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**Consideration of reports submitted by States parties
under article 40 of the Covenant**

List of issues in the absence of the initial report of Swaziland

Addendum

Replies of Swaziland to the list of issues*

[Date received: 15 May 2017]

* The present document is being issued without formal editing.

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1. The Swaziland Constitutional framework on the respect for, promotion, protection and fulfilment of all human rights and fundamental freedoms is provided for under Chapter 3 (Bill of Rights) of the Constitution of Swaziland Act¹ (“the Constitution”). Swaziland uses a dualist system, which requires the domestication of International Instruments,² before they can be invoked in domestic courts. Efforts have been made to harmonize Customary and Common laws with the Constitution, to this end, a committee was set up to review and codify the Swazi customary law and the stakeholder consultation process has been conducted. Various workshops have been held for judicial officers, prosecutors, state lawyers, to sensitise them on the provisions of the Covenant and the Bill of Rights as entrenched in the Constitution.

2. The Constitution,³ enjoins the High Court of Swaziland as the court of first instance (original jurisdiction) to enforce the rights contained in the Bill of Rights as informed by the Covenant. Importantly, redress is available for a violation that has been or is being or likely to occur. Further, the Constitution establishes an independent Commission on Human Rights and Public Administration⁴ (CHRPA), whose mandate is to advocate, protect and promote fundamental rights and freedoms. The Constitution is the supreme law of the land and is legally binding to all, however, the King and the Indlovukazi enjoy certain immunities. Acts of Chiefs and Chieftaincy disputes are also subject to the Constitution and are regulated by the propriety or otherwise of acts of chiefs is subject to the constitution, and other applicable laws including swazi law and custom. The Attorney General represents Chiefs in legal proceedings resultant on their acts in their official capacity.⁵ The Constitution provides for the Council of Chiefs⁶ which advises the King on matters relating to or affecting chieftaincies including chieftaincy disputes. The dictates of the Constitution are such that an individual shall not be deprived or evicted without due process of the law. Should such occur, that individual shall be entitled to a prompt and adequate compensation for the loss resulting from the eviction. The decision of *Umbane Limited v Sofi Dlamini and Three Others*⁷ does not change the position, importantly, as the deprivation of land therein was made under a court order⁸ and the individuals so evicted did not occupy Swazi Nation Land (SNL), but they occupied privately owned title deed land belonging to Umbane Limited. The Kingdom is working towards ratifying the Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR).

3. In an endeavour to put in place an enabling legislation for the CHRPA, a Bill that is in line with the Paris Principles has been drafted.⁹ The Government of Swaziland in collaboration with the Office of the United Nations High Commissioner for Human Rights (OHCHR) and the United Nations Development Project (UNDP) is in a process of establishing the National Mechanism for Reporting and Follow up (NMRF) on treaty obligations. Various consultations and trainings have been conducted for key stakeholders. Furthermore, the terms of reference for the NMRF have been forwarded to Cabinet for approval.

Public emergencies (Art. 4)

4. The constitution provides for three grounds upon which a state of emergency can be declared in the country, and these are:

- where the Kingdom is at war or where there are circumstances showing an imminent war between Swaziland and a foreign state;
- where there is a natural disaster or an imminent threat of a natural disaster; and

¹ No. 01 of 2005.

² Section 238 of the Constitution.

³ Section 35.

⁴ Section 163 & 164.

⁵ Section 77 (3) (c).

⁶ Section 251.

⁷ [2013] SZSC 25.

⁸ Section 19 (2) (c).

⁹ The Human Rights and Public Administration Commission Bill.

- Where an action taken by or threatened by a person or a body of persons is likely to endanger public safety or deprive the community of supplies essential to the community.

5. A state of emergency is declared by the King on the advice of the Prime Minister. The declaration is thereafter tabled by the Prime Minister before Parliament as soon as practicable but not later than 7 (seven) days from the date of publication of such declaration and the declaration has to be approved by a two-third majority at a joint sitting of both the Chambers of Parliament.

6. Freedoms and rights that are non-derogable under a state of emergency are; life, equality before the law, security of persons, right to a fair hearing, freedom from slavery and servitude, freedom from torture, cruel, inhuman and degrading treatment or punishment. Thus, the constitution is compatible with Article 4 of the covenant in as far as Article 6, 7, 8 and 18 is concerned. The 1973 decree is no longer in force, it sought to repeal the 1968 Constitution and ban the operation of political parties at the time.

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

7. Swaziland is state party to numerous international frameworks that promotes and protects women's rights as human rights. The International Convention on the Elimination of All Forms Discrimination Against Women (CEDAW) was ratified without reservations as an indication of the commitment to the provision for full enjoyment of women's rights. In addition to these, the Government adopted more international instruments that eliminate direct and indirect gender discrimination. These include; Beijing Declaration and Platform for Action, Convention on the Rights of Children and SADC Protocol on Gender and Development. Domestically, the Constitution¹⁰ provides for equality before the law and that no person shall be discriminated against on the basis of gender, race, colour, ethnic origin, tribe, birth, creed or religion, or social or economic standing, political opinion, age or disability. Further, Section 28 (3) prohibits discriminatory cultural practices. Discrimination on the basis of social standing which includes sexual orientation, gender identity and marital status is also prohibited. It is notable that policies are incrementally dealing with discrimination and are further enforced by the Courts, however cultural norms and practices still indicates elements of discrimination. To address these elements, the country has held consultations and sensitization workshops with stakeholders including traditional authorities and Civil Society organizations. In addition, with the support of development partners, the country has conducted various studies, including one on the drivers of violence study.

