

Joint UN Submission for the UN Compilation report: United Nations Country Team report for the Universal Periodic Review- Swaziland March 2011

Introduction

1. This report was drafted by the United Nations Country Team (UNCT) in Swaziland. Due to space constraints, the report is not exhaustive but rather highlights key issues on the country's performance on human rights and briefly identifies those that are addressed by the UNCT through its programmes. For a detailed presentation of the work performed by the UNCT, one may refer to the United Nations Development Assistance Frameworks (UNDAF 2006-2010 and 2011-2015).

Background and framework

Constitutional and legislative background

2. The Constitution Act of 2005 Chapter III has a Bill of Rights which enshrines the Protection and Promotion of Fundamental Rights and freedoms through progressive realization. This chapter addresses the following rights; life, personal liberty, protection from slavery and forced labour, protection from inhuman and degrading treatment, protection from deprivation of property, equality before the law, right to fair hearing, protection against arbitrary search or entry, protection of freedom of conscience or religion, protection of freedom of expression, protection of freedom of assembly and association, protection of freedom of movement, rights and protection of the family, rights and freedoms of the women, rights of the child, rights of persons with disabilities, abolition of the status of illegitimacy, rights of workers, rights to administrative justice, property rights for spouses, enforcement of protective provisions, declaration of emergency, derogations during public emergency and prohibition of certain derogations.
3. Swaziland has ratified the following Conventions ; International Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), Convention on the Rights of the Child (CRC), Convention Against Torture and Other Inhuman and Degrading Treatment and Punishment, International Covenant on Cultural, Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR), International Convention on the Elimination of All Forms of Racial Discrimination, International Covenant for the Protection of all Persons from Enforced Disappearance, International Convention on the Protection of Rights of all Migrant Workers and Members of their Families (MWC), Convention on the Minimum Age of Employment and Elimination of Worst Forms of Child Labour Swaziland has ratified all the key ILO conventions except the Minimum Age (Industry) Convention and its revised version.
4. With regard to routine reporting on Conventions, Swaziland has only reported on two Conventions namely the CRC and CEDAW. The United Nations supported the drafting of the two reports by providing technical support for drafting the reports and funding for the consultative process.
5. The following Conventions have been long in the pipeline but remain pending because of the lengthy national ratification procedure. These conventions include; The Convention of the Rights of Persons with Disabilities and its optional Protocol, African Charter on the Rights and welfare of Child, The Optional Protocol on the Involvement of Children in Armed Conflict, The Optional Protocol on the Convention on the Rights of the Child on the Sale of Children, Child

Prostitution and Child Pornography, International Treaty on Plant Genetic Resources for food and Agriculture, Optional Protocol to Convention on the Rights of the Child on the Involvement of Children in Armed Conflict and the UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage.

6. The implementation of the Constitution 2005 requires the amendment of all existing national legislation in order to be fully aligned to the provisions of the Constitution. Although some have been so amended and are awaiting Parliamentary enactment, there remains a backlog of laws requiring urgent attention. Amongst those awaiting enactment are the Marriages Act; the Administration of Estates Act, the Deeds Registry Act.

Institutional and Human rights structure

7. The Justice system in Swaziland is complex because of the dual legal system; civil and customary law. Swaziland is a Constitutional Democracy, the civil system exists parallel with customary law and both systems are headed by His Majesty the King. The Constitution is the supreme law of Swaziland and citizens of Swaziland have the right and duty to at all times uphold and defend the Constitution.
8. The Ministry of Justice and Constitutional Affairs is the custodian of the Human Rights agenda through monitoring of the implementation of the Constitution. The Ministry is responsible for ensuring that the state fulfills its justice and Human Rights obligations, to prevent violation of human rights and promote Human Rights.
9. The Constitution (2005) creates a number of key institutions. Among these is the Human Rights and Public Administration Commission. However it is worth noting that the establishment of this important body has taken some time and the UN played a key role of advocating the establishment of the Commission. His Majesty the King appointed the Human Rights and Public Administration Commission (HRPAC) in 2009 as per the constitutional provisions in S. 163 of the Constitution Act of 2005. The main functions of the Commission include; S164 investigate Human Rights violations; investigate complaints of injustice, corruption, abuse of power in office; take appropriate action for the remedying, correction or reversal of instances of human rights violations. However the enabling legislation to fully operationalize the Commission has not been passed. As constituted, the Commission remains weak and cannot effectively execute its mandate. In addition, the Commission only operates on a part time arrangement and has not been sufficiently resourced to carry out its work effectively.
10. The United Nations support to the Human Rights and Public Administration Commission has been in training on human rights based approaches to programming, in case investigation techniques and the development of a strategic plan. The United Nations has also been instrumental in enlarging the understanding of human rights to civil society through advocacy during annual commemorations of the Universal Declaration of Human Rights Days and through training on the human rights based approach to programming.
11. There is no parliamentary portfolio committee solely on Human Rights. The responsibility for Human Rights falls within the jurisdiction of the Ministry of Justice and Constitutional Affairs.
12. Article 138 of the Constitution establishes the Judiciary which comprise of the courts and is mandated with the administration of justice in the country including administrative functions of other key bodies such as the Judicial Service Commission and professional bodies such as the Law Society. The functions of the Judiciary Service Commission which is chaired by the Chief

