from the Southern Africa Customs Union (SACU).

35. In 2010 The Free Primary Education Act was enacted to give effect to this right. Section 10(1) of the Act compels parents to send their children to school on pain of prosecution.

36. In the grades where FPE has not yet been introduced, the Ministry of Education continues to provide free text and workbooks, free stationery, free school furniture and free exercise books.

37. FPE has led to a significant increase in the net enrolment ratio. The preliminary report of the Multi Indicator Cluster Survey, 2010 (MICS) indicates that the net enrolment ratio stands at 97%.

38. The Government has adopted programmes aimed at removing barriers to access to Secondary Education. These programmes are the introduction of a book rental scheme, the building of new schools and classrooms as well as the implementation of a feeding scheme. These interventions have led to an increase in the gross enrolment rate. According to the Education Management Information Systems (EMIS) report of 2009/2010 in 2009 the provisional gross enrolment rate in Lower Secondary Schools was 75%. 78% of those children were male and females constituted 72%. For 2010 the provisional gross enrolment rate was 78%, 81% of whom were male and 75.5% were female.

39. In Senior Secondary Schools the provisional gross enrolment rate in 2009 was 34%. 36% of these pupils were male and 33% were female. In 2010 the provisional gross enrolment had risen to 57%, males constituted 58 % of those pupils and females 55%.

40. Tertiary Education is widely accessible to most Swazis. The Government awards scholarships to students attending local institutions of higher learning. Scholarships are also awarded to students studying in international tertiary institutions depending on the country's development needs.

### **C. Rights of children**

41. According to the 2007 Population and Housing Census, there are 481,945 children below the age of 18 and they comprise 47% of the population.

42. The Constitution provides the legal framework for the protection of children's rights. Section 29 provides for the rights of children to know and be cared for by their parents or guardians, access to education, medical treatment, and protection from all forms of exploitation and abuse and abolishes the status of illegitimacy for children born out of wedlock. In 2009 the Government adopted The National Children's Policy which seeks to promote, protect and fulfil the rights of all children and ensure their full development and long-term welfare including their physical and psychosocial development.

43. A bill, the Child Welfare and Protection Bill of 2011, intended to give effect to the provisions of the Constitution and the country's obligations under the CRC and the African Charter on the Rights and Welfare of the Child (ACRWC) is currently before Parliament. In terms of section 238 of the Constitution an international agreement becomes binding on Swaziland by an Act of Parliament or a resolution of at least two-thirds of the members at a joint sitting of the two Chambers of Parliament. The ACRWC is still awaiting ratification by a joint sitting of both chambers.

44. According to the first Swaziland Demographic and Health Survey (DHS) for 2006/2007 the Country has a high prevalence of HIV and AIDS. This has led to an increase in the number of orphaned and vulnerable children (OVC). The EMIS report of 2009/2010 reveals that up to 53% of all children are either orphaned or vulnerable. There are a number of social services aimed at the most vulnerable children groups in the country:

(a) OVC education fund which provides for this group of children's school fees from Grade 4 up to completion of secondary school.

(b) Child Support Grants that are allocated to orphanages around the country.

(c) Neighbourhood Care Points (NCP) are service delivery points at community level. At NCPs children come daily to receive care and psychosocial support, a meal, basic health care, educational and recreational activities. Currently there are 48,248 children aged under 5 years registered in 1,495 NCPs located countrywide. Training is provided to caregivers to improve their skills in catering for the children's needs.

45. The CRC states that all children have the right to be registered immediately after birth. The Ministry of Home Affairs is responsible for issuing birth certificates of new born babies and other citizens. The birth registration process has been expanded to all main public hospitals in the country. Since 2007 the Government in collaboration with UNICEF has been engaged in a birth registration programme to improve child birth registration across all communities in the country.

46. The DHS for 2006/2007 put the rate of birth registration of children under 5 years at 30%. The birth registration process has seen an increase in the rate of birth registrations. MICS 2010 reports that the figure has escalated from 30% in 2007 to 49% in 2010.

#### **D. People living with disabilities**

47. The Disability Profile of 2011 which was taken from the 2007 census data estimates, states that persons living with disabilities constitute 17% of the population. The prevalence of disability increases with age and is higher in rural areas than it is in urban areas. The common types of disabilities are visual impairment, hearing disabilities, multiple disabilities, mental, speech and physical disabilities. Government has undertaken a situational analysis on children and young persons, and is in the process of drafting a national disability policy.

