

SWAZILAND

Civil Society report on the Implementation of the Covenant on Civil and Political Rights

The report provides civil society's overview to
concerns listed in the List of Issues in the
absence of a State report

(120th session of the Human Rights Committee – July 2017)



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I. Introduction

a. Joining organisations

This report was prepared by Swaziland organisations working on the rights protected under the International Covenant on Civil and Political Rights (ICCPR). Annex I contains a lists of all participating stakeholders.

b. Methodology

Stakeholders organised themselves in thematic clusters according to their mandate and expertise. Four thematic clusters were formed namely the Women and LGBTI Rights' cluster, Civil and Political Rights' cluster, Youth and Children Rights' cluster, as well as the Socio-Economic and Cultural Rights cluster. In each of the four clusters two organisation were elected to serve as Chair and Vice-Chair, respectively. Cluster Chair and the respective cluster Vice-Chair organisations lead the data collection process which informed the report. A two-day national consultation was conducted in April 2017. Participants discussed Swaziland's approach to implementing its obligations under the ICCPR. They also discussed details relating to the List of Issues (LoI) pertaining to Swaziland's implementation of the ICCPR, as raised by the Human Rights Committee. Moreover, participants led by cluster Chair and Vice-Chair organisations contributed by sharing their experiences and recommendations on how the country can fulfil its obligations under the ICCPR. Consequently, this report is a sum of the deliberations, written submissions and contributions of all stakeholders as listed in Annex I. In addition, the report incorporates findings of desktop research and interviews with (private and public) stakeholders outside the cluster groups.

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II. Background information

Swaziland is a landlocked country located at the tip of Southern Africa. It borders South Africa on the North, the South and West and Mozambique on the East. It is Africa's last absolute monarchy and is ruled by King Mswati III. The country's system of governance is based on *Tinkhundla*, a traditional concept used to highlight what is known to be a Monarchical Democracy. Within the Swaziland context, the King holds all Executive, Legislative and Judicial powers.

Since the abrogation of the 1968 Constitution of Swaziland on the 12th April 1973, political activists have been calling for change in the political system. Despite the Constitution coming into force in 2005, the political environment has not changed. Political parties remain banned and are still unable to participate in the national elections, which are seen as farcical for not conforming with international and regional requirements and standards. The elections are also found wanting with regard to women participation, with only one woman voted into parliament during the 2013 national elections.

The country is divided into 55 *Tinkhundla*, from which members of parliament are elected, and 385 chiefdoms, which are governed by chiefs in the name and stead of the King. The chiefs wield traditional authority on behalf of the King. They both determine the day-to-day life of the community and are the traditional gatekeepers of culture and custom. They are vested with the authority to allocate land on Swazi Nation Land, and by the same authority to dispossess their subjects of the same land.

With a population estimated at 1.2 million people, Swaziland faces many socio, economic and political challenges. Some of the major concerns relate to health issues including HIV and Tuberculosis. The poverty rate in the country reaches 70%, due in part to a high unemployment rate of about 40%. As a result 63% of Swazi people live on less than E25.00 (about \$2) a day. Swaziland's GDP per capita categorises it as a middle-income country, but distribution is highly skewed with 20% of the population controlling 80% of the country's wealth.¹ The GDP growth rate stood at 0.5% in 2016 and the inflation rate, which stood at 6% as of March 2017, is expected to rise to 7.88% by the end of the quarter.² The introduction of a 14% Value Added Tax (VAT) has hit the pockets of many Swazis hard, pushing them to find additional means to supplement the meagre wages they are earning.

The country has the highest HIV infection rate in the world, at 26%. With 80% of TB patients co-infected with HIV, there are 733 TB infections per 100 000 Swazis.³ Life expectancy stood at 48.94 years in 2014.⁴

The country practices a dual system of governance which renders a democratic dispensation impossible. This is because the King not only has all necessary powers vested in him in the Constitution, but also has traditional and cultural powers which give him the sole prerogative to determine the political dispensation in Swaziland. An example of the use of these powers occurred in 2013 when he declared that Swaziland was no longer a *Tinkhundla* system based country, but a Monarchical democracy. As a result of this duality, Swaziland has a dual legal system which uses common law and customary law interchangeably and normally with conflicting consequences.

Women in Swaziland are marginalised and discriminated in law and in practice. Many violations of women's rights occur in the practice of custom and tradition.

The country has seen a decrease in the enjoyment of rights, particularly with the advent of the 2005 Constitution. Apart from replies highlighted in this report, freedom of religion has also been limited

¹ 2017 CIA World Factbook.

² Trading Economics Global Macro Models and Analysts.

³ CDC Global Health 2015.

⁴ Ibid.

with a policy stating that only Christianity will be taught in schools. All religions had previously been incorporated within the national syllabus.

All recommendations in this report are time bound by the year 2022. This is to comply with the King's Vision 2022, his strategy to have the country attain first world status by the year 2022. Despite the ambition of the strategy, many Swazi's are sceptical of it, as they have seen the rate of poverty and unemployment continue to increase while the economy of the country has declined rather than grown.

III. Replies of Civil Society to the Issues identified in the LoI

a. Constitutional and legal framework within which the Covenant is implemented (art.2)

Issue 1: What is the status of the Covenant under domestic law? Can provisions of the Covenant be directly invoked before domestic courts? If so, please provide detailed examples of cases in which this was done and with what results. Please provide information on efforts to harmonize common and customary laws with the Constitution and efforts to give effect to the provisions of the Covenant, including training of judges, prosecutors and lawyers regarding the rights protected under the Covenant. Please state if a law reform commission has been established to that end or if the Law Review Commission has been revived.

Reply / Comments from Civil Society

The Covenant has only been ratified, and not domesticated. The Constitution of the Kingdom of Swaziland expressly provides for the protection of civil and political rights in its Bill of Rights, but it does not have a specific provision relating to the domestication of human rights treaties. It is left for the courts to apply them in appropriate cases, and they have done so. The High Court in particular has applied the principles of CEDAW in cases dealing with violence against women.

Lawyers have raised or applied international human rights instruments including the ICCPR in litigating some cases. However, international human rights instruments are only regarded as having persuasive authority, but are not binding. This position grants the court discretion on whether to take cognisance of the instruments and their provisions. Articles 25 and 19 of the Covenant were invoked by the 4th Accused, but the court did not consider the provisions therein, nor did it make any reference thereof in its judgment.⁵

The duality of the legal system as recognised in Article 252 of the Constitution creates a conflict of law and weakens human rights protection, but there has been no harmonisation effort between the common law and customary law with the constitution to give effect to the Covenant.⁶

The duality of the legal system is further complicated by the double status of the King (Head of State) and *Ingwenyama* (Traditional Head in terms of Swazi Law and Custom). Where matters hinging on common law may be handled by the courts, the *Ingwenyama* may intervene and impose Swazi Law and Custom, resulting in the case being removed from the ambit of the judiciary, and normally leaving the aggrieved parties with no recourse thereafter.⁷

Some judges have attended trainings convened by various stakeholders, such as the International Commission of Jurists, on an *ad hoc* and individual basis, but there has been no systematic training of the entire judiciary. These trainings however do not necessarily translate to progressive judgments though, as a result of a system where national policy determines the conduct of law enforcement and the judiciary, and which lacks institutional independence necessary for the protection and enforcement of human rights. With regard to training for prosecutors and lawyers, the same applies.

No Law Reform Commission has been established despite many discussions for the necessity of law reform, particularly with the advent of the 2005 Constitution. The Law Review Commission has not been revived.

⁵ Rex vs The Nation Magazine and 3 Others, (120/14) [2014] SZHC 152 at pages 42 and 52 respectively.

⁶ Constitution of the Kingdom of Swaziland, 2005.

⁷ There was a land dispute involving Lwandle and Moneni chiefdoms and the case was taken to court; whilst still pending, the King issued a directive calling for order and stating categorically that court orders must be set aside and the communities should live together without fighting. The case did not proceed after the declaration by the King, and the residents now live in uncertainty and fear of evictions.

Recommendations:

The State Party should:

- 1) Review the Constitution to ensure international human rights norms are formally recognized. To this end, the Constitution should also ensure supremacy of international law in relation to domestic laws and make human rights instruments justiciable in domestic courts;
- 2) Review domestic laws to mainstream the standards contained in the Covenant and ensure that relevant domestic laws that domesticate the standards in the Covenant are enacted;
- 3) Establish a Law Reform Commission to embark on a law reform exercise, with particular emphasis on harmonising the common and customary law with the constitution to give effect to the Covenant;
- 4) Take necessary measures to ensure the independence of the judiciary and to strengthen the country's judicial system, including training judges, prosecutors and lawyers about the application and protection of rights contained under the Covenant.

Issue 2: Please provide information on the availability of remedies for individuals claiming a violation of their rights as contained in the Constitution and the Covenant. Please address the extent to which the Constitution is applicable and judicially enforceable with respect to, inter alia, the monarchy and chieftaincies, and give details of the remedies available in case of eviction from land vested in trust for the Swazi Nation by the iNgwenyama (the King) as provided for in Sections 19 (2) (b) (i) and 211 of the Constitution and up to date information on the remedies provided to the victims following the decision *Umbane Limited v Sofi Dlamini and Three Others* [2013] SZSC 25. Please report on any plans to ratify the Optional Protocol to the Covenant.

Reply / Comments from Civil Society

Affected parties may approach the courts or the Commission on Human Rights and Public Administration (CHRP) seeking redress for violation of their rights. The number of cases reported to the CHRP is unclear, and though some have been resolved through alternative dispute resolution, it is not known how many parties' grievances have received adequate remedies. But some cases related to workers rights or political rights have never been acknowledged by the CHRP, giving it the impression of partiality. Many cases reported by the Trade Union Congress of Swaziland and the Swaziland Democracy Campaign (SDC) have gone unacknowledged or unattended to.

However, there have been some successes and positive developments in the courts. The Attorney General vs Mary-Joyce Doo Aphane case, for example, led to the amendment of the Deeds Registry Act, thereby allowing for women married in community of property to have land registered in their own name.⁸

In so far as a matter may touch on the King or the Ingwenyama, there is no recourse under any law applicable in Swaziland.⁹ Chiefs are said to exercise delegated power from the King and as such, suing or challenging them is tantamount to suing or challenging the King. Some chiefs have been taken to court though, with the Attorney General's office representing them in all suits.¹⁰ Success in these cases is highly unlikely though, particularly if the name of the King is invoked.

⁸ (12/2010) [2010] SZSC 32.

⁹ Article 11, "The King and *Ingwenyama* shall be immune from (a) suit or legal process in any cause in respect of all things done or omitted to be done by him".

¹⁰ The Attorney General is the legal representative of the government, and his representation of the chiefs demonstrates clearly the conflicts arising from the dual legal system as many chiefs are taken to court arising out of incidences of the application of customary law.

Article 19(2) of the Constitution provides that “[a] person shall not be compulsorily deprived of property or interest in or right over property of any description except where the following conditions are satisfied- (b) the compulsory taking of possession of the property is made under a law which makes provision for- (i) prompt payment of fair and adequate compensation.” There have been no successful remedies for eviction cases; affected parties are not given adequate compensation, nor are they allocated alternative land to live on. Subsequent to the Umbane case, evictions were held in Nokwane so that the land could be used for the King’s Bio-Technology Park in 2014.

The evictions came in the wake of a protracted court case that was heard by Judge Mpendulo Simelane, where the residents lost the case but appealed to the Supreme Court.¹¹ Despite the appeals, the government proceeded to demolish the residents’ homes, leaving them homeless and with no compensation or alternative land. To date, the Nokwane residents have received redress. Their case is still pending appeal.

To the extent that research was conducted it was found that there are no plans to ratify the Optional Protocol to the Covenant.

Recommendations:

The State Party should:

- 1) Undertake constitutional review to ensure full respect for democratic principles such as that everyone is equal before the law. Such review must take into account the need to ensure that the Swazi King and chiefs, as well as citizens, are directly accountable under the law and ensure respect of normative provisions;
- 2) Develop a comprehensive land policy to regulate acquisition of Swazi Nation Land (SNL), dispossession thereof and remedies, including a right to fair compensation in cases of nationalisation and or misappropriation of land;
- 3) Enact legislation to give effect to Article 19 of the Constitution;
- 4) Consider ratification of the Optional Protocol to the Covenant.

Issue 3: Please provide information on any steps taken to adopt enabling legislation for the Commission on Human Rights and Public Administration to legally grant it a mandate to undertake activities as a national human rights institution in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles). Please provide information on the steps taken to establish a national mechanism for reporting and follow-up, as a standing government structure (ministerial, inter-ministerial or institutionally separate) that is mandated to coordinate and prepare reports to and engage with international and regional human rights mechanisms.

Reply / Comments from Civil Society

An attempt to enact enabling legislation for the CHRPA was made by the Commonwealth to assist with said legislation and a Bill was prepared in 2011, with some consultations on it taking place. The process was discontinued, however, after the government raised some concerns on certain provisions because of an issue relating to the overlap of functions under Article 164 (1) (b), (e) and (f) of the Constitution with S. 10 of the Prevention of Corruption Act 2006.¹² The Bill was tabled before Cabinet in 2012, but was not taken any further because Parliament was subsequently dissolved in preparation for the 2013 national elections.

¹¹ Chief Justice Ramodibedi allocated cases to Simelane to obtain favourable judgments for government or his cohorts and himself.

¹² It empowers the CHRPA to investigate corruption ; It empowers the Anti-Corruption Commission to investigate corruption.