Justice are defined in Article 160 and include the following: To advise the King in the exercise of the power to appoint persons to hold office specified in the Constitution which includes power to exercise disciplinary control over those persons and to remove those persons from office; advise government on improving the administration of justice in the country etc.

The position of the Chief Justice has always been occupied by an expatriate. Section 157(1) of the Constitution provides for the appointment of Justices of the superior courts and speaks to issues of localization of these appointments after seven years of the implementation of the Constitution. In his speech during the opening of Parliament in 2011, the President of the Law Society pointed out this clause and requested the Chief Justice and the Minister for Justice to prepare for its implementation.

Policy measures enhancing human rights

13. The Poverty Reduction Strategy and Action Programme (PRSAP) 2006 has prioritized under its governance pillar focus on improving governance systems and ensuring institutional development that will not only enhance participation but will also ensure that the respect of all basic human rights is observed. Furthermore, government policies promote human rights issues and these are National Gender Policy 2010, National Children's Policy, Social Development Policy, National Health Policy, Education Policy, the National Strategic Framework on HIV/AIDS, and Labour Inspection Policy among others. Among these policies, the United Nations provided technical support to develop the National Gender policy, the Children's Policy, the Social Welfare Policy, the Education Policy and the National Strategic Framework on HIV and AIDS. The UN also provided technical input towards the Food for Work Policy.
14. The following policies are still pending: Disability Policy, Food for work Policy, the Land Policy to promote the enabling environment for human rights based development agenda.

Equality and discrimination

15. The Constitution (2005) in Article 14 enshrines the fundamental rights and freedoms of all individuals and guarantees the enjoyment of these without discrimination. Article 20, provides for equality before and under the law without discrimination. The rights and freedoms of women are further enshrined in Article 28, which specifically guarantees women the right to equal treatment with men and equal opportunities in political, economic and social activities.
16. However while Article 38 prohibits derogation from the enjoyment of the right to life, equality before the law and security of the person, Chapter 4 governing citizenship issues provides for different treatment between men and women regarding acquisition of citizenship through marriage, transfer of citizenship through descent and renunciation of citizenship. These provisions negatively affect women contradicting the rights that are provided for in the aforementioned articles.
17. Under the constitution, children derive citizenship from their father unless the birth occurred outside the marriage and the father does not claim the child, in which case the baby carries the mother's citizenship. A foreign woman who married a citizen can become a citizen by lodging a declaration with the proper authorities. However, if a Swazi woman marries a foreign man this process is not the same, even where the man has become a naturalized citizen, the children are assumed to carry the fathers' birth citizenship. Birth registration is not automatic although it remains the entry point for all public services including access to free primary education and OVC education grant.

