



Convention on the Elimination of All Forms of Discrimination against Women

Distr.: General
24 July 2014

Original: English

Committee on the Elimination of Discrimination against Women

Concluding observations on the combined initial and second periodic reports of Swaziland*

1. The Committee considered the combined initial and second periodic reports of Swaziland ([CEDAW/C/SWZ/1-2](#)) at its 1231st and 1232nd meetings, on 10 July 2014 (see [CEDAW/C/SR.1231](#) and 1232). The Committee's list of issues and questions is contained in [CEDAW/C/SWZ/Q/1-2](#) and the responses of Swaziland are contained in [CEDAW/C/SWZ/Q/1-2/Add.1](#).

A. Introduction

2. The Committee appreciates that the State party submitted its combined initial and second periodic reports, albeit after a long delay. It also appreciates the State party's written replies to the list of issues and questions raised by the pre-sessional working group and welcomes the oral presentation by the delegation and the further clarifications provided in response to the questions posed orally by the Committee during the dialogue.

3. The Committee commends the State party for its delegation, which was headed by the Principal Secretary in the Office of the Deputy Prime Minister, Khangeziwe Mabuza. The delegation included representatives of the Office of the Deputy Prime Minister and the Permanent Mission of Swaziland to the United Nations Office and other international organizations in Geneva.

B. Positive aspects

4. The Committee welcomes the progress achieved since the ratification of the Convention, in particular the adoption of the following legislative measures:

- (a) Children's Protection and Welfare Act, in 2012;
- (b) People Trafficking and People Smuggling (Prohibition) Act, in 2009.

* Adopted by the Committee at its fifty-eighth session (30 June-18 July 2014).



5. The Committee welcomes the State party's efforts to improve its policy framework aimed at accelerating the elimination of discrimination against women and promoting gender equality, such as the adoption of the following:

- (a) National gender policy, approved by the Cabinet in 2010;
- (b) Reproductive Health Commodity Security Strategic Plan 2008-2015.

6. The Committee welcomes the State party's accession to the following international instruments:

- (a) Convention on the Rights of Persons with Disabilities, in 2012;
- (b) Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, in 2012;
- (c) International Covenant on Civil and Political Rights, in 2004;
- (d) International Covenant on Economic, Social and Cultural Rights, in 2004;
- (e) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, in 2004;
- (f) Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, in 2012;
- (g) Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, in 2012.

C. Principal areas of concern and recommendations

Parliament

7. The Committee stresses the crucial role of the legislative power in ensuring the full implementation of the Convention (see the statement by the Committee on its relationship with parliamentarians, adopted at the forty-fifth session, in 2010). It invites Parliament, in line with its mandate, to take the necessary steps regarding the implementation of the present concluding observations between now and the next reporting period under the Convention.

Definition of discrimination and legislative framework

8. While the Committee notes that section 20 of the Constitution provides that all persons are equal before the law and prohibits discrimination on specific grounds, it is concerned that those grounds do not include sex and marital status. The Committee also notes with concern that a number of draft laws and policies with an important bearing on women's rights, such as the bills on marriage, administration of estates, transnational crime, employment, legal aid, sexual offences and domestic violence and the land policy, are pending, with no specific time frame for their adoption. The Committee is also concerned that the amendment to the Deeds Registry Act of 2012 following the ruling of the High Court in *Attorney General v. Mary-Joyce Doo Aphane* has not been widely disseminated among women and is being poorly implemented.

9. **The Committee calls upon the State party to adopt a comprehensive legal definition of discrimination against women in line with article 1 of the Convention, covering all prohibited grounds of discrimination, including sex and marital status, by amending section 20 of the Constitution or adopting other appropriate national legislation. The State party should urgently adopt the laws and policies that are pending, such as the bills on marriage, administration of estates, transnational crime, employment, legal aid and sexual offences and domestic violence and the land policy, and ensure that they fully comply with the Convention. The Committee also recommends that the State party widely disseminate the amendment to the Deeds Registry Act of 2012 and ensure its full implementation.**

