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Universal Periodic Review

## Report of the Working Group on the Universal Periodic Review\*

### Swaziland

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\* The annex to the present report is circulated as received.

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## Introduction

1. The Working Group on the Universal Periodic Review, established in accordance with Human Rights Council resolution 5/1 of 18 June 2007, held its twelfth session from 3 to 14 October 2011. The review of Swaziland was held at the 4th meeting on 4 October 2011. The delegation of Swaziland was headed by Chief Mgwagwa Gamedze, Acting Minister of Justice and Constitutional Affairs. At its 8th meeting held on 6 October 2011, the Working Group adopted the report on Swaziland.
2. On 20 June 2011, the Human Rights Council selected the following group of rapporteurs (troika) to facilitate the review of Swaziland: Cameroon, Hungary and Switzerland.
3. In accordance with paragraph 15 of the annex to resolution 5/1, the following documents were issued for the review of Swaziland:
  - (a) A national report submitted and a written presentation made in accordance with paragraph 15 (a) (A/HRC/WG.6/12/SWZ/1);
  - (b) A compilation prepared by the Office of the United Nations High Commissioner for Human Rights (OHCHR) in accordance with paragraph 15 (b) (A/HRC/WG.6/12/SWZ/2 and Corr.1);
  - (c) A summary prepared by OHCHR in accordance with paragraph 15 (c) (A/HRC/WG.6/12/SWZ/3).
4. A list of questions prepared in advance by Switzerland, the United Kingdom of Great Britain and Northern Ireland and the Netherlands was transmitted to Swaziland through the troika. These questions are available on the extranet of the universal periodic review (UPR).

## I. Summary of the proceedings of the review process

### A. Presentation by the State under review

5. Swaziland indicated that its national report to the Human Rights Council had been prepared by an inter-ministerial committee on the UPR. Membership of the Committee included representatives from the Commission on Human Rights and Public Administration and civil society organizations.
6. In 2005, Swaziland adopted its Constitution with a justiciable Bill of Rights. The Constitution also establishes the independent Commission on Human Rights and Public Administration, the mandate of which is to investigate complaints concerning alleged violations of fundamental rights and freedoms. The first members of the Commission took office in September 2009. The provisions of the Constitution are substantially permissive to enable the Commission to carry out its mandate. The Commission has powers to make findings on human rights complaints against private and public institutions to remedy, correct or reverse instances of human rights violations.
7. Swaziland is party to six of the core international human rights instruments. Moreover, on 25 September 2007 Swaziland signed the Convention on the Rights of People with Disabilities. Under the Constitution, ratification of international agreements requires a resolution supported by at least two thirds of the members of Parliament in a joint sitting. The Ministry of Foreign Affairs and International Cooperation has conducted training for members of Parliament on, among other instruments, the Convention on the Rights of

People with Disabilities, and that instrument has been tabled before Parliament for ratification. Further, the Government is considering becoming party to all outstanding international human rights treaties.

8. Swaziland acknowledged that the State had not met its reporting obligations under the international human rights instruments. For that reason, Swaziland requested technical assistance and capacity-building in the areas of treaty body reporting and following up on concluding observations and recommendations of special procedures and mechanisms of the United Nations, including national monitoring of the implementation of international human rights instruments.

9. Swaziland stated that, being a small and vulnerable economy, it had the added challenge of heightened exposure to external shocks. That had historically diminished the ability of the Government to efficiently underwrite some of the human rights that had financial implications. That situation had been further exacerbated by the prevailing global economic crisis. The crisis had triggered a slowdown and in some instances an outright retraction of the economic and social progress achieved by many developing countries during the past decades; that made the achievement of the internationally agreed development goals a difficult task.

10. In spite of the numerous economic challenges facing the country, Swaziland had continued to prioritize the provision of free primary education. In the grades where the Government did not yet provide free education, it offered free text- and workbooks, free stationery, free exercise books, school furniture, feeding programmes and improved infrastructure. However, its endeavour to ensure accessible education was negatively affected by the fiscal crisis that the country was experiencing.

11. In fulfilment of the right of access to health services, the Government had for the past 15 years provided free primary health-care services for the nation. Specific developments directed to increasing access to health included highly subsidized secondary and tertiary health-care services and highly subsidized specialist health-care services for the disadvantaged population through a special medical fund, as well as the decisions to keep the health sector as a priority and to spare it from the budgetary cuts.

12. To improve the quality of services provided to the nation, the Government revised the Essential Health Care Package in 2010, to be responsive to the present-day disease burden within the population. The Government had recently launched a programme for the provision of free medical treatment for the elderly.

13. With regard to food security, Swaziland was committed to ensuring that all its people had access to adequate quality food at all times in order for them to live healthy and productive lives. In 2008, the Government had adopted the Poverty Reduction Strategy and Action Programme (PRSAP), which presented a poverty reduction framework. Food security was one of the pillars of the framework. Between 2008 and 2010, the financial resource allocation from Government sources to the Ministry of Agriculture had increased from about 5 per cent to 8 per cent of the national budget. Also, sectoral policies had been developed to increase household and national food security.

14. With regard to the rights of children, the Constitution provides the legal framework for the protection of children. In 2009, the Government had adopted the National Children's Policy, which was aimed at promoting, protecting and fulfilling the rights of all children in the country. In 2011, it had introduced to Parliament the Child Welfare and Protection Bill, intended to give effect to the provisions of the Constitution and the country's obligations under the Convention on the Rights of the Child. Moreover, there were a number of social services for orphaned and vulnerable children groups.

15. Women's right to equality and non-discrimination is protected by the Constitution. An audit of existing laws for compliance with the Constitution and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) had been completed. As a result of the audit, a cluster of family laws had been drafted and were waiting to be tabled in Parliament. Also, in 2010 the Government had adopted a national gender policy; the primary objective of the policy was to ensure equitable access by all persons to education, training, health services and control over resources such as land and credit for improved quality of life. Furthermore, the country had made significant strides in increasing the number of women in public sector employment.