18. As a response to the challenge of registration, the United Nations has since 2006 been supporting the government birth registration programme by providing certificates, transport and registration clerks and the required hardware. This support fast tracked and raised the registration levels of all children particularly orphans and vulnerable children.
19. Because of the apparent contradictions within the Constitution, a number of key pieces of legislation require urgent amendments because they not only perpetuate inequality before the law but discriminate on face value, and also in application. These include the Marriage Act 1947/1964, The Deeds Registry Act 37/1968, Administration of Estates 1902, Citizenship Act 1992, and the Birth, Marriage and Death Registration Act 1963. In addition, the Marriages Act and its provisions on marital power violate the equality clause as it limits the right of women in that they cannot acquire a bank loan or own property without the written consent of their husbands, and thereby relegating them to the status of minors. These laws have not yet been amended.
20. There are also a number of discrepancies in the acquisition of land, which again disadvantage women. Although Article 211 of Constitution provides for equal access to land without regard to gender, in practice most women still face a number of hindrances in acquiring land through the customary laws and structures. In most instances women are denied (limited) independent access to land through inheritance, traditional acquisition of Swazi nation land and also in registering title deed land in their names if they are married. The case of Ms Doo Aphane vs the Registrar of Deeds and others¹ civil case no. 383/2009 is relevant.
21. Swaziland has a number of discriminatory cultural practices against women. Recognizing this, Article 28 of the Constitution enshrined that women shall not be compelled to undergo or uphold any custom to which she is in conscience opposed. This not only places a heavy burden on the individual woman but also means that the law is refraining from actually prohibiting and condemning all forms of practices that negatively affect the human rights of women.

Right to Life, liberty and Security of the Person

22. Protection of the right to life is provided for under Article 15 of the Constitution, and although the Human Rights Charter provides for the abolishing of the death penalty, the same article provides that the death penalty can still be used as a form of punishment by the court in criminal cases.
23. Violence against Women and Children remains a major challenge in Swaziland¹. The Violence against Women and Children Study of 2007 commissioned by the United Nations illustrates that there is a huge Gender Based Violence (GBV) problem and that 1 in 3 women experience some form of sexual violence by the time they reach 18 years of age. In light of the HIV/AIDS pandemic, 26% of the population is infected with the HIV virus (Demographic Health Survey 2006/7 and Sentinel Surveillance Report 2010), the impacts of these atrocities against women and children have far reaching consequences. Although there has been some effort to address gender based violence through advocacy and other interventions targeting prevention and response, these still fall short in addressing the problem adequately. The UN has collaborated with its implementing partners to promote awareness and has advocated against GBV through

¹ Complimentary Country Analysis April 2010

schools and communities. In addition to these initiatives, health facilities are supported to provide improved services to victims of gender based violence. Other measures included legal reform such as the drafting of the Sexual Offences and Domestic Violence Bill to provide the legislative framework to deal with this problem. In this regard, the United Nations provided the technical support, convened stakeholder sensitization workshops including convening both Houses of members of Parliament as part of its advocacy campaigns to support the enactment of this law. A first reading of this – bill has taken place but some barriers remain in passing it into law. The challenge is mainly with the interpretation of certain clauses as they relate to some cultural practices.

24. Article 15 (5) limits the right to abortion to cases of rape, incest or unlawful sexual intercourse or on medical grounds. Although the Constitution provides for abortions in these circumstance, under the therapeutic reasons, the stipulated procedure is so long and ends endangering the life of the mother and unborn child .In the cases of unlawful sexual intercourse, the procedure is unclear and by the time approval is granted it is often too late in the pregnancy to do anything about it.
25. Although Swaziland has signed the Convention of International Trade an Endangered Species (CITES), its ratification remains pending. The Game Act 51/1953 amended in 1991 has its main functions of protecting endangered species in conformity with the CITES. The Game Act is legally vested in the King’s Office but delegated to a private entity the “Big Game Parks” for day to day administration. This arrangement makes it difficult to delineate between the private and public interests in the administration of this law. Some actors in conservation argue that the Game Act provides unbridled authority and power to game rangers to respond to transgressions of the protection of game as they deem fit. Extra judiciary killings by game rangers of individuals suspected of being poachers have been reported. The reported killing of a suspected poacher by the name of Musa Gumedze in his home by the General Manager of Mkhaya Private Game Reserve, who was accompanied by three police officers.(US State Department 2008 Human Rights Report: Swaziland) is a case in point.
26. Article 18 provides for the protection against inhuman and degrading treatment; however there have been allegations of police employing interrogation methods that are in contravention of this provision some of them resulting in death. In that regard there has been a commission of inquiry set up to look at the circumstances of the death one Siphon Jele a member of PUDEMO (a banned political organization) who was arrested on May Day 2010 and died in prison custody. The inquest report (Legal Notice 77 of Gazette 44/2010) found that while the prison authorities were not responsible for his death, there was nonetheless negligence on their part that they did not ensure that harmful objects were removed from the cell.
27. In instances where police brutality was cited such as in the case of Mandlenkosi Mathousand Ngubeni (Legal Notice No 93/2004 Gazette 75), no disciplinary action was taken against the culprits who were merely transferred to other police stations. So far, there has been no successful case taking police into account for police brutality.