8. Laws applicable in Swaziland safeguard against discrimination and violence against all persons. From available records, there are no reported cases of violence against LGBTI persons. With regards to the legal framework, the Common law crime of Sodomy is only applicable in cases of persons under the age of 21, otherwise sexual activities between consenting adults in a private setting are not penalized. In an effort to align the country's policies with international principles on the issue of LGBTI persons the country has undertaken the following initiatives:

- Assessment on the National Legal, Regulatory and Policy Framework for HIV and AIDS in Swaziland in 2015 by the National Emergency Response on HIV and AIDS (NERCHA)
- The 1st phase of the Baseline Survey on the Status of Human Rights in Swaziland, which was commissioned by the CHRPA in 2016.

9. Over the years HIV infections have been declining. This is due to the efforts that the country has put forward to halt the spread of HIV. Swaziland has prioritized the prevention of new infections in children with the rapid expansion of the PMTCT programme. The country has developed its own elimination framework which aims at reducing new HIV

¹⁰ Section 20 (2).

infections among children and improving the survival of their mothers. Below are tables; (Table A) showing the new HIV infections rates and (Table B) deaths due to HIV/AIDS related illnesses between 2005 to date.

Table A — HIV Infection Rate

<i>Year</i>	<i>Male</i>	<i>Female</i>	<i>Total</i>
2005	7 011	8 636	15 647
2006	6 710	8 232	14 941
2007	6 604	8 031	14 635
2008	6 547	7 900	14 447
2009	6 155	7 453	13 608
2010	5 862	7 100	12 962
2011	5 373	6 526	11 899
2012	5 218	6 315	11 533
2013	4 248	5 282	9 530
2014	4 115	5 100	9 215
2015	3 872	4 786	8 658
2016	3 788	4 673	8 461
2017	3 745	4 614	8 539

Table B — AIDS Related Deaths

<i>Year</i>	<i>Number of AIDS related deaths</i>
2005	8 751
2006	8 182
2007	7 250
2008	6 736
2009	6 097
2010	5 395
2011	4 577
2012	4 004
2013	3 491
2014	3 175
2015	3 036
2016	2 967
2017	2 707

10. The Swaziland HIV Estimates and Projections Report 2015 estimates the number of people living with HIV in 2017 to be 231, 610 for all age groups, male and females. The number of males living with HIV is estimated at 95,496 and females at 136,114. The Extended National Multisectoral HIV and AIDS Framework 2014-2018 (eNSF) informs national strategic priorities and interventions on HIV prevention, treatment, mitigation and response coordination. Efforts to intensify testing and counselling includes the scaling up of testing and counselling among couples through the “Love Test” campaign led by the Ministry of Health, as well as the national programme on “Test and Start” to encourage testing and early start of ART. The national HIV testing and counselling rate has improved from 16% in 2006/7 to 40% of people aged 15-49 in 2010. HIV testing and counselling has also been effectively integrated into all health care provision points nationally. The eNSF has prioritized social and behavioural change (SBC) interventions aimed at reducing stigma and discrimination associated with HIV and sexuality, promoting open discussion of safer

behaviours, influencing gender norms with the aim of addressing gender inequality and gender-based violence.

11. The concept of non-discrimination because of HIV status in the workplace/working environment is well established. The right to work and to fair conditions of work is a well-recognized basic human right in Swaziland. There is a Code of Good Practice for HIV and AIDS and Employment (as provided for in the Industrial Relations Act) which aims at eliminating discrimination in the workplace based on a person's HIV status. This Code promotes a non-discriminatory workplace environment in which People Living with HIV (PLHIV) have a right to be open about their HIV status without fear of stigma and/or rejection. This code also talks to HIV testing, confidentiality and disclosure.

12. Also prioritized are customized interventions for key populations and groups at higher risk of HIV infection, including women and adolescent girls, sex workers, men who have sex with men, and mobile populations at risk of acquiring HIV (e.g. transport operators, construction workers, factory workers and seasonal workers). To inform strategic programming in the area, the Ministry of Health in 2015 conducted a mapping exercise for key populations. Currently being piloted is the routine provision of pre-exposure prophylaxis for sex workers, led by the Ministry of Health in partnership with the National Emergency Response Council on HIV and AIDS (NERCHA).

13. National studies and surveys have identified some of the key drivers influencing the spread of HIV in Swaziland as multiple and concurrent sexual partners, gender inequality, gender-based violence, early sexual debut and intergenerational sex. The eNSF outlines specific strategic national targets to address HIV and AIDS among women (particularly young women and adolescent girls) and these include a percentage reduction of women aged 15-24 who had sex with a partner 10+ years older than them from 14% in 2010 to 5% by 2018; a reduction in the percentage of young people aged 15-24 who are living with HIV is reduced from 23% for women in 2007 to 10% in 2018 and 6% for men in 2007 to 2% in 2018. Similar strategic objectives are in place for an increase in condom use among men who have sex with men (MSM) and among female sex workers. Wife inheritance is not a prevalent practice in Swaziland.

14. As part of the implementation of the National Gender Policy (2010), Swaziland developed a National Plan of Action for the Gender Policy and a Monitoring and Evaluation Strategy. These documents were designed to operationalize the policy through strategic interventions and outputs to facilitate the achievement of gender equality and women empowerment. The Government established and launched a High Level Task Force on Violence whose main responsibility is to provide policy advice and guidance on issues of violence in Swaziland. There is also a Multi-Sectoral Technical Task Team on Violence which was launched and it coordinates the implementation of violence issues at a technical level.

15. Furthermore, the Government created a National Surveillance system on violence, Gender Based Violence referral Network and launched a Men Engage Network (Swaziland Chapter). A study was also conducted on the Drivers of Violence against Children to establish the root causes of violence in Swaziland. Other measures for the implementation of the Gender Policy includes; the development of a National Strategy to end Violence in Swaziland and a strategy on the economic empowerment of women called The Federation of National Association of Women in Business in Eastern and Southern Africa (FEMCOM) and lastly a National Gender Status Index that reflects progress and gaps on the status of gender issues in Swaziland.