In April 2017, the Permanent Secretary of the Ministry of Justice informed COSPE and CCPR-Centre that the process for establishing an Inter-Ministerial mechanism for reporting and follow-up has been initiated. However, it had not been approved by Cabinet. Up to date *ad hoc* committees have been set up for specific reports e.g. CEDAW and UPR.

Recommendations:

The State Party should:

- 1) Enact enabling legislation for the establishment of an independent and impartial CHRPA to undertake activities as an NHRI in accordance with the Paris Principles;
- 2) Establish a national mechanism for reporting to international and regional mechanisms and follow-up on implementation of recommendations from these mechanisms.

b. Public emergencies (art. 4)

Issue 4: Please state the grounds and procedures for which a state of emergency can be lawfully declared under Article 36 of the Constitution and your domestic law and the rights in the Constitution that are not derogable in times of public emergency, and explain the compatibility of the domestic law with article 4 of the Covenant. Please provide information on the status and, if relevant, content of the 1973 State of Emergency decree. Is the decree still in force or it been repealed? Have derogations from the present Covenant been made, and if so has the State Party informed the Secretary-General thereof, as stipulated in article 4 (3) in this Covenant?

Reply / Comments from Civil Society

In terms of Article 36 of the Constitution there are grounds for a declaration of a state of emergency in instances where the country is at war or when there is an imminent state of war between Swaziland and a foreign State, where there is a natural disaster or an imminent threat of a natural disaster, or where an action is taken or immediately threatened by a person or body of persons of the nature or extent to endanger public safety or deprive the community of supplies or essential services.

The King declares a state of emergency, on the advice of the Prime Minister (PM), by publishing a gazette which the PM must present to parliament not more than 7 days after publication. It must be approved by a 2/3 majority.

In keeping with the ICCPR and the obligations under the African Charter on Human and Peoples' Rights (ACHPR), non-derogable rights are the right to life, equality before the law and security of person, the right to fair hearing, freedom from slavery or servitude, the right to an order in terms of Article 35 (1) [enforcement protective provisions], and freedom from torture, cruel, inhuman or degrading treatment or punishment. There have been no derogations from Articles 4 (2), 6, 7, 8 (at paragraphs 1 and 2), 11, 15, 16 and 18 of the Covenant.

Ordinarily, a law is repealed expressly and there has been no repeal of the 1973 Decree. On repeal of a statute a new law should replace old legislation. Although the Swaziland Constitution recognises the right to freedom of assembly and the right to participation in the country's political activities, the 1973 Decree is used by law enforcement officers to suppress political opponents. In this regard, in Swaziland, political parties remain banned and assemblies are strictly restricted to non-political purposes (thus also barring involvement of political parties). Meetings organised by opposition parties are often disrupted by law enforcement agencies/officers.

In March 2013, the Swaziland Democracy Campaign (SDC) organised a meeting in which they would launch their anti-elections campaign. The meeting was moved from the initial venue because the police had intimidated and harassed the owners of the venue into withdrawing the permission for its use. It was subsequently held at the Catholic Cathedral Church in Manzini. Despite the fact that there were

international guests, including members of the clergy, the police disrupted the meeting and demanded the participants to leave the church.

Reportedly, the Attorney General (AG) stated that the Constitution replaced the 1973 Decree. However, the Constitution covertly incorporates principles and elements of that Decree. For instance, political parties were expressly banned under the Decree and the new Constitution makes no provision protecting these parties and related that they cannot contest national elections. The State normally uses Jan Sithole, an MP and the President of SWADEPA, as an example of political parties contesting elections. However, he was elected on individual basis, as per the Constitution.¹³

No derogations have been made to the Covenant.

Recommendations:

The State Party should:

- 1) Expressly repeal the 1973 Decree;
- 2) Enact legislation to allow for the recognition, registration and operation of political parties;
- 3) Amend the constitution to allow political parties to contest national elections.

c. Non-discrimination and equality between men and women (arts. 2, 3, 25 and 26)

Issue 5: Please provide information on the measures taken in law and in practice to ensure protection against discrimination in all forms in the public and private sectors, including direct, indirect, and multiple discrimination, and on all grounds protected by the Covenant, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, disability, sexual orientation, gender identity or other status, and to ensure the application of these prohibitions to customary law. In particular, please provide information on whether sexual orientation and gender identity and marital status are included as prohibited grounds for discrimination under the Constitution and domestic legislation.

Reply / Comments from Civil Society

Article 20 of the Constitution provides for equality before the law and sub-article 2 covers a number of prohibited grounds of discrimination, which do not however prevent discrimination on the grounds of sex, language, sexual orientation and gender identity. It is submitted that protection should be extended to such other grounds not included in sub-article 2. This will ensure that key populations such as sexual minority groups including LGBTI persons, who are prone to discriminatory acts, will be protected from violations of their fundamental rights. It must be noted that though discrimination is not broadly permitted in terms of gender, the issue of gender identity is one that has been overlooked and not discussed. There is therefore a need to consult on whether its definition in the Constitution also encompasses gender identity.

Despite the fact that the Constitution provides for the equal treatment of women and men, in practice the marital status of a woman can act as a ground for discrimination.¹⁴ The Marriage Act (1964) assigns the married woman a disadvantaged status, granting the man more privileges and rights. For instance, married women can access credit from financial institutions only when they obtain express consent of their husbands. In the past, amendments were proposed in respect to the Marriage Act and a consultation process took place. An amendment Bill was drafted in 2011, but the proposed amendments have not been debated and passed into law. One of the daily newspapers however reported that it would

¹³ Article 79 “The system of government for Swaziland is a democratic, participatory, *tinkhundla*-based system which emphasises devolution of state power from central government to *tinkhundla* areas and individual merit as a basis for election or appointment to public office.

¹⁴ Article 28 (1).

be tabled before Parliament soon, and consultations are currently under way on the Marriage and Matrimonial Property Bills.¹⁵

Swaziland's domestic laws and customary practices also play a role in perpetuating inequality between men and women, with women being left in a disadvantaged position. For instance, Article 34 (1) of the Constitution provides that "a surviving spouse is entitled to reasonable provision out of the estate of the deceased spouse whether the spouse died having made a valid will or not and whether the spouses were married by civil or customary rites." However, a widow may be and is still dispossessed of her inheritance in the estate of her husband in the guise of Swazi Law and Custom, whereas a widower will not face the same situation on the death of his wife.

The former Minister of Justice, in collusion with the former Chief Justice attempted to ensure protection of widow's rights by passing an Estate Policy that would ensure equal treatment of all women, regardless of the marriage regime and number of wives by introducing the estate policy (which had been disapproved by the Cabinet of Ministers) through a court case.¹⁶ However, the manner in which they sought to achieve this was done in an underhanded and unlawful manner and was a contributing factor to the judicial crisis that led to the Minister's arrest, and the CJ's dismissal.

Women are most vulnerable with respect to violations linked to customary practices, which include those of forced marriages and bride inheritance. Laws that seek to protect women from being "compelled to undergo or uphold any custom to which she is in conscience opposed" are not enforced, as women continue to be forced into customary practices to which they are opposed.¹⁷ Despite compliance with Article 115, custom has been cited as the reason why the Sexual Offences and Domestic Violence Bill has not been enacted into law for several years.¹⁸

Recommendations:

The State Party should:

- 1) Enact legislation protecting against discrimination based on sex, sexual orientation, gender identity, language;
- 2) Fast-track the review of the Marriage Act including enactment of the Marriage Amendment Bill with provisions that give effect to the Constitution and Covenant;
- 3) Ensure that Swaziland customary practices are in full compliance with Article 34 of the Constitution and the Covenant.¹⁹

Issue 6: Please provide information on measures taken in law and in practice to protect persons from discrimination and violence based on sexual orientation and gender identity, including in housing and employment, and to promote tolerance. Please provide information on complaints regarding violence against LGBTI persons, and any investigations and prosecutions pursued, punishments imposed, and reparation to victims. Please address any plans to remove the common law criminalization of same-sex relations between men. Please provide disaggregated statistical data on the number of persons infected by HIV/AIDS and those that have died from HIV/AIDS related illnesses. Please provide information on efforts to intensify education and awareness-raising among all parts of the population to combat societal stigma and discrimination against persons living with HIV/AIDS, including in employment. Please address specific measures to provide protection and support for women and girls and to end traditional practices that contribute to the spread of HIV/AIDS, including wife inheritance, as well as efforts to develop prevention, testing and treatment programs specifically targeting youth and the LGBTI community.

¹⁵ Swazi Observer of 23 March, 2017.

¹⁶ Wezzy Ndzimandze & 16 Others vs Titselo Dzado Ndzimandze & 13 Others (981/2014) [2014] SZHC 234.

¹⁷ Article 28, Ibid.

¹⁸ Ibid.

¹⁹ (2) "Parliament shall, as soon as practicable after the commencement of this Constitution, enact legislation regulating the property rights of spouses including common-law husband and wife."

Reply / Comments from Civil Society

The reality of the HIV epidemic, namely that men who have sex with men (MSM) are at a heightened risk of HIV, has forced the Government of Swaziland to implement measures for the protection of certain sexual minorities. For example, the Key Population Programme within the Swaziland National AIDS Programme (SNAP), a Department within the Ministry of Health, aims to enhance universal access to HIV prevention, treatment, care and support for key populations, including MSM, and to promote positive health-seeking behaviour. This programme is working to remove structural barriers, including stigma and discrimination, which prevent effective retention of key populations in the HIV continuum of care. It does this by coordinating sensitisations and trainings across the health sector. With input from key populations, it recently completed a training manual for healthcare providers entitled *Improving Access to Comprehensive Health Care Services for Key Populations in Swaziland*.

Through civil society organisations, Commissioners and Assistant Commissioners of the police force have been sensitised to the needs and challenges faced by key populations. However, there is a need to more comprehensively target entire police forces.

While these developments are certainly welcome, there is an urgent need to protect and promote tolerance for all sexual and gender minorities, not simply MSM. As well, there is no anti-discrimination legislation specifically targeting sexual orientation and gender identity, such that, when an LGBTI person is assaulted, the charge faced by the perpetrator is simply one of assault; it is neither viewed nor captured as a hate crime.

In housing and employment, few measures have been taken in law or in practice to protect persons from discrimination based on sexual orientation and gender identity. Positively, the Swaziland National Association of Teachers secured a transfer for transgender male teacher who was being harassed by his school's administration. This, however, is not the norm. Rock of Hope, a local LGBTI organisation, reports that LGBTI persons are frequently denied housing, face prejudice as early as the application stage when searching for employment. Often, the focus of the job interview will be on how the candidate presents or behaves, and not on their qualifications or preparedness for the job. In 2010, Rock of Hope documented a case wherein a queer person arrived for an interview for a teaching position within the public school system, only to be sent home and told to return wearing a skirt.

Since December 2016, Rock of Hope has been collecting evidence about rights violations against members of the LGBTI community. As of the date of submission, it has documented 28 incidents of discrimination and violence, emerging in settings including the health sector, educational institutions, family/home settings, workshops, correctional services and police settings. In one instance, a correctional services officer told a 24-year-old gay man in detention that his sentence could be shortened in exchange for oral sex. When the young man refused, the officer raped him and threatened to kill him if he reported the incident. In another case, which is representative of transgendered peoples' experience in the health care system more generally, a transgender woman in her mid-twenties reports being publicly ridiculed by the service provider attending to her.

Significantly, since 2014, two individuals – Themba Zwane and Kayla Glover – have been violently murdered in incidents directly linked to their sexual orientation. In the Kayla Glover case, the accused, Tony Zola Mamba, was found guilty of murder and sentenced to 20 years in prison – a result that was welcomed by the LGBTI community.

As for the legal status of consensual same-sex relations between men, the Minister of Justice assured the international community that it will no longer be prosecuted under Swaziland's sodomy laws. The Office of the Attorney General reiterated this position in a subsequent meeting with Rock of Hope. It further clarified that, as the present legal definition of rape is only applicable in instances where the victim is female and the perpetrator male, legislation criminalising same-sex relations will not be repealed until such time as there are other mechanisms by which to prosecute rape between men. As well, during the

Universal Period Review, Swaziland did not accept recommendations surrounding the decriminalisation of same-sex relationships.

The following table summarises key indicators with respect to the HIV and AIDS epidemic.

	Total	Women	Men
People Living with HIV (all ages) ²⁰	220,000 [200,000- 240,000]	-	-
HIV prevalence rate for adults aged 15-49 ²¹	25.9%	31.1%	19.7%
HIV incidence rate among adults aged 18-49 ²²	2.38%	3.1%	1.7%
Estimated number of people newly infected with HIV (all ages) ²³	11,000 [9,700- 14,000]	-	-
People dying from HIV- and AIDS-related illnesses ²⁴	3,800 [3,300- 4,200]	-	-
Estimated number of children (aged 0-14 years) newly infected with HIV ²⁵	<500 [<500- <1000]	-	-
Estimated percentage of pregnant women living with HIV who received effective antiretroviral medicines to prevent mother-to-child transmission of HIV ²⁶	95	95	-
Estimated percentage of adults (aged 15 years and older) living with HIV and receiving antiretroviral therapy ²⁷	67 [62-72]	74 [69-80]	56 [52-61]
Estimated percentage of children (aged 0-14 years) living with HIV and receiving antiretroviral therapy ²⁸	78 [74-84]	-	-

Notably, there is no anti-discrimination legislation specifically prohibiting discrimination on the basis of HIV and AIDS. This is the case despite HIV-related stigma and discrimination having been identified as key drivers of the HIV epidemic.²⁹ Significantly, levels of stigma and discrimination are high. A 2011

²⁰ UNAIDS (2016). *Prevention Gap Report*. Geneva, Switzerland: Joint United Nations Programme on HIV and AIDS.

