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Introduction

1. The Coordinating Assembly of Non-governmental Organizations (CANGO) make this joint submission to the Universal Periodic Review (UPR), on issues related to social, economic and cultural rights. The report was developed jointly by members of CANGO (see annex 1). Originally started off as a network of Primary Healthcare providers in 1983, and later grew its mandate to coordinate the NGO sector. CANGO is a membership based, umbrella organisation for NGOs in Eswatini with a membership of more than seventy NGOs. Its mandate is to coordinate, facilitate joint advocacy, build capacity – both institutional and technical and also manages grants. The member organisations are clustered into consortia; namely children, youth, gender, food security and livelihoods, media, HIV/AIDS, Human Rights and Governance, and the Elections Support Network.

2. The submission focuses on the following:
 - Guarantee and non-discrimination in the exercise of socio-economic rights and the right to adequate standard of living
 - The recognition of the right of everyone to the enjoyment of the highest attainable standard of physical and mental health
 - State obligation to provide free and compulsory primary education, equally accessible secondary and higher education in its different forms (technical and vocational)

Previous UPR of Eswatini

3. During the 25th session of the UPR, Eswatini accepted recommendation from Maldives and South Africa to expedite implementation of the National Disaster Management Actⁱ, and to strengthen the National Disaster Management Authority (NDMA) in the countryⁱⁱ respectively. The COVID 19 global pandemic exposed Eswatini's failure to implement these recommendations. In announcing the partial lockdown on Friday 27 March 2020, the late Prime Minister Ambrose Mandvolo Dlamini stated that he had been commanded by his Majesty the King to do so, yet the Act does not make reference to His Majesty. Further, the National Commissioner of Police, William Dlamini, imposed further travel restrictions requiring people to have letters of permission to be travelling. While in terms of section 10 (1) (d) of the Act the Commissioner of Police or a person appointed

by him is a member of the National Disaster Management Council he has no power in terms of the Act to make any pronouncements on national disaster. Due to the massive internal repression in Eswatini, security forces are generally brutal. There were reported incidents of people being harassed and beaten for travelling to town for one reason or another. The brutality contradicts some of the measures put in place that allow people to go out only for essential purposes, such as buying food and medication. Their right to privacy of people was also grossly violated by the security forces as people taking chronic medication were required to produce their medical cards. People Living with HIV, for example, were forced to produce their cards as proof that their date of refill of the ARVs was due.

4. The NDMA had no budget to respond to the pandemic. The entity made appeals for donations from the private sector, individuals and donor agencies for financial support. The national budget allocated to the NDMA is not nearly enough to respond to disasters save for a large sum of the subvention goes towards personnel costs and other administrative costs. Out of the SZL100million requested pledge, the NDMA ended up receiving less than their projected budget.

Recommendations

- Strengthen the authority and resource capacity to timeously respond to crisis situations.
- Implement the Disaster Management Act in its accordance, and entrust the NDMA to lead in disaster response

Eswatini's International Obligations

5. During the 25th Session of the UPR, Eswatini received a recommendation from Portugal to, “consider establishing a permanent inter-ministerial committee responsible for the implementation of its international human rights obligations, inter alia, for coordinating the drafting of the national reports to the treaty bodies and for organizing country visits by the Council’s special procedures”ⁱⁱⁱ. The Kingdom of Eswatini has since established a National Reporting Mechanism which is in charge of state party reporting to the UN and AU human rights mechanisms. The mechanism is coordinated by the Ministry of Justice and Constitutional Affairs. The civil society in Eswatini commends this positive step and look forward to timely reporting, involvement of CSOs and NGOs in the development of state party reports, and follow up on implementation of

recommendations by relevant ministries or institutions and the general duty bearers.

6. Having ratified the International Covenant on Economic Social and Cultural Rights in 2004, the state party has not submitted the initial and subsequent reports for review by the Committee of Experts on the ICESCR.