Legal status of the Convention and harmonization of laws

10. The Committee notes that the State party has a pluralistic legal system in which customary and statutory law are applicable side by side with Roman-Dutch law. The Committee is, however, concerned that some elements of customary and statutory law are not in compliance with the Convention. The Committee is particularly concerned that the State party has yet to establish a law review commission with a mandate to review and harmonize all laws with the Convention. The Committee regrets that section 28 (2) of the Constitution states that the provision of the facilities and opportunities necessary to enhance the welfare of women to enable them to realize their full potential and advancement is subject to availability of resources. The Committee is also concerned that the State party has not fully incorporated the Convention into its national law and has not yet acceded to the Optional Protocol to the Convention.

11. The Committee calls upon the State party:

(a) **To establish a law review commission, which should conduct a gender analysis of all laws in the State party with a view to harmonizing them with the Convention;**

(b) **To review section 28 (2) of the Constitution, which makes the provision of women's facilities and opportunities dependent on availability of resources, so that it complies with the immediate nature of the obligation to realize rights under the Convention as expounded in paragraph 29 of general recommendation No. 28 on the core obligations of States parties under article 2 of the Convention;**

(c) **To accelerate the process of incorporating the Convention into its national legal order and to consider acceding to the Optional Protocol.**

Access to justice and legal complaint mechanisms

12. The Committee is concerned that there is no legal aid scheme in the State party and that complex legal procedures, exorbitant legal fees and the geographical inaccessibility of courts impede women's access to justice. The Committee is also concerned that the bill on legal aid has yet to be enacted into law. The Committee is further concerned about the absence of enabling legislation for the Human Rights Commission, which would legally grant it a mandate to undertake activities as a national human rights institution and provide legal services to women. The

Committee is concerned at reports that the Commission has inadequate financial and human resources.

13. The Committee recommends that the State party:

- (a) Establish a comprehensive legal aid scheme by urgently enacting the bill on legal aid;**
- (b) Ensure that the bill on legal aid provides legal assistance to women and girls in both criminal and civil matters;**
- (c) Ensure that women, especially those belonging to disadvantaged groups, have effective access to justice in all parts of the country;**
- (d) Enact enabling legislation to legally establish a human rights commission in compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles), whose competencies should include issues relating to gender equality and the protection of women's rights.**

National machinery for the advancement of women

14. The Committee notes that the Gender and Family Issues Unit, which acts as the national machinery for the advancement of women, has been elevated to a department within the Office of the Deputy Prime Minister, but is concerned that it is extremely underresourced in both human and financial terms. The Committee is also concerned that gender focal points in line ministries have multiple duties and responsibilities that affect their effectiveness as gender focal points. The Committee is further concerned at the lack of systematic gender mainstreaming and gender budgeting, in addition to the lack of sex-disaggregated data to enable adequate monitoring and evaluation of the implementation of the action plan of the national gender policy of 2010.

15. The Committee recommends that the State party:

- (a) Provide adequate financial and human resources to the Gender and Family Issues Department so that it can effectively undertake its activities as the national machinery for the advancement of women;**
- (b) Take specific remedial measures to tackle the challenges to the effectiveness of the gender focal points, such as the multiplicity of duties and responsibilities;**
- (c) Continue to train technical staff in charge of budgeting at the national and local levels on how to develop gender-responsive budgets;**
- (d) Urgently develop the planned national gender index, which should serve as a gender-indicator system to improve the collection of data disaggregated by sex with a view to assessing the impact and effectiveness of policies and programmes aimed at mainstreaming gender equality and enhancing women's enjoyment of their human rights. In this regard, the Committee draws the State party's attention to its general recommendation No. 9 on statistical data concerning the situation of women and encourages the State party to seek technical assistance from relevant United Nations agencies.**

Temporary special measures

16. While noting that section 86 of the Constitution sets a quota of 30 per cent representation of women in Parliament, the Committee is concerned that such provisions were not fully implemented in the 2008 and 2013 parliamentary elections and that temporary special measures are not being used in other areas covered by the Convention, such as participation of women in public life, education and employment, in order to accelerate the achievement of substantive or de facto equality of women and men.