²¹ Central Statistical Office (2008). *Swaziland Demographic and Health Survey 2006-2007*. Calverton, USA: Macro International Inc.

²² Central Statistical Office and Macro International Inc (2008). *Swaziland Demographic and Health Survey 2006-07*. Mbabane, Swaziland: Central Statistical Office and Macro International Inc.

²³ UNAIDS (2016). *Prevention Gap Report*. Geneva, Switzerland: Joint United Nations Programme on HIV and AIDS.

²⁴ *Ibid.*

²⁵ *Ibid.*

²⁶ *Ibid.*

²⁷ *Ibid.*

²⁸ *Ibid.*

²⁹ Stigma and discrimination have been identified as key drivers of the HIV epidemic, especially among key and vulnerable populations. This is true both nationally and at a global level. UNAIDS reports that they contribute to lower uptake of HIV preventive, testing and counselling services; reduced and delayed disclosure; and postponement or rejection of treatment,

Stigma Index Report published by the Swaziland National Network of People Living with HIV and AIDS (SWANNEPHA) indicated that 85% of participants living with HIV had experienced stigma and discrimination, with 22% having been verbally abused, assaulted, harassed or threatened. Furthermore, the Multiple Indicator Cluster Study of 2014 reported that discriminatory attitudes against people living with HIV remain high. Specifically, only 37% of people expressed low levels of discriminatory attitudes towards PLHIV.³⁰

With respect to traditional practices that contribute to the spread of HIV, the Constitution provides for women to opt out of “any custom to which she is in conscience opposed.” This is contrary to international human rights standards, which stipulate that it is the State’s responsibility to prohibit and condemn all forms of harmful practices that negatively affect the human rights of women. In the present form, the law places an undue burden on women to challenge deeply embedded and patriarchal cultural norms and practices. Notably, women who have done so have faced negative repercussions. For example, Human Rights Watch’s 2016 Country Summary for Swaziland indicates that chiefs continue to fine the families of girls and young women who fail to take part in Umhlanga, a traditional eight-day ceremony attended by females from across the country.

The Ministry of Justice and Constitutional Affairs is in the process of aligning the Marriage Act of 1964 with the Constitution and international standards. To this end, the Marriages Bill 2017 and the Matrimonial Property Bill 2017 have been drafted and, in June 2017, they were shared with stakeholders at a national consultation. Should they be enacted in their current form, they would reduce women’s vulnerability by, among other things, removing the marital power of the husband, prohibiting evictions except by court order, and by making provisions for common law marriage.³¹ It further renders sexual intercourse without consent of the spouse, otherwise known as marital rape, an offence with either criminal or civil liabilities. As for the practice of wife inheritance, *kungenwa*, the Marriage Bill provides that a relative of the deceased may marry a widow but only with her free consent. Finally, the age of consent to marriage, whether civil or customary, would be set at 21 or as low as 18 with parental consent. This is significant as, at present, the age of consent for women is as low as 16 for civil marriages. Within customary marriages, though, women can be married after the onset of puberty. Notably, the Multiple Cluster Indicator Survey 2014 indicate that 4 percent of women aged 15-19 are currently married or in union and 8.8 percent of women aged 20-49 were married or in union before age 18.

As mentioned previously, the government has taken steps to provide access to HIV prevention services to MSM, namely through the Key Population programme with SNAP. Civil society organisations are also delivering HIV prevention, treatment, care and support services to MSM through mobile clinics and outreaches. Select clinics across the country have been identified as referral clinics for key populations, including MSM. There are, however, no HIV programmes specifically targeting lesbians, bisexuals, transgender or intersex persons.

As for HIV prevention, treatment care and support programmes targeting youth, both civil society and government have been very active in this regard. For example, the Ministry of Education institutionalised its Life Skills Education programme, which is heavily focused on HIV prevention and

care and support. Sources:

UNAIDS (2007). *Reducing HIV Stigma and Discrimination: a critical part of national AIDS programmes*. Geneva: Joint United Nations Programme on HIV/AIDS.

NERCHA, UNAIDS, PEPFAR and World Bank (2014). *The Extended National Multisectoral HIV and AIDS Framework (eNSF) 2014-2018*. Mbabane, Swaziland.

³⁰ Levels of acceptance are assessed using the following four questions: 1) would care for a family member with AIDS in own home; 2) would buy fresh vegetables from a vendor who is HIV-positive; 3) thinks that a female teacher who is HIV-positive should be allowed to teach in school; and 4) would not want to keep it a secret if a family member is HIV-positive.

³¹ Common law marriage is defined as cohabitation and is referred to as such in the Marriage Bill 2017.

education, in 262 secondary schools, reaching 70,676 students in 2016. The Coordinating Assembly of NGOs (CANGO) is overseeing a three-year project for the delivery of Comprehensive Sexuality Education (CSE) to all out-of-school youth in 20 of Swaziland's 55 Tinkhundla. Within the same project, 3,088 tertiary students were reached with an HIV prevention package. The Government also hosted a National Youth Prevention Indaba, in which a political communiqué for Youth HIV prevention was developed.

Efforts are also being made to ensure that rural youth populations are being serviced. For example, with the support of UNFPA, the Family Life Association of Swaziland, operated youth-friendly mobile clinics, delivering integrated sexual and reproductive health and HIV services to hard-to-reach, youth populations. With these clinics, they reached 19,030 people in 2016, approximately 4000 of whom were between the ages of 10-24.

Recommendations:

The State Party should:

- 1) Create an enabling environment for dialogue around sexual orientation and gender identity to prevent discrimination and attacks against them;
- 2) Amend existing legislation to decriminalise consented same-sex relationships;
- 3) Enact legislation that will give effect to the Constitution against customary practices that are discriminatory to women.

Issue 7: Please provide information on the measures taken in the last three years to ensure effective implementation of the National Gender Policy (2010). Please also provide information on: (a) women's status in the political, economic and social life of the State party; (b) levels of employment among women and the proportion of women in decision-making positions both in the private and public sectors; (c) whether women and men receive equal pay for work of equal value; and (e) the literacy and school enrolment rates for women and girls as compared to those of men. Please also specify what measures are in place to promote equal representation of women in decision-making positions, both in public affairs and the private sector, and the efforts taken by the Government to fully implement section 86 of the Constitution which sets a quota of 30 per cent representation of women in Parliament.

Reply / Comments from Civil Society

Though the Swaziland Government successfully passed the National Gender Policy and Action Plan of 2010 (NGP) and made a Gender Development Index to measure progress in the 9 thematic areas of the Gender Policy, there is nonetheless criticism from civil society and concern from international development partners that the implementation of this Policy is not keeping up. One reason for this is the lack of resources and capacity. The United Nations Swaziland briefing on Gender Equality and Equity in Swaziland mentions that "the progress of implementation remains slow." <http://sz.one.un.org/content/unct/swaziland/en/home/about-the-country/gender-equality-and-equity.html>. The policy has been recently reviewed, but there has been no information dissemination on the process, its outcomes and implementation plan.

As of the last Census in 2007, the population stood at 1,018,449 people, (CSO 2007), 53% of whom were female and 47% of whom were male. Despite being greater in numbers, women occupy a minority status in society. For one, women are most heavily hit by unemployment, with 32.2% of women unemployed compared to 24.4% of men.³² Women's earnings as a proportion of men's stand at 53%.³³ Additionally, only 45% of women participate in the labour force, while for men that number is as high as 73%.³⁴

³² Socio-Economic Database Swaziland, 2016.

³³ Gender Links (2016). *SADC Gender Protocol Barometer 2016*. Johannesburg, South Africa.

³⁴ *Ibid.*

Moreover, as captured in the below table, women are not equally represented in decision-making:

Indicator	Value
Percentage of women in economic decision-making	27
Percentage of men in economic decision-making	74
Percentage of firms with women participation in ownership	29
Percentage of women in ambassadorial positions	23
Percentage of women in local government	22

Source: Gender Links (2016). *SADC Gender Protocol Barometer 2016*. Johannesburg, South Africa

As well, within the structures of government, the following disparities exist:

Position	Number of men	Number of women
Cabinet Ministers ³⁵	14	5
Judges	20	3
Member of Parliament ³⁶	61	4

Notably, only one woman MP was elected to Parliament; the other three were appointed. As well, between the 2013 elections and the previous election cycle, Swaziland saw a setback of 7.7% of female representation in Parliament.³⁷

Section 96 of the Employment Act of 1980 provides for equal pay for equal work done by men and women. Employers adhere to these statutory provisions, but nonetheless there is a lack to access to equal employment opportunities.

The Gender Parity Index measures the relative access of girls and boys to education by comparing enrolment trends. Net enrolment gender parity indicates the ratio of girls to boys who are receiving education appropriate to their age. Gross enrolment gender parity shows those overall who are receiving education regardless of the age-appropriateness of this schooling. The relevant indices for Swaziland are captured in the below table:

	Gross Enrolment Gender Parity Index	Net Enrolment Gender Parity Index
Primary	0.92	1.00
Lower Secondary	1.0	1.4
Upper Secondary	0.9	1.44

Source: Ministry of Education and Training Annual (2014). *Annual Education Census 2013*. Education Management Information Systems: Mbabane, Swaziland.

³⁵ Swaziland Government (2017). *Cabinet Ministers*. Accessed on 7 June 2017 at: http://www.gov.sz/index.php?option=com_content&view=article&id=1467:cabinet-ministers&catid=65:the-prime-ministers-office.

³⁶ Inter-Parliamentary Union (2014). *Women in Parliament 2013: The year in review*. Inter-Parliamentary Union: Geneva, Switzerland.

³⁷ *Ibid.*

These figures indicate that the education system has more boys than girls at the primary and upper secondary levels. Gender parity in terms of gross enrolment was achieved in Lower Secondary. Of note, though, is that the net enrolment GPI indicates that more girls are at an age-appropriate level than boys.

Overall, as per the three basic indicators of internal efficiency of the education system – dropout rate, repetition rate and promotion rate – girls are more efficient users of the education system than boys. Of significance, though, is that young women overwhelmingly report pregnancy as their reason for dropping out. In Lower Secondary, pregnancy accounts for 40% of female dropouts.

As for literacy rates, the Multiple Indicator Cluster Study of 2014 reports that 95% of young women and 92% of young men are literate. For the former, literacy rates do not vary significantly across place of residence or region. For young males, on the other hand, literacy rates varied slightly across region, at a low of 88% in Lubombo to a high of 94% in Shiselweni. Likewise, young men from urban areas are more literate than men from rural areas, with literacy rates at 97% and 91% respectively.

The fact that more women are educated does not translate to equal representation of women in decision-making positions. More efforts are needed to promote equal representation, including addressing government failure to implement measures to ensure conformity with the constitutionally prescribed quota for women representation in parliament. There is need to address the issue that society must vote for more women if more of them will be elected to parliament. This must be achieved despite the fact that the Constitution places an obligation on parliament to “elect not more than four women on a regional basis to the House”.³⁸

Recommendations:

The State Party should:

- 1) Take necessary measures to ensure full and effective implementation of the NGP;
- 2) Take immediate action to ensure compliance with Article 86 (2) on ensuring the stipulated quota for women representation.

Issue 8: Please explain the compatibility of the restrictions in Chapter 4 of the Constitution, which provide for different treatment between men and women regarding, inter alia, the acquisition and transfer of Swazi citizenship, with the Covenant. Please specify measures taken to ensure that discrimination against women is prohibited under customary law in both law and practice. Please also explain what measures have been taken to remedy women’s limited access to land under the traditional land tenure system and what steps the State party has taken to amend section 16 (3) of the Deeds Registry Act No 37 of 1968, which was held to be unconstitutional by the Supreme Court. Please explain what concrete steps have been taken to ensure that women, who are “married out of community of property” where marital power has not been excluded, are guaranteed equal rights to property as men. Please explain what measures have been taken to address polygamy, discrimination against widows such as restrictions on the ability to appear in public, and to raise public awareness to combat traditional practices and stereotypes regarding women, including in rural areas and with respect to traditional leaders.

³⁸ Article 86 (2), Ibid.

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In terms of the Constitution, women married to non-nationals are not allowed to transfer Swazi citizenship to their children.³⁹ This is in conflict with Article 20 of the Constitution of Swaziland and Article 26 of the Covenant, which both provide for equal treatment before the law.

Insufficient measures have been taken by government to ensure that discrimination against women is prohibited under customary law and practice. This position also pertains to women's limited access to land under the traditional land tenure system as well as for women 'married out of community of property' where marital power has not been excluded. However, as a result of the Doo Aphane case, which concerned the right of women married in community of property to have land registered in their name, the Deeds Registry Act was amended in 2012 to ensure protection of the rights to property as enjoyed by men. As noted in the Concluding Observations of Committee on the Elimination of Discrimination Against Women on the combined initial and second periodic reports of Swaziland, there is a need to widely disseminate, especially among women, this amendment and to ensure its full implementation.

In working to align the Marriage Act of 1964 with international standards, as mentioned previously, the Ministry of Justice and Constitutional Affairs' is demonstrating commitment towards ending discrimination against widows. For example, should the Matrimonial Property Bill 2017 be enacted, it would prevent widows from being evicted from their matrimonial homes.