16. Swaziland upholds women's political, economic and social rights through a number of initiatives. The country subscribes to the principle of equality as expressed in the Constitution as well as the SADC Protocol on Gender and Development that provides for the 50 percent representation of women in politics. However, women's representation in Parliament is still below the Swaziland quota of 30 percent and 50 percent adopted by

SADC, African Union and Commonwealth. The table below (marked “C”) illustrates the statistics of women in decision making positions in percentages.¹¹

Table C — Statistics of women in decision making positions

<i>Parliament</i>	<i>Cabinet</i>	<i>Principal Secretaries</i>	<i>Judges</i>	<i>Magistrates</i>	<i>Ambassadors & High Commissioners</i>
15	25	10.5	20	33	23

17. Economically, women are actively engaged in the business sector, mostly in transport business, cross border trade, and craft business. The Government is currently in the process of launching the Swaziland Chapter of the Federation of National Association of Women in Business in Eastern and Southern Africa (FEMCOM) aimed at promoting programmes that integrate women into trade and development activities in the Eastern and Southern Africa, in particular in the field of agriculture, trade, mining, transport, communication and natural resources. This shall also enhance their businesses through linkages with other networks and international markets.

18. With regards to the levels of employment among women and the proportion of women in decision making positions both in private and public sectors, it has been observed that more women are in the informal sector as compared to men and the proportion thereof is as indicated in Table C above. According to the National study on women in Decision Making Position (2013) men still dominate leadership positions both in private and public sector. Currently all recruitments and promotions in the public and private sectors are made on the basis of a competitive and transparent process, which is based on merit and competency.

19. To ensure women receive equal pay for equal work, the country is party to various international instruments such as Convention No. 111 on Discrimination (Employment and Occupation) as well as Convention 100 on Equal Remuneration. The Employment Act¹² and the Industrial Relations Act¹³ prohibits discrimination on all the grounds listed in the Covenant.

20. Swaziland has a high overall literacy rate of 89.1 percent in the general population. The literacy rates among those aged between 15-24 years is also high at 95.3 percent. However, the country has not reached gender parity in literacy among this age group with males at 92.1 percent being disadvantaged compared to girls at 95.3 percent. The net enrolment rate at primary school level reached gender parity at 89 percent for both boys and girls in 2014 following the introduction of FPE in 2010. The net enrolment rates were at 34.3 percent for girls, 23.7 percent for boys at lower secondary and 14.7 percent girls and 9.9 percent boys at senior secondary level.¹⁴ Generally, enrolment in tertiary education seems to favour males over females with gender parity status of 0.96 percent. It has been observed that the enrolment rate is higher for girls at lower and senior secondary level yet at tertiary, the enrolment rate favours males. This can be attributed to social barriers such as child headed families (wherein the girls assume the role of taking care of families), lack of scholarships and the fact that females go for softer programmes.

21. As alluded to before, all recruitments and promotions in both the public and private sector are made on the basis of a competitive and transparent process, based on merit and competency. In law, discrimination in the workplace on the basis of gender is prohibited,¹⁵ however in practice, it has been noted that gender sensitivity is considered in recruitment processes.

22. In terms of efforts to implement Section 86 of the Constitution, the country is currently in the process of drafting The Election of Women Members of Parliament Bill,

¹¹ SADC Report on Gender and Development (2015).

¹² Act 5 of 1980, section 29.

¹³ Act 1 of 2000 (as amended), section 2.

¹⁴ Annual Education Census Report, 2014.

¹⁵ Section 29, Employment Act & Section 2, Industrial Relations Act.

which seeks to deal with modalities of the implementation of the above stated provision. Further the Elections and Boundaries Commission is working in conjunction with the department of Gender on civic education programmes aimed advocating for the election of women.

23. Swaziland has noted the non-compatibility of chapter 4 of the Constitution with the Covenant. This issue has been noted amongst others for consideration in the process of amending the Constitution. Further, the Constitution¹⁶ provides that women shall not be compelled to undergo or uphold any custom to which they are in conscience opposed. This further includes the customary practice of wearing mourning gowns (kuzila) which prevented women from speaking in public forums and going to work inter alia. The state is obligated, subject to the availability of resources, to provide facilities and opportunities necessary to enhance the welfare of women to enable them to realize their full potential and advancement.¹⁷ The Constitution provides for equal access to land without regard to gender.¹⁸ The Deeds Registry Act 37/1968 was amended in 2012 to give effect to the rights of women married in community of property to own land and have it registered in their own names. The doctrine of marital power was previously applicable only to marriages in community of property and such has been abolished by the High Court in *Nombuyiselo Sihlongonyane v Mholi Joseph Sihlongonyane*,¹⁹ which has the effect of making spouses married in community of property joint administrators of their matrimonial estate and accords the spouses equal rights to property. The culture of polygamy is acceptable to the people of Swaziland. There has been a shift in the practice of mourning in Swaziland; before the enactment of the Constitution the practice compelled women to wear mourning gowns. For those women who decide to wear mourning gowns, the restrictions which were applicable previously are no longer enforced. The Gender and Family Issues Department together with Civil Society Organizations (CSO) have regular interaction and educational sessions with traditional leaders on gender equality and women's empowerment. It is emphasised during consultations that leaders have a duty to promote equality and protect citizens against discrimination.

