

SUBMISSIONS FOR OHCHR's SUMMARY OF STAKEHOLDERS INFORMATION PRESENTED BY THE SWAZILAND COMMISSION ON HUMAN RIGHTS & PUBLIC ADMINISTRATION / INTEGRITY – SWAZILAND October 2011

1.0 BACKGROUND AND FRAMEWORK

1.1 ABOUT THE SWAZILAND COMMISSION ON HUMAN RIGHTS AND PUBLIC ADMINISTRATION

The Commission on Human Rights and Public Administration / Integrity (the “Commission”), was appointed into office in September 2009, through Legal Notice No. 143 of 2009. Sections 163 and 243 of the Constitution of the Kingdom of Swaziland 2005 (“the Constitution”), reflects the nature of the Commission when it functions as a Human Rights and Public Administration Commission and the Integrity Commission, respectively.

The Commission, in its capacity as a National Human Rights Institution (NHRI), is established by section 163 of the Constitution and it consists of “a Commissioner for Human Rights and Public Administration (the “Commissioner”); and at least two Deputy Commissioners for Human Rights and Public Administration (the “Deputy Commissioner”) as may be necessary for the effective discharge of the functions of the Commission” (Section 163(2) (a-b)).

The Commission currently consists of 6 members, that is, the Commissioner and 5 Deputy Commissioners. The Commission is in the process of recruiting its Secretariat.

1.2 METHODOLOGY

The Commission relied on secondary data to compile this report and the literature consisted of publications by Treaty Bodies, local NGOs, local State Bodies and Swaziland Government departments.

Whilst the Commission acknowledges that the ideal methodology is to conduct broad consultations, it would like to point out that because of financial constraints, it could not do so.

1.2.1 SCOPE

This report seeks to cover the period between 2007 – 2010.

1.3 HUMAN RIGHTS ENVIRONMENT IN SWAZILAND

Section 252 of the Constitution provides for a dual legal system; section 252 (1) provides that “Subject to the provisions of this Constitution or any other written law, the principles and rules that formed, immediately before the 6th September, 1968 (Independence Day), the principles and rules of the Roman Dutch Common Law as applicable to Swaziland since 22nd February 1907 are confirmed and shall be applied and enforced as the common law of Swaziland except where and to the extent that those principles or rules are inconsistent with this Constitution or a statute;” Section 252 (2) provides that “Subject to the provisions of this Constitution, the principles of Swazi customary law (Swazi law and custom) are hereby recognised and adopted and shall be applied and enforced as part of the law of Swaziland.”

The Constitution, through the Bill of Rights in the Constitution, declares and enshrines fundamental rights and freedoms of the individual, thereby setting the tone for the recognition, protection and promotion of the fundamental rights and freedoms in Swaziland. This national standard is enhanced by the various international human rights instruments Swaziland has ratified such as, the African Charter on Human and People’s Rights, International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of the Child (CRC).

The Constitution contains an equality clause that seeks to afford all persons equality before and under the law and prohibits discrimination on various grounds such as gender, race, birth, social or economic standing.

The Constitution ensures broader enforcement of the protective provisions by allowing for litigants, who though not directly affected by an infringement of a right, belong to a group that may perceive its rights to have been infringed at that particular time.

The Constitution, in addition to the equality clause, also recognizes the rights and freedoms of women, prescribing their right to equal treatment with men and equal opportunities in political, economic and social activities

The Constitution also goes further to offer protection to Swazi women from undergoing or upholding any custom to which they are in conscience opposed.

In 2010 the Government of Swaziland passed the National Gender Policy. The Policy’s mission is to “achieve a gender balance in the socio-economic, legal, religious, cultural, political process of national development by developing and implementing strategies and interventions, including capacity building, that recognizes and acknowledges the needs and interests of women and men in the eradication of gender inequality, gender based violence, HIV and AIDS and poverty in the country.” (National Gender Policy 2010: 16-17)

The Government of Swaziland also adopted the National HIV/AIDS Policy and Second National Strategic and Action Plan (2006 – 2008)

Vulnerable groups such as children, persons with disabilities and the elderly also have constitutional protection, Parliament having the obligation to enact laws to enable these groups to enjoy their constitutional rights and freedoms.

The Constitution provides for an independent Commission on Human Rights & Public Administration and this Commission was operationalised in 2009.

2.0 PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND

2.1 Cooperation With Human Rights Mechanisms

Swaziland has only reported under the Convention on the Rights of the Child (CRC) and is still to make initial reports to all other treaty bodies as per the international human rights instruments it has ratified.

2.2 Implementation of International Human Rights Obligations

2.2.1 Equality and Non Discrimination

The Constitution of Swaziland makes provision for equality and non discrimination under section 20 and for the protection of the right of women to equal treatment with men and to have equal opportunities (section 28). Grounds of non discrimination do not however include marital status and sexual orientation. Additionally, sexual contact between male persons is still criminalized under the common law as sodomy. Also, the Constitution contains contradictions in this area, for example, Chapter IV – Citizenship that indicates inequalities in terms of the right to citizenship for Swazi women and men (sections 43 and 44).

2.2.2 Right to Life, Liberty and Security of the Person

Under section 15 the Constitution grants the right to life, but there are claw back clauses, such as provision for the death penalty (section 15(2)). Swaziland's last execution of the death penalty was in 1983.

Swaziland in 2010 passed into law the People Trafficking and People Smuggling (Prohibition) Act. The institutional framework here includes the Task Force for the Prevention of People Trafficking and People Smuggling and a Secretariat.