16. Swaziland responded to advance questions asked by Member States. With regard to political rights, political parties were not banned. The Constitution protected the right to freedom of association, which includes the right to form and belong to political parties. However, by virtue of the Constitution, elections to public office were by individual merit and therefore political parties could not field candidates in national elections. The King's Proclamation to the Nation of 12 April 1973 had been superseded by the Constitution of 2005.

17. With regard to privately owned media houses, there were no restrictions on private ownership of print media. All newspaper titles and magazines were privately owned. A communications bill aimed at liberalizing the electronic media space had been tabled before Parliament and was expected to be passed by the end of November 2011.

18. With regard to the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), Swaziland was considering becoming party to that Optional Protocol and to all outstanding international human rights instruments. On extrajudicial killings and torture, all killings were investigated by the law enforcement officers and normal criminal investigation. Where there was sufficient evidence, criminal proceedings were instituted. In cases of deaths in custody, inquests were held.

19. With regard to the right to life, the delegation stated that it was protected by the Constitution. Swaziland was not a State party to the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, and retained the death penalty. Capital punishment was not mandatory and it may be imposed only on adults convicted of murder without extenuating circumstances. The ultimate punishment may be carried out only pursuant to a final judgment pronounced by the Supreme Court. The death penalty had last been carried out in 1983. In effect, Swaziland, though a retentionist State in law, was abolitionist in practice.

20. With regard to the Commission on Human Rights and Public Administration, the Government had drafted a bill that would fully operationalize the Commission and ensure that it operated in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles). The bill was before Cabinet and would be tabled before Parliament in 2012.

21. On existing gaps and challenges – some highlighted in the advance questions submitted by Member States – Swaziland wished to ask the international community and other cooperating partners for support in the alignment of national laws with the Constitution and its international human rights obligations. The Government of Swaziland was alive to the challenges that confronted the judiciary. It sought to meet those challenges and was working tirelessly to engage the stakeholders in trying to find a lasting solution to the impasse. While the Government was aware of the fact that the judicial challenges adversely affected the promotion and protection of human rights, it was approaching the issue with a full appreciation of the doctrine of the separation of powers.

## **B. Interactive dialogue and responses by the State under review**

22. During the interactive dialogue, 47 delegations made statements. Recommendations made during the dialogue are to be found in section II of the present report.

23. Algeria welcomed the measures taken by Swaziland to respond to the challenges identified in its national report, including through its plans and programmes of action related to the realization of constitutional rights, such as the rights to life and to education, and the efforts towards the protection of vulnerable groups and the fight against poverty and HIV/AIDS. It stated the importance of support from the international community. Algeria made recommendations.

24. Lesotho stated that Swaziland deserved commendation for realizing the right to education, as well as for the Child Welfare and Protection Bill of 2011. The policies of Swaziland with regard to people living with disabilities were appreciated. Lesotho expressed the hope that the spirit and determination with which Swaziland addressed the right to education and protection of children could be applied to other human rights challenges and was ready to share its experiences with Swaziland.

25. Cuba noted that the socio-economic difficulties faced by Swaziland had caused an increase in poverty. It welcomed that the State's main priority was the elimination of extreme poverty, and also welcomed its efforts to prevent and control tuberculosis and other transmissible diseases, to combat HIV, and to ensure universal free education by 2015. Cuba noted that about 82 per cent of births had been assisted by health professionals and that malaria had decreased. Cuba made recommendations.

26. Zimbabwe commended the achievements made by Swaziland in education, health, food security and the advancement of women's rights. Zimbabwe made recommendations.

27. Singapore stated that despite its challenges, Swaziland had made progress in important areas, such as increased access to improved water resources. It noted that Swaziland had rightly prioritized HIV/AIDS on its overall development agenda. Singapore made recommendations.

28. France welcomed the de facto moratorium on death penalty. However, it noted that death penalty sentences continued to be pronounced. It expressed concern at the use by authorities of the 2008 law on the suppression of terrorism, to restrict freedom of expression. France made recommendations.

29. China noted with appreciation that the Government had formulated a poverty reduction strategy and action plan and that it had made great efforts in the areas of health and education. China noted that Swaziland was still facing difficulties in areas such as reduction of maternal mortality, and that gender inequality still existed. It appealed to the international community to provide Swaziland with constructive assistance so that it could achieve the Millennium Development Goals.

30. India took note of the positive achievements of Swaziland in the area of elementary education. It encouraged Swaziland to strengthen further the programme for free medical treatment for the elderly, and welcomed the initiation of the process for drafting the human rights commission bill and a leadership code of conduct bill. India encouraged Swaziland to enhance women's empowerment.

31. Canada acknowledged the Constitution. It regretted the insufficient implementation of reforms and expressed concern at the continuing ban of political parties and the lack of democratic space to exercise freedom of expression and association. Canada also expressed concern at the reports of excessive use of force, arbitrary arrests and extrajudicial executions. It noted the challenges faced by Swaziland regarding HIV/AIDS, vulnerable

children, economic situation, and discrimination against women. Canada made recommendations.

32. Mozambique noted that the 2005 Constitution laid down a legal framework for Government efforts towards the enhancement of the enjoyment of human rights. It commended Swaziland for establishing the Commission on Human Rights and Public Administration. It praised the Government for the introduction of free primary education and health care. It encouraged the Government to continue its efforts towards the adoption of Child Welfare and Protection Bill. Mozambique made a recommendation.

33. Hungary noted with satisfaction the adoption of the National Children's Policy in 2009 and requested more information about concrete achievements thus far. It stated that Swaziland retained the death penalty in its statute books. Also, freedom of assembly and association was severely restricted. Hungary made recommendations.

34. Ghana welcomed the initiatives undertaken by Swaziland to increase free education and school enrolment, and to ensure the right to food, gender equality, and the provision of social services for the most vulnerable groups. While noticing that the Constitution addressed the principle of non-discrimination, Ghana noted the discriminatory practices against women persisting in Swaziland. It also noted the continuing allegations of arrest and detention following peaceful protest actions. Ghana made recommendations.