48. The Ministry of Education has made provision for Special Pupils to access Basic Education by implementing an Inclusive Education (IE) policy in all schools. School structures are being modified to enable disabled children to access education without obvious barriers. There are specialized schools for the deaf. For the visually impaired programmes include provision of Braille text books, Braille machines and the establishment of two resource centers for special needs children where teachers and pupils will access teaching and learning materials.

49. There is a Public Assistance Fund (PAF) which provides, amongst others, wheelchairs and ad hoc cash grants. However due to financial constraints, the PAF is unable to adequately address the needs of the disabled.

## **E. Women's rights**

50. Sections 20 and 28 of the Constitution have introduced significant changes in as far as non-discrimination and the rights of women are concerned. Section 20 prohibits discrimination on several grounds including sex. Section 28 is a provision dedicated specifically to the rights and freedoms of women.

51. Section 94(2) of the Constitution provides that of the 10 Senators elected by the House of Assembly, 5 should be women. Section 94(3) states that of the 20 Senators appointed by His Majesty the King, eight should be women. In terms of section 86(1) where after an election, it is apparent that women do not constitute at least 30% of the total membership in Parliament, a special procedure should be invoked to elect 4 additional women – 1 from each Region – into the House.

52. In the 2008 elections, 7 women were elected at *tiNkhundla* level into the House of Assembly while 2 women were appointed by the King. In Senate, of the 10 members nominated by members of the House, 5 are women and of the King's 20 appointees, 7 are women. These numbers represent 22% of Parliament's total women membership. The target of 30% was not met in spite of a campaign launched by the Government encouraging the electorate to vote for women.

53. In 2010 the Government adopted the National Gender Policy. The primary objective of the policy is to ensure equitable access by all persons to education, training, health services and control over resources such as land and credit for improved quality of life.

54. Between April 2008 and March 2009 the Swaziland Action Group Against Abuse (SWAGAA) a Non-Governmental Organization, counselled 358 victims of physical abuse and 219 victims of sexual violence. SWAGAA counselled 257 victims of physical violence and 194 victims of sexual violence for the period April 2009 to April 2010. To address the problem of domestic violence and sexual offences the Domestic Violence and Sexual Offences Bill was tabled in Parliament in 2009 where it is still pending. The aim of the bill is to protect all persons from harm caused by sexual acts and acts of domestic violence.

55. An audit of existing law for compliance with sections 20 and 28 of the Constitution and CEDAW has been completed. As a result of the audit a cluster of family laws inclusive of the Marriage Bill and the Administration of Estates Bill have been drafted and are awaiting Cabinet approval before they are tabled in Parliament. The Government has tabled the Deed Registry (Amendment) Bill in Parliament. The tabling of the Bill is in compliance with the order of the Supreme Court in the *Aphane* case. The object of the Bill is to amend the Deeds Registry Act so as to bring it in conformity with the provisions of the Constitution.

## **F. Social security for the elderly**

56. The Department of Social Welfare (DSW) has the task of protecting and providing social assistance to vulnerable older persons who are currently facing challenges of poverty, neglect, abuse and ill health.

57. The Old Age Grant (OAG) was introduced in April 2005. In terms of the 2007 census there are 56,385 people aged 60 and above which is 5.5% of the population. The DSW estimated that roughly 49,000 older people obtained the OAG in 2006/07. Currently, it estimates that 55,000 older persons receive the OAG. Delays in paying the OAG and money leakages are challenges faced by the Government in providing social assistance to the elderly.

58. Empirical evidence from a study conducted by Help Age International, UNICEF, Regional Hunger & Vulnerability Programme in 2010, shows that the OAG has impacted many aspects of beneficiaries' lives as well as their household characteristics.

59. Considerable impacts have been noted both for the beneficiaries themselves, and for other members of their household. One of the most visible outcomes of vulnerability amongst the elderly is hunger and food insecurity, and receipt of the OAG undoubtedly seems to reduce these conditions in terms of meal frequency, meal quality, ability to purchase food (directly or indirectly), and benefiting from economies of scale by buying in bulk.