Recommendations

- The state party should submit all pending reports for review under the United Nations human rights systems, and reach out for support where necessary in order to ensure timeous reporting, especially for the ICESCR, CAT, and CRPD.
- Allocate adequate funding for the effective operation of the Eswatini national mechanism for reporting and follow-up.

National Law

7. The status of economic rights in Eswatini remain elusive. The Constitution of the Kingdom of Eswatini, that came into force in 2006 does not accommodate economic rights under its Bill of Rights, besides the right to free primary education (Section 29:6) accommodated under the banner of the rights of a child. Rights classified as economic, social, and cultural rights are contained outside the Bill of Rights; they are instead in chapter 4 captioned as Directive Principles of State Policy and Duties of the Citizen which is not justiciable.
8. Moreover, Eswatini still has some laws that undermines the enjoyment of economic, social and cultural rights. The Vagrancy Act No. 39 of 1963 disadvantages people who are homeless and empowers the police to arrest them. A vagrant is defined by the Act as a person who has neither lawful employment nor lawful means of subsistence for his/her maintenance; having no fixed abode; wandering abroad and placing himself in a public place to beg or gather arms or procuring a child/children to do so; or living or lodging in a place which the Minister has declared by notice in the Gazette to be unfit for living in.
9. The role of the law and the courts cannot be overemphasised in the protection of human rights. Eswatini operates a dual legal system, common law which is based on Roman Dutch law and customary law that is based on Swazi law and custom. The challenge with Swazi law is that it is not codified and is based on patriarchal systems of traditional norms which is often in conflict with common law, constitutional and recognised human rights standards. This has resulted in conflicts leading to numerous violations of group rights, women's rights in particular, despite constitutionally guaranteed equality, where

women married in common law and customary law assume minority status. However, we welcome the court judgement that annulled marital power, and allows women the right to equality with their spouses. Married women now have the right to contract, administer property, and sue or be sued in court. The traditional legal system recognises family tribunals, community structures such as the chiefs and constituency head-men to deal with matters of Swazi (traditional) Law and Custom. In such instances, widowed women who have lost property rights, in particular land after their husbands pass on are not able to be fairly treated or have their grievances resolved in their favour.

10. In Eswatini international law and domestic law are viewed as two separate legal systems. Hence, international law if not domesticated is no force in the kingdom. This combined with the state party's shortcomings in submitting reports under the UN human rights systems on the status of human rights in the country undermines the universality concept of human rights.

Recommendation:

Economic, social and cultural rights are equally important. The state should make efforts to incorporate economic, social and cultural rights in the country's legal framework; and also allocate adequate resources for their achievement and enjoyment in the country.

Guarantee and Non-discrimination in the Exercise of Social, Economic Rights and the Right to Adequate Standard of Living

11. Land is a major source of livelihood, and a gateway to some of the economic, social and cultural rights. In terms of Section 211 of the Constitution, land continues to be vest in the King in trust for the Swazi nation, this in reference to Swazi Nation Land (SNL) and concession; save privately held title deed land (TDL). SNL land is allocated by chiefs based on a system of patronage. The lack of security of land tenure has exposed people to land evictions which has an impact on their wellbeing, exposes them to poverty, lack of housing and means of livelihood through agriculture which is what most people in rural areas depend on for subsistence. In April 9th, 2018 dozens of people, including more than 30 children, were left homeless after their homes were demolished by 20 armed police and bulldozers in the farming area of Embetseni in Malkerns. These evictions were carried out without following due process. The affected people were not provided with any alternative accommodation, forcing some of them to take refuge at a

local school. Others slept in the open at the site of the demolitions with their belongings, while some slept in a chicken shed. One family slept at the Chief's residence.

