

THIS REPORT WRITING AND SUBMISSION WAS FACILITATED BY LAWYERS FOR HUMAN RIGHTS -SWAZILAND



# Universal Periodic Review

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Swaziland, April-May 2016

## SUBMITTING ORGANISATIONS:

SOS-Swaziland

Super Buddies

Prison Fellowship

Luvatsi – Swaziland Youth Empowerment Organisation

## **FOLLOW UP ON PREVIOUS REVIEW**

During the previous Universal Periodic Review in October, 2011, Swaziland accepted all recommendations made to address and improve children's rights standards in the country. Swaziland agreed to consider ratifying the Optional Protocols to the relevant Convention and 1993 Hague Convention on Protection of Children and Cooperation in respect of Inter-country Adoption<sup>1</sup>. We note with regret however, that the country has not yet signed these important instruments. On a progressive note, the Children and Welfare Act was enacted in 2012<sup>2</sup>, which to an extent domesticates the Convention on the Rights of the Child.

Other critical recommendations made to Swaziland pertaining to the rights of the child and youths were boarding on education - its quality, non-discriminatory access for girls and boys, children in rural and urban communities and children belonging to most vulnerable groups<sup>3</sup>; and to scale up and strengthen provision of social services such as health<sup>4</sup>. The has taken minimal steps in addressing issue of children from most vulnerable groups; but only one sector – which is orphans and vulnerable children<sup>5</sup>. The government has provision for education through the orphan and vulnerable fund; but has no health or education or any other social services targeting other sectors of vulnerability such as children from evicted families, children with disabilities, children living with HIV/AIDS, child headed households, and children in poverty to mention but a few. Moreover, the definition of orphan and vulnerable children (OVC) has been narrowed to only consider a child whose parents are deceased; it is divorced from other vulnerabilities.

The country is stagnant and seems to be regressing on some levels of its commitment to improving the rights of children and youth. Based on the recommendation of the forty third (43<sup>rd</sup>) session of the Committee on the Rights of the Child<sup>6</sup> to fully operationalise the Child Coordination Unit, the country adhered to this recommendation but unfortunately disbanded the unit in 2012. This created problems such that there is still lack of coordination of activities and programs aimed at improving the rights of the child on the ground; further research based policy and programming<sup>7</sup> is frustrated. This has further frustrated efforts that seek to build synergies and partnerships amongst NGOs, government and other agencies working on the ground. On issues of children in prison<sup>8</sup>, corporal punishment<sup>9</sup> and the improvement of health care services for infants and children living with HIV/AIDS<sup>10</sup> and youths; there are emerging human rights abuses in these areas as reflected on the report. Youths have been excluded in many sectors and on issues concerning their welfare and rights

and they are not involved in any decision making process through means of consultation. They are struck with issues of unemployment, poverty and HIV/AIDS. Efforts that were made by the government legislatively have remained on paper<sup>11</sup>; and those programmatic have been withdrawn<sup>12</sup>.

## **1. THE NATIONAL HUMAN RIGHTS FRAMEWORK**

Swaziland enacted the Child Protection and Welfare Act in 2012; which was a step towards domesticating the Convention on the Rights of the Child.

Swaziland is party to the African Youth Charter, 2006 which was domesticated in 2009 through the Swaziland National Youth Policy (SNYP). The SNYP is also based on recognition of other international youth instruments as the United Nations World Programme of Action for Youth and Commonwealth Youth Charter. It recognises and appreciates the political and socio-economic challenges faced by young people in the country and further proposes structures/institutions and programmes to address such issues. The SNYP notes the absence of youth involvement and participation in decision making structures and establishes Youth Leaders - a body to be based at each of the 55 constituencies in the country operating in the constituency youth centres to liaise with the Swaziland National Youth Council (SNYC) and the Ministry of Sports, Culture and Youth Affairs. Youth Leaders are supposed to be a vehicle for youth participation at different levels of society. Another critical body envisaged by the national policy is the Parliamentary Youth Portfolio Committee whose tasks involves being an interface between parliament and the youths; overseeing the review of the youth policy; policy development, implementation of guidelines and plan of action.