35. Slovakia commended Swaziland for the establishment of the trafficking task force, taking also a positive note of the adoption of the National Gender Policy and the National Children's Policy. It noted that there were allegations of police employing interrogation methods contravening constitutional provisions. Slovakia expressed concern about reported restrictions concerning the freedom of expression, such as under the Proscribed Publications Act or the Suppression of Terrorism Act. Slovakia made recommendations.

36. Switzerland expressed alarm at the many allegations of extrajudicial executions and torture committed by the security forces and stated that victims should receive justice. It noted that there were no political parties because of existing restrictions and that there were also few private media organizations. It was impossible for women to open bank accounts and to register property titles. Also, the independence of the human rights commission was not guaranteed and access to this commission was restricted. Switzerland made recommendations.

37. Norway expressed concern at the systematic violations of freedom of assembly and association in Swaziland, including through the suppression of political parties. Norway expressed grave concern at the reports of forceful disruptions of peaceful marches, rallies and protests, including through the use of violence and arbitrary detention. It was alarmed at the extensive use of pretrial detention, ill-treatment and alleged torture in police custody. Norway made recommendations.

38. Turkey praised the efforts by Swaziland to ratify key international human rights instruments. It welcomed the establishment of the National Children's Coordination Unit, while drawing the attention of all relevant parties to its financial difficulties. Turkey commended the Government for establishing the Anti-Corruption Commission. It drew the attention of the international community to the importance of the support given to Swaziland in its efforts. Turkey made recommendations.

39. Australia welcomed further progress on the implementation of the Optional Protocol to CAT, the first Optional Protocol to the International Covenant on Civil and Political Rights, and the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women. It encouraged Swaziland to improve and strengthen its democratization efforts and its health services. Australia urged Swaziland to take steps to reduce the high rates of chronic malnutrition and mortality for children under five years of

age, and to abolish the death penalty and corporal punishment. It expressed concern about the overcrowding and poor conditions in prisons. Australia made recommendations.

40. Germany asked what steps were being taken to overcome the limited access to clean water and sanitation. It noted the restrictions of freedom of expression, in particular the Proscribed Publications Act. Germany also noted that in 2010, only 30 per cent of births had been registered, even though such registration was the entry point for access to all public services and education. It asked what steps the Government was taking to ensure birth registration for all children. Germany made recommendations.

41. Slovenia commended Swaziland for establishing the Commission on Human Rights and Public Administration. It noted that enabling legislation was needed to fully operationalize the Commission. Slovenia welcomed the Constitution, which had introduced significant changes with respect to non-discrimination and the rights of women. It remained concerned about reports of discriminatory cultural practices against women. It asked about the necessary measures taken to effectively ensure gender equality. Slovenia made recommendations.

42. South Africa stated that Swaziland had alluded to a lack of resources which impacted on its ability to guarantee human rights to its citizens. It sought clarification on whether there was a timeline for implementing laws that were still awaiting ratification by Parliament. South Africa supported the appeal by Swaziland for technical assistance and capacity-building in the completion of treaty body reports. It referred to recommendations made by a tripartite high-level mission following a visit to Swaziland, and enquired as to what those recommendations entailed and whether their implementation had yielded any significant results. South Africa made recommendations.

43. Brazil welcomed that the eradication of extreme poverty, and ensuring food security, were priorities of Swaziland and that, despite serious socio-economic challenges, the State had increased investment in health care. It noted that the prevalence of HIV/AIDS required additional efforts. Brazil welcomed the measures taken to improve access to free education, but was concerned at the persistence of discrimination against women, and restrictions to civil and political rights. It encouraged Swaziland to pursue constitutional reforms. Brazil made recommendations.

44. The United States of America welcomed the establishment of the independent Commission on Human Rights and Public Administration, and the trafficking task force. It expressed deep concern that the legislation to fully operationalize the Commission had not yet been passed. It asked how Swaziland planned to ensure the protection of the freedoms of assembly, association and expression. It called on Swaziland to protect the rights of lesbian, gay, bisexual and transgendered people. The United States made recommendations.

45. Spain recognized the efforts made by Swaziland in the promotion and protection of human rights, in particular the incorporation of human rights protection in the Constitution, and the creation of a national commission on human rights. Spain made recommendations.

46. Sweden noted that domestic legislation needed to be harmonized with the Constitution and international human rights law. Sweden was concerned that the independence of the Commission on Human Rights and Public Administration had been questioned and that its powers remained unclear. Sweden expressed hope that the optional protocols to the instruments ratified by Swaziland would also be ratified, and expressed concern at the enactment of the Suppression of Terrorism Act. Sweden made recommendations.

47. Indonesia applauded the policy of Swaziland to guarantee children the right to free education in primary school. It appreciated the effort to alleviate poverty through the adoption of the Poverty Reduction Strategy and Action Programme. It commended the



steps taken in areas such as the right to health, especially in relation to HIV/AIDS. Indonesia encouraged Swaziland to continue its positive efforts. Indonesia made recommendations.

48. Swaziland appreciated the questions and recommendations made by Member States and observers. It highlighted some of the issues they had raised. With regard to the death penalty, although Swaziland had not carried out the death penalty since 1983, some countries stated that Swaziland must fully abolish it. The delegation reiterated that Swaziland was an abolitionist State in practice and recalled that since 1983, the sentences in 42 of the 45 death penalty cases had been commuted to life imprisonment. Regarding instances in customary laws where women are marginalized, the delegation reported that the Constitution provided for ownership of land by women regardless of their marital status. In addition, Parliament had recently enacted the Deeds Registry (Amendment) Bill, which enables women married in community of property to register land in their own names.

49. On sexual orientation, Swaziland advised that to date no one had been prosecuted for sexual orientation offenses. As the world revolved, Swaziland would look into the possibility of adopting a policy on the issue. On the issue of torture and extrajudicial killings, Swaziland highlighted that any person who had been tortured was free to seek redress. All extrajudicial killings were investigated, including cases of deaths in custody. On the rights of the child, the delegation reported that there were legislations pending in Parliament, such as one on sexual offences and domestic violence.