12. In other related incidents, in Mbondzela, Gege, in the Shiselweni region, approximately 45 homesteads, including at least 38 children, faced eviction from Title-deed Land. The residents had appealed to the Minister of Natural Resources and Energy (MNRE), who referred the matter back to the Central Farm Dwellers Tribunal for reconsideration. The residents allege that there are at least 17 graves on the disputed land.
13. In a recent development, a farm owner with a title deed for Portion 3, Farm 982 situated in Sicunusa has experienced what he terms as a hostile take-over of his farm. Soldiers have been deployed at the farm by a senior member of the Umbutfo Eswatini Defense Force (UEDF), who also happens to be a member of the Royal family. The farm owner had been mining quarry in the farm with a commercial mining license acquired in 2013 and expired in 2018. The Mines and Minerals Act does not classify quarry as a precious metal or stone. It is defined as a building or construction material which is mined freely by private companies and individuals. The Minister of Natural Resources and Energy, when questioned on the matter cited Section 213 of the Constitution which stipulates that all minerals and mineral oil, under or upon any land should after the commencement of the Constitution continue to vest in Ingwenyama (King) in trust for the Eswatini nation as vested on April 12, 1973. It has emerged that the member of the royal family who deployed soldiers to guard against any activity on the private farm owned by Mr Mandla Mkhalihi, Managing Director at NDI Investments (Pty) Limited has applied for a mining licence to mine the same property. It is worth mentioning that this unfortunate incident is only befalling Mr Mkhalihi amongst many other private companies and citizens who continue to mine quarry in the country. These are located in Nkwalini, Nokwane, Mbabane, Gwayimane, Sikhuphe. All these are not even documented in the government official mineral resource repository of 2006.
14. A report produced by CANGO titled, "Scoping Mission to Generate Knowledge on the State of the Extractive Industry in the Kingdom of Swaziland (now Eswatini)" in 2018; reveals some other areas of urgent attention in the area of mining in the country. The issue of mining shares as articulated by the Mines and Minerals Act, 2011 begs questions when appreciated with the same Acts assertion that all minerals vest in the King for the Swazi nation. The Act also provides for another share split to government.

Therefore, the report accounts that if the King acts in trust for the nation, the King's share is counterproductive since government is capable to handle the shares for the benefit of the Swazi nation. Moreover, government shareholding has a great potential for accountability, transparency and ensuring a fair distribution on beneficiation of the resources and value add to the nation and local communities where the mining activity occurs.

15. Section 22 (1-7) of the Mines and Minerals Act enumerates restricted areas for mining or prospecting, such areas of cultural significance, game reserves, within town, biodiversity rich areas. However, what has been observed is that there is a huge challenge between balancing and managing conflict regarding economic benefits and environmental management. A mining right was granted to extract iron ore and jeopardised the chances of the country to declare Malolotja as a world heritage site. In recent times, it has been observed that the construction industry has erroneously constructed building in wetlands. This has been specifically the case in the construction of "The Bridge Shopping Complex, Build It-Hardware & PUMA filling station", Mbabane.
16. The Country has no land policy as the draft policy was abandoned during the constitution making process with a commitment to be finalised once the Constitution was put in place. To date the land policy efforts towards completing and adopting the land policy have not been made.

Recommendations:

- Beneficiation on natural resources should be ensured within the legal framework and in practice; and government to channel back mineral proceeds to social services for the citizens and communities where mining is occurring.
- Address the land security issues to enable emaSwati to hold ownership and land security to the land they occupy.
- Where there are evictions, due process of relocation, informed consent and compensation should be adhered to.

Right to Health

17. The Government of the Kingdom of Eswatini has worked impressively and collaboratively with different stakeholders in curbing the HIV/AIDS scourge and has over-achieved the 90-90-90 global target to reaching 92-93-94 in 2018 (UNAIDS, 2019a). The 90-90-90 represents a percentile target to be achieved by 2020, that: 90% of

all people living with HIV will know their HIV status; 90% of all people with diagnosed HIV infection will receive sustained antiretroviral therapy; 90% of all people receiving antiretroviral therapy will have viral suppression^{iv}.