However, it is of concern that the institutions and programmes proposed by the SNYP have not been established, and those that were instituted are no longer in existence. Institutions such as the youth leaders and the Parliamentary Youth Portfolio Committee was not created; the Ministry of Sports, Culture and Youth Affairs only existed in 2008 to 2013, and currently there is no youth element to the Ministry as it is now called the Ministry of Sports and Culture. While it was in existence, the Ministry of Youth Affairs, never delivered much for the youth as it did not have a strategy or vision to address youth issues. Furthermore, the Swaziland Constitution which is the supreme law of the land, has a glaring gap in that it does

not address youth as a sectorial population group; though the Youth Policy was adopted to close that gap.

## **2. HUMAN RIGHTS SITUATION ON THE GROUND**

### **Child Mortality Rate**

The country has managed to increase the number of qualified personnel with specialised training in maternity wards. Infant mortality is still experienced due to negligence of health personnel.

### **Orphan and Vulnerable children & Children with Disability**

Government established the National Child Coordinating Unit (NCCU) which was responsible for coordinating, monitoring and evaluating children's issues covering policy formulation, strategy and national programs for protecting the rights of the child. The NCCU was disbanded in 2012 much against the recommendation by the Committee on the Rights of the Child in 2006 as reflected above. The Orphan and Vulnerable Children Unit focuses on psychosocial support, education, health, child protection, strengthening of the OVC safety nets.

Amongst the social services mentioned above; government has only managed in the education sphere to offer tuition fees and basic stationery for OVCs from primary up to high school. This effort is much welcomed though very limited and does not comprehensively cover all school necessities such as uniforms for the children. Furthermore, government pays a standardised amount for children, which is lower than the tuition amount charged by government schools. These then means that guardians have to top up the remaining balance. However, this excludes children from child-headed households from accessing education to be able to uplift themselves from the abyss of poverty.

Children with disabilities remain side-lined in receiving specialised social services from the government. In the education sector, government has managed to accommodate educational needs of children with disabilities through establishing three in schools for children with disabilities<sup>13</sup> and attempts to integrate special education for children living with disabilities has been made.

Generally, a provision for safety nets is being attempted by private individuals and there are notably weak regulations by the government especially in the area of providing shelter for orphanages. Reports of child abuse have been awash in media of children housed in privately operated orphanages. Amitofo Care Centre, an orphanage in the Shiselweni region has had cases of child abuse in the orphanage. In one instance a 3 year old epileptic boy landed in Intensive Care Unit after being battered by the Director of the Centre; and on another a teacher stripped a pupil naked in class<sup>14</sup>. In response to the crisis and in contrast to the approach of separating children from their roots, government established 430 Neighbourhood Care Points (NCP) –an innovative initiative to care for vulnerable children. These are created within the communities where children can come together and access various services. There they can receive care and support, meals for the day, and some form of education. However, there has been financial challenges and sustainability of the centres such that most of them operate seasonally when offered food parcels or funds by private individuals and NGOs; while others have been turned into crèches by local authorities and private individuals.

### **Access to Quality Education**

Girl children are often discriminated against, an issue further compounded by cultural values where the boy child is often seen as an investment to continue the family's legacy as compared to a girl child who will marry and enrich another family. This is reflected in school enrolment ratio between girls and boys; with girls at 47% against 53% boys<sup>15</sup>.

A report by the Ministry of Education and Training reveals that 25% of Primary school teachers are not qualified and the teacher-student ratio is often high at 1:60 instead of 1:30 as universally prescribed. This has a contributing factor to high repetition and drop-out rates. There is a clear gap in the education sector to improve the quality of education for necessities such as infra-structure, expansion of trained and qualified teachers, as well as investing on the primary education fund to comprehensively cover all expenses for children. As such, an assessment of the Millennium Development Goals implementation by the Ministry of Economic Planning and Development reveals that there is 5% of primary school going age of children still not enrolled in school. Nonetheless, statistics has shown that there is an increase in enrollment of grade one students who graduated from primary school. The data increased from 59.8% in 2007 to 77.9% in 2014.