50. Regarding political parties, Swaziland underlined that they were not banned. A reference was made to the 1973 Decree that had banned political parties, but in the Constitution of 2005, the freedom of association and the freedom to belong to any political party were protected. There was only an obligation for each party to have and use its constituency during the election in order to ensure direct representation in Parliament. On the issue of the Suppression of Terrorism Act, Swaziland indicated that, given the rate of terrorism, it had sought assistance from countries and cooperating partners to put in place that legislation. Member States were of the view that that legislation was used to suppress freedom of association. Swaziland underlined that it would need assistance from Member States in aligning the legislation with international human rights norms, similar to the assistance it had received from the International Labour Organization in putting in place other labour/human rights legislation.

51. On the issue of operationalizing the Commission on Human Rights and Public Administration, Swaziland indicated some progress in that area, such as the creation of nine critical posts that would investigate human rights violations. Swaziland reported that birth registration had been decentralized to all the regions. All parents were encouraged to register their children, a process that could be completed at Ministry of Home Affairs offices, which were located in all regions, as well as at all major hospitals through a programme initiated by UNICEF. On the impact of the gender policy, Swaziland recalled that that policy had been approved only in 2010, but promised to report on its impact during the next UPR cycle.

52. Argentina commended Swaziland for having in its Constitution a chapter dedicated to the promotion and protection of human rights and freedoms. It made recommendations.

53. Uruguay acknowledged the efforts of Swaziland to promote and protect human rights. It highlighted the State's commitment regarding food security and welcomed the act of 2010 on free and compulsory primary education. Uruguay noted the discriminatory cultural practice against women in Swaziland. While welcoming that the Constitution raised the issue of non-discrimination, Uruguay expressed concern at the de facto

discrimination against the most vulnerable groups of children, and that corporal punishment was legally practiced. Uruguay made recommendations.

54. The Democratic Republic of the Congo underlined Swaziland's social allocation for the elderly as an important advancement in favour of social human rights to be seen on the African Continent. It noted that there were a number of contradictions between the common law and the local customary laws, and that some laws were in conflict with the international human rights norms. It asked about the actions the country intended to take to resolve those conflicts.

55. The United Kingdom welcomed the steps taken by Swaziland towards democracy, and expressed hope that the uncertainty regarding the status of political parties could be resolved to enable free and fair elections. It inquired as to how Swaziland planned to strengthen the implementation of section 24 of its Constitution, which provided for freedom of expression and peaceful acts of assembly. The United Kingdom encouraged Swaziland to investigate allegations of torture. It made recommendations.

56. The Holy See noted the efforts made by Swaziland to achieve free primary education, to improve access to health for older persons, to provide drinking water to the population and to eliminate pediatric AIDS, and that an independent national human rights institution had been established. However, it also noted some difficult challenges faced by Swaziland, such as reducing poverty and child and maternal mortality rates. It expressed hope that the enactment of new programmes and campaigns would prove useful. The Holy See made recommendations.

57. Morocco commended the brave self-criticism of Swaziland which, among other things, called upon the Human Rights Council and the United Nations High Commissioner for Human Rights to provide the country with guidance and support in fulfilling its international obligations. It asked about the mandate of the Commission on Human Rights and Public Administration in terms of the promotion of access to justice and non-repetition of violations. Morocco made recommendations.

58. Romania stated that the commitment of Swaziland to the Millennium Development Goals was commendable. It noted the National Gender Policy adopted in 2010 and stated that women still suffered from discriminatory laws and practices. Romania was aware of the challenges faced in offering care and services to orphaned or vulnerable children and considered the setting up of the Neighbourhood Care Points to be a helpful measure. It stated that engaging with human rights mechanisms would be beneficial in identifying weaknesses and strengthening respect for human rights. Romania made recommendations.

59. Malaysia appreciated the recognition by Swaziland of various challenges faced in its efforts to improve socio-economic development and in the promotion and protection of human rights. It also noted the measures undertaken by Swaziland regarding poverty eradication and social services, in particular in the areas of health and education. Malaysia made recommendations.

60. Uganda commended the Government of Swaziland for the concrete steps taken to try to meet the Millennium Development Goals related to health. It noted with appreciation that the most vulnerable, such as the elderly and persons with disabilities, were exempt from paying hospital charges. It commended the Government for striving to ensure that its female population was accorded particular Constitutional protection. Uganda made a recommendation.

61. Latvia stated that there was room for improvement in the area of cooperation by Swaziland with special procedures mandate holders. It made a recommendation.

62. Burkina Faso welcomed the fact that Swaziland was party to most of the main human rights instruments. It noted the measures taken in favour of older persons, such as

the benefits regime for older persons, as well as the 2005 programme on free medical services for older persons. Burkina Faso appreciated efforts deployed by Swaziland to provide education to children deprived of liberty. Burkina Faso made recommendations.

63. Portugal welcomed the cooperative attitude of the Government in the process. It expressed serious concern about the alarming dimension of HIV/AIDS and the situation of children orphaned as a consequence of HIV/AIDS. It enquired whether the country intended to amend the legal provisions, including the Penal Code, so as to replace the death penalty with other penalties that did not include cruel, inhuman or degrading punishments. Portugal made recommendations.

64. Mexico acknowledged the actions taken by Swaziland to promote the highest attainable standard of physical and mental health and to attain universal access to free education by 2015. It also noted the efforts of Swaziland to eradicate transmissible diseases and to eliminate the risks related to food security. Mexico called on the international community to respond positively to the requests for assistance formulated in chapter VI of the national report of Swaziland. Mexico made recommendations.