Administration of Justice and the Rule of Law

28. The dualism of the legal system (customary and common law) creates challenges of forum shopping since at times there are inconsistencies and overlaps between these two systems and therefore a need for harmonization. The traditional courts often offer a less rigid procedure that

is also fast. On the other hand the common law system is faced with challenges of inadequate infrastructure and human resource and this leads to a huge backlog in cases resulting to delayed justice delivery.

29. With the exception of murder cases, a person charged with a criminal offence is not entitled to state funded legal representation. The law governing legal practitioners does not encourage or require lawyers to offer pro bono services to disadvantaged populations. This then hinders access to justice, especially by the most vulnerable groups.
30. In some instances it has been observed that where the courts had passed judgments on cases, the law enforcement agencies have shown reluctance in enforcing court decisions.² Some examples of instances where law enforcement agencies have failed to enforce court decisions are namely the Vuvulane Irrigated Farms Ltd vs Moses Mathunjwa and other Farmers of Vuvulane Irrigation Farmers Appeal case No.31/2000 where the state failed to enforce a court decision against the Royal Investment Trust, Tibiyo.
31. Corruption remains a widespread problem at all levels of society, negatively affecting the enjoyment of human rights and continuously crippling the development of the country.³ In this regard, the (Anti Corruption Act) was enacted in 2008, and the Anti Corruption Commission (ACC) was established in 2008 to tackle this widespread problem. Although there have been a few reported cases, and some arrests, the government is yet to secure a conviction. The efforts of the Anti Corruption Commission though commendable have fallen short of addressing the problem given that the situation seems to be worsening each year.⁴ The Minister of Finance articulated that between the 2009 and 2010 the amount of embezzled funds doubled from at least E40 million to about E80 million. The Transparency International Perception of Corruption Survey ranked Swaziland 79 out of 196 countries in 2009. By 2010, but the ranking deteriorated by 12 places to 91 out of 196 countries. Of the 13 corruption cases forwarded to the Director of Public Prosecutions since 2008 none have resulted in a conviction. According to the Anti Corruption 3rd Quarterly Progress Report of 2010 a trial date has been set for only three of the thirteen cases. The United Nations provided technical support to the Anti Corruption Commission to produce the Swaziland Perception of Corruption Survey of 2010 and in addition supported capacity development initiatives through technical experts to set up systems, build the capacity of investigators and develop a code of conduct.

Freedom of Association and the right to participate in Public and Political life

32. Article 25 of the Constitution provides for the right to freedom of assembly and association, limited only by the interests of defense, public safety, public order etc. Because the interests of public safety are not clearly articulated, this is then left to the discretion of the political leadership. The law requires police consent to hold any political meetings, marches or demonstrations in a public place. In practice there have been a number of restrictions imposed on meetings, marches and demonstrations by labor related and political formations.⁵

² The two court judgments and the PMs statement on Macetjeni case

³ Minister of Finance budget speech and press statement

⁴ Minister of Finance budget speech

⁵ U.S Department of State 2009 Human Rights Report: Swaziland

33. Under the same Article 25 the Constitution provides that persons may associate freely with other persons for the promotion and protection of the interests of that person. The interpretation of this has been an issue of major public debate between the state and political groupings seeking to register political parties and participate in elections, especially because, the constitution is silent on political parties. Though the legal opinion offered by the Attorney General's Office states that under the new constitution, political parties are not illegal, there is no instrument removing the 1973 Decree which declares a state of emergency. During national and municipal elections candidates are expected to run in their individual capacity and cannot form a government as members of a political party. The position of political parties and their relationship to the constitution as well as the 1973 Decree is still contentious (Times of Swaziland 30th January 2011)