For tertiary education, the government has not adequately adapted to the changing needs of the society; in that it has not fully addressed the problems of relevance, quality and

accessibility. This problem is appreciated in the number of children graduating from high school and accessing tertiary education; and eventually absorbed into the job market or even starting entrepreneurship schemes. In 2013 alone, government was able to accommodate only 800 students through the scholarship fund<sup>16</sup>; of the 1 300 who graduate from high school.

### **Corporal Punishment and Abuse**

Corporal punishment by teachers and principals is legal and routinely practiced. It is a method of child-rearing in the home, at school, and as a sentence by the court. The Bill of Rights Section of the Swaziland Constitution; section 29 (2) reads, “ *A child shall not be subjected to abuse or torture or other cruel inhuman degrading treatment or punishment subject to lawful and moderate chastisement for purposes of correction*”. School regulations state a teacher may administer a maximum of four strokes with a stick on the buttocks to a student younger than 16 years old, and six strokes to students older than 16. The constitution and the school’s regulation are in contradiction with Swaziland’s international human rights obligations outlined in conventions such as the CRC and the International Covenant on Civil and Political Rights.

Teachers and parents alike often exceeded these limits with impunity. Some are not even aware of the legally stipulated strokes. In August 2013 a local newspaper, the *Times of Swaziland* carried a story of a boy who was made to lower his trousers and was battered on his buttocks with a stick. . According to a 2012 report released by the National Children’s Coordination Unit in the Office of the Deputy Prime Minister, there were 4,556 reported cases of abuse between January and June 2011.

### **Child Marriages**

The legal age of marriage is 18 years for both boys and girls, but, with parental consent and approval from the minister of justice, girls may marry at 16. The government recognizes two types of marriage, civil marriage and marriage under traditional law and custom. Under traditional law marriages are permitted for girls as young as 13. Although the deputy prime minister has spoken out against this practice, civil law was generally not enforced to prevent it due to the duality of the legal system. The Children’s Protection and Welfare Act leaves the responsibility to defend or protect oneself to the child as it holds that, “A child has the right to refuse to be compelled to undergo or uphold any custom or practices that are likely to negatively affect the child’s life, health, welfare, dignity or physical, emotional,

psychological, mental, and intellectual development.” This is a challenge because children are defenceless and have decisions taken by their parents or guardians on their behalf. The Act is weak in as far as this provision is concerned.

### **Children’s Illegal Incarceration**

There is a growing trend of child and youth abuse done by the state and the parents purportedly in “the best interests of the child”. Children and youths are illegal incarcerated in prison centres by parents in collaboration with the Commissioner of Correctional Services who claims that the children are unruly. In one incident, *Grace (not her real name)* who is a single parent to *John (not his real name)* wrote a request letter to the Commissioner of Correctional Services requesting that John be incarcerated for unruly behaviour. In the letter, Grace states her concerns that eleven years old John might not finish school; hence her reason for wanting him incarcerated and attending the juvenile school at Malkerns Industrial School for Rehabilitation. Responding to the same letter of request by Grace, the Commissioner of Correctional Services stated that under normal circumstances, they do not admit persons who have not been sentenced by the courts and directed therein through committal warrants. However, the Commissioner agreed to rehabilitate John under the stated conditions; that the 11 years old John is institutionalised at the juvenile school for 10 years; there is an order from a presiding officer giving him a custodial order of ten years without remission; and that he will cooperate with His Majesty’s Correctional Services while under its care. With that response, Grace the letter to a presiding officer who then wrote a custodial order for the stipulated time and John was admitted to the juvenile school in 2013. The 11 years old John lodges with other juveniles who have been charged by the court of law for various crimes they have committed. Grace pays tuition fees and up-keep fees for John, and she will continue doing so for the next ten years until 11 years old John is 21 years.

This case is one of many, and the children are of different ages and varying backgrounds. It is only recently that a joint task team comprising of UNICEF, Prison Fellowship Swaziland, Lawyers for Human Rights-Swaziland, Save the Children Swaziland working together with the department of home affairs are exploring means to curb this situation and probably provide solutions for both the parents and children.