65. Trinidad and Tobago applauded Swaziland for implementing initiatives to curb the HIV/AIDS pandemic. It stated that work remained to be done to remove the existing barriers to equal treatment of women, and that discriminatory cultural practices prevented Swaziland from achieving its full potential. Also, democracy in Swaziland could be better cemented by allowing a more open system of freedom of thought and expression. Trinidad and Tobago made recommendations.

66. Burundi welcomed the creation of the independent Commission on Human Rights and Public Administration. It congratulated Swaziland for enacting a law on free primary education and encouraged the Government in its efforts to turn this decision into reality. It noted with satisfaction that Swaziland took in charge children orphaned by HIV/AIDS, notably by ensuring the funding of their secondary school education and by establishing community centres. Burundi made a recommendation.

67. Mauritius commended the measures taken by Swaziland to enhance the enjoyment of human rights by its population, such as poverty reduction strategies and policies regarding access to health care and education, including free schools kits and feeding programmes. Mauritius noted the challenges of Swaziland related to reporting obligations under treaties, and called upon the international community to provide the capacity-building and technical assistance identified in paragraph 112 of the national report.

68. Qatar welcomed the fact that Swaziland had ratified several conventions, and that the Constitution provided for a human rights commission. It stated that Swaziland had made great efforts to promote human rights. It noted that in 2008 Swaziland had adopted a plan of action to combat poverty and had also made efforts to ensure the rights to education and health through the adoption of plans and programmes. Qatar made recommendations.

69. Botswana welcomed the commitment of Swaziland to ensure food security; the Poverty Reduction Strategy and Action Programme, which increased allocation to agricultural projects; the 2010 Free Primary Education Act; and the task force on prevention of trafficking. It noted the challenges regarding the reduction of child and maternity mortality and HIV/AIDS. Botswana hoped that the international community would provide Swaziland with technical assistance regarding treaty body reporting, developing a national human rights strategy and action plan, and harmonizing domestic law with international human rights law.

70. Nigeria stated that it was highly commendable that the Commission on Human Rights and Public Administration had powers to make findings on human rights complaints. It welcomed the commitment of Swaziland to attaining food security and noted

the numerous Government policies in that regard. Nigeria commended Swaziland for the gains made in the area of education.

71. Chad noted with satisfaction the legislation and other measures put in place by the Government, including with respect to access to free primary education and health-care services. It also noted with satisfaction the rate of 30 per cent of representation of women among the Government's employees. It called upon the international community to provide Swaziland with the support needed to face the considerable challenges it was still facing. Chad made a recommendation.

72. The United Republic of Tanzania noted with great satisfaction the efforts made by Swaziland to promote and protect human rights despite its immense challenges, and appealed for the support of the international community. It acknowledged the importance given by Swaziland to free education and health services and to address HIV/AIDS. The United Republic of Tanzania made a recommendation.

73. Cameroon expressed its satisfaction with the tangible results achieved by Swaziland in the areas of education, health, democracy and freedoms. It took note of the legislative measures that had been taken in promoting and protecting civil and political rights, as well as economic, social and cultural rights. Cameroon encouraged Swaziland to continue to strengthen its activities with a view to overcoming all the difficulties highlighted in its national report.

74. Swaziland noted the constructive recommendations and questions by Member States. On the total abolishment of the death penalty, it indicated that that the issue would require a national debate. On the issue related to contradictions in civil and customary laws, Swaziland recognized that some of its cultural practices could be perceived to be against human rights. However, it would endeavour to harmonize those cultural practices with the doctrine of human rights. It stressed that the Constitution had identified those practices which should be dealt with only by the customary law in order to minimize instances of the conflict between the two sets of laws. Swaziland emphasized that the Constitution was the supreme law of the land. On the child welfare and protection bill, Swaziland reported that the bill would become law by mid-2012. With regard to addressing the conflict between common and customary laws, the Government intended to revive the Law Review Commission, which would develop common and customary laws in a way that would give effect to the values of the Constitution and harmonize the two.

75. On the ratification of 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, Swaziland reiterated that it would consider ratifying all outstanding human rights treaties. On sexual offences and gender-based violence, it stated that a bill on sexual offences and domestic violence was pending before Parliament and that the Ministry of Justice would take all necessary measures to ensure that the bill passed in Parliament. Regarding the use of corporal punishment, the Government would consider enacting legislation that banned the use of corporal punishment as a judicial sentence for adults. On the issue of finding places in schools for children leaving prison in the middle of the school year, it stated that the Department of Correctional Services would take measures, including earlier identification of those children in order to take remedial actions. Regarding its reporting obligations to treaty bodies, Swaziland recognized the challenges in that area and therefore requested assistance from OHCHR.

## II. Conclusions and/or recommendations\*\*

76. The recommendations formulated during the interactive dialogue listed below have been examined by Swaziland and enjoy the support of Swaziland:

76.1. Ratify, in the context of its continued effort to improve the situation of children, the Optional Protocols to the relevant Convention and 1993 Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption (Turkey);

76.2. Expedite the national ratification process of key international conventions which will improve Swazi Government's cooperation with the relevant international bodies (Turkey);

76.3. Conclude the process of ratification of the Convention on the Rights of Persons with Disabilities (Spain);

76.4. Ratify the Convention on the Rights of Persons with Disabilities (Argentina);

76.5. Sign and ratify the Optional Protocols to the CRC on the sale of children, child prostitution and child pornography and on the involvement of children in armed conflicts, and ratify the United Nations Convention on the Rights of Persons with Disabilities (Portugal);

76.6. Adopt legislation that protects children in accordance with the concluding observations and recommendation by the United Nations Committee on the Rights of the Child in 2006 (Hungary);

76.7. Consider aligning national laws, including customary laws with the protections outlines in the Constitution of the Kingdom of Swaziland, as well as with the provisions of International Human Rights Instruments to which Swaziland is a party (South Africa);

76.8. Speed up the adoption of the Child Welfare and Protection Bill, in order to achieve compatibility of domestic legislation, policy and practice with international standards, for the benefit of children (Romania);

76.9. Develop a National Human Rights Strategy and Action Plan, while also intensifying its public awareness campaign to the general public and other interested stakeholders (South Africa);

76.10. Enact the legal act of the Human Rights and Public Administration Commission to ensure its independence and its formal access by the population (Switzerland);

76.11. Enact legislation to fully operationalize the Human Rights and Public Administration Commission, to provide it adequate funding, and to clarify its mandate to civil society and the international community (United States of America);

76.12. Develop a national institution for human rights to bring it in full compliance with the Paris Principles, by adopting the necessary legislation (Spain);

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\*\* Conclusions and recommendations have not been edited.