Violence against women (arts. 3, 6 & 7)

24. The Government has enacted the Children Protection and Welfare Act²⁰ (CPWA), the People Trafficking and People Smuggling (Prohibition) Act,²¹ Crimes Act,²² Girls' and Women's Protection Act,²³ Criminal Procedure and Evidence Act (CP&E)²⁴ to protect victims of Gender Based Violence (GBV). Currently a process of enacting the Disability Bill and the Sexual Offences and Domestic Violence (SODV) Bill is ongoing. Protection orders such as restraining orders are issued by Courts to protect victims of GBV. The SODV Bill defines rape as 'the intentional unlawful sexual act with a person without consent of that person, accomplished through force, threat of violence or intimidation.' The Girls' and Women's Protection Act defines rape as 'the intentional unlawful carnal connection or an attempt thereto or solicit and entice to commit an immoral or indecent act with a girl under the age of sixteen years.' The Sexual Offences and Domestic Violence Bill seeks to criminalize marital rape.²⁵ The National Strategy and Action Plan to End Violence (2013-2018) has undergone a review and the amendments thereof have been adopted. These amendments include the incorporation of recommendations from the National Study on Drivers of Violence Against Children in Swaziland which was adopted in 2016. The costing of the strategy is currently underway.

¹⁶ Section 27 (3).

¹⁷ Section 28 (2).

¹⁸ Section 211 (2).

¹⁹ (470/2013A) [2013] SZHC 144 (18 July 2013).

²⁰ No. 06 of 2012.

²¹ No. 07 of 2009.

²² No. 6 of 1889.

²³ No. 39 of 1920.

²⁴ No. 67 of 1938.

²⁵ Clause 151.

25. The country is cognizant of the challenges relating to domestic violence, to that end a study was undertaken and the report²⁶ states that 75% of reported abuse cases is on women, and 27% among children. Most cases are seen to be happening at home (66%) followed by open fields (21%). Intimate partners (ex-boyfriends/ ex-girlfriends) are the major perpetrators (42%) followed by relatives (38%).

26. The rolling out of One Stop centres is in progress and is being integrated in hospitals. Currently there is a fully operational centre in Mbabane and another has been completed at the Raleigh Fitkin Memorial Hospital in the Manzini region. A third one is near completion at the Lubombo Referral Hospital. It is anticipated that another one will be established in the Shiselweni region. With regards to shelters, the Government manages a halfway house for orphaned children and is also constructing a shelter in Mankayane. A number of privately owned shelters also cater for women, children and orphanages that have experienced gender based violence. In general, the Government has financial constraints but resources are allocated to support victims of domestic violence and most often there is assistance from donors in that regard.

27. Further, victims of domestic violence currently receive free counselling and medical treatment. The Constitution generally provides for the rights of children and more specifically the CPWA criminalizes abduction of children.²⁷ The SODV Bill²⁸ also intends to criminalize child marriages. The Gender and Family Issues Department in collaboration with Civil Society Organizations have regular interactions and educational sessions with traditional leaders on gender equality and human rights as well as conduct continuous advocacy programmes.... including campaigns to sensitize and disseminate information to the public on violence, and reporting structures. Such programs while inclusive of men and boys especially target women and girls to empower them to challenge such stereotypes.

28. Swaziland with support from United Nations Economic Commission for Africa, developed a National Gender and Development Index (SGDI) Report of 2016 and Women's Progress Score Board that also captures gender disaggregated statistical data on gender in general however limited on violence. Plan to disaggregate violence data from the gender perspective are underway. Below is a table (labelled "D") outlining the statistics of the incidence of domestic violence reported for investigations between years 2012 to 2016.

Table D — Domestic Violence Statistics

<i>Period (Jan –Dec)</i>	<i>Complaints received</i>	<i>Convictions</i>	<i>Acquittals</i>
2012	990	570	9
2013	1 056	605	30
2014	1 101	660	22
2015	1 315	767	22
2016	1 541	869	21
Total	6 003	3 471	104

29. Further to ensure that cases of such a nature are effectively handled, a department of Domestic Violence, Child and Sexual Offences with specially trained officers has been established in all Police stations around Swaziland. Other steps taken to combat violence against women and girls include regular trainings for Prosecutors, Police Officers, Judicial Officers, traditional authorities and the general public on women's rights and available remedies on the violations thereto. Specifically Prosecutors, Magistrates, Master of High Court, National (Swazi) Courts officials were trained on the application of international Instruments such as CEDAW and Convention on the Rights of the Child (CRC) in their various roles. A Training program for Judges was planned but could not be carried out due to financial constraints. Police Officers in all Police Stations are continuously trained on

²⁶ The National Surveillance Report (2016).

²⁷ Section 75.

²⁸ Clause 43.

GBV and every station has a designated GBV Focal Person. Government, Development partners and CSO, provide on-going support, and training to health officers including Rural Health motivators during their sessions.

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)

30. The rate of teenage pregnancy is currently at 25 percent as per the Multiple Indicator Cluster Survey (MICS) (2016). The Maternal Mortality Rate (MMR) is high as it currently stands at 593/100,000 having increased from 289/100,000 in 2007. The major causes of MMR are excessive bleeding, infections, hypertensive disorders of pregnancy. Measures taken to reduce teenage pregnancy and MMR include;

- Strengthening Family Planning (FP) programmes (integration of FP into all health care service delivery points, training of health care workers);
- Emergency Obstetric and Neonatal Care (maternities infrastructural improvements, lifesaving equipment procurement, training of health workers and research);
- Mentorship, supervision and training by Ministry of Health - mentoring of midwives and doctors providing EMNoC, with the support of the World bank;
- Promotion of skilled birth attendance and hospital delivery – through community outreach campaigns;
- Introduction of Maternal Death Review Surveillance which started in 2015.

31. In a bid to reduce teenage pregnancy awareness raising efforts have been intensified & Sexual Reproductive Health (SRH) education strengthened.

32. In as much as abortion is not legalised in Swaziland, the Constitution²⁹ provides permissible grounds on which it may be allowed. The implementation of the restrictions have so far not been problematic, save for cases whereby pregnancy resulted from rape, incest and unlawful sexual intercourse with a mentally retarded female, as these conditions require a court order for the process to be carried out or effected.