## **Youth Involvement & Participation at all Sectors**

One of the recommendations to the country in the previous UPR in 2011<sup>17</sup> was to the effect that the country must intensify implementation of special targeted programmes to stimulate economic growth and development in generating employment especially for the most vulnerable section of society. The youth comprise 43% of the country's population, with 70% residing in rural areas. The country had realised the socio-economic challenges faced by the youth; such issues as unemployment<sup>18</sup>, perpetual poverty leading to social challenges such as drug abuse<sup>19</sup> and high levels of HIV infections<sup>20</sup> amongst the youth. A Youth Development Fund<sup>21</sup> (YDF) was made available as a means for youth to start up business enterprise to mitigate issues of poverty and unemployment in light of the shrinking job opportunities in the country which has further been compounded by minimal foreign direct investments that has a potential to create job opportunities. This initiative was applauded though short lived, as the government took the decision to stop this programmatic initiative without giving reasons. Further, the youth was not involved through means of consultation that would foster a buy-in and owning the initiative.

The country has acted with hostility by intimidating individuals that are subscribing to other youth organisations<sup>22</sup> outside of the Swaziland National Youth Council (SNYC). The SNYC is a government funded youth entity that purportedly seeks to close the gap of youth participation and involvement of youth in all sectors of governance and policy issues. As per the national youth policy; the SYNC is supposed to work in consultation with youth leaders at constituent level and organised youth within NGOs, a structure referred to as the Youth Development Consortium with the policy. However, we note with concern that the government agencies as the police have unleashed hostility and intimidation to youth formations, and the relevant ministry for the youth had rebuffed any other youth formation outside the SNYC.

## **Access to Sexual Reproductive Health Services**

With HIV/AIDS prevalence amongst the youth very high, it is concerning to note that health workers contribute to worsening the problem due to hostility and negative attitudes towards young people seeking health services related to sexual reproductive health services. The Children's Protection and Welfare Act of 2012 makes a provision for young people, just over 12 years old to access condoms and contraceptive; however, in reality, health workers tend to discriminate against children and youth in terms of access to SRH services. Unsafe and



illegal abortions still continue to put young people at risks, and often leading to deaths. Shocking statistics from the Family Life Association of Swaziland (FLAS) have revealed that the organisation offered a total of 1 049 abortion-related services in the month of September alone<sup>23</sup>. According to the Ministry of Health and Social Welfare, illegal abortions amounts to 19% of maternal mortality rates which are at 589 per 100 000 births<sup>24</sup>.

Abortion in Swaziland is criminalised as per section 15 (5), but has certain conditions under which it may be permitted<sup>25</sup>.

On another note, sterilization is generally a limited right for women. A woman cannot access or be freely allowed to sterilise without consent of her husband or male figure; brother, uncle or any elder male for unmarried women. Often, health workers would sometimes disallow unmarried women to sterilise; hence decisions of sexual and reproductive health rights are not fully the individual's prerogative.

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

The submitting coalition organisations call upon the government of Swaziland:

#### *National Human Rights Framework*

- To take initiative to implement the National Youth Policy; which seeks to close the constitutional gap in recognising the rights of youth in the country.
- To align the Child Protection and Welfare Act, 2012 with international instruments

#### *Social Services for Children and Youths*

- To resuscitate the National Child Coordination Unit for better coordination, monitoring and evaluation of programmes targeted at children to enable policy formulation and better service delivery.
- Strengthen of the OVC safety nets for all children by establishing half way houses or orphanages for children in need.
- To standardise tuition fees in public schools to curb the issue of top-up fees which renders education inaccessible and unaffordable for some sections of the society

- Ensure quality and relevant education at primary, high school and at tertiary level; and attempt to adapt education syllabus to vocational training at all levels to minimise reliance on white collar jobs.

### *Corporal Punishment*

- Legislatively ban corporal punishment at schools and all sectors of society in the country; and adopt programmatic measures to eradicate the practice through conducting civic education/ public awareness in line with international instruments on the right of children.