- 76.13. Ensure the speedy enactment of the legislation to equip the Human Rights and Public Administration Commission with clear powers and adequate resources to ensure that it is able to work in an accessible, effective, independent and impartial manner (Sweden);
- 76.14. Enact the Bill on the Human Rights Commission in order that a proper NHRI, in conformity with the Paris Principles, can be established (Indonesia);
- 76.15. Strengthen the investigation capacity, independence and legal framework of the Human Rights and Public Administration Commission in accordance with the Paris Principles, with a view to obtain its accreditation by the ICC (Mexico);
- 76.16. Provide support to the Human Rights and Public Administration Commission to ensure its functioning (Qatar);
- 76.17. Develop and implement a national strategy to eliminate stigma and discrimination against people living with HIV/AIDS, and ensure orphaned and vulnerable children have access to health and education services and are protected from violence and abuse (Canada);
- 76.18. Adopt a comprehensive national human rights plan of action (Indonesia);
- 76.19. Adopt plans and programmes for awareness education in the field of promotion of human rights and fundamental freedoms, and ensure the follow-up and implementation of recommendations and proposals made concerning human rights (Qatar);
- 76.20. Takes steps to strengthen the cooperation with United Nations treaty bodies, including presenting reports as requested by such bodies (Norway);
- 76.21. Collaborate regularly with the treaty bodies by submitting reports which will allow them to monitor the implementation of treaties (Chad);
- 76.22. Further action to remove societal discrimination against children with disabilities, street children and children living in rural areas (Ghana);
- 76.23. Combat gender inequality and discriminatory practices and consider legislative reforms to ensure equality between men and women before the law (Brazil);
- 76.24. Adopt with the support of the international community, strategies aimed at eradicating any practice which violates the rights of women with particular emphasis on prevention, punishment and elimination of any forms of gender-based violence and increase the steps taken to ensure equality before the law of civil, political, economic and social rights for men and women (Argentina);
- 76.25. Modify the Law on marriage and its provisions on conjugal authority, that infringe the principle of equality, by restricting rights such as to apply for bank credits or to acquire properties, for which the husband's written consent is required (Uruguay);
- 76.26. Implement all necessary measures aimed to abolish discrimination against children belonging to most vulnerable groups, through a greater and more focused provision of social services, carrying out awareness-raising programmes on their particular needs and a greater access to education (Uruguay);

- 76.27. Enact the necessary policies and actions to support in practice the implementation of the legislation on non-discrimination and legal equality of women (Mexico);
- 76.28. Redouble efforts to achieve gender equality by adopting a more systematic approach to public education in this area, with particular emphasis on the ills and consequences of domestic violence and sexual exploitation of women (Trinidad and Tobago);
- 76.29. Improve conditions in Swaziland's prisons and detentions centres (Australia);
- 76.30. Consider expediting the adoption of draft law on domestic violence (Brazil);
- 76.31. Consider adopting a comprehensive policy for prevention and combat of child abuse and neglect in the family (Brazil);
- 76.32. Carry out educational and awareness raising campaigns to ensure the use of alternative disciplinary measures to corporal punishments in accordance with the human dignity of the child (Uruguay);
- 76.33. Take steps to ensure that the Domestic Violence and Sexual Offences Bill, and other Bills to protect the rights of women that are currently before Parliament, are enacted without further delay (United Kingdom);
- 76.34. Intensify the training programmes for the personnel responsible for law enforcement (Algeria);
- 76.35. Put in place human rights training programmes for members of the judiciary and law enforcement officials, including the police, security forces and correctional officers (Canada);
- 76.36. Take concrete and immediate measures to guarantee the independence and the impartiality of the judiciary (Canada);
- 76.37. Take necessary steps to ensure that law enforcement and security officials are subject to legal oversight and operate in compliance with international human rights standards (Norway);
- 76.38. Ensure the functioning juvenile justice system throughout the country and raise the age of criminal responsibility that comply with the acceptable international standards (Slovenia);
- 76.39. Increase emphasis on the protection and promotion of human rights, especially in the areas of apprehension and interrogation of suspects and investigating reports of trafficking in persons, as part of the training programs of the Umbutfo Swaziland Defense Force, the Royal Swaziland Police Service and His Majesty's Correctional Services (United States of America);
- 76.40. Accelerate the improvement of the judicial, policial and prison systems and training to the police force in line with international human rights standards (Holy See);
- 76.41. Ensure the freedom of expression and the right to freedom of assembly and association, limited of course, by the interest of defence, public safety and public order (Ghana);
- 76.42. Ease legislative and administration restrictions on the registration and operation of independent media with a view to provide for plurality of information (Slovakia);