In relation to gender based violence, Swaziland has the Sexual Offences and Domestic Violence Bill that is still to be passed into law.

In Swaziland, corporal punishment is lawful and traditionally accepted and widely practiced in the family, schools and other settings, it being established through section 29(2) of the Constitution of Swaziland and section 306 of the Criminal Procedure &

Evidence Act No 67 of 1938. This situation was identified as a concern by the Committee on the Rights of the Child. The Committee recommended that Section 29(2) of the Constitution of Swaziland be amended to facilitate the elimination of corporal punishment in all aspect of Swazi life. At the time of compilation of this report, the state party is yet to report on any activity relating to this issue.

On 1st May 2010 a certain Sipho Stephen Jele was arrested by the Royal Swaziland Police allegedly arrested for wearing a T-shirt bearing the name and logo of one of the banned political parties. On the 3rd May 2010 he was remanded by the High Court and on the 4th May 2010 he died in the care of Correctional Services Mbabane. The Government of Swaziland then established an Inquest (May 2010 – January 2011) to investigate into the circumstances surrounding the same. The Coroner's conclusion was to the effect that after careful consideration of two reports submitted by independent pathologists, the cause of death was suicide.

2.2.3 Right to Privacy, Marriage and Family Life

Section 27(1) of the Constitution of Swaziland provides that “Men and women of marriageable age have a right to marry and found a family.” There is no definition of what “marriageable age” is, either in the Constitution or in any subsequent legislation. This lack of clarity makes the prevention of early marriage problematic.

In spite of the existence of sections 20 and 28 in the 2005 Constitution of Swaziland, which provide for equality before and under the law and the protection of the rights and freedoms of women, respectively, the discrimination of women in property rights still persists in Swaziland in light of Legislation like the Deeds Registry Act No 37 of 1968, section 16(3), is still operational. In Mary-Joyce Doo Aphane, Civil Case No 383/2009, the Court held that section 16(3) is unconstitutional and enjoined Parliament to urgently engage in relevant law reform.

2.2.4 Freedom of Religion or Belief, Expression, Association and Peaceful Assembly, and Right to Participate in Public and Political Life

Sections 25 (1) and 25(2) of the Constitution of Swaziland, provide that “A person has the right to freedom of peaceful assembly and association;” and “A person shall not except with the free consent of that person be hindered in the enjoyment of the freedom of peaceful assembly and association, that is to say, the right to assemble peacefully and associate freely with other persons for the promotion or protection of the interests of that person,” respectively. Side by side with the Constitutional provisions, there exist legislation such as the Public Order Act 1963 and the Suppression of Terrorism Act 2009.

Section 86 (1) of the Constitution of Swaziland provides that “where at the first meeting of the House after any general election it appears that female members of Parliament will not constitute at least thirty percentum of the total membership of Parliament, then,

and only then, the provisions of this section shall apply.” Section 86 (2) “for the purposes of this section, the House shall form itself into an electoral college and elect not more than four women on a regional basis to the House in accordance with the provisions of section 95(3). In the 2008 National Elections the number of women parliamentarians did not constitute the required quota and at the time of writing this report, the provisions of section 86 had not yet been operationalised.

2.2.5 Right to Work and to Just and Favourable Conditions of Work

In consideration of reports submitted by state parties under Article 44 of the Convention on the Rights of the Child (CRC), Swaziland reported on incidences of undesirable forms of child labour. The Committee having noted the limited information on measures Swaziland intended to employ towards the elimination of child labour, then recommended that Swaziland should develop and implement a comprehensive programme to prevent and combat child labour, in full compliance with ILO conventions which Swaziland has ratified. Since then, the Swaziland Government developed the Swaziland Action Programme on the Elimination of Child labour (APEC) 2008 – 2012.

2.2.6 Minorities

Local media reports have indicated an emerging trend in the violation of the rights and freedoms of people living with albinism (Times of Swaziland, August 20: 1). Reports have included stories of alleged ritual killings for purposes of witchcraft (Times of Swaziland, October 25: 13). These happenings are in direct violation of rights vested on them in the Constitution such as the right to life and protection from inhuman or degrading treatment. In response to this situation, the Swaziland Government has established a protection programme whereby affected individuals were invited to register with the police for purposes of ease in monitoring and speedy response in cases of reported violations.

2.2.7 Right to Social Security and to an Adequate Standard of Living

The Constitution of Swaziland under section 27(6) provides that “subject to the availability of resources, the Government shall provide facilities and opportunities necessary to enhance the welfare of the needy and the elderly.” Accordingly, in 2009 the Swaziland Government developed the National Social Development Policy (“the Policy”), under the Deputy Prime Minister’s Office (the DPM’s Office), whose primary goal is to: “... to improve the quality of life and human wellbeing of all Swazis through the provision of appropriate and sustainable social services that are developmental in orientation.”

In line with this policy the DPM’s Office, has developed a national policy “...to protect the rights of older persons and to assist the poor among them with the means to support

themselves and the children under their care.” (3.3.1). In this regard the DPM’s Office issues quarterly grants to the elderly.

Under Clause 3.4.1, the Policy states that “it is national policy to protect and promote the rights of children and ensure that their basic needs are met and that they are provided with opportunities to reach full potential.” In this regard the DPM’s Office established an educational fund that seeks to support the educational needs of orphaned and vulnerable children.

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