However, few other steps have been taken with regard to polygamy or discrimination against widows. Additionally, no public awareness has been raised to combat traditional practices. The Gender Unit, within the Deputy Prime Minister's Office, though, has run annual campaigns for the 16 Days of Activism Against Gender-Based Violence. These have challenged stereotypes regarding women. Unfortunately, though, traditional leaders are at the forefront of attacking widows, such as the case of Jenifer du Pont who was vilified by Chief Magudvulela for participating in parliamentary elections in 2013 while in mourning.⁴⁰ As per Swazi custom, women in mourning are not allowed to participate in public affairs and are further isolated from the community. The same does not apply to men. In the 2013 election Jennifer DuPont approached the High court before Judge Hlophe seeking an order declaring the primary elections of her constituencies null and void based on abnormalities that happened in the primary elections, suspending secondary elections and secondly seeking a public apology from Chief Magudvule for uttering words that warned the community of an eviction if they nominated or elected the former MP.⁴¹ The case was dismissed.

Recommendations:

The State Party should:

- 1) Review the Constitution on citizenship rights to allow women to enjoy fully the right to pass citizenship to their children, regardless of the nationality of the father;
- 2) Adopt measures to eradicate discrimination against women both under customary law and in practice, as well as removing limitations to their access to land;
- 3) Adopt measures to eradicate discrimination against widows.

³⁹ Article 43 (1) read together with (4).

⁴⁰ Information available at (<http://www.times.co.sz/news/90035-%E2%80%98vote-for-jennifer%2C-face-eviction%E2%80%99.html>).

⁴¹ Information available at (<http://www.times.co.sz/news/91316-jennifer-du-pont-wins-round-one.html>).

d. Violence against women (arts. 3, 6 and 7)

Issue 9: Please provide information on the legal protections available to protect victims of gender-based violence, including the availability of temporary restraining orders, and on the status of the Sexual Offences and Domestic Violence Bill. Please state the definition of rape in that bill and in the Girls' and Women Protection Act, and whether it includes marital rape. Please give information on what measures the State party has taken to implement the National Strategy and Action Plan to End Violence (2013-2018), and the results of those efforts

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It is commended that a Gender Unit within the Police Service was established to deal with domestic violence cases because there had been many complaints about the lack of discretion and sensitivity when reporting cases at the police stations. Apart from existing protections under criminal law and common law for unlawful acts, there have been no specific measures to provide legal protection to victims of gender-based violence. Temporary restraining orders are obtainable from the courts, but they prove to be ineffective due to the fact that the affected parties often remain in a shared shelter with perpetrators of violence. In many cases, this is because victims lack funds and assistance for them to leave the shared home.

The Sexual Offences and Domestic Violence Bill of 2015 remains in bill form and it does not appear like it will be adopted as law anytime soon. Allegedly, delays in passing the bill into law are credited to the King. There is a perception that if passed into law, the provisions might infringe upon Swazi laws and customs. There are four clauses that are a cause for concern to the King and the traditional authorities. These pertain to provisions on stalking, flashing, marital rape and child marriage:

- a) Stalking – in terms of custom, a woman may be pursued for a relationship endlessly no matter how many times she may refuse the advances;
- b) Flashing – the nature of traditional attire is such that there is much display of flesh, for example, during the reed dance, young maidens go around bare-chested and with short beaded skirts that show off their buttocks;
- c) Marital rape – generally, there is lack of understanding on marital rape, with society struggling with the concept. This also includes women, who have been conditioned to the fact that they have no rights over their sexual reproductive functions and activities;
- d) Child marriage – the Bill seeks to outlaw child marriages, whereas in terms of Swazi Law and Custom the marriageable age is determined by puberty, regardless at what age a young girl may reach this milestone.

The King has instructed parliament to call for a referendum on the matter, but there has been no information dissemination on this.

The definition of rape has been broadened in the Bill, from the common law definition, to cover the insertion even in the slightest degree, of the genital organs of a person into the genital organs, anus or other orifice of another person.⁴² It makes provision for marital rape, which is also a cause for concern among many Swazi men who struggle with the concept as they believe strongly that there can be no rape between spouses because a man is entitled to have sexual intercourse with his wife if and when he so desires. Male rape is also provided for in the Bill.

The challenges faced with the implementation of the National Gender Policy are the same ones which are cited with regard to the National Strategy and Action Plan to End Violence (2013-2018). It is foreseen that the state will fail to achieve its objective by the timeline stated.

⁴²Section 3 (2) “for the purposes of this section, Rape is defined as an unlawful sexual act with a person; Interpretation Clause on the definition of “sexual act.”

Recommendation 9:

The State Party should:

- 1) Enact the Sexual Offences and Domestic Violence Bill into law and ensure the law covers all gaps that perpetuate domestic violence against women and men;
- 2) Align domestic laws to comply with CEDAW;
- 3) Adopt measures to implement the National Strategy and Action Plan to End Violence.

Issue 10: Please provide detailed information on the extent of the problem of violence against women in Swaziland, in particular domestic violence; on the number of one-stop centres and safe shelters outside the capital; and on the resources allocated to the assistance of victims. Please provide information regarding the incidence of child and forced marriages (Kutekwa and Kwendziswa) and abduction of women and girls, and address efforts to prevent and combat these phenomena in law and practice. Please provide information on the steps taken to gather disaggregated statistical data on all forms of violence against women, and inform the Committee regarding the number of complaints received, investigations and prosecutions, including convictions and acquittals, punishments imposed, and reparation provided to victims during the last five years. Please specify what measures are being taken to ensure that such acts are effectively investigated, and that perpetrators are prosecuted and sanctioned. Please also indicate whether other steps have been taken to combat violence against women, such as training of judges, prosecutors, police and health officers and awareness-raising campaigns for traditional authorities, the general public, and for women on their rights and available remedies.

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Sexual and domestic violence are endemic within Swaziland. The *National Study on Violence Against Children and Young Women in Swaziland* reports that approximately one in four young females has experienced physical violence as a child and one in three has experienced some form of sexual violence before the age of 18.⁴³ Marginalised populations, such as sex workers, are also particularly at risk of victimisation. For example, 49.2% of sex workers report having been tortured and 33.5% report having been raped since the age of 18.⁴⁴

Surveys interrogating attitudes towards domestic violence indicate strong support for traditional gender roles, high levels of rape supportive attitudes and tolerant attitude for violence. For example, of men, only 51% believe a woman can refuse to have sex with her husband. 88% believe a woman should obey her husband and 45% believe a husband has the right to punish his wife if she does something wrong.⁴⁵

However, there are no safety shelters provided for victims of domestic or gender based violence, there is only one state owned shelter in the country and it caters to children. The Department of Social Welfare service provision sector in the National End Violence Strategy (2016-2018) highlights the challenge of this lack of shelters. The current working mechanism of the DSW is to place victims with distant relatives, in some cases house victims them in their own homes. There is only one shelter providing service to the entire country, it serves children and not adults, and also the majority of women victims of domestic violence are unaware of it. The country's only existing shelter lacks also the resources needed for it to function effectively and to provide adequate services.

At present, there is only the single, well-funded, one-stop centre in the capital, Mbabane. This centre provides legal, health and psychosocial services to the victims of violence during daytime working hours. There are no shelters, though. Given the high incidence of violence against women, there is an urgent

⁴³ UNICEF (2007). 'A National Study on Violence Against Children and Young Women in Swaziland.' UNICEF: Mbabane, Swaziland.

⁴⁴ Ministry of Health (2013). 'Swaziland Behavioral Surveillance Survey: HIV among High Risk Groups of 2013'. Kingdom of Swaziland, Ministry of Health: Mbabane, Swaziland.

⁴⁵ Central Statistical Office (2008). *Swaziland Demographic and Health Survey 2006-2007*. Calverton, USA: Macro International Inc.

need to establish new one-stop centres in all regions of the country and open shelters where victims of violence are able to stay overnight.

Marriage before the age of 18 remains a reality for many girls and young women. The Multiple Cluster Indicator Survey 2014 indicate that 4% of women aged 15-19 are currently married or in union and 8.8% of women aged 20-49 were married or in union before age 18. At 11% and 4% respectively, women in rural areas are more likely to have been married before the age of 18 than women in urban areas. Similarly, 18% of women from the poorest households and 4% of women from the richest households were married before 18.

Closely linked to the issue of child marriage is the age at which girls become sexually active. Women who marry before the age of 18 tend to have more children than those who marry later in life. Maternal mortality is also known to be the leading cause of mortality for both married and unmarried girls between the ages of 15 and 19.⁴⁶ Additionally, evidence indicates that child and adolescent brides are more likely to have older male partners, which puts them at increased risk of HIV infection. The age differential and the pressure to reproduce contributes to low condom use among such couples.⁴⁷ Married adolescent girls are at a higher risk of contracting the virus because many of them are married to men who are in polygamous unions, are facing sexual violence or are unable to negotiate safe sex with their older husbands.

Under the guise of traditional practices, girls also find themselves involved in marital relations without their express consent.

Data collected through the Violence Surveillance System indicate that there were 10,504 abuse cases reported between January and December 2016. Physical violence accounted for 31%, sexual violence for 19%, emotional/verbal for 35%, financial for 7% and neglect for 6%. The age of the perpetrators is found in the table below:

Age of Perpetrator	Percentage
0-5	4
6-11	6
12-17	17
18-24	18
25+	55%

The government has conducted trainings for stakeholders, particularly the police, in an attempt to combat violence against women and girls. CSOs, however, have played the larger role in this regard by disseminating information and carrying out civic education on issues relating to the subject. Despite these initiatives, there has not been sufficient nor concerted effort in training judges and prosecutors. Moreover, health officers have also not been trained sufficiently on how to collect medical evidence needed to build up sexual and gender-based violence cases. On the legislative framework it remains a challenge that the recently passed SADC Model Law on Eradication of Child Marriage and Protection of Children in Marriage (SADC Model Law on Child Marriage) has not been domesticated.

⁴⁶ Central Statistical Office and UNICEF, 2016, Swaziland Multiple Indicator Survey 2014, Final Report, Mbabane, Swaziland.

⁴⁷ Clark, S et al. (2006). 'Protecting young women from HIV/AIDS: the case against child and adolescent marriage'. *International Family Planning Perspectives* 32(2): 79-88.

Domestication and incorporation of the standards contained in the SADC Child Marriage Model Law would help addressing the problem of early marriage in Swaziland.

Between 2010 and 2012, the Swaziland Action Group Against Abuse (SWAGAA) monitored the effectiveness of sexual violence cases within the courts. Between 2010 and 2012, it followed 94 rape cases. Of those cases, 11 defendants were found guilty, 68 cases are pending or postponed, one case was excluded and the status of the remaining 14 was unknown. In its summary report, *Court Watch Swaziland 2012*, SWAGAA highlighted many challenges within the legal system.⁴⁸ For one, it posited that many sexual assault cases are likely to go unreported because the system is not conducive to the needs of victims and survivors. For example, legal facilities are inadequate, often lacking anatomical aids and proper waiting areas. There is little respect for the privacy of the victim before, during and after the cases. This is exacerbated by the fact that the media rarely respects the anonymity of the victim.

As well, cases are often delayed, thereby exposing victims to additional trauma. In one particular case, although the victim being 17 months at the time of the alleged offence, the case was not heard until she was 8 years old. Not only did this cause the victim significant stress, but the defendant was placed in custody for a long time. Furthermore, there exists a shortage of key personnel for victim assistance, such as social workers, interpreters, prosecutors and judicial officers.

SWAGAA indicates that the situation remains the unchanged today. Notably, though, attempts have been made to address the significant delay in court proceedings by transferring rape cases from the Principal Magistrate's Court to the High Court. Significant delays later reappeared and rape cases have been returned to the jurisdiction of the Magistrate's Court.

Recommendations:

The State Party should:

- 1) Strengthen domestic laws aimed at addressing the problem of child and early marriage including domesticating and incorporating the standards contained in the SADC Model Law on Child marriages;
- 2) Implement trainings for health workers aimed at building their capacity to collect evidence needed for prosecute sexual and gender based violence cases;
- 3) Implement community awareness raising campaigns/programmes speaking to the risks/danger of early/forced marriage and ensure that community leaders and traditional authorities are taught about alternatives to empower girls and include information aimed to empower girls during initiation rituals;
- 4) Embark on training of relevant stakeholders on sexual and gender-based violence, including the police, judges, prosecutors and health officers.

e. Right to life, prohibition of torture and other cruel, inhuman or degrading treatment or punishment, treatment of persons deprived of their liberty (arts. 6, 7, 9 and 10)

Issue 11: Please provide data from the last five years on the level of teenage pregnancy as well as on the rate of maternal mortality, disaggregated by cause, and information on measures taken to reduce maternal mortality and teenage pregnancy in the State party. Please address how the restrictions on abortion in Article 15(5) of the Constitution have been implemented in law and in practice and provide information on any criminal enforcement measures as well as measures taken to ensure that restrictions on abortion do not prompt women to seek unsafe abortions that may put their lives and health at risk. Please report on awareness-raising efforts and steps taken to

⁴⁸ SWAGAA (2012). *Court Watch Swaziland 2012*. SWAGAA, UNFPA, Crossroads International: Mbabane, Swaziland.

ensure that men, women and adolescents in all regions of the country have access to contraceptives and sexual and reproductive health education and services.

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A table reflecting the rate of teenage pregnancy as well as the mortality rate is as follows:

	2012	2013	2014	2015	2016
Teenage Pregnancy			16.7% ⁴⁹		
Adolescent fertility rate (age specific for women 15-19)⁵⁰	86.376	79.995	73.614	67.234	
Maternal Mortality Ratio		310 ⁵¹		389 ⁵²	

Swaziland did not achieve Millennium Development Target 5.A to reduce by three-quarters between 1990 and 2015 the maternal mortality ratio. This is largely attributed to the HIV and AIDS epidemic, and declining health systems.⁵³ However, Swaziland did achieve a reduction of 39% from 635 to 389 maternal deaths per 100,000 live births per year during that time period⁵⁴.