## **G. Access to health services**

60. The Government is obligated to deliver people centred health care services to the entire nation, irrespective of geographical location or socio economic status. The ultimate goal is to improve people's health by providing comprehensive, integrated, equitable, quality and responsive essential health care services.

61. The country delivers health care services using the Primary Health Care Approach as outlined in the National Health Policy of 2007, which is operationalized by the Health Sector Strategic Plan 2001–2013. Specific developments directed to increasing access to health include:

62. Free primary health care services for the nation. This policy has been in operation for over 15 years now and government continues to support its implementation.

(a) Highly subsidised secondary and tertiary health care services. In all public hospitals, the patients pay less than U\$ 2.00 for consultation and medication. The government continues to subsidize the nation for these services regardless of the increases in the price of drugs.

(b) Highly subsidised specialist health care services for the disadvantaged population through a special Medical Fund. Civil servants and their immediate family members also have been provided with a medical scheme, financed by government for specialist Health Care services.

(c) The proportion of the national budget allocated for Health continues to increase towards the Abuja Declaration that calls for a 15% allocation. Currently the country is at 18%, having increased from 6% four years ago. Despite the fiscal challenges faced by the country, the health sector has been spared from the budgetary cuts and has remained as a priority.

(d) Regarding access to health facilities, a majority of the population is within an 8km radius to a health facility. For hard to reach communities, mobile outreach health care services are provided. According to the Service Availability Mapping Report (SAMR) of 2010 the total number of health facilities has increased from 223 in 2008 to 265 in 2010. There are 25 health facilities per 100, 000 people. However, topography still makes access a challenge in some areas.

(e) The SAMR states that in 2008 there were 201 physicians working in the country and the number has increased to 241 in 2010. Similarly the doctor to patient ratio increased from 19.7 per 100, 000 population in 2008 to 23 per 100, 000 population in 2010 reflecting a 3.3% increase. Nurses form the bulk of the Human Resources for Health. There has been an increase in the number of nurses practising in the country from 1,778 in 2008 to 1,911 in 2010.

(f) To improve the quality of services provided to the nation, the Government revised the Essential Health Care Package in 2010, to be responsive to the present day disease burden within the population.

(g) The government has recently launched a programme for the provision of free medical treatment for the elderly.

## **H. Access to potable water supply**

63. Section 210 of the Constitution places the ownership of water resources on the State. According to this provision, the State is tasked to ensure that the resource remains available for the future generations of Swaziland.

64. More than two thirds of households have access to improved water sources, and three in four households are within 15 minutes of their drinking water supply. About 73% of urban households have water piped into their dwellings or yards, while about 23% of rural households have direct piped water. Rural households also rely on public taps, surface water and dug protected wells for their drinking water.

65. The Demographic and Health Survey (DHS) of 2007 shows that in urban areas alone, sustainable access to improved water sources increased slightly from 89% in 1997 to 91.9% in 2007. The latest study by the Swaziland Water Services Corporation reveals that access to improved water stood at 95% in 2009. On the other hand, the DHS indicates that sustainable access to drinking water in rural areas has been improving since 1997 from 40% to 54% in 2007 and 59% in 2009. Based on current commitments it is anticipated that in rural areas these figures will increase to 61% by the end of 2011 through the installation of sixty micro schemes (hand pumps) and the completion of five macro schemes. Projections are that by 2013, rural water supply will increase to 79%.

66. The Government has a target of providing potable water to every citizen by 2022, however insufficient funding and settlement patterns especially within rural areas present challenges to the fulfilment of this goal.

## **I. Access to land**

67. The right of access to land is protected by sections 19 and 211 of the Constitution. The country's land tenure system consists of Swazi Nation Land (SNL), Title Deed Land (TDL) and Crown Land. SNL can further be divided into three categories: Swazi areas, land concessions and farms that were bought back by the Government after Independence.

68. All land other than privately held TDL vests in the King in trust for the Swazi Nation. Chiefs who are placed in charge of demarcated areas administer Swazi Areas on behalf of the King. There are pending court cases concerning whether the chiefs' powers of administration extend to land concessions and the farms that were bought back.