17. The Committee calls upon the State party to fully invoke the legislative provisions on temporary special measures to increase the representation of women in Parliament. It also recommends that the State party consider using temporary special measures in other areas, such as participation of women in public life, education and employment, in accordance with article 4 (1) of the Convention and the Committee's general recommendation No. 25 on the subject, as a necessary strategy to accelerate the achievement of substantive equality of women and men in all areas of the Convention in which women are underrepresented or disadvantaged.

Stereotypes and harmful practices

18. The Committee is concerned at the persistence of adverse cultural practices and traditions and patriarchal attitudes and deep-rooted stereotypes regarding the roles and responsibilities of women and men in the family and in society, especially those portraying women as caregivers. The Committee notes that such stereotypes contribute to an increase in the practices of child and/or forced marriage, abduction of girls and polygamy and hence to the disadvantaged and unequal status of women in society.

19. The Committee urges the State party:

(a) To intensify media and other efforts to educate the public and raise awareness about existing sex-based stereotypes that persist at all levels of society, with a view to eliminating them;

(b) To expand public education programmes on the negative impact of such stereotypes on women's enjoyment of their rights, in particular in rural areas, targeting traditional leaders who are the custodians of customary values in the State party;

(c) To take effective legal measures to prohibit and eliminate child and/or forced marriage and abolish polygamy;

(d) To regularly monitor and review the measures taken to eliminate gender stereotypes in order to assess their impact.

Violence against women

20. While noting the efforts to enact the bill on sexual offences and domestic violence, which was passed by Parliament and the Senate, the Committee is deeply concerned that the bill lapsed because it did not receive royal assent. The Committee is also concerned that, according to the National Surveillance System on Violence, Abuse and Exploitation, the prevalence of violence against women and girls is high, as is the rate of abduction of young girls, often perpetrated by persons known to the

victims. The Committee is also concerned at the low level of reporting of violence against women, owing to a culture of silence and impunity, and at the lack of data on the number of reported cases involving violence against women that have been investigated and prosecuted and on the nature of sanctions imposed on perpetrators. The Committee notes that, the State party's efforts to establish a one-stop centre in the capital city and other shelters notwithstanding, shelters remain inadequate for and inaccessible to women and girls in other regions of the State party.

21. Recalling its general recommendation No. 19 on violence against women, the Committee urges the State party:

(a) **To enact into law the bill on sexual offences and domestic violence without further delay and ensure that it is comprehensive, covering all forms of violence against women, especially marital rape and sexual harassment;**

(b) **To encourage reporting of domestic and sexual violence against women and girls, to ensure that complaints are effectively investigated and perpetrators punished with sanctions commensurate with the gravity of the offence and to address the culture of impunity;**

(c) **To develop a system for regular collection of statistical data on cases, focusing on all forms of violence against women, including domestic violence and abduction, which should be disaggregated by age, type of offence and relationship between perpetrator and victim;**

(d) **To decentralize one-stop centres and shelters to the four regions of the State party in order to ensure that women and girls who are victims of violence can gain access to them;**

(e) **To establish a national violence coordination mechanism with a mandate to tackle all forms of violence against women and girls and to coordinate national efforts to prevent and eliminate such violence.**

22. While noting the intention of the State party to establish a national register of persons with albinism, the Committee is deeply concerned at the gruesome murders of women and girls with albinism, whose body parts are harvested for rituals. The Committee is particularly concerned at reports that, in the past, perpetrators of such murders were prosecuted for less-serious crimes, such as causing grievous bodily harm, and therefore received lenient sentences upon conviction.

23. The Committee recommends that the State party urgently establish a national register of persons with albinism and provide protection to women and girls with albinism. The State party should ensure that all complaints relating to violence against women and girls with albinism are effectively investigated and perpetrators prosecuted and punished with appropriate sanctions upon conviction.