33. Awareness-raising efforts and steps taken to ensure that men, women and adolescents in all regions of the country have access to contraceptives and sexual and reproductive health education and services include the following;

- Life Skill Education has been provided for youth in schools.
- Comprehensive Sexual Education for youth in communities was piloted in 38 out of 55 constituencies by the Ministry of Youth, Sport and Culture.
- Institutionalization of youth friendly services into all health facilities in the country.
- Training of Nurses on ASRH and Youth Friendly Services with of United Nations Population Fund (UNFPA) and other development partners.

34. All law enforcement officers are capacitated on how to use force and firearms in their training curriculum during recruitment period and on refresher courses internally and outside the country. The use of force and firearms including lethal force is governed by the CP&E Act, which permits law enforcement officers to use lethal force as a measure of last resort, after certain conditions have been satisfied. Non-lethal force is used where a person suspected of criminal conduct resists arrest or flees and cannot be apprehended or prevented from fleeing by means other than the use of moderate force. The Royal Swaziland Police Service is a member of an organization for the Southern African Region Police (SARPCCO), wherein all member states are obliged to adhere to the SARPCCO Charter, which provides inter alia, a code of conduct for law enforcement officials and the use of force. In the Police Service, all incidents including excessive use of force and deaths are

²⁹ Section 15 (5).

recorded in an occurrence book. However, the country acknowledges that this method is not sufficient for purposes of data capturing and/or collection in such cases hence efforts are being made to address this problem. During the reporting period there were three reported cases of deaths in police custody. These were investigated by the coroner in terms of the Inquest Act.³⁰ Amongst the three cases all of the victims were males, two adult Swazis and one adult Mozambican. The inquiry into the death of Mr. Luciano Reginaldo Zavale is still ongoing.

35. The country is considering to review the provisions of the Game Act.

36. Even though Swaziland had previously reported that she is not yet ready to adopt the Second Optional Protocol on the Abolition of death penalty, there is political will to adopt this protocol as the country has recently voted for the moratorium on the death penalty.

37. The Constitution³¹ outlines permissible grounds for deprivation of personal liberty as well as the Criminal Procedure and Evidence Act.³² Individuals who have been unlawfully arrested have the right to institute legal proceedings in courts for redress. Amongst other rights protected under the Constitution,³³ a person in police custody has a right to access a lawyer immediately after arrest, and is entitled to appear before court for arraignment within 48 hours. The Constitution³⁴ prohibits torture, as it provides for protection from inhuman or degrading treatment. Torture is not yet specifically criminalized in Swaziland. Currently cases of torture are treated as assault cases and people affected are at liberty to claim for compensation. In the past five years, the Police received a total of ninety-four civil claims occasioned by assault and torturing of suspects. A notable trend is that the claims are on the decrease as tabulated in Table E below. Currently there is no independent body established specifically to investigate cases of complaints of ill-treatment by law enforcement officials, however the CHRPA is responsible for investigating any cases relating to ill-treatment.

Table E — Civil Claims on Assault and Torture

<i>Year</i>	<i>No. of claims</i>
2012	22
2013	21
2014	18
2015	18
2016	15
Total	94

38. His Majesty's Correctional Services (HMCS) adheres to the United Nations Standard Minimum Rules for the treatment of offenders (Mandela Rules) and conscientiously observes Human Rights Principles and Guidelines in the execution of its duties on daily basis. Inmates confined in Correctional Centres are given a balanced diet three times a day. Regulation 36 of the Prisons Regulations of 1965, sets out the procedure on how food is to be distributed to inmates, it further has a schedule that spells out the quantity of food to be given to inmates.

39. Mr. Mario Masuku was never denied medical care whilst in detention. In fact Mr. Masuku was housed in the Matsapha Correctional Centre, which has a mini clinic to afford him the best medical attention whenever the need arose and the records thereof indicate several dates at which he was treated internally and also referred to the main Government Hospital for further treatment. The law³⁵ and policy regulating the operation of Correctional

³⁰ No. 59 of 1954.

³¹ Section 16 (1).

³² Section 22 and 30.

³³ Section 16 (2-9).

³⁴ Section 18.

³⁵ Section 27 (4) of the Prisons Act 40 of 1964.

centres does not allow inmates' preference on medical Centres for security reasons. It gives the medical officer (Doctor) in a Correctional Centre discretion to determine how medical care is to be administered. However, inmates are allowed to consult Doctors of their preference only in cases where a particular ailment cannot be treated in the Government institution during that particular period. It is worth noting that in every Correctional Centre there is a Clinic with a minimum of 2 nurses. The organization has two Medical Officers who conduct scheduled visits to the various Correctional Centres, one Medical Officer is based at the Headquarters and the other is a resident Doctor at Matsapha Correctional Centre. Information of the number of prisons, their capacity and number of inmates per facility, as at April 2017, is outlined in Table F below:

Table F — Statistics of Prisons Facilities & Capacity

<i>Correctional Centres</i>	<i>No. of inmates</i>	<i>Capacity</i>
a. Matsapha Correctional Centre	807	400
b. Criminal Lunatic Asylum Centre	35	20
c. Malkerns Young Person's Centre	182	150
d. Mawelawela Correctional Centre	239- Adults 18- Children	120
e. Vulamasango Primary and High Schools	182	300
f. Manzini Remand Centre	330	350
g. Mankayane Correctional Centre	55	50
h. Mbabane Correctional Centre	339	400
i. Piggs Peak Correctional Centre	367	400
j. Bhalekane Correctional Farm	320	350
k. Big Bend Correctional Centre	370	350
l. Nhlangano Correctional Centre	277	230

40. The Malkerns Young Person's Centre is where Juvenile male inmates are detained and afforded an opportunity to enroll at Vulamasango School. Mawelawela Correctional Centre is a women only facility which also houses juvenile female inmates who also have access to Vulamasango School. The Mawelawela Centre also has a children's facility which caters for the inmate's children who are either brought with their parents on imprisonment or born whilst incarcerated. However, at a certain age these children are released to be with the relatives of the inmate, they too, do attend crèche inside this facility. The apparent challenge prevalent in the Correctional centres is that of overcrowding as clearly shown in table below.