69. Section 59(6) of the Constitution requires the State to settle the "land issue" and the issue of the land concessions expeditiously so as to enhance the economic development and the unity of the Swazi people. That section is located in Chapter V of the Constitution which is the Directive Principles of State Policy. Although these Principles are not justiciable, section 56(1) of the Constitution states that the Principles shall guide the State in taking and implementing any policy decisions for the establishment of a just, free and democratic society. To this end in 2009 the Government drafted a land policy; the vision of which is to maximise benefits to the entire society from land on a sustainable basis. Presently the policy is awaiting consultations with relevant stakeholders.

70. SNL is accessed through the traditional *kukhonta* system. *Kukhonta* is the paying of allegiance to a chief as an application to become a resident of that chief's chiefdom. Prior to the advent of the Constitution SNL could only be accessed through male family members who pledge allegiance to the chief of the areas. Section 211 now allows women to have access to land on the same basis as men.

71. Access to TDL is also a challenge to women married by civil rites in community of property. This is caused by the fact these women are subject to their husband's marital power, who, even where eligible to apply for credit to purchase land, require their husband's consent to do so. The Marriage Bill when passed into law will abolish the marital power and its corollary, the minority status of women. Even where a woman is ultimately able to secure her husband's consent and the land is purchased, if she is married in community of property her ownership and control over the property is virtually removed as the land cannot be registered in her name but is registered in her husband's name.

## **J. Right to life**

72. Section 15 of the Constitution protects the right to life. Swaziland is not a state party to the Second Optional Protocol to the ICCPR and retains the death penalty. The death penalty is not mandatory and it may only be imposed on adults convicted of murder without extenuating circumstances and treason. Capital Punishment may only be carried out pursuant to a final judgment pronounced by the Supreme Court.

73. A person sentenced to death has a right to seek pardon or commutation of his or her penalty from the Prerogative of Mercy Committee. In practice the Committee commutes the sentence to life imprisonment. The death penalty was last carried out in 1983. Since then forty-five people have been sentenced to death. Forty-two of the forty-five people sentenced to death had their sentences commuted to terms of imprisonment. There are two prisoners whose death penalty has not been commuted. One of those prisoners was sentenced in 1998 and the other in 2002. The third prisoner was sentenced to death by the High Court in 2011 and his appeal against conviction and sentence is pending. In effect Swaziland though a retentionist state in law, it is abolitionist in practice.

74. The Constitution read with the Criminal Procedure and Evidence (CP &E) Act authorises the use of lethal force. In order for lethal force to be lawful, it must be reasonable, justifiable and proportionate in all the circumstances of the case. There is a perception that the uniformed services and game rangers carry out extra-judicial executions. This perception is fuelled by the fact that there are no independent bodies to investigate wherever it appears that an arbitrary deprivation of the right to life has been committed.

## **K. Freedom of association and workers' rights**

75. Freedom of Association and the rights of workers are protected by sections 25 and 32 of the Constitution respectively. A contentious issue in connection with freedom of association is the right of political parties to contest elections. The controversy is caused by the fact that the Constitution does not prohibit political parties but at the same time section 79 of the Constitution states that the basis for election or appointment to public office is individual merit.

76. In the case of *Jan Sithole and Others v The Prime Minister and Others* Appeal Case No. 50/2008 the Supreme Court held that the Constitution does not allow political parties to field candidates in national elections.

77. Section 32 of the Constitution deals with the rights of workers to freely form and join a trade union for the promotion and protection of workers. Swaziland has ratified the entire core ILO Conventions and has domesticated them primarily through the Employment Act of 1980 and the Industrial Relations Act of 2000. However during its 98th Session the ILO Conference concluded that the country's laws, particularly the Public Order Act of 1963 and the Suppression of Terrorism Act (STA) of 2008 were not compliant with the Freedom of Association and Protection of the Right to Organise Convention (Convention 87) and Right to Organise and Collective Bargaining Convention (Convention 98). Government has in turn requested the ILO to point out the offensive parts of the STA. To date the ILO has not done so. In October 2010 the country was visited by a Tripartite High Level Mission which made recommendations. These recommendations are being implemented through social dialogue with social partners.

## **L. Freedom of expression**

78. Freedom of expression which includes freedom of the press and other media is guaranteed by section 24 of the Constitution.