Trafficking in women and exploitation of prostitution

24. While welcoming the adoption of the People Trafficking and People Smuggling (Prohibition) Act in 2009, the Committee remains concerned that the State party is a country of origin, transit and destination for trafficked women and girls, mainly for sexual exploitation and domestic labour. The Committee is also concerned at the lack of data on the extent of trafficking in persons and at the absence of specific programmes to raise awareness of the existence of a national

referral mechanism on human trafficking in the State party. It is further concerned that the prohibition of prostitution under the Crimes Act does not criminalize the demand for prostitution. The Committee is also concerned at the lack of programmes aimed at addressing prostitution, including exit programmes to encourage women to leave prostitution.

25. The Committee recommends that the State party:

(a) **Intensify efforts to tackle the root causes of trafficking in women and girls and to ensure the rehabilitation and social integration of victims, including by providing them with access to shelters, legal, medical and psychosocial assistance and alternative income-generating opportunities;**

(b) **Undertake a comprehensive study with a view to collecting data on the extent and forms of trafficking in women and girls, which should be disaggregated by age, region and country of origin;**

(c) **Increase awareness-raising efforts aimed at promoting reporting of trafficking crimes and early detection of women and girls who are victims of trafficking, in addition to their referral through the national referral mechanism;**

(d) **Step up efforts aimed at bilateral, regional and international cooperation to prevent trafficking, including by exchanging information and harmonizing legal procedures to prosecute traffickers, in particular with States members of the Southern African Development Community;**

(e) **Provide data in its next periodic report on existing programmes aimed at addressing prostitution, including by criminalizing demand and implementing exit programmes for women who wish to leave prostitution.**

Participation in political and public life

26. The Committee is concerned that, notwithstanding the constitutional provision that sets a goal of achieving at least 30 per cent representation of women in Parliament, women remain underrepresented at decision-making levels, including in Parliament, the judiciary and the diplomatic service. The Committee is particularly concerned that the quota for the appointment of women to Parliament from the four regions of the State party has not been implemented, allegedly owing to the lack of enabling legislation. The Committee is also concerned at the lack of information on the impact of the *tinkhundla* electoral system, which bans political parties, on the political participation of women.

27. The Committee recommends that the State party introduce temporary special measures, in accordance with article 4 (1) of the Convention, general recommendation No. 25 and general recommendation No. 23 on women in public life, in order to accelerate the full and equal participation of women in elected and appointed bodies, including the judiciary and the diplomatic service. Furthermore, the State party should undertake a comprehensive study on the impediments that the *tinkhundla* electoral system presents to women who seek to stand for political office.

Nationality

28. While noting the efforts of the State party to tackle challenges relating to its nationality legislation, the Committee is concerned that both the Constitution and the Citizenship Act contain provisions depriving children born to Swazi women and foreign husbands of nationality, hence increasing their risk of statelessness. The Committee notes that this is discriminatory because it is not applicable where Swazi men marry foreign women. The Committee is also concerned that, under the Constitution, Swazi women married to foreign men cannot transmit their citizenship to their husbands on an equal basis as Swazi men married to foreign women.

29. The Committee recommends that the State party repeal the discriminatory provisions in the Constitution and the Citizenship Act to ensure that Swazi women married to foreign men can transfer their nationality to their husbands and children on the same basis as Swazi men married to foreign women, in line with article 9 of the Convention. Furthermore, the Committee recommends that the State party undertake programmes aimed at ensuring that children born to Swazi women married to non-Swazi men are not rendered stateless and have equal access to education, health care and other basic services.

Education

30. While welcoming the introduction of free primary education and the high enrolment rate of girls in school, the Committee is concerned about the indirect costs of primary education. The Committee is also concerned that girls make stereotypical choices of subjects and courses, often avoiding science courses. The Committee is further concerned about the:

- (a) Increasing number of girls who drop out of school, mainly as a result of teenage pregnancy;
- (b) Widespread cases of abuse of and sexual violence against girls in schools by teachers and when travelling to and from school;
- (c) Limited provision of age-appropriate sexual and reproductive health and rights education in schools owing to cultural resistance because sex education is considered taboo;
- (d) Lack of appropriate measures to criminalize corporal punishment and prevent its use in all settings, especially schools.