Significantly, pregnant women continue to die from five major preventable causes: severe postpartum haemorrhage, obstetric infections, hypertensive disorders, unsafe abortion and obstructed labour.⁵⁵ However, in reporting on maternal deaths, Swaziland does not disaggregate by cause. National policy, though, requires all maternal deaths to be reported to a central authority within 24 hours, and while audits occur for all maternal deaths occurring in facilities, there is no maternal death review process in place at the community level⁵⁶.

According to the Ministry of Health's Sexual and Reproductive Health Program 2014 Annual Report, investments are being made into a number of key interventions for reducing maternal mortality. These interventions are summarised below:

Firstly, antenatal care (ANC) is the care provided to women during pregnancy and a key strategy in the promotion of maternal and child health. The World Health Organisation (WHO) recommends pregnant women receive four focused ANC visits, with each visit specifically tailored to the given stage of the pregnancy. To this end, the Multiple Cluster Indicator Study of 2014 reports that 98.7% of women attended at least one ANC visit, with 76.1% of women attending four or more.⁵⁷ Notably, this

⁴⁹ Central Statistical Office and UNICEF, 2016, Swaziland Multiple Indicator Survey 2014, Final Report, Mbabane, Swaziland.

⁵⁰ World Bank, United Nations Population Division, World Population Prospects, Adolescent fertility rate (births per 1,000 women ages 15-19).

⁵¹ WHO, UNICEF, UNFPA and The World Bank estimates, Trends in maternal mortality: 1990 to 2013.

⁵² WHO, UNICEF, UNFPA, World Bank Group, and United Nations Population Division Maternal Mortality Estimation Inter-Agency, Group 2016, Maternal Mortality in 1990-2015 Swaziland.

⁵³ World Health Organization, African Health Observatory (2014). *Analytical Summary, Maternal and newborn health*. Accessed at: http://www.aho.afro.who.int/profiles_information/index.php/Swaziland:Analytical_summary_-_Maternal_and_newborn_health.

⁵⁴ African Health Observatory, World Health Organisation (2016). *Swaziland: Factsheets of Health Statistics 2016*.

⁵⁵ World Health Organization, African Health Observatory (2014). *Analytical Summary, Maternal and newborn health*. Accessed at: http://www.aho.afro.who.int/profiles_information/index.php/Swaziland:Analytical_summary_-_Maternal_and_newborn_health.

⁵⁶ World Health Organisation (2016). *Swaziland: Maternal and Perinatal Health Profile*. African Health Observatory.

⁵⁷ Central Statistical Office and UNICEF (2016). *Swaziland Multiple Indicator Cluster Survey 2014. Final Report*. Mbabane, Swaziland, Central Statistical Office and UNICEF.

information is contrary to data presented in the Sexual and Reproductive Health 2014 Annual Report, which reports that significantly fewer women are receiving the four focused visits, as captured in the table below:

Year	Number of women attending at least 4 ANC visits	Percentage of women
2012	5,567	17%
2013	9,795	33%
2014	8,435	29%

Adapted from Sexual and Reproductive Health Program 2014 Annual Report

Notably, a significant proportion of women continue to seek ANC services at a later point in their pregnancy than recommended by the WHO. Specifically, while 36.9% of women have their first ANC visit in the first trimester, 43.4% have their first appointment at 4-5 months and 16.8% at 6-7 months. Secondly, post-natal care (PNC) within 7-14 days of birth is critical in reducing maternal mortality. Encouragingly, as the following table indicates, there has been an increasing trend of women attending their first PNC visit.

Year	Number of women attending 1 st PNC visit	Percentage of women
2012	11,897	45%
2013	14,889	47%
2014	18,470	59%

Adapted from Sexual and Reproductive Health Program 2014 Annual Report⁵⁸

Thirdly, more deliveries are taking place in facilities. The presence of a skilled birth attendant at a facility is another key intervention that can reduce maternal. According to the Multiple Cluster Indicator Survey of 2014, 87.7% of deliveries in the two years prior to the survey took place in an institution and 88.3% were attended to by a skilled professional.⁵⁹ However, regional differences remain, as captured by the table below:

Percent distribution of women age 15-49 years with a live birth in the last two years by place of delivery of their last birth, Swaziland MICS 2014

Region	Place of delivery		
	Home	Institutional Delivery	Other
Hhohho	7.5	90.6	1.9
Manzini	6.5	89.4	4.1
Shiselweni	13.7	85.8	0.5
Lubombo	16.7	82.5	0.8

Adapted from Multiple Cluster Indicator Survey 2014.

According to the Sexual and Reproductive Health Program 2014 Annual report, waiting huts for some facilities have been upgraded in an effort to increase the number of facility deliveries. However, the

⁵⁸ Kingdom of Swaziland, Ministry of Health. 2015. *Sexual and Reproductive Health Program 2014 Annual Report*. Mbabane, Swaziland, USAID.

⁵⁹ Central Statistical Office and UNICEF. 2016. *Swaziland Multiple Indicator Cluster Survey 2014. Final Report*. Mbabane, Swaziland, Central Statistical Office and UNICEF.

number of public facilities that provide delivery services remains low and most peripheral clinics with maternity wings remain non-functional because of staffing challenges.⁶⁰

Abortion remains a highly controversial and divisive topic despite the fact that the high incidence of illegal abortion is one of the key contributing factors to the high maternal mortality rates in the country. Specifically, unsafe abortions account for an estimated 19% of annual maternal deaths.⁶¹ The high incidence is more pronounced among teenage girls and factory workers in the industrial hub of Matsapha.⁶²

There is limited data on the extent to which women access induced abortions, whether safely in neighbouring South Africa where abortions are available on request, or unsafely. The Ministry of Health, for example, reports on abortion however does not segregate by type and instead classifies those that are medically induced, spontaneous and illegally induced as abortions. The number of abortions reported by facilities is captured in the table below. Evidently, there is an urgent need to review data tools for a more comprehensive classification of abortion cases.

Abortions (medically induced, spontaneous and illegally induced) Reported by Facilities⁶³:

Year	Number of Abortions Reported
2012	2,824
2013	2,456
2014	2,925

Source: Sexual and Reproductive Health Program 2014 Annual Report

However, data from the Family Life Association of Swaziland (FLAS), a member association of the International Planned Parenthood Federation and a local leader in sexual and reproductive health service delivery, shows that, in 2014 alone, a total of 9863 clients were seen for comprehensive abortion care. Of these, 9033 came in for unwanted pregnancy counselling, 439 came in for pre-abortion counselling, 366 for post-abortion counselling, and 25 for post-abortion care.

Swaziland's Constitution makes provisions for abortion to be accessed under certain circumstances, which are: (a) on medical or therapeutic grounds; (b) where the pregnancy resulted from rape, incest or unlawful sexual intercourse with a mentally retarded female; or (c) on such other grounds as Parliament may prescribe. Permission must be sought from the Ministry of Health prior to performing an abortion.

Notably, there are no legal provisions dealing with the professional qualifications required to perform an abortion, the place where the procedure must be performed or the period during pregnancy when an abortion can be performed. As well, despite the provisions in the Constitution, there is no protocol to address the issues of rape or incest at service delivery level.⁶⁴ This absence of clear protocol has blocked access to safe abortion services for those who met the eligibility criteria.⁶⁵ For example, in 2015, a 12-year-old girl who had been raped by her father was forced to carry the pregnancy to term, despite numerous attempts to take advantage of the provisions in the law.⁶⁶

⁶⁰ Kingdom of Swaziland, Ministry of Health. 2015. *Sexual and Reproductive Health Program 2014 Annual Report*. Mbabane, Swaziland, USAID.

⁶¹ Gender Links. 2015. *SADC Gender Protocol Barometer 2015*. Johannesburg, South Africa. Gender Links.

⁶² Family Life Association of Swaziland, IPPF, Safe Abortion Action Fund. 2015. *Lilungelo Ngelakho: Desk Review Report*. Manzini, Swaziland.

⁶³ *Ibid.*

⁶⁴ *Ibid.*

⁶⁵ *Ibid.*

⁶⁶ The young woman's case was referred to the police after she presented to a Family Life Association of Swaziland (FLAS) service delivery point in her first trimester of pregnancy. On application by the girl's family, a magistrate court order was issued for the abortion. The girl was then referred by FLAS to Raleigh Fitkin Memorial Hospital for the abortion but as the hospital had religious affiliations, hospital staff refused to carry out the procedure. She was further referred to Mbabane

Within the general public, the provisions restricting access to abortion are not well known and most people believe it is illegal. This is evident from coverage of abortion in the media. For example, a report carried by Independent Radio News (IRN) on 14 November 2012 articulated that “[a]bortions are illegal in Swaziland and have resulted in criminal convictions.” The same report quoted the office of the Attorney General as having said, “[p]erforming, receiving or participating in an abortion was a criminal offence carrying a maximum sentence of life imprisonment.” He further stated that “[t]he law is not concerned whether the mother is a rape survivor, or if the pregnancy is a consequence of incest.” This position still holds true today, and is viewed as the national policy.

Family planning reduces the need for abortion, especially unsafe abortion.⁶⁷ It is positive then that the total met need for contraception has increased over the last decade, standing at 66% in 2014. Met need for contraception is positively correlated to place, education level and wealth. For example, the met need for women in rural areas versus urban areas is 63% and 73% respectively.⁶⁸ Where education level is concerned, the met need by education status for women age 15-49 years ranges from 59% for those with primary education to 74% amongst those with higher education.⁶⁹ A similar trend is observed by household wealth index where met need is 61% in the poorest households and 72% in the richest.⁷⁰ The total *unmet* need for contraception, though, is 15.2% and it is negatively correlated to wealth, education and place of residence.⁷¹

To improve access to sexual and reproductive health education, Swaziland has adopted two strategies to reach young people. The first targets out-of-school youth with comprehensive sexuality education, thereby providing young people with age-appropriate physical, mental, emotional and social dimensions of human sexuality. CSE has been shown to help youth delay onset of sexual activity, reduce the frequency of sexual activity, reduce number of sexual partners and increase condom and contraceptive use, thereby reducing the incidence of unplanned pregnancy, STIs and HIV.

A validation exercise of the national CSE manual was carried out by civil society in 2016 and the intervention began shortly thereafter. The reach is captured in the table below:

2016				January-March 2017			
Females reached with at least 9 sessions	Males reached with at least 9 sessions	Total reached with at least 9 sessions	Total attended	Females reached with at least 9 sessions	Male reached with at least 9 sessions	Total reached with at least 9 sessions	Total attended
4,516	4,021	8,537	18,592	2,707	2,907	5,614	6,324

Notably, although it went through a validation process, the manual used for CSE does not comprehensively address sexual diversity and gender orientation.

Government Hospital. Authorities from the Ministry of Health then insisted that the abortion had to be performed by the Head of the Gynaecology Department, but only after obtaining a court order from the High Court and not the Magistrate Court. These interventions caused a delay such that eventually, hospital staff refused to perform the procedure on the basis that the pregnancy was in an advanced stage – this despite there being no provisions in the Constitution specifying the point in a pregnancy at which an abortion may no longer be performed.

⁶⁷ World Health Organisation. 2016. *Family Planning/Contraception: Fact sheet*. Accessed at: <http://www.who.int/mediacentre/factsheets/fs351/en/>.

⁶⁸ Central Statistical Office and UNICEF. 2016. *Swaziland Multiple Indicator Cluster Survey 2014. Final Report*. Mbabane, Swaziland, Central Statistical Office and UNICEF.

⁶⁹ *Ibid.*

⁷⁰ *Ibid.*

⁷¹ *Ibid.*

In-school youth, on the other hand, are being targeted with what is called the Life Skills Education (LSE), a school-based program which has been implemented by the Ministry of Education. At present, LSE has been rolled out to 255 secondary schools reaching 70,670 students.

Recommendations:

The State Party should:

- 1) Expand health services, particularly neo-natal and maternal health services, to all regions in the country, provide treatment for pregnant mothers as a measure to reduce maternal mortality and ensure progress towards achieving MDG 5 in the current form as incorporated in the new development agenda under the SDGs;
- 2) Establish mechanisms and procedures to ensure abortions are accessible where women meet the criteria prescribed by the Constitution;
- 3) Remove restrictions for abortions;
- 4) Implement educational programs to curb teenage pregnancies.

Issue 12: Please provide information regarding the legal standard applied in the State party for appropriate uses of force and firearms by law enforcement officials and the source of that standard in domestic law. Please explain what steps the State party has taken to ensure that such standards are respected by law enforcement and security personnel in practice. Please provide statistical data disaggregated by sex, age and ethnicity on reports of deaths from the use of force by police and security forces and the number of deaths in police custody during the reporting period, investigations conducted, prosecutions pursued, convictions secured, and punishments imposed, and reparations provided to victims. Please give information on the investigations and judicial proceedings into the deaths in police custody of Mr. Luciano Reginaldo Zavale and Mr. Siphon Jele, Please explain what measures the State party is taking to bring the Game Act 51/1953 amended in 1991, which gives conservation police (game rangers) immunity from prosecution for killing any person they suspect of having poached, in line with the Covenant, and to train game rangers in human rights. Please provide information regarding any plans to adopt the Second Optional Protocol on abolition of the death penalty, and to abolish the death penalty.