Security and the Suppression of terrorism

34. Article 24 of the Constitution provides for the protection of the freedom of expression, which included freedom of the press and other media. While some improvement has been noted regarding media freedom, in other sectors realization of this freedom has been restricted by the Suppression of Terrorism Act 2008. While states have a duty to protect all those under their jurisdiction and that in some situations this will require states adopting counter terrorism legislative measures to protect the population from violent attacks.
35. The Amnesty International Publications and International Bar Association 2009 notes that it is absolutely critical that anti terrorism measures are implemented in accordance with international human rights laws. According to the Amnesty International report the Swaziland Suppression of Terrorism Act definition of "terrorist act" places restrictions on a wide range of human rights provisions such as freedom of association and assembly, freedom of thought, conscience and religion, freedom of opinion and expression, the definition of what constitutes a terrorist group, legal remedies and issues of due process and fair hearing, the role of the courts, detention without charge or trial and the absence of effective safeguards in the law to prevent these human rights violations.

Right to work and just and favorable conditions of work

36. Swaziland has ratified all the key ILO conventions: one priority convention and all the key instruments on freedom of association, wages, working time and occupational safety and health. However this has still not been domesticated especially because it is still argued that the 1973 Decree and its implementation through the enforcement of state security clauses continues to be at variance with the enjoyment of worker's rights to associate and to assembly. The ILO has found this limitation infringes on trade union activities for which the country has been sanctioned by placement under the ILO "Special paragraph".

Right to health, social security and to an adequate standard of living

37. According to the Swaziland Household Income and Expenditure Survey 2011, poverty is a major challenge with an estimated 63% of the population living below the poverty line with 30% living in extreme poverty. A total of 79% of the population resides in rural areas, relying predominantly on subsistence agriculture. The Poverty Reduction Strategy and Action Programme recognizes "land as the most important asset for the poor as all their livelihood

activities revolve around the size and nature of the land they access”. For the majority (79%), access to land is primarily through the system of khonta where customary land is allocated by chiefs. Such land is held in trust by the King and under Swazi law and custom; the communal ownership implies that citizens have a right to the custody and use of the land although they hold no title to it. Of rural dwellers, 75% live in poverty, compared to 49% of urban population.

38. Issues of property rights play a critical role in the socio economic and political lives of the citizens especially those residing on Swazi Nation land (SNL). Over the years disagreements between chiefs and their subjects over social or political issues have resulted in illegal demolitions of homesteads and evictions from the communities. The Constitution protects citizens from arbitrary evictions without due process. However experience points to the fact that the traditional system disregards such provisions and citizens have had recourse of the courts after demolitions have been effected. For many citizens, the legal costs associated with legal redress are prohibitive. In addition, the lack of knowledge on the constitution and the absence of a human rights culture prevent citizens from seeking redress.
39. According to the FAO Right to Food Voluntary Guidelines “Food security exists when all people, at all times, have physical and economic access to sufficient, safe and nutritious food to meet their dietary needs and food preferences for an active and healthy life. The four pillars of food security are availability, stability of supply, access and utilization.” States have obligations under relevant international instruments related to the progressive realization of the right to adequate food, namely the International Covenant of Economic, Social and Cultural Rights (ICESRC). Although Swaziland is a lower middle-income country, changes in the economic, climatic and social context have led to a rapid increase in chronic malnutrition. Stunting rates have risen from the already high level of 28 percent in 2006 to over 42 percent in 2009 (Vulnerability Assessment Report 2010). Economically, the country has suffered a series of shocks. The global financial crisis and changes in trade agreements have led to a decrease in prices for major exports such as sugar and to a fluctuation in remittances from outside the country. At the same time, the global rise in food prices contributed to diminished purchasing power for the poor. In this cash-based economy, the changes affected the ability of families to meet their food needs, and many turned to cheaper, less nutritious options. The United Nations has prepared technical assistance to complete the draft Food for Work Policy and in addition providing technical assistance for designing the safety net component of the investment plan of the Comprehensive Africa Agriculture Development Programme.
40. Limited food assistance to orphaned and vulnerable at neighborhood Care Points is provided through the National Emergency Response Council on HIV and AIDS (NERCHA) and the United Nations. Supplementary food is also provided through the food by prescription programme aimed at nutritional support to people on Anti Retroviral Treatment, Prevention of Mother to Child Treatment (PMTCT) and TB treatment.
41. Areas where policies have been drafted to provide an enabling food secure environment have been put on hold or delayed which has greatly minimized the impact of the FAO Voluntary Guidelines on the Right to Food in the country. This includes the chronically food insecure and the transient or seasonally food insecure populations. The first group is ideally addressed by a safety-net or a social protection mechanism that covers their needs throughout the year. The second, more resilient group that only needs temporary support through various programmes like food for work or food by prescription that do not create dependency on food aid.
42. The Swaziland Food and Nutrition Policy was completed in 2008 but has not yet been endorsed. Social safety-nets in the form of school feeding are taking place but are not 100 percent comprehensive. There is no proper policy or legislation specific to school feeding in place and yet the implications on the most vulnerable children are not limited to hunger and nutrition but include the likely threats to education and the development of human capital in Swaziland.