Table G — Overcrowding statistics for the past 3 years

<i>Year</i>	<i>Average Yearly Population</i>	<i>Prison Capacity</i>	<i>Overcrowding Percentage</i>
2014/2015	3507	3120	13
2015/2016	3491	3120	11.9
2016/2017	3405	3120	9.14

41. HMCS with partners in the Criminal Justice System is in the process of addressing the problem of overcrowding through various initiatives including:

- Amnesty/ Royal Pardon;³⁶
- Prioritizing of cases of long awaiting-trial offenders, a project aimed at reducing detention cycle;

³⁶ 293 Inmates released in 2017.

- Reviewing The Prison Act, 1964 and the Criminal Procedure and Evidence Act, 1937, with the intention of introducing alternative sentencing;
- The release of awaiting-trial offenders who have been allowed bail but cannot afford to pay same due to the offender's personal social conditions, under specific conditions;

42. Independent monitoring groups³⁷ have access to all prisons and detention centres, this includes; Minister of Justice and Constitutional Affairs, all judges, all magistrates, all regional secretaries of the region in which the Correctional Centre is situated and the Chief Medical Officer. Further, International and regional bodies and special envoys are allowed with prior arrangement with the relevant authority to access prisons. The country is working towards acceding to the Optional Protocol to the Convention Against Torture.

Counterterrorism (arts. 9, 14 & 19)

43. The Public Order Act³⁸ and the Suppression of Terrorism Act³⁹ are not entirely compatible with the Covenant in that they are subject to the provisions of the Constitution.⁴⁰ Both Acts are currently being reviewed and are in Parliament. The judgment of the High Court in the consolidated cases of Thulani Maseko and others v the Prime Minister of Swaziland and others⁴¹ set aside certain provisions of the Terrorism Act and the Sedition Act on the basis that the provisions are not constitutional. However an appeal has been noted by the state. Currently there are five cases which have been concluded that have a bearing upon the above stated legislations, in two of these the accused were convicted and three acquitted. The compatibility of these legislations will be pronounced when the above processes have been finalised.

Right to fair trial (art. 14)

44. Swaziland has experienced a rule of law crisis in the recent past which led to the impeachment of the then Chief Justice. Having impeached the then Chief Justice, the judicial system was modified and the recruitment of judicial officers was done through a transparent process of advertising vacant posts in widely circulated newspapers. The judiciary continues to be an independent arm of government as per the dictates of the Constitution.⁴² Section 157 (1) of the Constitution has been complied with as the incumbent Chief Justice is a Swazi national, and no foreign Judge has been recruited after the cut-off date. With regards to security of tenure, it is worth noting that all Justices of the superior Courts have been employed on a permanent basis, and will only retire at age 75 in terms of our Constitution. The removal of Judges from office can only be done in terms of our Constitution.⁴³

45. The Legal Aid Bill has not yet been passed into law, however, pro deo services are provided at the expense of Government in case of any offence which carries a sentence of death or life imprisonment.⁴⁴ The judiciary has remarkably increased the number of Judicial Officers, thus the problem of lengthy pre-trial detentions is being addressed in all cases. Bail determination is left at the discretion of the presiding officers and is regulated by the provisions of CP&E Act. All cases are treated in like manner, whether they are political in nature or otherwise. The principles of natural justice are observed by the presiding officers in the traditional justice system, in the sense that; the presiding officers are selected from senior Swazi citizens with rich and sound knowledge of customary law.

³⁷ Section 61-63 of the Prisons Act, 1964 and Regulation 89 of the Prisons Regulations.

³⁸ No. 17 of 1963.

³⁹ No. 05 of 2008.

⁴⁰ Section 16 and 24.

⁴¹ Civil Case No. 2180/2009.

⁴² Section 141.

⁴³ Section 158.

⁴⁴ Section 21 (2) (c).

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

46. Although Swaziland is said to be a country of origin, transit and destination for trafficked persons, evidence on the ground indicate that the country is largely a transit country. There is minimal evidence with regards to Swaziland being a country of origin and destination. Statistical information for the past five years on the prevalence of human trafficking matters is outlined in Table H annexed. Government held awareness raising events and consultations have been conducted for officials from Royal Swaziland Police, Department of Immigration, Director of Public Prosecutions, Ministry of Health, Umbutfo Swaziland Defence Force with the aim of sensitizing all on the Peoples Trafficking and Peoples Smuggling Act. Further, there has been a number of awareness raising activities targeting the general public, rural health motivators and young maidens. Other measures for combating and prevention of human trafficking includes the establishment of a tripartite committee comprising of the Directorate of Public Prosecution, Royal Swaziland Police Services and the Human Trafficking Secretariat to address issues of minimal prosecution of people trafficking and smuggling matters. Victim Identification Guidelines have been developed for law enforcement officers and social workers. These guidelines have been launched and trainings undertaken. For the protection and rehabilitation of victims, the Government provides basic needs and essential services including psychosocial support.

Freedom of movement (art. 12)

47. Section 26 (6) of the Constitution is compatible with Article 12 (3) of the Covenant in that the restrictions imposed by the said section are in line with those permissible under the Covenant. There are no reported cases of any restrictions imposed under Swazi law and custom. The country is demarcated in terms of geographical areas which also applies under Swazi law and custom. It is generally accepted that permission is sought from traditional authorities before settling on Swazi nation land for proper settlement. Traditional authorities are also enjoined to ensure public order in their respective Chiefdoms hence all activities must be regulated.