Reply / Comments from Civil Society

Article 15 (4) of the Constitution provides that the use of force may be in cases of circumstances of the defence of any other person from violence or defence of property, in order to effect a lawful arrest or to prevent the escape of a person lawfully detained, for purposes of suppressing a riot, insurrection or mutiny or in order to prevent the commission by that person of a serious criminal offence.

However, law enforcement agencies have used excessive force, including serious assaults and the use of firearms and other weapons on unarmed citizens engaged in lawful activities. For example, Ayanda Mkhabela was left paralysed after police drove over her in an armoured vehicle during a non-violent protest by students in February 2016. Only recently, in late April 2017 has it been reported that the police officer responsible has been charged and will be prosecuted.

Law enforcement recruits are trained on the use of minimum force, and the police have adopted the SADC standards of model structures, including, re-branding the Commissioner of Police as the National Commissioner. However, this does not translate to a practical application of the standards.

Several people have died in police custody. Examples of cases of deaths linked to law enforcement actions are provided below:

Sex	Name	Year of Death	Details
M	Luciano Reginaldo Zavale	2015	He was arrested in connection with the theft of a mobile gadget by a third party and was taken into custody for questioning for being found in possession of stolen property that he had voluntarily handed to the police. It emerged that he had a gaping wound in the back of his head ⁷² .
M	Sipho Jele	2010	He was arrested on Worker's Day for wearing a t-shirt of a banned political party, PUDEMO. He died the following day, allegedly having hung himself under unclear circumstances.
M	Mathousand Ngubeni	2009	He was arrested while police were investigating the theft of money at his workplace. He had complained of shortness of breath and chest pains while in custody and subsequently died under questionable circumstances.
M	Muzi Ntshalintshali	2007	It was merely reported that he had died in custody with no further details as to the circumstances surrounding his death.
F	Fikile Mamba	2007	The wife of a treason suspect, she had been detained for more than 2 hours of questioning and was subsequently admitted at Good Shepherd Hospital in Siteki, complaining of shortness of breath and chest pains. The doctor's report stated that she had died of abdominal trauma

Whenever there is public interest in death matters, the State appoints a coroner from the civil service to lead a commission of enquiry into the circumstances surrounding the death. In most cases, reports into investigations are delayed, not published or the findings are inconclusive as to the manner or cause of death. For example, in the case of Mathousand Ngubeni, the report was inconclusive on the cause of death.

An inquest was held for both the Zavale and Jele cases; the report for the former has not been released. The inquest of the Jele case determined the cause of death, but did not give a finding on the manner and was not made available to the public.

Despite several advocacy initiatives by CSOs, legislators and some prominent members of society, Game Rangers continue to enjoy immunity from prosecution for extra-judicial killings or assault and there is no indication that the situation will change, as the amendment to the Game Act being discussed in closed spaces seeks to tighten the noose around poachers. It does not appear that any training on human rights is carried out for Rangers.

⁷² <http://www.times.co.sz/news/103305-zavale-has-gaping-wound-in-the-head.html>

There are no plans or efforts being made to ratify the Second Optional Protocol to the ICCPR on the abolishment of the death penalty. There are a number of people on death row, but there is a moratorium, with the last executions being in the 1980's, and death sentences have been commuted to life imprisonment. Public opinion, however, is strongly in favour of executions, with a number of individuals stating publicly that they would apply for the executioner's job, if it were to be posted.

Recommendations:

The State Party should:

- 1) Adopt measures to hold accountable perpetrators of extra-judicial killings including, investigating, arresting, persecuting and securing conviction of perpetrators;
- 2) Amend the Game Act to abolish impunity of Game Rangers for extra-judicial killings or assaults;
- 3) Take steps to address inhuman, cruel and degrading treatment or punishment including by ratifying the Second Optional Protocol to the ICCPR on the abolishment of the death penalty, and adopting legislation providing alternative sentencing options other than capital punishment.

Issue 13: Please provide information on permissible grounds for deprivation of liberty and state whether a redress mechanism to address instances of unlawful arrest or detention exists. Please elaborate on the rights of persons in police custody, including access to a lawyer, the stage at which a suspect is allowed access to a lawyer, and the maximum period of detention before an individual is brought before a judge. Please address whether torture is specifically criminalized in the State party, with appropriate penalties, and provide information on whether an independent body to investigate complaints and prevent abuse and ill-treatment by law enforcement officials exists. Please also provide data on the number of law enforcement officials that have been: (a) investigated; (b) prosecuted; (c) convicted or acquitted; and (d) punished, and the nature of the sanctions imposed.

Reply / Comments from Civil Society

Law enforcement officers can lawfully detain any person on suspicion of a criminal act or during the declared state of emergency as per the Criminal Procedure and Evidence Act or the Constitution, respectively. A person in police custody has the right to make a phone call, the right to access to a lawyer immediately on arrest and the right to be brought before a Magistrate within 48 hours of arrest. Police have been ensuring that the latter right is accorded to all individuals almost religiously, but do not comply with their obligations in terms of other rights.

Apart from the provisions of the law protecting a person from torture, there is no specific law to criminalise its use. There have been several credible reports of suspects being suffocated using a tube tied around their nose and mouth, and being placed lying facing upwards with arms tightly tied below the bench and legs tied to the side, while being poured with water into their open mouth and nose or being beaten. Accused persons have also testified to such practices in court.⁷³ No independent body has been established to investigate complaints and as such, the practice continues unabated.

In addition, arbitrary arrests and detention are used as a form of punishment, particularly in instances where the person is meant to be taught a lesson for a particular reason (normally for exercising freedom of expression and opinions that are seen to be anti-establishment), and yet there is no charge that can be lawfully levelled against the victim. For example, William Mkhali, who criticised the King during the last *sibaya* in 2016, was arrested and charged under the Public Order Act for theft under questionable circumstances.⁷⁴

⁷³ Rex vs Zonke Thokozani Tradewell Dlamini and Another (165/10) 2014 [SZHC] 02.

⁷⁴ The traditional People's Parliament, where decisions are made and policies crafted, held at the King's kraal at the traditional authority stronghold. The kraal is too small to accommodate all Swazis and speaking opportunities are controlled by the traditional PM and as such, many people cannot enter the arena and those with dissenting views are not normally given the

There are unsubstantiated reports of police officers being investigated, but there have been no prosecutions, convictions or acquittals, punishments or any other sanctions imposed that are known.

Persons subjected to arbitrary arrests and detentions may seek recourse in the courts and sue for compensation, but this avenue does not normally yield satisfactory results.

Recommendations:

The State Party should:

- 1) Enact legislation to criminalise torture;
- 2) Establish an independent body to investigate complaints and to prevent abuse and ill-treatment by law enforcement officers;
- 3) Adopt measures to hold police officers accountable for their actions.

Issue 14: Please respond to reports of inhumane prison conditions including food shortages and inadequate sanitary conditions and medical care. Please also comment on the allegations that the president of the (outlawed) political party People’s United Democratic Movement of Swaziland (PUDEMO), Mr. Mario Masuku, was denied access to adequate and independent medical care for complications relating to diabetes throughout his 14 months in pre-trial detention at Zakhele Remand Centre and Matsapha Central Prison. Please provide detailed information on the number of existing prisons, prison capacity and the number of inmates, disaggregated by facility, and explain whether prisons include separate sections for minors and women. What measures have been taken, if any, to reduce overcrowding, including resort to alternative sentences, and to improve prison conditions? Please also provide information on the degree to which independent monitoring groups have access to prisons and detention centres, and on the State party’s plans to ratify the Optional Protocol to the Convention against Torture.

Reply / Comments from Civil Society

Prison cells are overcrowded, sanitary conditions are very poor and access to medical care is limited. Inmates sleep on cold cement floors, on very thin mattresses or blankets. Blankets are thin and of poor quality and prison clothing is old and passed on from inmate to inmate.

A UNODC report (2009) found that violence pervades prison settings and that 83.7% prisoners had witnessed physical violence; 88.2% had psychological violence; and 44.1% sexual violence. 5.1% prisoners reported being forced into sexual contact.

Mr Mario Masuku was denied access to his doctor. He brought this up during his bail application, but the court made a ruling that the medical facilities at the Correctional facility were adequate to handle his medical condition.⁷⁵ This was despite the fact that the nursing staff were ill-equipped and lacked knowledge on diabetes and how to care for patients thereof.

The table below provides an overview of the population and their sexes in prisons around the country:

Name of Institution	Male	Female	
Bhalekane Correctional	277		

podium to speak. Many decisions are not implemented if they do not appeal to the authorities, such as the call for the current PM to be dismissed, which was made during the 2012 *sibaya*, without action by the King.

⁷⁵ Maxwell Manqoba Dlamini & Another vs Rex (184/14) [2014] SZHC 397.

Big Bend Correctional	341	5	
Criminal Asylum (Matsapha)	37		
Juvenile School (under 18)	179		
Mankayane Correctional	52		
Manzini Remand Centre	274		
Matsapha Correctional	783		
Mawelawela Women's Prison	211		
Mbabane Correctional	323	10	
Nhlangano Correctional	277	8	
Piggs Peak Correctional	306	5	
Young Offenders (Malkerns)	188		
Total Inmates	2035 (93%)	241 (7%)	
Un-convicted Inmates			838 (25%)

In facilities where there are men, women and minors, there are no separate sections for minors or women. However minors and women are normally confined in the same cells with persons of their own grouping.

The department of correctional services has stated that numbers in prisons have continued to grow consistently since 2001 and many facilities are above capacity by 15%. The government is attempting to mitigate the problem of over-crowding by constructing a new prison facility at Kalanga area. Though some progress has been made, some facilities do not comply with the SADC Minimum Standards.⁷⁶ The

⁷⁶ His Majesty's Correctional Services (as of 13/10/16).

overcrowding adds to the deplorable health conditions, because inmates are exposed to, and fall ill with infectious communicable diseases such as TB.

There is no independent monitoring mechanism conducting visits to prisons and detention centres, though some faith-based organisations are permitted to visit inmates for spiritual and religious purposes.

There appears to be no intention to ratify the Optional Protocol to the Convention Against Torture

Recommendations:

The State Party should:

- 1) Adopt measures to improve sanitary conditions and provide adequate medical care for inmates, including qualified health/medical personnel;
- 2) Adopt measures to reduce overcrowding, including introducing a parole system for appropriate cases;
- 3) Establish or allow independent monitoring groups to access prisons and detention centres;
- 4) Ratify the Optional Protocol to the Convention Against Torture.

f. Counterterrorism (arts. 9, 14, and 19)

Issue 15: Regarding counter-terrorism laws, including the Sedition and Subversive Activities Act No.46 of 1938, the Public Order Act No.17 of 1963, and the Suppression of Terrorism Act No.5 of 2008, please state their compatibility with the Covenant, including articles 9 and 19. Please report on the status of efforts to narrow the definition of terms such as a “terrorist act” and to provide access to effective legal remedies and procedural safeguards, including under the proposed Suppression of Terrorism (Amendment) Bill No.10 of 2016, and on the current status of the High Court’s invalidation of portions of the Subversive Activities Act and Suppression of Terrorism Act. Please provide detailed information on the number of investigations, detentions, prosecutions, acquittals and convictions under each law in the last five years and the reasons therefore.

Reply / Comments from Civil Society

Counter-terrorism laws and the Sedition and Subversive Activities Act are not only incompatible with the Bill of Rights in the Swazi Constitution but also incompatible with the Covenant, in so far as persons arrested under these laws may be arbitrarily arrested and detained and may be denied bail by the courts. Activists have been arrested, detained and prosecuted under these laws merely for expressing their political views and opinions and calling for change of the system of governance of Swaziland.

Two amendments were proposed to the Suppression of Terrorism Act. The said amendments remain to be passed into law. The amendments in particular focus on narrowing the definition of terrorist acts, providing for a definition of the word “fund”, and addressing the need for provision of judicial review when declaring certain entities to be specified.

The invalidation of certain portions of the laws is at this point merely academic, because an amendment that would affect the effect of the judgment would render the remedy nugatory as the new legislation would not be affected in any way by the order of court. Should the new laws be incompatible with the Constitution and Covenant, a challenge would have to be launched before the courts.

The table below provides details of investigations, detentions, prosecutions, acquittals and convictions on the above law:

Details	Suppression of Terrorism Act	Sedition and Subversive Activities Act
Investigations	<p>PUDEMO 7 (2014)</p> <p>Mario Masuku and Maxwell Dlamini (2014)</p>	<p>PUDEMO 7 (for wearing PUDEMO t-shirts and chanting slogans)</p> <p>Mario Masuku and Maxwell Dlamini (for calling for a change in the system of governance and chanting slogans)</p> <p>Thulani Rudolf Maseko (for calling a deceased comrade, who was allegedly involved in the unsuccessful bombing of the Lozitha Bridge, a hero) [arrested in 2008 and the case was left inactive, but the charges were re-instated in 2014]</p>
Detentions	<p>PUDEMO 7 (2014)</p> <p>Mario Masuku and Maxwell Dlamini (2014)</p>	Same as above
Prosecutions	<p>Bheki Dlamini and Zonke Dlamini were prosecuted for cases involving the petrol-bombing of public officers' homes (2010)</p> <p>Thandaza Silolo confessed to engaging in acts under the Act (2011)</p>	The above cited cases are those in which the High Court invalidated the provisions challenged, and as such the charges fell away
Acquittals	Bheki Dlamini was acquitted for lack of evidence linking him to the crimes	No prosecutions have been carried out
Convictions	<p>Zonke Dlamini was convicted, despite having been charged with common purpose with Bheki Dlamini</p> <p>Thandaza Silolo was convicted based on his confession</p>	No prosecutions have been carried out

Recommendation 15:

The State Party should:

- 1) Immediately amend the counter-terrorism laws to be compatible with Articles 9 and 19 of the Covenant.

g. Right to a fair trial (art. 14)

Issue 16: Please comment on reports that Swaziland is experiencing a rule of law crisis, with high levels of corruption and political bias in the judiciary, leading, inter alia, to the impeachment of the Chief Justice and the arrest of the Minister of Justice, two High Court judges and a High Court Registrar in 2015. Please provide information on specific measures taken to address this situation and to guarantee the independence and impartiality of the judiciary, including to ensure that rules relating to appointment and removal of judges are in line with the Basic Principles on the Independence of the Judiciary. According to section 157(1) of the Constitution, foreigners shall not be appointed as a judge in a higher court after seven years of the implementation of the Constitution, leading to a cut-off date on 27 July 2012. Please provide information on measures taken to implement this provision and steps taken to guarantee the security of tenure and the transparency of the appointment process.