43. Swaziland has the highest HIV prevalence in the world at 26% among the sexually active population with the HIV infection higher among women at 31.1% than men at 19% (DHS 2006-7). The two leading hospital diagnosed admissions being TB and HIV related illnesses, putting a strain on a health sector that is already facing a severe human resource shortage. The Joint United Nations Programme of Support on HIV and AIDS (JUNPS) is a UN's collective contribution to the national response based on the National Strategic Framework (NSF). The UN contribution is in thematic areas of prevention, treatment, care and support, impact mitigation and response management. Overall, strides have been made in treatment and care, however prevention of new infections remain a challenge and it is in this area that the most effort and innovative interventions should be developed. The UNCT continues to drive a strong advocacy for prevention and in 2010 the UN hosted the Executive Director for UNAIDS Mr Michel Sidibe and other high level advocates such as the Champions for an HIV Free Generation who comprise former Presidents and other high level members who are well placed to move the UN's advocacy messages to the leadership in the country. The United Nations contributes to all development data initiatives and these include the Population Census, the Demographic Health Surveys, Sentinel Surveillance Surveys, the National AIDS Spending Assessments (NASA), and the Multiple Indicator Cluster Survey (MICS) which all inform the impact of the development interventions as well as programme design and policy. In addition the UN has pioneered a strategy to eliminate stigma and discrimination of the infected and affected by HIV which continues to undermine service utilization. At present there is no specific policy in place to address issues stigma and discrimination.
44. While significant progress has been made towards the provision of free primary healthcare, the proximity of the clinics remains a hindrance to access to health. Maternal mortality and child mortality remains high⁶ and only about 74% of women deliver their babies in hospitals. (DHS 2006) Besides geographic access issues, access to finance (for transportation), social access and access to specialized health care remain a challenge in the provision of services to the most vulnerable groups. The government has prioritized the health sector in its Development Plan 2008-2013 and in support of this plan; the United Nations has concentrated its effort in the following strategic areas; the strengthening of health institutions, policy reform and capacity development of the health systems and skills development. A sector wide approach is in place and benefits of collaboration and harmonization between the government, development partners and civil society organizations are being realized. Integration of health services is also bringing greater efficiencies and effectiveness. For example, sexual reproductive health services are being integrated with HIV and AIDS services including expanded family planning services and maternal mortality interventions.
45. In addition to exerting pressure on the health system, HIV and AIDS have significantly increased the burden on Government social welfare services, as well as on traditional community support systems. The positive interventions through the creation of the Orphans and Vulnerable Children (OVC) Fund and grants for the elderly are noted. However mechanisms for registering those eligible for support have been daunting, and comprehensive access and monitoring has not yet been achieved.
46. Currently there exist a number of interventions targeting lesbians, men who have sex with men, bisexuals, and transgender and sex workers. However, there is still some level of stigma and discrimination against them and the country reports significant barriers to care and no specifically targeted services. Most At Risk Population (MAP) (prisoners, men who have sex with men and sex workers) still has difficulties accessing Sexual Reproductive Health (SRH)

care due to the fact that the country still has legislation that prohibits their sexual acts. People in correctional institutions, people with different sexual orientation and gender identity often feel discriminated against and stigmatized: for example, an individual with any anal ailment as a result of sexual intercourse would be refused immediate treatment at the hospital unless they have a police report for rape, rendering access to health care services difficult if not impossible. Access to medical care requiring guardian or parent consent for some orphans who are under age is difficult. Case in point is HIV testing and male circumcision for children under 18.