79. The Government owns a radio station and the only television station in the country. There is a Christian radio station that is privately owned. There are seven newspaper titles and a monthly magazine all of which are privately owned. The print media gives coverage to opposing views that are critical of the Government. The media are valuable in the fight against corruption and sensitise citizens on human rights issues.

80. Swaziland does not have any legislation that provides for an express right of citizens to access information held by the State.

## **M. Trafficking in persons**

81. Swaziland is a signatory to the UN Convention Against Transnational Organised Crime and its protocols. The Prevention of Peoples' Trafficking and People Smuggling (Prohibition) Act was passed in 2009 to give effect to the Convention. The Act criminalises both people smuggling and people trafficking and prescribes a sentence of a period of imprisonment not exceeding 18 years for both offences.

82. There is also a task force on Prevention of People Trafficking and People Smuggling which was formed in March 2010. The mandate of the task force is to prevent the trafficking in persons through public awareness, protection of victims of trafficking as well as researching on trafficking patterns in Southern Africa.

83. There have been over twenty cases of human trafficking identified by the task force and subsequently reported to the Police. These cases are still under investigation.

## **IV. Achievements, best practices, challenges and constraints**

### **A. Best practices and achievements**

84. His Majesty King Mswati III declared HIV and AIDS a National Disaster in 1999. This was followed by a specific budget allocation for the National HIV and AIDS Response. The National Emergency Response Council to HIV and AIDS (NERCHA) was created through an Act of Parliament. NERCHA provides support to the network of people living with HIV. This is a crucial component for addressing issues of stigma and



discrimination. The network is also able to provide support for positive living among people who have been diagnosed as HIV positive.

85. HIV Testing and Counselling has been scaled up and integrated into other health care services such as Antenatal Care (ANC) and TB services. To date about 40% of the population have tested and they know their HIV status. This is expected to increase as the country is engaged in a home based HIV testing through a population based survey to measure the incidence of HIV. The Prevention of Mother to Child transmission program is being implemented and services are available in 85% of facilities offering ANC services. According to the Swaziland United Nations General Assembly Special Session on HIV and AIDS (UNGASS) 2010 report, the proportion of children born to HIV positive mothers enrolled in Prevention of Mother to Child Transmission (PMTCT) programme that were born HIV free is 83%. The country has embraced the move towards the Elimination of Paediatric AIDS by 2015. Furthermore Male Circumcision has been integrated into the national HIV prevention package.

86. Regarding Anti Retroviral therapy, the government of Swaziland procures the ARV drugs for the people who need them. Every year the ARV budget is provided for in addition to the normative Ministry of Health budget. According to the Swaziland UNGASS 2010 report, 75% of people in need of ART based on the CD4 cell count of 200 are on treatment. In Swaziland we do not have people on waiting lists. However, the country has adopted the new WHO Guidelines of initiating treatment using the CD4 cell count of 350 and is targeting universal access for people living with HIV. In this regard, the number of health facilities providing ART facilities has increased from 1 in 2005 to 104 in 2010 including both private and public health facilities.

87. According to MICS 2010 82% of births in the previous five years were attended by skilled health care providers. This shows an increase from 74% reached in 2007 and 70% attained in 2000 which is above the average of most African countries.

88. Malaria has been halted in the country and its impact reversed. Government developed a strategy to deal with malaria and coordinated the activities of development partners so that they all followed the strategy with Government as the team leader. According to the 2008 annual report of the Malaria programme, the proportion of the population in targeted areas protected by indoor residual spray (IRS) was 97%. In 2001 death associated with malaria were 62 per 100,000 and improved to 5 in 2008. Laboratory confirmed cases of malaria show a downward trend from 670 cases in 2001 to 73 in 2008.

89. Net primary school enrolment has shown an increase from the year 2000 at 79.2% to 97% in 2010. This improvement is largely due to the introduction of the OVC initiative and FPE which commenced in 2002 and 2009 respectively. According to EMIS survey report 2008/2009, in 2009 a total of 85,530 OVC were benefiting from the scheme in primary school. The country is working towards achieving universal free primary education by 2015.

90. Swaziland has made significant strides to increase the number of women in public sector employment. In 2006 women constituted 47% of employees in the public sector. Two years later the figure stood at 49%. This suggests a strong potential for reaching the 52% by 2015 set out in Millennium Development Goal (MDG) 3. However the private sector is not performing towards the target as expected in that there is a constant downward trend of 29% in the year 2006/2007 compared with 33% for the previous years.