Reply / Comments from Civil Society

During the tenure of the previous Chief Justice, a number of irregularities occurred in criminal proceedings and the administration of justice. These included suppression of criticism of the judiciary, judges with a vested interest in a case refusing to recuse themselves, failure to provide written judgements thus jeopardising the prospects of success of appeals and the manipulation of the court roll to ensure certain judges hear political cases.⁷⁷ The Chief Justice ensured that the Thulani Maseko and Bheki Makhubu case was allocated to Judge Mpendulo Simelane (who was a material witness in the case, but refused to recuse himself from hearing it), to ensure that the two would be convicted and sentenced.

The then Chief Justice was appointed in 2010 in a manner which appeared to violate the Basic Principles on Independence of Judges. This became the centre of attention in both the 2011 and 2015 judicial crises. While the situation appears to have improved following his removal, concerns remain about the process of appointment of judges and such other factors which allow for the interference with the independence of the judiciary.

During the 2015 judicial crisis, the International Commission of Jurists conducted a fact-finding mission to Swaziland. The mission culminated with a report with clear recommendations to stakeholders involved in the administration of justice. Among other things, the State was requested to:

- Respect and ensure judicial independence and take the necessary steps to cease interference with judicial functions, including through bringing the Constitution and subordinate legislation in line with regional and international law and standards, in particular on the separation of powers and respect for judicial independence.
- Strengthen the legal and regulatory framework for the independence of the judiciary, and its implementation.

Despite the recommendations above, there have been no measures undertaken to ensure that rules relating to appointment and removal of judges are in line with the Basic Principles of Independence of

⁷⁷ The Pudemo 7 were arrested (for wearing t-shirts with the Pudemo name and political messages) for protesting outside the court premises when members of the public were denied access to Thulani Maseko and Bheki Makhubu's case. They were protesting against among others, matters relating to the administration of justice. Thulani Maseko and Bheki Makhubu were arrested and charged with contempt of court for criticizing the then Chief Justice.

the Judiciary. Instead, judges of the Supreme Court were recently appointed in contravention of the Constitution and in a non-transparent process. The provisions of Article 157 (1) were finally complied with during even more recent appointment of judges of the High and Supreme Courts, but there still is no security of tenure for judges.

Recommendations:

The State Party should:

- 1) Adopt measures to ensure the independence of the judiciary, including by ensuring the appointment of impartial judges, as well as prosecuting and punishing those responsible for acts undermining the independence or impartiality of judicial proceedings;
- 2) Ensure the rules relating to the appointment and removal of judges are in line with the Basic Principles on the Independence of the Judiciary.

Issue 17: Please explain the procedure for granting free legal aid and provide details of the number and types of cases in which legal aid has been sought, granted and denied in recent years. Please provide information on the implementation of the Legal Aid Policy and the status of the draft Legal Aid Bill. Please respond to reports of lengthy pretrial detention, particularly in politically sensitive cases and that bail in such cases is set at high levels. Please address the compatibility of the traditional justice system with the fair trial protections under the Covenant.

Reply / Comments from Civil Society

Generally, the State does not provide any form of legal aid services. However, *pro deo* legal services are provided in cases that may attract capital punishment. The country has adopted a Legal Aid policy, but such policy remains amongst the instruments pending before parliament.

Lengthy pre-trial detention cases are frequent. This is particularly the case in politically sensitive cases because there is no political will to prosecute and the State uses the detentions as a deterrent for people to abstain from engaging in political activity. The trial of Treason case of 2005 has still not commenced, and if the accused had not been granted bail, the probability that their cases would be tried in a timely matter are slim.⁷⁸ The Rex vs Zonke Thokozani Tradewell Dlamini and Another (165/10) 2014 [SZHC] 02 case commenced in 2011 and was only concluded in 2014, despite them being arrested in June 2010 and denied bail by the courts.

Bail for Maxwell Dlamini and Musa Ngubeni was set at E50 000 cash payment (approximately \$3700) and for the PUDEMO 7, bail was set at E5 000 (approximately \$370) including a surety of E10 000 (approximately \$740). In Swaziland's economic context, these figures are excessive for ordinary citizens who cannot afford to pay such exorbitant amounts of money. It took several months for Maxwell and Musa to be released on bail since they could not afford to pay bail price as set by the courts. Fundraising had to be done to assist them.

There is no due process in traditional courts with legal representation as provided for in the Constitution not being allowed.⁷⁹ Chances are high that persons facing trials under traditional courts would find a person against whose judgment they are seeking recourse seated as part of the appeal structures.

⁷⁸ Sixteen members of PUDEMO were arrested in 2005 on charges of treason, for allegedly petrol-bombing state buildings; 14 government offices and houses were damaged. Three people were slightly injured in the bombings and the case is still pending to date.

⁷⁹ Article 21 (2) (e) permitted to present a defence before the court either directly or through a legal representative chosen by that person.

Recommendations:

The State Party should:

- 1) Ensure adoption of legislation on the Legal Aid Policy;
- 2) Adopt measures to ensure speedy trials and non-setting of excessive amounts of bail;
- 3) Adopt measures to ensure due process in traditional courts.

h. Elimination of slavery and servitude and trafficking in persons (art. 8)

Issue 18: Please comment on the information before the Committee that the State party is a country of origin, transit and destination for men, women and children trafficked for sex and forced labor, and that forced and child labor are prevalent in the country, particularly for orphans. Please provide statistical information from the past five years on the prevalence of human trafficking and forced labor disaggregated by gender, age and country of origin of the victims; the number of complaints, investigations, prosecutions, and convictions, and punishments imposed; and the number of victims that have received reparation and rehabilitation. Please provide information on recent measures taken to combat and prevent these phenomena, including the implementation of the People Trafficking and People Smuggling (Prohibition) Act No.07 of 2009 and on results of the Task Force on Prevention of Trafficking. Please also report on efforts to train law enforcement officials and social workers on identifying victims, increase labor inspections, investigations and prosecutions, and protect and rehabilitate victims of trafficking and forced labor.

Reply / Comments from Civil Society

Swazi women and girls (particularly orphans) are subjected to sex trafficking and domestic servitude primarily in the urban areas in Swaziland, South Africa and Mozambique. Traffickers reportedly force Mozambican women into prostitution in Swaziland, or transit them through the country en route to South Africa. The country is used as a transit point for foreign victims beyond the region for the sex-trade or forced labour, after voluntarily migrating in search of employment.

Forced and child labour are common in the country; chiefs may coerce children and adults through the use of threats into doing work for the King under the guise of culture, whilst boys and foreign children are forced to work in commercial agriculture, including cattle-herding and market-vending. It is reported that Swazi men in border communities are recruited for forced labour in South Africa's timber industry⁸⁰.

Police and immigration officials intercepted 9 potential foreign victims in 2012, though they failed to identify or investigate cases involving Swazi victims. The Swaziland Task Force against Human Trafficking has not responded to requests for statistical information for the past 5 years, making it difficult to track complaints, investigations, prosecutions, convictions and punishments imposed. During the previous reporting period, the government allegedly failed to provide adequate shelter and support for victims, which led to the deportation of 6 victims in 2011. This tends to increase the vulnerability to re-victimisation of victims.

While the anti-trafficking task force and its secretariat continued to guide anti-trafficking efforts, a lack of resources has hindered progress on all fronts, especially with regard to the provision of adequate protection to the victims. The Head of the task Force against Human Trafficking confirmed that the practice was rife and had affected the country's standing internationally.

Recommendations:

The State Party should:

- 1) Ensure the abolishment of forced and child labour;

⁸⁰ United States Department of State Report, 2016.

- 2) Strengthen the Task Force against Human Trafficking, including providing adequate resources;
- 3) Adopt measures to allow access to information from the Task Force.

i. Freedom of movement (art. 12)

Issue 19: Please state how article 26 (6) of the Constitution of Swaziland, which provides for the deprivation of the right to freedom of movement when it is done under Swazi Law and Custom, is compatible with the article 12 (3) of the Covenant, and report on the imposition of such restrictions in practice and the reasons therefore. Please respond to reports that traditional leaders limit access to their territories in a manner that restricts activities of civil society and political groups.

Reply / Comments from Civil Society

Article 26 (6) of the Constitution of Swaziland is incompatible with Article 12 (3) of the Covenant because the former does not conform with the restrictions as placed in the proviso. Article 26 (6) deigns to give unfettered discretion to anyone invoking Swazi law and custom to restrict freedom of movement. This discretion may be abused, as is often the case with custom but there are currently no reported cases. Community life is directed by custom and tradition, and it is the role of the chiefs to ensure that this is adhered to. The chiefs ensure that the community also participates in national cultural activities and compulsory work announced by the King or traditional authorities.

There is inconsistency between chiefs on granting permission to access to communities. Access is dependent on the organisation and its mandate. For example, welfare organisations such as World Vision have easier access, whereas CSOs working on empowering communities on human rights or governance issues find it difficult to access their targets. Political groups cannot access communities at all. The amendment of the Public Order Act seeks to provide stricter provisions in terms of permission, which may be obtained from the Regional Administrator or chiefs or the Ministry of Tinkhundla. This will most probably result in organisations being led on a wild goose chase, seeking permission that may be revoked at any time for unclear reasons.

Recommendations:

The State Party should:

- 1) Adopt measures to ensure that Article 26 (6) conforms with Article 12 (3) of the Covenant;
- 2) Ensure access to communities for CSOs and political groups.

j. Freedom of expression, assembly and association (arts. 19, 21 and 22)

Issue 20: Please comment on allegations that journalists, editors and human rights defenders are exposed to intimidation, attacks, arbitrary arrests and loss of life despite the constitutional provisions protecting the freedom of the press. Please provide detailed information on: (a) how freedom of opinion and expression is guaranteed in law and in practice, including with respect to circulating information in any form; (b) the existence of non-State controlled media, and (c) the legal regime that regulates the censorship of the media. Please provide information on the Proscribed Publications Act (1968), the Public Order Act (1963), and the proposed Public Order Bill and their impact on the rights to freedom of expression and association and compatibility with the Covenant. Please also give detailed information on the detention, proceedings, release and compensation (if any) awarded to human rights lawyer Mr. Thulani Rudolf Maseko and journalist Mr. Bheki Makhubu, and the status of their suit for wrongful arrest.

Reply / Comments from Civil Society

Freedom of opinion, expression and the press are guaranteed in the Constitution, but no legislation has been enacted to enforce and protect these rights.⁸¹ The State controls electronic media and its licensing

⁸¹ Article 24.

and owns the only national radio and television stations. In one case, a Christian radio station was granted a license, but restrictions were imposed to the effect that it can only broadcast religious and gospel programs. A relative of the King was granted a license to operate a private television station under unclear circumstances, and whose content is censored. There are 2 major print media houses, with 1 being State owned, and the other heavily monitored and censored.

There are at least 32 laws in operation that censor the media; the Proscribed Publications Act was used by government in 2001 to shut down the Guardian Newspaper which was duly registered and operating. The Act attributed powers to the Minister of Information to ban any publication “if the publication is prejudicial or potentially prejudicial to interests of defence, public safety, public order, public morality or public health.” Though the reasons for the ban were unclear, there was strong speculation that it was as a consequence of the publication running several scathing reports of the Royal family.

The current Public Order Act restricts the rights to freedom of association and assembly, particularly because the permission would have to be sought, and a special license obtainable from the police would have to be issued before the meeting could proceed. This authority vested in the police has led them to ban and disrupt meetings without due course.

The provision for an Independent Monitor violates the right to freedom of peaceful assembly and association as protected under S.25, as proposed in the Public Order Bill. The presence of the Monitor has the potential of intimidating people into not expressing their views and opinions in gatherings and thus also impinge on their right to freedom of expression as guaranteed in Article 24.

Mr Thulani Maseko and journalist Bheki Makhubu were arrested and charged with contempt of court in March 2014, after having authored and published articles in the Nation Magazine and criticising the then Chief Justice Michael Ramodebi for the manner in which he had handled a case involving a public service officer who was charged for executing his duties. The officer had impounded a motor vehicle ferrying a judge of the High Court without the necessary authority. He was subsequently charged with contempt of court and his bail hearing was held in a manner contrary to procedure and he was denied access to his legal representative. Maseko and Makhubu were then subjected to a sham trial devoid of principles of fair trial and were subsequently convicted and sentenced to 2 years imprisonment without an option of a fine. They were released in June 2015 on appeal before the Supreme Court. They have sued the government for compensation, and the case is still pending because the State has opposed their claim.