The right to basic education

47. In 2005, the Constitution S29(6) provides that every Swazi child within three years of the commencement of this Constitution shall have the right to free education in public schools at least up to the end of primary school, beginning with the first grade. In 2009, the introduction of state funded free primary education, which is now being phased-in with the elimination of primary school fees for grade 1, 2 and 3 in 2011, and one additional grade every year thereafter. Coupled with the education grant for Orphan and Vulnerable Children (OVC), there has been a steady increase in school enrolment by nearly 8 percentage points between 2004 and 2008 (World Bank, 2010). With a net primary school attendance rate of 84 percent (DHS, 2006/07), and high gender parity, the free primary education campaign brings Swaziland within reach of the Millennium Development targets for education. The greatest challenge in the coming years will be reaching the most marginalized, who remain outside of the system due to factors beyond school fees alone. Urban/rural and regional disparities persist, with urban males completing a median of 8.0 years education, compared to only 3.9 years in rural areas (for females, the proportions are 7.8 years for urban and 4.7 years for rural). By region, those living in Manzini complete the most years education (6 years), followed by Hhohho (5.7 years), Shiselweni (4.9 years) and Lubombo (4 years). Of concern, is the low rate of progression from primary to secondary school at 47%, of those who progress only 52% advance to tertiary education (Swaziland Government), DHS 2007.
48. Challenges in this sector include the lack of qualified teachers and inadequate school infrastructures and a weak policy and legislative framework. The financial crisis facing the country may impact negatively on the sustainability of the state funded free education. The Public Service Commission is mandated by the Constitution to manage public servants requires capacity development to ensure that public servants are properly deployed for effective and efficient service delivery.
49. The United Nations response to the challenges around this right have been in the area of policy development where technical support was provided to develop the Education Policy which has been adopted by Cabinet in 2011. In addition the UN has supported the roll out of the state funded education through procurement of materials such as desks and personnel costs.

The issue of statelessness

50. Section 43, of the Constitution provides that a person born in or out of Swaziland shall be considered a Swazi citizen if at the time of birth, the father of that person is a citizen of Swaziland. Section 4, of the Constitution provides that a child may access Swazi citizenship if

the mother is a citizen of Swaziland and the child is not claimed by the father. This essentially means that a child born to a Swazi mother and a non Swazi father may only access citizenship if the parents are un-married and the father does not accept paternity, hence such child cannot at the time of birth access Swazi citizenship, and remains stateless unless/until the child is registered as a citizen in the father's country of citizenship. A child born in or out of wedlock to a Swazi father and a non Swazi mother, whether in or outside of Swaziland immediately assumes Swazi citizenship, whereas a child born to Swazi woman by a non Swazi father may only access Swazi citizenship under the following conditions: 1) the child must be born out of wedlock, 2) the father must deny paternity.

Achievements and Best Practices

51. Although there have been challenges towards the attainment of Human Rights Swaziland has made progress particularly towards creating an enabling legislative and policy environment, which includes; the adoption of the Constitution Act in 2005, Trafficking in Persons and People Smuggling Act 2009, Anti-Corruption Act 2008, Amendment of the Magistrates Act 2011.
52. Swaziland has adopted the following policies:- the National Gender Policy 2010, Children's Policy 2009, Social Development Policy, National Health Policy 2007, and Labour Inspection Policy.
53. Swaziland established the Trafficking Task Force, Anti- Corruption Commission and Human Rights and Public Administration Commission.
54. Swaziland has made progress in roll out of state funded universal primary education, state funded primary health care and the roll out of ART.
55. Swaziland has made advancement in the issues for children including marked improvement in the conditions of incarcerated children and establishment of the child friendly court and interviewing room and capacity strengthening for major role-players in criminal justice system.
56. Best practices include; A National Study on Violence against Children and Young Women in Swaziland which informed the establishment of a National Gender Based Violence surveillance system.
57. The strategic linkage between the ART programme and food aid programmes is another best practice.
58. In the previous public budget Swaziland attained the Abuja Declaration goal of 15% of the budget and because of the fiscal challenges faced by the country this year's has dropped to 12%.
59. Swaziland has attained the Dakar Declaration of Education for All Goal.