91. His Majesty's Correctional Services (HMCS) has a school that caters for children. Children in conflict with the law are detained separately from adults.

92. All imprisoned children attend the school which follows the national education policy and the country's prevailing curriculum. In essence, their education is in line with that taught in public schools around the country and those sitting for external examinations, write the same examinations. While the children are attending school, they are in full school uniform and the teachers are also in formal business clothing. The school provides classes for Grade 1 up to Grade 12. The Ministry of Education provides inspectors for the school. The school is also registered as a centre for external examination. The children attending the school are allowed to engage in sporting activities with schools around the country.

93. On completion of their sentences, His Majesty's Correctional Services liaises with schools around their communities in order to solicit a place for admission for the soon-to-be released child so that she or he continues with her or his education. However, HMCS faces a challenge in finding places for children in the formal schools where the child completes his or her term of imprisonment in the middle of the school year.

## **B. Challenges and constraints**

94. Over the last 10 years Swaziland has experienced a series of socio-economic challenges that led to a less than impressive economic growth averaging around 2% per annum. A consequence of the poor economic growth is high levels of poverty in the country. According to the Swaziland Household Income and Expenditure Survey (SHIES) 2009/2010 report the number of people living below the poverty line is 63%. This is a reduction from 69% in 2000/2001.

95. The mortality rate of children and infants is still high. According to the Central Statistical Office (CSO) the child mortality rate in 1997 was 106 deaths per 1000 live births and in 2007 it stood at 120 deaths per 1000. In 1997 infant mortality rate was 78 deaths per 1000 live births and this increased to 85 per 1000 deaths in 2007.

96. Maternal mortality was 370 deaths per 100,000 in 2000 rising to 589 deaths in 2007. There is evidence that the effect of HIV and AIDS on pregnant women negatively affects the maternal mortality ratio.

97. Tuberculosis (TB) continues to be a public health threat in the country particularly so with the emergence and rising number of drug resistant cases. In addition Non Communicable diseases (NCD) are observed to be on the increase in the country.

98. Although Swaziland has ratified most of the core international human rights instruments, the country has not complied with its obligation to report to the treaty monitoring bodies. Swaziland has only submitted the initial report to the Committee on the Rights of the Child (CRC) and last submitted its periodic reports to the Committee on the Elimination of Racial Discrimination (CERD) in 1997. Further the Government has not followed up on the recommendations and suggestions made in the concluding remarks of the CRC and CERD. The initial report and first periodic report on CEDAW has been completed and will be submitted to the treaty monitoring body this year.

99. The Government advocates for education for the girl child at all levels. The net enrolment in Secondary Schools is higher for girls than it is for boys. However the gross enrolment rate for girls is lower than that of boys. This is attributable to many social factors including teenage pregnancies, the girl child bearing the burden of looking after sick relatives, early marriages and the belief that educating the boy child is a better investment than educating the girl child because the girl will leave the family on marriage and not contribute to the family.

100. The Constitution protects the right to a fair and speedy hearing within a reasonable time. However criminal cases take many years before they are heard. The delays have resulted in an increase in the prison population awaiting trial. The cause of the delay is the absence of a case management system, shortage of judicial officers, congested court rolls, insufficient court rooms and an endemic culture of postponement. To reduce the undue delay in the completion of cases, the High Court is amending its rules to include a case management system, additional judicial officers have been appointed and courts have been refurbished by increasing the number and size of court rooms.

101. Education and information regarding the protection and promotion of human rights is not included in the training of the Umbutfo Swaziland Defence Force (USDF), the Royal Swaziland Police Service (RSPS) and HMCS.

102. The NHRI is under resourced due to financial challenges and as a result it has been hampered in setting up a secretariat to operationalize its programmes and activities. In addition there is no legislation that expands on the Constitutional provisions relating to the NHRI. The government is currently in the process of drafting the Human Rights Commission Bill and a Leadership Code of Conduct Bill to give effect to the constitutional provisions.

103. Law enforcement agents have a challenge of striking a balance between enforcement of the provisions of the STA and respect for the human rights particularly the rights to freedom of expression and association.