Recommendations:

The State Party should:

- 1) Align laws on freedom of expression with the Constitution and the Covenant;
- 2) Adopt measures to ensure full enjoyment of freedom of the press;
- 3) Ensure that the proposed Public Order Act is compatible with international standards, and the Covenant;
- 4) Abolish the common law crime of contempt of court, to curb its use to persecute human rights defenders.

Issue 21: Please provide information on the regulations governing the operation of trade unions and on their application in practice. What is the status of the Public Services Bill? What are the legislative restrictions on the right to form and join trade unions? Are certain categories of workers subject to particular restrictions? What percentage of the total work force belongs to a trade union? Please respond to allegations that trade union activities have been repressed and that arbitrary arrests and detentions, intimidation, physical violence, and warrantless searches have been used to silence activists in the State party.

Reply / Comments from Civil Society

Trade Unions have to be formally and legally registered to operate. They have to provide annual audited statements to the Commissioner of Labour. Failure so to do will result in de-registration after due notice has been given to them.

The Public service Bill is still pending before parliament and consultations have been made. Submissions by concerned individuals and unions are being made before the relevant portfolio committee.

Members of the law enforcement and security forces are restricted from forming or joining unions. They are permitted to establish and join staff associations meant to assist their respective Commanders, but not meant for collective bargaining or any other workers rights related issues. These include police and correctional services officers who are regulated by legislation specific to their departments.

Swaziland had an estimated workforce of 446 100 in 2013.⁸² It is reasonably estimated that more than half of it is unionised, because for any union to gain recognition with the employer he has to have more than 50% of the workers registered with the union.

Trade union activities continued to be repressed with arbitrary arrests and detention, intimidation, physical violence and warrantless searches during the reporting period. For example, the Secretary General for the Swaziland National Teachers Association SNAT, Muzi Mhlanga was assaulted by police on the 14th March 2015, during a raid at the Teachers Offices (SNAT CENTRE). Worker's Day celebrations for the years 2012, 2013 and 2014 were also disrupted as government had refused to register the workers federation, TUCOSWA.

Recommendations:

The State Party should:

- 1) Remove all legislative and practical restrictions to peaceful assembly and association and ensure the protection and respect of these rights
- 2) Enact the Public Service Bill in compliance with the Constitution and compatible with the Covenant

k. Protection of minors (art. 24)

Issue 22: Please provide information on the implementation of the National Children's Policy (2009), on efforts to bring the Children Protection and Welfare (Act No. 6 of 2012) into conformity with international standards and on the work and mandate of the National Children's Coordination Unit. Please give current information on the implementation of the 2010 Free Primary Education Act and the resources allocated thereto. Please provide information on the age for criminal responsibility and the potential maximum penalties imposed for crimes by minors. Please provide information on protections for children with disabilities and orphans, and on measures taken to address sexual and other forms of violence against children, including in rural areas.

Reply / Comments from Civil Society

Sensitisation has been carried out with chiefs, particularly in the Lubombo District, on the Children's Welfare and Protection Act and its provisions. Civic education has been conducted for teachers in all four regions of the country, with the Act being translated into SiSwati for better understanding.

The contribution for Free Primary Education (FPE) was increased from E560 (\$41) to E590 (\$44) per child between the period of 2009 to 2017. This is, however, still insufficient, when the inflation rate of 8.20% recorded in January 2017 is taken into account. The FPE programme lacks sufficient resources and the donor funded nature of the programme means sustainability is a problem. With the government having officially declared that parents may pay top-up-fees to cover shortfalls in their contribution for the the required fees in the different schools, many would argue that FPE no longer exists in anything beyond an academic sense. Beyond this the quality of education is seen to be poor. There is also no transition process for those in primary school moving to secondary school. Many children drop out once they have completed primary school, demonstrated by the fact that while enrolment at primary school reaches 115% it is only 69% in secondary school.⁸³

The Children's Welfare and Protection Act identifies the age for criminal responsibility as 12 years and allows a court to impose a maximum sentence of 5 years imprisonment for children above the age of 16 years.⁸⁴ As with all criminal cases, the sentence must be proportionate to the crime. The Act provides for the prosecution of perpetrators of any form of violence or abuse against children. Dependent on the circumstances, a child may be removed from the place of residence and taken to a place of safety. Children with disabilities are generally protected against discrimination, and specifically provided for in terms of Section 11, whereas orphans are provided for specifically in terms of vital registration only.⁸⁵ Children at risk are normally placed at the residence of a relative, the Cabrini Ministries Care Centre in St. Phillip's Mission or at another Care Centre in Nhlngano.

Despite initiatives to educate the populace on violence, there are currently no practical measures that have been taken to address sexual and other forms of violence against children.

Recommendations:

The State Party should:

- 1) Conduct civic education on the Children's Protection and Welfare Act, particularly in the rural areas;
- 2) Ensure adequate resources for the FPE program, including developing a sustainability plan;
- 3) Adopt practical measures to address sexual and other forms of violence against children.

Issue 23: According to information before the Committee, a substantial number of all births in Swaziland are not properly registered despite the fact that registration is the entry point for all public services including access to free primary education and government grants. Please provide information on the measures taken to deal with this situation and provide up-to-date data on the rate of registration of new-born children. According to information before the Committee, corporal punishment is still lawful in the home, alternative care, day care, schools and penal institutions. Please comment and provide information on the steps taken by the State party to prohibit corporal punishment by law and enforce the prohibition in all institutions, including detention centres and schools, and homes.

⁸³ National Education Profile 2014.

⁸⁴ Section 79; Section 165(1).

⁸⁵ Section 7.

Reply / Comments from Civil Society

The Registration Act governs the civil registration of births, marriages and deaths for citizens of Swaziland and provides for the compulsory registration of all births, whether live or stillborn, within 60 days. Registration controls access to civil services and is a requirement to determine nationality. The registration rate remains low, with coverage in 2014 being recorded at 54% in children less than five years of age. It increases alongside increases in the age, with a rate of only 38% for ages 0-11 months to one of 64% for ages 36-47 months.

Birth registration increases with the education of the mother from 46% for those with mothers with primary education to 84% for children with mothers that have tertiary education. Urban areas have a higher rate than rural areas, at 64% and 51% respectively. Children from the poorest households are the lowest registered at 39% while those from financially secure households are at 78%.

Though research has not provided data and statistics, children whose birth has not been registered face challenges in obtaining social services due to the lack of a Personal Identity Number (PIN) usually issued at birth. The PIN is the main requirement for registration for any social services like registration at schools or external examinations.

Article 29 (2) of the Constitution provides that “a child shall not be subjected to abuse or torture or other cruel inhuman and degrading treatment or punishment subject to lawful and moderate chastisement for purposes of correction.” Within the context of Swaziland, corporal punishment is a form of “chastisement” which is used to correct children for wayward behaviour. The Children’s Protection and Welfare Act provides for “justifiable discipline” and corporal punishment is used for this as well. In 2015, the Ministry of Education issued a directive banning corporal punishment in schools, but the practice is still enforced in many around the country. In one example, students were beaten by a head teacher in May 2017 for failure to bring empty milk cartons to the school for purposes of winning a competition⁸⁶.

Recommendations:

The State Party should:

- 1) Implement birth registration awareness raising campaigns to bring communities to register their children;
- 2) Increase coverage of birth registration services and ensure remote areas have access to these vital services;
- 3) Adopt measures to abolish the practice of corporal punishment.

1. Participation in public affairs, right to be elected (art. 25)

Issue 24: Please provide information on how the governmental structure of the State Party is compatible with the right to participate in public affairs under article 25 of the Covenant, including information on the governmental positions that the King directly appoints at the national and local (tinkhundla) level. Please comment on reports that the elections held in the State party in 2013 did not comply with international standards of free and fair elections including the provisions of the Covenant. Please elaborate on the State party’s electoral policies, including the work of the Election and Boundaries Commission. Please also detail the State party’s policies regarding political parties and in particular the prohibition on political parties and how that is compatible with article 25 of the Covenant. What are the steps taken to ensure the right to participate in public and political life in Swaziland and in particular any measures taken to address the fact that article 79 of the Constitution only allows individuals to participate in elections in their personal capacity. Please provide information on implementation of the legal framework to combat corruption and on the Anticorruption Commission including its independence, its recent investigations and activities, and the adequacy of its funding and resources. Please report on investigations, prosecutions, convictions and penalties imposed against government officials for acts of corruption.

⁸⁶ Times of Swaziland, 20 May 2017.

Reply / Comments from Civil Society

Citizens participate in national and local government elections by secret ballot at *tinkhundla* and municipal councils. The governmental structure is incompatible with Article 15 of the Covenant because the executive branch of the country is appointed by the King, meaning the Ministers are representative of the King's interests and not of the citizens. The Commonwealth Observer Mission to the 2013 elections in its report released on 20 September stated that "Swaziland elections were generally well organised, but fell short of meeting Swaziland's key international obligations for democratic elections." Among these standards is that the elections were not free and fair, due to underhand de-campaigning of some nominees by prominent members of society and the fact that political parties may not contest elections.⁸⁷ Therefore, the free expression of the will of the electorate was not guaranteed.

Members of the House of Assembly are elected by citizens from the 55 *tinkhundla*, and supplemented by 10 members appointed by the King. The King also appoints 20 members to the Senate. These appointees become custodians of the King's interests in Parliament. The other 10 members of Senate are appointed on the recommendation of the Members of the House of Assembly, but the numbers are skewed in favour of the King because he is guaranteed a 2/3 majority whenever there is a call for a vote on any motion or legislation.

The composition of the Elections and Boundaries Commission (EBC) does not conform with its founding legislation. This is because it is not headed by a person with the status and qualification equivalent to a judge of the High Court, but rather it is headed by a chief. Civil society challenged this issue, but the High Court dismissed the application for lack of *locus standi* by the Applicant. The EBC appears to lack understanding of the importance of information dissemination on the process and conduct of elections, resulting in the electorate being ignorant. They monopolise civic education on elections (but do not carry it out adequately) and do not hold themselves accountable to the citizens in the exercise of their duties.⁸⁸

The prohibition on political parties to contest elections is incompatible with Article 25 of the Covenant because people do not freely choose their representatives. Having individual members of political parties elected under the current system is not an indicator of any relaxation of this prohibition.

There have not been any steps taken to redress the deficiencies in the right to participate in public and political life. Instead, the philosophy of a Monarchical Democracy was introduced to suggest to the international community that Swaziland changed its attitude towards governance by vowing for democratisation. In practice, however, the re-branding is being used to further entrench the *tinkhundla* system of governance.

The Anti-corruption Commission is perceived to be politically controlled by the executive, and executing its mandate only in so far as directed by the Prime Minister. It appears to target persons who oppose the PM. Complaints from ordinary members of the public do not appear to be investigated and some cases against prominent people are not processed if that person is in good relations with the PM or authorities. Cases that have been brought against persons without a political agenda take long to be determined by the courts.⁸⁹

Recommendations:

The State Party should:

- 1) Ensure that the EBC's composition is compliant with its founding legislation, and that it fulfils its roles and responsibilities towards the citizens;

⁸⁷ The Jennifer du Pont case mentioned above, and another woman who was rejected outright as a nominee on the basis that she was wearing trousers.

⁸⁸ They delayed the release of the elections report by 3 years.

⁸⁹ Sifiso Sibandze, Judge President of the Industrial Court's case has been ongoing for the past 5 years, whereas the protracted case of Polycarp Dlamini was conducted and concluded in the space of 18 months.

- 2) Remove all legislative and practical restrictions on political parties to contest democratic multi-party elections;
- 3) Remove all practical restrictions that bar women from participating in elections;
- 4) Ensure the independence of the anti-corruption commission and adherence to its mandate.

IV. Additional Information: Access to information

Swaziland has not developed a culture of information disclosure, rather it tends to be a very secretive society, particularly with regard to information relating to politics, human rights and government policies. To this extent, government departments are unwilling to disclose information to a non-government partner. The right to access to information is one that is not specifically protected under the law, and as such, within the context of the country, it is not recognised⁹⁰. This lack of specificity in the law leads to hesitance, reluctance and refusal to disclose any information. For example, when compiling this report, it was difficult to collect information and data that would be incorporated herein.

Recommendations:

The State Party should:

- 1) Adopt measures, including enacting legislation on the rights to Access to Information.

⁹⁰ Article 24 (2) (a) only provides for the right to receive ideas and information.

ANNEX I

List of organisations that attended national consultation meetings and provided information for the report

- 1) Luvatsi;
- 2) CANGO;
- 3) Arterial Network;
- 4) TUCOSWA;
- 5) Swaziland Rural Women Assembly;
- 6) Catholic Commission on Justice and Peace;
- 7) Rate Payers Association;
- 8) Church Forum;
- 9) Diocese of Manzini;
- 10) SWADEPA;
- 11) ICJ;
- 12) CCPR;
- 13) Human Rights Institute of Swaziland – HURISWA;
- 14) Swaziland Unemployed Peoples movement – SUPMO;
- 15) Council of Swaziland Churches;
- 16) Family Life Association of Swaziland – FLAS;
- 17) Foundation for Socio-Economic Justice;
- 18) Media Institute of Southern Africa (Swaziland) – MISA;
- 19) People’s United Democratic Front;
- 20) Rock of Hope;
- 21) Sive Siyinqaba;
- 22) Swaziland Coalition of Concerned Civic Organisations – SCCCCO;
- 23) Swaziland Concerned Church Leaders;
- 24) Swaziland Editors Forum;
- 25) Swaziland National Association of Teachers;
- 26) Swaziland National Union of Students;
- 27) Swaziland United Democratic Front; and
- 28) Women in Law in Southern Africa – WILSA.