18. With the strides made in the fight against HIV, the concerns to regress emanate from the national health budget for 2019/2020 estimated to be E2.2bn which falls below the 15% threshold of the Abuja Declaration on HIV, Tuberculosis and other related infectious diseases.
19. In an assessment conducted by the World Health Organizations on Eswatini's ability to attain Universal Health Coverage, the following areas of improvement were noted ranging from declining national immunization programme, inadequate workforce and failure to retain skilled personnel, urban bias in provision of service and gaps in the implementation of the Essential Health Care Package.
20. There is a perpetual shortage of drugs which were reported in the 25th UPR session in 2016. In recent times, government clinics have struggled to provide basic service as antenatal care medical supplements. Expectant mothers are written prescription to purchase supplements privately. Medical supplies for chronic ailments, like epilepsy, diabetes, and hypertension amongst others would be in shortage. This has been attributed to constraints in the health budget, government pending debts with suppliers and communication breakdown between health facilities and the Central Medical Stores.
21. A network of organizations called the Non-Communicable Disease consortium, under the ambits of CANGO, have articulated some of the issues faced in the health sector. Cancer patients have no access to highly required treatments such as radiography and chemotherapy, particularly in public hospitals. The country still relies heavily on neighbouring South Africa for such services yet the country has the highest rate of cervical cancer patients who accounts for 43.1% as articulated in the National Health Policy.
22. The government responded to the COVID 19 pandemic by invoking a State of Emergency as per section 29 of the Disaster Management Act on 17 March 2020. The Disaster Management Act, 2006 (the Act) provides for the establishment of the National Disaster Management Agency (NDMA) a parastatal under the Deputy Prime Minister's

Office – being the Minister responsible for disasters in Eswatini, to coordinate national preparedness and response to the various risks and disasters that occur in the country. With the urgency COVID 19 demanded, the Deputy Prime Ministers Office developed COVID 19 Regulations with the aim of curbing the spread of the virus and government then reallocated funds and established resource mobilisation structure to respond to the pandemic through National Disaster Management Agency (NDMA).

23. However in the midst of the first and second wave of the pandemic, local media was constantly reporting on the lack of ambulances, PPE, Lack Oxygen, Drug shortages of medicines. Further, Emergency Response personnel through their labour unions protested the lack of adequate pay and lack of proper working tools. Arguably, the inability to provide enough proper working tools resulted in the loss of life of frontline workers such as nurses. The COVID 19 first and second wave saw politicians, prominent people being airlifted out of the country to neighbouring South Africa to receive medical attention related to COVID 19. This exposed the lack of investment in the country's health system and infrastructure. Citizens who do not possess the resources to receive medical care outside the country are disadvantaged, which exacerbates inequality. The media also reported on instances where citizens died due to there not being any ambulances to take them to hospital.

Recommendations:

- Expedite implementation of the National Disaster Management Act, and to strengthen the National Disaster Management Authority in the country.
- Decentralise and standardise access to health service through-out the country, in both rural and urban settings.
- Budget allocation should be based on the real needs of the sector and in line with global standards and adherence to the right to health.

Right to Education

24. In 2010, the Government of the Kingdom of Eswatini introduced the Free Primary Education Programme (FPEP) after a long-protracted court battle with civil society that forced the state to enforce Section 29 (6) of the Constitution which provides that within three years of the adoption of the Supreme Law, there shall be free and compulsory education at primary school. The Government started to implement FPE in phases starting with grades I and II in 2010. In 2011, the European Union supported the Government by paying for the first grade until its support came to an end in 2018. Government pays E580 (is equivalent to US\$38.16 at an exchange rate US\$1= E15.20)

for each child's tuition, supplies food and stationery in all the grades plus an exam fee for those in Grade VII. School principals continue to charge parents additional fees dubbed Top-Up Fees (TUF) in addition to Government's grant, much against the Constitution and the court order. Principals argued that the Government was not providing adequate resources to run schools which has bankrupted schools leading to failure for the administrations to pay support staff.