### *Youth Participation*

- Take measures to ensure that there is at least 15% youth representation and participation in decision making structures as per the African Youth Charter

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<sup>1</sup> Report of the Working Group of the Universal Periodic Review of Swaziland, October 2011 (A/HRC/WG.6/12/L.4) paragraph 76; recommendations 1 and 5 (Turkey and Portugal)

<sup>2</sup> Report of the Working Group of the Universal Periodic Review of Swaziland, October, 2011 (A/HRC/WG.6/12/L4) paragraph 76, recommendation 6 and 8 (Hungary and Romania)

<sup>3</sup> Ibid paragraph 76, recommendation 26, 65, 66, 68 (Uruguay, Algeria, Indonesia and Qatar)

<sup>4</sup> Ibid paragraph 76, 53 (Australia)

<sup>5</sup> Government has a provision for education access for Orphaned and Vulnerable Children (OVC) through the OVC Fund which caters for a standard amount for stationary and tuition fees at primary and high school level.

<sup>6</sup> Convention on the Rights of the Child. Committee on the Rights of the Child 43<sup>rd</sup> session CRC/C/SWZ/CO/1, October 2006; recommendation 10. "The committee recommends that the State party take all necessary measures for an effective start of work of the Child Coordination Unit by January 2007 and provide it with the necessary resources in order to allow the unit to fully and effectively coordinate the activities of governmental bodies, NGOs and others regarding the implementation of CRC and effectively perform the other tasks under its mandate (monitoring, evaluation and research).

<sup>7</sup> Ibid, recommendation 18

<sup>8</sup> Report of the Working Group of the Universal Periodic Review of Swaziland, October 2011 (A/HRC/WG.6/12/L4) paragraph 76, recommendation 67 (Burkina Faso)

<sup>9</sup> Ibid paragraph 76, recommendation 31 and 32 (Brazil and Uruguay)

<sup>10</sup> Ibid paragraph 76, recommendation 53 (Australia)

<sup>11</sup> Swaziland National Youth Policy 2009

<sup>12</sup> Youth Development Fund: capital for starting up youth enterprises

<sup>13</sup> Kwetsembeni, Mzimpofo school of the deaf and Matsapha for children with autism.

<sup>14</sup> Cases of child abuse at Amitofo Centre appeared on the Times of Swaziland in April 15, 2015 and the other on 11 October, 2013

<sup>15</sup> National Development Plan, 2014 – 2017: Ministry of Economic Planning and Development

<sup>16</sup> Times of Swaziland (22 August, 2013); 800 UNISWA students granted scholarships - <http://www.times.co.sz/news/90648-800-uniswa-students-granted-scholarships.html>

<sup>17</sup> Report of the Working Group of the Universal Periodic Review of Swaziland, October 2011 (A/HRC/WG.6/12/L.4) paragraph 76; recommendation 65 (Malaysia)

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<sup>18</sup> Labour Force Survey, 2007 (which is the last current report on labour analysis involving statistics of youth in the labour market) revealed that over 80% of the youth are either unemployed or underemployed

<sup>19</sup> Ministry of Health and Social Welfare Assessment Report found that 34% of the youth sample population was found to be on substance abuse

<sup>20</sup> The 10<sup>th</sup> sero-surveillance report 2006 show an infection rate of 26% for the youth aged 15-19 years, 40.3% for youth aged 20-24 years, 48% for youth aged 25- 29 years.

<sup>21</sup> Refer to endnote 12: established in 2009

<sup>22</sup> On the 18 March, 2013 Police arbitrary arrested and detained members of a youth NGO called Luvatsi, also known as the Swaziland Youth Empowerment Organisation. They were questioned about their political activities. According to newspaper reports on the incident, police allegedly placed plastic bags over their heads in order to extract information; and they were later released without any charges against them.

<sup>23</sup> Times of Swaziland (13 November, 2012) 1 049 abortion cases handled in September -

<http://www.times.co.sz/News/81679.html>

<sup>24</sup> *ibid*

<sup>25</sup> Swaziland Constitution, section 15 (5) (a) on medical or therapeutic grounds or where certified by a Doctor; (b) where the pregnancy resulted from rape, incest or unlawful sexual intercourse with a mentally retarded female; or (c) such other grounds as Parliament may prescribe