104. The Government of Swaziland is faced with a fiscal crisis which was caused by an 11 percent of GDP drop in revenue payments from the Southern African Customs Union (SACU). The fiscal crisis has a negative impact on social programmes including OVC grant, elderly grant and other programmes with a bearing on the enjoyment of human rights. In response, the authorities have put in place a Fiscal Adjustment Roadmap (FAR) and requested IMF staff to monitor its implementation. The IMF approved a Staff-Monitored Program with Swaziland on April 4, 2011, that seeks to start the necessary fiscal adjustment, while protecting education and health sectors, and pro-poor spending and improving public financial management.

## **V. Key national priorities, initiatives and commitments**

105. The eradication of extreme poverty is the foremost priority of the Swaziland Government. In 2007 the Government adopted the Poverty Reduction Strategic and Action Plan (PRSAP). The PRSAP is the key document for operationalising the attainment of the MDGs. The Government has significant strategies aimed at the eradication of poverty:

(a) All project proposals submitted for possible funding must be in line with the PRSAP.

(b) Investing in infrastructure development in the country which has also contributed immensely to economic growth through job creation. Examples of infrastructure include road network, railway services and utilities such as electricity, water and sewerage.

(c) Through external assistance, Swaziland has successfully coordinated the facilitation of the Rural Electrification Programme which entails extending the national electricity grid to rural areas. The following benefits have been achieved:

(i) The rural community can now power their water pumps for rural water schemes for the provision of clean water and irrigation for small-scale farming.

- (ii) Provision of educational facilities to provide a conducive environment for learning.
- (iii) Provision of health care facilities for improved health standards and livelihoods.
- (iv) A Micro projects Programme whose purpose is to contribute to sustained social and economic development by a process of empowering poorer Swazis in rural and peri-urban areas with special emphasis on women.

106. The Government has established programs focusing on the prevention, treatment and control of TB and Non Communicable diseases. The TB program has a special focus on community and Civil Society engagement through implementation of the Directly Observed Treatment (DOTS) approach. A national Stop TB Partnership has been established, further strengthening the role of Civil Society in the TB response. Other strategies include strengthening TB diagnostics, training of health care workers and decentralisation of TB services.

107. Swaziland has a specialised hospital for the management of Drug Resistant (DR) TB and this forms the nucleus for the national response to DR TB, providing technical support to other regional hospitals.

108. There is reasonable success in the delivery of TB interventions as portrayed by the improvement in the targets. The case detection as of December 2010 stands at 87% from less than 50% in December 2005. The treatment success rate stands at 68% as at December 2010. Government continues to procure drugs for TB and DR TB and stock outs are avoided through utilisation of procurement systems that are endorsed by WHO.

109. With regard to NCDs efforts are being made to formulate a comprehensive response. This process is being guided by WHO led global efforts that have called upon countries to refocus on this emerging epidemic.

110. The Government provides free Ante Natal Care (ANC) services in an effort to reduce maternal mortality and the still birth rate. What is more the Government has launched the Campaign for Accelerated Reduction of Maternal Mortality in Swaziland (CARMMS) in 2009. This campaign emphasises on community engagement in mobilising women to visit facilities for ANC and delivery.

111. In so far as infant and child mortality is concerned, there is a national Expanded Programme on Immunisation (EPI) responsible for implementing a comprehensive immunisation program to prevent morbidity and mortality among infants and children due to vaccine preventable diseases. According to the MICS indicators for immunisation have improved greatly. The Government procures all the vaccines including newly recommended ones.

## **VI. Capacity building and technical assistance**

112. The Swaziland Government seeks support in the following areas:

- (a) Assistance to capacitate the national human rights institution to have a Secretariat in order to enable it to carry out its constitutional mandate to promote human rights awareness and conduct human rights training for disciplined forces and other state organs.
- (b) Technical assistance with building capacity on treaty body reporting and following up on concluding observations and recommendations of special procedures and

mechanisms of the United Nations including national monitoring of the implementation of international rights instruments.

- (c) Developing a National Human Rights Strategy and Action Plan.
  - (d) Intensifying public education and awareness on human rights to the general public and stakeholders.
  - (e) Support in the alignment of national laws with international human rights conventions and the constitution.
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