25. While the Government has a Constitutional obligation to deliver the FPEP, it has continually claimed that its financial woes have become worse over the years. This however, is in light of continued investment in capital project with weak economic returns. In 2017, Ministry of Education and Training issued a circular that instructed schools principals to apply to the Minister of Education for charging TUF for construction projects. However, principals claim that MoET does not grant them permission despite their applications which leaves them with no choice but to continue charging TUF, which is against the law. In all this mayhem, parents, guardians and the orphaned and vulnerable children continue to bear the burden of government's failure to comprehensively deliver on its constitutional obligation.
26. In a survey commissioned by the Swaziland Network Campaign for Education for All in 2019, it transpired that some schools charge much higher TUFs, even with schools that are located within the same location and in close proximity with each other. Moreover, some schools have over and above the TUFs introduced some fund raising initiatives where students are allowed to wear civil clothes on Fridays at a fee payable to the school; which ranges from E2 – E10 per student.
27. At primary education level, the quality of education is a very serious concern. Findings of the Eswatini Household Income and Expenditure Survey (EHIES, 2018) indicate that only 21.6% of pre-primary school going age children have access to Early Childhood Care and Development Education (ECCDE). The implication of this is that many children are enrolled to primary education without preparation for primary education. This also means that the children admitted at primary education levels may be at different levels in terms of knowledge and skills as the curriculum is not standardized.

28. Access to secondary education continues to be very limited and inequitable. The cost of secondary education is an area of concern for the sector. Some learners who started off at primary fail to reach higher secondary education, i.e. Form 5. This indicates a very inefficient system of education, which pushes out a large number of the children out of school. Moreover, access to Technical and Vocational Education and Training (TVET) as well as Higher Education (HE) institutions still remains limited. There is lack of reliable data on the number of secondary schools graduates who eventually access TVET and HE.
29. Through the Ministry of Education and Training, the government is making attempts at ensuring an inclusive education for pupils. In July 2018 the MoET passed a policy, “The Government of the Kingdom of Eswatini National Education and Training Sector Policy”. One of the strategic objectives of the policy is to ensure learners are able to re-enter their former education and training establishment at an appropriate time and in a conducive and supportive environment if they leave prematurely, due for example to pregnancy or conflict with the law, or are assigned another suitable education or training establishment. Teenage pregnancy is one of the highest contributor of school drop-out. The Health Management Information System (HMIS) data reveals that 82,978 of school going girls were pregnant between 2001 and 2017.
30. The policy only addresses re-entry of pupils who might have dropped out due to pregnancies and other social misgivings. It lacks in addressing retention and ensuring a conducive environment for learners and teachers to continue their enrolment even with their pregnancies. Some children who had been able to conceal their pregnancies have proven the possibilities that pregnant pupils do cope in schools with their pregnancy. Moreover, they have had a higher chance of retention in the education systems than those who drop out and re-enter.
31. The subject of re-admission of teen-parent pupils has been a thorny one for some parents and teachers alike in the country. Some schools have stringent rules that disallow admission of pupils who had previously dropped out of school due to pregnancy claiming this will set a bad precedent and negatively influence other students. This sentiments are echoed by some parents. During the COVID enforced lockdowns, there has been a high recorded rate of teenage pregnancies. The Minister of Education has appealed to schools to admit pregnant students which was departure point from

previous policies. The implementation of this appeal remain to be tested when schools re-opens.

Recommendations:

- Standardise the primary education costs so that government covers a flat rate and scrape off the Top up Fees.
- Increase access to Early Childhood Care and Development Education and ensure a standard quality education in the ECCDE grade.
- Improve on equitable secondary and tertiary access to education.

ⁱ 107.10 Expedite implementation of the National Disaster Management Act (Maldives);

ⁱⁱ 107.11 Strengthen the National Disaster Management Authority in the country (South Africa);

ⁱⁱⁱ 107.15 Consider establishing a permanent inter-ministerial committee responsible for the implementation of its international human rights obligations, inter alia, for coordinating the drafting of the national reports to the treaty bodies and for organizing country visits by the Council's special procedures (Portugal);

^{iv} 107.65 Step up the fight against communicable and non-communicable diseases, with a view to lowering the particularly high mortality rate (Congo); and 107.66 Strengthen measures to prevent and reduce the prevalence of HIV/AIDS