Recommendations

60. Although there has been some progress towards the provision of fundamental rights and freedoms there is still room to address issues related to the protection of social, cultural and economic rights. Transparency and accountability remains a major challenge and the need to strengthen justice delivery system, fast track the domestication of regional and international Conventions and the establishment of effective regulatory bodies cannot be over emphasized. Specific recommendations include:

Legal reform

61. The government should consider seeking further cooperation and engagement with the UN Special Rapporteur on the Protection of Human Rights and Fundamental Freedoms while Countering Terrorism and the possibility of requesting the advisory services and technical assistance of this mandate, to ensure that Swaziland complies with its international obligations for the protection of human rights and fundamental freedoms, while implementing its other obligations under the UN Global Counter Terrorism Strategy (The Amnesty International Publications and International Bar Association 2009).
62. The Parliament should pass the following pending amendments/bills which include; the Marriages Act; Administration of Estates Act; Deeds Registry Act; the Sexual Offences and Domestic Violence Bill 2009; the Nurses and Midwives Bill 2009; the Public Health Bill 2010 and Child Protection and Welfare Bill 2011 and the Leadership code.
63. The country should fast track the ratification of pending Conventions and domesticates the ratified ones.
64. The Citizenship Act should be aligned to the equality and non discrimination provisions of the Constitution and International Instruments.
65. There is need to build capacity of Government, Institutions, Social Partners in promoting, protecting labour rights and on reporting on conventions and how to operationalise them, like building on existing programmes like APEC (Action Programme on the Elimination of Child Labour) and ILO HIV Workplace Program to come with Bill on Child Labour.

Policy

66. Approval of pending policies including: Disability Policy; Food for work Policy; the Land Policy and the Education Policy and supporting increased access to education for the poor and vulnerable groups
67. Support qualitative improvement in Education, focusing attention on class size teacher/pupil ratios and educational material supplies, particularly in disadvantaged regions

Institutions

68. The capacities of the Human Rights and Public Administration Commission; the Public Service Commission; the Judiciary Service Commission and the Anti Corruption Commission should be strengthened to enable them to deliver on their mandates.
69. Government should consider establishing a Legal Aid Facility and strengthening the capacity of professional regulatory bodies such as the Law Society for enhanced access to justice especially by the vulnerable.
70. Institutional and technical capacities of the Judiciary and National courts should be strengthened to speed up case-flow and enhance access to justice.
71. Capacity development of systems that improve transparency and information flow between the state and citizens should be undertaken.
72. The vast number of policies, acts, strategies, action plans, visions, frameworks in the context of food security, agriculture and disaster management is not aligned coherently to provide the population of Swaziland with an optimal environment in which to achieve their own food and nutrition security. While recognizing the substantial effort towards this goal, the United Nations wishes to recommend the establishment of a higher level national body that effectively coordinates food and nutrition security strategies, action plans and monitoring and evaluation for the activities within the country.

Bibliography.

1. The United Nations Development Framework (UNDAF) 2011-2015
2. The Complementary Country Assessment 2011 (CCA)
3. The Constitution of Swaziland (2005)
4. 2009/2010 Swaziland Household and Expenditure Survey
5. The Amnesty International Publications and International Bar Association 2009
6. The Poverty Reduction Strategy and Action Programme (2006)
7. The Swaziland Household Income and Expenditure Survey 2011
8. The Swaziland National Children's Policy June 2009
9. Swaziland Protracted Programme Operation 10602
10. The Demographic Health Survey (2006/7)
11. The Game Act
12. Swaziland Annual Vulnerability Assessment and Analysis report July 2009
13. The 2011 Public Budget Speech
14. The two court judgments and the PMs statement on Macetjeni case
15. The National AIDS Spending Assessment 2005/06 and 2006/07
16. The National Emergency Response Council on HIV and AIDS (NERCHAA)
17. National Study on Violence on Children and Young Women in Swaziland (Oct.2007)
18. Convention No. 81 Of 1947 – Labour Inspection
19. Protocol of 1995 to the Labour Inspection Convention
20. Convention No. 129 of 1969: Labour Inspection (Agriculture)
21. Convention No. 150 of 1978: Labour Administration
22. Convention No. 155 of 1981: Occupational Safety and Health
23. Protocol of 2002 to the Occupational Safety and Health. 1981
24. Convention No 170 of 1990 – Chemicals Convention
25. Convention No. 144 – Tripartite Consultation
26. The Suppression of Terrorism Act 2008