31. The Committee recommends that the State party:

- (a) **Remove the indirect costs of primary education, such as payment for school uniforms, to ensure that it is free and accessible to girls, especially those from poor backgrounds;**
- (b) **Adopt measures to prevent and eliminate all abuse of and sexual violence against girls in schools and ensure that perpetrators are adequately punished;**
- (c) **Encourage girls and young women to choose non-traditional fields of study and professions, including through the adoption of temporary special measures, and implement programmes aimed at counselling boys and girls on**

the full range of educational choices, with a view to encouraging them to choose non-traditional fields of study and professions;

(d) Reduce the number of girls dropping out of school by promoting their re-entry after they have given birth;

(e) Integrate age-appropriate education on sexual and reproductive health and rights into school curricula, including comprehensive sex education for adolescent girls and boys covering responsible sexual behaviour;

(f) Prohibit corporal punishment and adopt measures aimed at eliminating its use in all settings, especially schools, and promote the use of non-violent forms of discipline.

Employment

32. The Committee is concerned about the continued occupational segregation between women and men in the labour market and the fact that women are concentrated in low-paid jobs in the informal economy. The Committee is also concerned about the non-compliance by the private sector with the provisions of the Employment Act that provide for 12 weeks of maternity leave. The Committee is further concerned at the lack of provisions in the law of the State party explicitly prohibiting sexual harassment in the workplace and that the bill on employment, which contains such a provision, is yet to be enacted into law.

33. The Committee calls upon the State party:

(a) To intensify efforts to promote the entry of women into the formal economy through, among other things, the provision of vocational and technical training;

(b) To strengthen efforts aimed at eliminating structural inequalities and occupational segregation, both horizontal and vertical, and to adopt measures to narrow and close the gender pay gap by, among other things, regularly reviewing wages in sectors in which women are concentrated;

(c) To conduct regular labour inspections and enforce compliance with labour laws by private employers, especially in relation to maternity leave;

(d) To urgently adopt comprehensive legislation to combat sexual harassment in the workplace, in line with the Committee's general recommendation No. 19 on violence against women.

Health

34. The Committee welcomes the introduction of prenatal programmes aimed at preventing mother-to-child transmission of HIV/AIDS. The Committee remains concerned, however, at the high prevalence of HIV/AIDS and of clandestine abortions, which have contributed to the increase in maternal mortality in recent years.

35. The Committee calls upon the State party:

(a) To intensify the implementation of HIV/AIDS response strategies, especially preventive strategies, and to continue to provide free antiretroviral

treatment to all women and men living with HIV/AIDS, including pregnant women so as to prevent mother-to-child transmission;

(b) To step up efforts to reduce the incidence of maternal mortality, such as providing safe abortion and post-abortion care services.

Rural women

36. While noting the efforts of the State party to protect equal access to land under section 211 of the Constitution, the Committee is concerned that women, especially those in rural areas, continue to face barriers to acquiring land owing to prevailing discriminatory customary laws and structures. The Committee is also concerned at reports that women are largely excluded from participating in decision-making on matters of rural development and policy owing to persisting negative social and cultural norms regarding their participation. The Committee is further concerned at the lack of income-generating opportunities for rural women.

37. The Committee calls upon the State party:

(a) To eliminate all cultural barriers that restrict women's access to land, especially in rural areas;

(b) To facilitate the participation of women in decision-making regarding rural development programmes and policies;

(c) To continue to expand women's access to microfinance and microcredit at low interest rates so as to enable them to engage in income-generating activities and to launch their own businesses.

Disadvantaged groups of women

38. While noting the State party's provision of small financial grants to older persons and efforts to improve the lives of women with disabilities and widows, the Committee is concerned at the lack of disaggregated data on the challenges that those groups of women face in the enjoyment of their rights under the Convention.

39. The Committee calls upon the State party:

(a) To pay special attention to the needs of older women, women with disabilities and widows to ensure that they enjoy equal access to health care, training, employment and other rights;

(b) To collect disaggregated data on the status of older women, women with disabilities and widows, focusing on the forms of discrimination that they encounter in society.