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

48. The Government has no record of the allegations of intimidation, attacks, arbitrary arrests and loss of life in respect of journalists, editors and human rights defenders. Section 24 of the Constitution guarantees freedom of expression and opinion including freedom of the media. To further promote the enjoyment of freedom of expression, free media and operationalization of independent media houses, the Government has enacted the Swaziland Communications Commissions Act 2013. This Act establishes a Commission whose objectives are inter alia; to regulate electronic communications, data protection in electronic communications, postal services, electronic commerce and broadcasting.

49. Internationally, Swaziland has ratified ILO's Core-Conventions relating to the principles of freedom of association and collective bargaining as well as promotion of tripartism and social dialogue. These include Convention No. 87 (1948),⁴⁵ Convention No. 98 (1949)⁴⁶ and Convention No. 144 (1976).⁴⁷

50. On domestic law, the operation of trade unions is regulated by the Constitution⁴⁸ and the Industrial Relations Act.⁴⁹ The Public Service Bill⁵⁰ is currently in Parliament. There are no legislative restrictions on the right to form and join a trade union, except for members of the Disciplined or Armed forces who are only entitled to form staff associations. Currently there are no records of allegations that trade union activities have been repressed and that

⁴⁵ Freedom of Association and Protection of the Right to Organize Convention.

⁴⁶ The Right to Organize and Collective Bargaining Convention.

⁴⁷ Tripartite Consultation (International Labour Standards) Convention.

⁴⁸ Section 32 (2).

⁴⁹ No. 1 of 2000 (as amended).

⁵⁰ No. 16 of 2015.

there has been arbitrary arrests detentions, intimidation, physical violence and warrantless searches as measures to silence activists. The Government has got no records of instances of clear victimization as mentioned, except for those isolated instances which occur during violent strikes when members of the security forces are forced to intervene to maintain law and order.

Protection of Minors (Art. 24)

51. To implement the National Children's Policy (2009), Swaziland enacted CPWA which is compatible with the CRC, and has initiated a process of formulating Regulations to operationalize CPWA. Further, the Government has provided initial key resources to support the establishment of a Government led National Children Services Department (NCS D). Currently, there is a NCS D in place which replaced the National Children Coordinating Unit (NCCU) which was a project, thus could not report on behalf of the country. The mandate of the NCS D is to bring together Government, CSOs, Development Partners and Private sector stakeholders involved in the protection and promotion of children's rights. The NCS D is responsible for providing overall leadership in co-ordination, monitoring & evaluation of policies & programmes and promoting & protecting children's rights.

52. The programme of Free Primary Education⁵¹ (FPE) has been successfully rolled out in all grades. Yearly, the Government invests E65 Million for textbooks, E22 Million for stationary, E15 Million for teachers and an average of E 885.76 (US \$80) capitation grant per child for all primary school pupils. Furthermore learners with special needs have been provided with specialized teaching, learning material and equipment. The age for criminal liability is twelve as stated in the CPWA, and a maximum penalty given so far is three years imprisonment for rape.

53. In respect of children with disabilities, the current legal framework provides for the protection of people with disabilities in general.⁵² The country has put in place a Disability Policy (2013) and is in a process of crafting a Disability Bill which will elaborately deal with the rights of children with disabilities. The Government also dispense grants quarterly to registered persons with disabilities, however, it is acknowledged that there is a need to improve the framework and allocation of resources. Other measures taken to address sexual and other forms of violence against children including in rural areas, would be the establishment of One Stop centres, training of health motivators and social workers who visits the rural areas, child protection communities and the establishment of DCS which gives special treatment to children in cases of sexual violence. The Ministry of Education with the assistance of UN Agencies has made available a Toll-free line for reporting all forms of violence within the education sector.

54. The Birth Registration challenge was identified as early as the year 2005. The trend has been that parents, especially in the rural areas, only got to register births when the children needed to access public services such as enrolment in schools, application for passports and so on. The births were not registered for various reasons including birth being given at home, if at hospital – the need to consult family on the name of the child and non-understanding the importance of registration. Measures taken to deal with this problem include a radio programme, visitation schedules to communities and chiefdoms to sensitise the citizenry on the importance of registration. Further in hospitals where there are maternity wards, there is a civil registration desk which imitates the birth registration process. These measures have been made with the assistance of United Nations Children's Fund (UNICEF).

55. Although the country has not abolished corporal punishment in all settings, the CPWA abolished the use of corporal punishment in cases involving children. The Ministry of Education also rolled out a program on Positive discipline and is working on revising its policies and rules to be in line with the principles of positive discipline. Further, the

⁵¹ The Free Primary Education Act No. 17 of 2010.

⁵² Section 30 of the Constitution.

Ministry has partnered with CSOs to promote the use of positive discipline in family settings. This initiative is aimed at gradually incorporating these principles in the different settings where corporal punishment has been practiced. In penal institutions such as HMCS, corporal punishment is provided for by the CP&E⁵³ Prisons Act and its Regulations,⁵⁴ however the provisions of the Constitution prohibits same and the latter as the supreme law supersedes the former legislation.