- 76.43. Facilitate the establishment of private media organisations by eliminating legislative and administrative obstacles (Switzerland);
- 76.44. Develop a comprehensive legal framework that guarantees freedom of expression and a free media (Germany);
- 76.45. Respect the rights of all its citizens to freedom of assembly, freedom of association and freedom of expression, which are guaranteed by the Swazi Constitution and by international human rights instruments particularly by allowing labour, political and civil society groups to assemble peacefully, free from Government interference (United States of America);
- 76.46. Develop a legislative framework which guarantees freedom of expression and freedom of the press (Trinidad and Tobago);
- 76.47. Continue implementing strategies and socio-economic development plans to advance in the realization of the Millennium goals by 2015 (Cuba);
- 76.48. Continue and reinforce current efforts aimed to increase the access to and quality of services to health and education for all its citizens (Cuba);
- 76.49. Consider investing more in health so as to reduce the high mortality rate of children, high maternal mortality, tuberculosis and other communicable and non-communicable diseases (Zimbabwe);
- 76.50. Continue to invest more in rural development projects through best practices such as micro credit financing (Zimbabwe);
- 76.51. Continue to improve the supply of portable water, especially in the rural areas, with the support of the international community (Singapore);
- 76.52. Maintain and further build upon the HIV/AIDS prevention, care and treatment programmes (Singapore);
- 76.53. Improve healthcare for infants and children and for people living with HIV/AIDS (Australia);
- 76.54. Continue to strengthen its poverty reduction strategy with the aim of ensuring among others, food security (South Africa);
- 76.55. Provide, in the fight against AIDS, support and access to medicines to all people in need (Holy See);
- 76.56. Continue with free pre-natal care services to reduce maternal mortality (Holy See);
- 76.57. Ensure the supply of drinkable water for all the people of the Kingdom (Holy See);
- 76.58. Assess in terms of the fight against HIV/AIDS and Malaria its assistance needs and request such assistance particularly from the World Health Organisation (Morocco);
- 76.59. Consider the establishment of an integrated human development programme (Morocco);
- 76.60. Intensify implementation of special targeted programmes to stimulate economic growth and development in generating employment especially for the most vulnerable sections of society (Malaysia);



- 76.61. Strengthen policy coordination in the area of food and nutrition security and access to adequate, clean and safe drinking water especially for the population living below poverty line (Malaysia);
- 76.62. Launch information campaigns about HIV/AIDS, through the media and through door to door action on how to prevent the transmission of the virus, namely by the use of condoms (Portugal);
- 76.63. Intensify efforts to combat poverty and improve the standard of living (Qatar);
- 76.64. Consider enacting a legislation that among other would help to contain or restrain certain behaviours that enhance the spread of the HIV/AIDS killer disease (United Republic of Tanzania);
- 76.65. Pursue the implementation of the right to education for all with a particular attention given to the realization of this right for girls (Algeria);
- 76.66. Intensify effort to raise the level of attendance of girls in school through the modification of traditional customs and beliefs that hinder girls from attending school (Indonesia);
- 76.67. Continue seeking solutions to enable children whose prison sentence is coming to an end in the middle of the school year, to continue school (Burkina Faso);
- 76.68. Pursue the efforts to establish and carry-out national programmes in relation to the right to education and the quality of education at every level through-out the country (Qatar);
- 76.69. Continue its engagement with the UPR process and work in close cooperation with civil society to implement recommendations arising out of it (Norway);
- 76.70. Further encourage the involvement of civil society as partner of the Government in promoting and protecting of human rights (Indonesia);
- 76.71. Continue its efforts to provide fundamental and basic human rights to its citizens (Uganda);
- 76.72. Identify its needs for technical and financial assistance to catch up on the backlog accumulated in the presentation of reports to the treaty bodies (Algeria);
- 76.73. Seek technical assistance from the international community in developing a National Human Rights Strategy and Action Plan (Mozambique);
- 76.74. Seek technical assistance and support from OHCHR and other relevant United Nations bodies, agencies and funds including for the preparation of overdue reports to the treaty bodies (Malaysia);
- 76.75. Make use of the technical support from OHCHR to finalizing the overdue reports (Burkina Faso).
77. The following recommendations will be examined by Swaziland which will provide responses in due time, but no later than the nineteenth session of the Human Rights Council in March 2012. The response of Swaziland to these recommendations will be included in the outcome report adopted by the Human Rights Council at its nineteenth session:

- 77.1. **Ratify the International Convention for the Protection of All Persons from Enforced Disappearance and the Rome Statute of International Criminal Court (France);**
- 77.2. **Ratify the Optional Protocol to the Convention Against Torture (OP-CAT); put in place the national mechanism of prevention of torture as set out in that instrument; abrogate the provisions of 2008 law on the repression of terrorism, which could allow the use of torture by the police (France);**
- 77.3. **Consider the ratification of the Second Optional Protocol to the International Covenant on Civil and Political Rights (Hungary);**
- 77.4. **Ratify the Second Optional Protocol to the ICCPR (Switzerland);**
- 77.5. **Become a party to all outstanding international human rights treaties, particularly the OP-CAT, the First Optional Protocol to the ICCPR and the Optional Protocol to CEDAW (Turkey);**
- 77.6. **Ratify the Second Optional Protocol to the ICCPR (Germany);**
- 77.7. **Sign and ratify remaining core international human rights instruments and the Rome Statute of the International Criminal Court (Slovenia);**
- 77.8. **Accede to the Second Optional Protocol to the ICCPR and abolish the death penalty (Slovenia);**
- 77.9. **Consider acceding to OP-CEDAW, OP-CAT and the Rome Statute (Brazil);**
- 77.10. **Conclude the process of ratification of the International Convention for the Protection of All Persons from Enforced Disappearance. (Spain);**
- 77.11. **Ratify the International Convention for the Protection of All Persons from Enforced Disappearance, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Optional Protocol to CEDAW (Argentina);**
- 77.12. **Ratify the OP-CAT (United Kingdom);**
- 77.13. **Ratify the OP-CAT (Holy See);**
- 77.14. **Consider ratifying the Second Optional Protocol to the ICCPR (Romania);**
- 77.15. **Ratify the ICRMW (Burkina Faso);**
- 77.16. **Sign and ratify both Optional Protocols to the ICCPR (Portugal);**
- 77.17. **Issue a standing invitation to the Special Rapporteurs and Working Groups of the United Nations human rights system (Norway);**
- 77.18. **Issue a standing invitation to the special procedures of the United Nations Human Rights Council and enhance its cooperation with all human rights bodies (Romania);**
- 77.19. **Consider positively the request for a visit by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and eventually extend a standing invitation to all special procedures of the Human rights Council (Latvia);**
- 77.20. **Abrogate without delay the legislative and regulatory provisions that discriminate women, and adopt new laws in accordance with the principle of gender equality, as set out by CEDAW, ratified by Swaziland (France);**