Equality before the law and legal capacity

40. The Committee is concerned that the State party retains the doctrine of marital power, which divests women of legal capacity to administer property and to sue without the consent of their husbands when they are married out of community of property where marital power has not been excluded and which might in some cases extend to the marital power of the husband's family.

41. The State party should repeal the doctrine of marital power in order to ensure full compliance with article 15 of the Convention so that women have

identical legal capacity to that of men to be able to conclude contracts and to administer property, as well as to sue or to be sued, in their own right.

Marriage and family relations

42. The Committee notes the complexity of the customary and civil marital regimes within the State party, which have varied economic implications, and is concerned at the lack of awareness among women of their choices and the consequences. The Committee is also concerned that the State party retains the “fault” principle under its divorce law and that there is a lack of information on the economic impact of the principle on women during the division of matrimonial property, in particular when women are found to be at fault in a divorce case.

43. The Committee recalls its general recommendation No. 29 on the economic consequences of marriage, family relations and their dissolution and calls upon the State party to separate the fault-based divorce grounds and the distribution of marital property.

Optional Protocol and amendment to article 20 (1) of the Convention

44. The Committee encourages the State party to ratify the Optional Protocol to the Convention and to accept, as soon as possible, the amendment to article 20 (1) of the Convention concerning the meeting time of the Committee.

Beijing Declaration and Platform for Action

45. The Committee calls upon the State party to use the Beijing Declaration and Platform for Action in its efforts to implement the provisions of the Convention.

Millennium Development Goals and the post-2015 development framework

46. The Committee calls for the integration of a gender perspective, in accordance with the provisions of the Convention, into all efforts aimed at the achievement of the Millennium Development Goals and into the post-2015 development framework.

Dissemination

47. The Committee recalls the obligation of the State party to systematically and continuously implement the provisions of the Convention. It urges the State party to give priority attention to the implementation of the present concluding observations and recommendations between now and the submission of the next periodic report. The Committee therefore requests that the present concluding observations be disseminated in a timely manner, in the official languages of the State party, to the relevant State institutions at all levels (national, regional and local), in particular to the Government, the ministries, Parliament, the Senate and the judiciary, to enable their full implementation. It encourages the State party to collaborate with all stakeholders concerned, such as employers’ associations, trade unions, human rights and women’s organizations, universities, research institutions and the media. It recommends that the present concluding observations be disseminated in an appropriate form at the local community level to enable their implementation. In addition, the

Committee requests the State party to continue to disseminate the Convention, the Optional Protocol thereto and relevant jurisprudence, in addition to the Committee's general recommendations, to all stakeholders.

Technical assistance

48. The Committee recommends that the State party consider seeking international assistance and avail itself of technical assistance in the development and implementation of a comprehensive programme aimed at the implementation of the above recommendations and the Convention as a whole. The Committee also calls upon the State party to continue its cooperation with specialized agencies and programmes of the United Nations system.

Ratification of other treaties

49. The Committee notes that the adherence of the State party to the nine major international human rights instruments¹ would enhance the enjoyment by women of their human rights and fundamental freedoms in all aspects of life. The Committee therefore encourages the State party to consider ratifying the International Convention for the Protection of All Persons from Enforced Disappearance and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, to which it is not yet a party.

Follow-up to the concluding observations

50. The Committee requests the State party to provide, within two years, written information on the steps taken to implement the recommendations contained in paragraphs 9 and 21 above.

Preparation of the next report

51. The Committee invites the State party to submit its third periodic report in July 2018.

52. The Committee requests the State party to follow the harmonized guidelines on reporting under the international human rights treaties, including guidelines on a common core document and treaty-specific documents ([HRI/MC/2006/3](#) and Corr.1).

¹ The International Covenant on Economic, Social and Cultural Rights; the International Covenant on Civil and Political Rights; the International Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Elimination of All Forms of Discrimination against Women; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Convention on the Rights of the Child; the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; the International Convention for the Protection of All Persons from Enforced Disappearance; and the Convention on the Rights of Persons with Disabilities.