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

56. In ensuring compatibility with Article 25 the country has guaranteed everyone an equal right to vote and be elected in ‘genuine periodic elections ‘ and have a right to access to public service in the country. Specifically, everyone has a right to vote in terms of the Constitution,⁵⁵ the system of governance is democratic, participatory and constituency based⁵⁶ and the life of Parliament shall be five years.⁵⁷ Moreover, the country allows independent observers from SADC, European Union (EU) as well as Commonwealth during elections. The Constitution⁵⁸ provides that the people of Swaziland have a right to be heard through and represented by their own freely chosen representatives in the Government of the country. Voting is by secret ballot⁵⁹ and it is may be emphasized that although Section 79 states that a person shall be elected or appointed into public office on the basis of individual merit, this individual represents the constituency and is supposed to serve the entire community. In respect of the information on the governmental positions that the King directly appoints at the national or local (tinkhundla) level, the King exercises his prerogative as provided for in the Constitution. By way of example, the King is enjoined to appoint a 50% quota in respect of the Cabinet Ministers who are drawn from those who have been elected by the people from their constituencies to ensure representation of people at Cabinet. This is therefore a participatory process. Moreover, in carrying out the appointments, the King does so in consultation with relevant structures. There is however, no recollection of instances where the King appoints at local (tinkhundla) level because this is left to the constituencies.

57. The country is aware of the opinion expressed in a report that the elections held by the country in 2013 did not comply with International standards of free and fair elections due to alleged prevailing inconsistencies and contradictions, in particular as they related to the separation of powers (or lack thereof) and the rule of law; and secondly, political parties were proscribed, due to contradictions as they related to the interpretation of the fundamental right of freedom of association and assembly. It is the country’s view that there were many other reports which declared the elections free and fair hence this opinion not only seeks to discredit the elections but is also not a true reflection n of the country’s elections and unique governance system. This is particularly because the system of governance in the country follows the three – tier system where there is the executive, Legislature and Judiciary and the constitution makes distinct provision for each arm, the rule of law is upheld and the right to freedom of association and assembly is guaranteed in terms of the constitution.

58. The National elections are managed by the Elections and Boundaries Commission (EBC), an independent Commission, established and mandated in terms of the Constitution.⁶⁰ In addition, the EBC is currently in a Civic Voter education drive to sensitize members of the public on the electoral process. Currently about 25% of the populace has been covered.

⁵³ Section 306.

⁵⁴ Act 40 of 1964, section 49 and Regulation 63. A Correctional Services Bill, 2015 has been drafted and is in Parliament. It bans the administration of corporal punishment.

⁵⁵ Section 85 (1).

⁵⁶ Section 79.

⁵⁷ Section 134 (2).

⁵⁸ Section 84 (1).

⁵⁹ Section 87.

⁶⁰ Section 90.

59. The National Elections legislative framework includes the Constitution, Elections and Boundaries Act,⁶¹ Voter Registration Act,⁶² Elections Expenses Act,⁶³ Elections Act,⁶⁴ Senate (Elections) Act,⁶⁵ and the Parliament (Petitions) Act.⁶⁶ These laws regulate and clearly articulate the conduct of elections in the country.

60. On the measures to address the participation of political parties in elections, the country has indicated during the Universal Periodic Review (UPR) that it is not yet ready to allow political parties to contest elections, however, individual members of political parties are able to contest in their personal capacities. This position is in line with interpretation of section 79 by the Supreme Court in the case of Sithole NO and Others v The Prime Minister and others, SC 50/2008. In this case, the Supreme Court pronounced that political parties were not allowed to field candidates however, members of such parties can participate based on individual merit.

61. There is no evidence which suggests that political party members have been stopped from participating in the elections in their individual merit. This is evident in the fact that the current Parliament, for example, has members who have been elected based on individual merit who are members of political parties, who have openly declared their party membership and they have not been victimized in anyway because of their political affiliation.

62. In respect of the fight against corruption the Prevention of Corruption Act (POCA),⁶⁷ is the key legislation establishing and operationalizing the Anti-Corruption Commission (ACC). The country is also party to the United Nations Convention Against Corruption (UNCAC), having ratified same in 2012. In the assessment of implementation of the legal framework, the country underwent a self-assessment process under UNCAC for issues relating to criminalization & law enforcement and international cooperation. There were gaps identified in the legal framework and recommendations made, hence the process of amending the POCA has been initiated and with the assistance the United Nations Office on Drugs and Crime (UNDOC), the POCA will also be aligned with UNCAC. Other legislation that augment the fight against corruption include the Money Laundering (Prevention) Act,⁶⁸ The Serious Offences (Confiscation of Proceeds) Act,⁶⁹ and the Swaziland Procurement Act.⁷⁰

63. It also envisaged that the passing into law of the Witness Protection Bill⁷¹ & Prevention of Organised Crime Bill⁷² will strengthen the anti-corruption initiatives. The ACC is enjoying operational independence as provided for in the POCA and has recorded quite a number of completed investigations and arrests were subsequently made. The establishment of an Inter-Agency Task Team has enhanced the investigations relating to complex and serious cases. However, it is noted that it is difficult to gauge the performance of the institution as the cases are not going through the courts due to an existing backlog of cases. Efforts have been made to address the backlog through a move to establish a Specialised Commercial Court to deal with and for the timely conclusion of corruption and commercial cases. The allocation of resources still remain a challenge as the funding of the ACC is dependent on the extent of availability of funds in the Government purse. United Nations agencies once again assist in making available funding for certain projects undertaken by the institution.

⁶¹ No.7 of 2013.

⁶² No.8 of 2013.

⁶³ No.9 of 2013.

⁶⁴ No.10 of 2013.

⁶⁵ No.11 of 2013.

⁶⁶ No.12 of 2013.

⁶⁷ No.3 of 2006.

⁶⁸ As amended in 2016.

⁶⁹ No. 08 of 2001.

⁷⁰ No. – of 2011.

⁷¹ 2016.

⁷² 2016.

64. The Government also acknowledges the challenge emanating from the fact that the ACC is a creature of statute and the CHRP is established in terms of the Constitution, and the latter also being given a mandate of fighting against corruption thus resulting in an overlap of functions. On another note a recent judgement by the High Court called into question the constitutionality of some sections of the POCA thereby impacting on the institution's operational autonomy and stalling current investigations. An appeal has been filed against this decision.