- 77.21. Take concrete measures to repeal laws and practices that are discriminatory toward women, including in respect of property, land ownership and marriage (Canada);
- 77.22. Take further measures to eliminate discriminatory cultural practices (Ghana);
- 77.23. Amend the legislation in force to allow women to open bank accounts and register property titles in their names (Switzerland);
- 77.24. Continue commuting death sentences into prison sentences and institute a de facto moratorium on executions, with a view to definitely abolish the death penalty (France);
- 77.25. Specifically criminalize torture and put in place effective measures to prevent and sanction the use of torture (France);
- 77.26. Formalize the moratorium on the death penalty as a step towards its full abolition (Hungary);
- 77.27. Reinforce measures designed to prevent all forms of torture and inhuman or degrading treatment, including appropriate human rights training of the law enforcement personnel, while ensuring full accountability of perpetrators as well as redress and rehabilitation to victims (Slovakia);
- 77.28. Set-up commissions of inquiry for all cases of deaths in custody which take place in the national police, the army, the penitentiary services, etc. (Switzerland);
- 77.29. Set up a moratorium on all executions with a view to the final abolition of the death penalty (Switzerland);
- 77.30. Take all steps to abolish the death penalty (Australia);
- 77.31. Prohibit corporal punishment in all settings (Slovenia);
- 77.32. Consider abolishing the death penalty (Brazil);
- 77.33. Impose a moratorium on the death penalty with a view to its later abolition and sign and ratify the Second Optional Protocol to the ICCPR (Spain);
- 77.34. Enact legislation, as a matter of priority, that criminalizes the use of torture and ensure impartial and effective investigation in line with its obligations under the Convention against Torture (Spain);
- 77.35. Enact legislation which specifically defines and criminalizes torture and stipulates effective measures to prevent and punish any violations (Sweden);
- 77.36. Institute an urgent review of laws, regulations and procedures relating to the use of force and firearms by law enforcement officials (Sweden);
- 77.37. Make every effort to repeal the application of the death penalty (Argentina);
- 77.38. Expressly prohibit by law corporal punishments in all areas (Uruguay);
- 77.39. Abolish the death penalty (Holy See);
- 77.40. Abolish the death penalty (Romania);

- 77.41. Establish a formal moratorium on executions with a view to abolishing the death penalty (Portugal);
- 77.42. Consider positively the establishment of a moratorium to the death penalty with a view to the abolishment of the death penalty (Mexico);
- 77.43. Not to maintain the death penalty in its legislation since the last execution dates from 1983 (Burundi);
- 77.44. Establish an independent unit to examine allegations of torture in order to provide reparation to victims of torture and to fight against impunity (Switzerland);
- 77.45. Take steps to end impunity for extensive use of pre-trial detention, ill-treatment and alleged torture of individuals in police custody, by investigating and prosecuting all perpetrators (Norway);
- 77.46. Establish commissions of inquiry, and investigate and prosecute those who commit torture and violate human rights (United Kingdom);
- 77.47. Implement measures to prevent violence against the LGBT community, through training and advocacy campaigns (United States of America);
- 77.48. Remove all legislative and practical restrictions impeding to freely exercise civil and political rights, in particular those related to freedom of association and expression, with a view to allow the creation of political parties and respect of trade freedoms (France);
- 77.49. Align the national legislation with international standards to guarantee freedom of assembly and association, in particular as regards the notification of the organisation of peaceful assemblies (Hungary);
- 77.50. Provide for an unhindered enjoyment of the right to the freedom of expression in accordance with country's international obligations (Slovakia);
- 77.51. Consider allowing the registration and operation of political parties, introducing greater political freedoms through free, fair, transparent democratic elections (Slovakia);
- 77.52. Enact legislative measures to facilitate the existence of political parties (Switzerland);
- 77.53. Create an enabling environment for civil society where citizens are free to exercise their full rights to freedom of peaceful assembly and association in accordance with the principles of democracy and in line with international obligations under the ICCPR, including revoking the royal decree of 1973 (Norway);
- 77.54. Take immediate steps to repeal laws which criminalize and/or restrict freedom of expression and of the media, in particular the Sedition and Subversive Activities Act (1938), the Proscribed Publications Act (1968) and provisions of the Suppression of Terrorism Act (2008) (Norway);
- 77.55. Take steps to further democratisation efforts, including by enacting laws that facilitate the registration of political parties (Australia);
- 77.56. Strengthen the institutions established to protect democracy (South Africa);

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- 77.57. **Repeal or urgently amend the Suppression of Terrorism Act of 2008 and other pieces of security legislation to bring them in line with international human rights standards (Sweden).**
78. **The recommendations below did not enjoy the support of Swaziland:**
- 78.1. **Continue towards the implementation of the OP-CAT, the First Optional Protocol to the ICCPR and the Optional Protocol to CEDAW (Australia),**
- 78.2. **Consider taking measures to eliminate forms of discrimination against workers from ethnic minorities (Brazil);**
- 78.3. **Enhance the Independent Commission's Investigation, processing and reporting of human rights abuses by State and non-State actors, including investigations of the allegations of arbitrary arrest and detentions associated with the spring protests (United States of America);**
- 78.4. **Take concrete measures to decriminalize same-sex relations and prevent discrimination based on marital status and sexual orientation (United States of America);**
- 78.5. **Adopt the necessary political and legislative measures to establish a specific framework to protect against discrimination on the grounds of sexual orientation and repeal all laws which criminalize homosexual practice, and implement public awareness-raising campaign on this matter (Spain);**
- 78.6. **Bring its legislation into conformity with its international human rights obligations by repealing provisions which may be used to criminalise same-sex activity between consenting adults , and take all necessary measures to ensure enjoyment of the right to the highest attainable standard of health, without discrimination on the basis of sexual orientation or gender identity (Portugal);**
- 78.7. **Clarify the status of all political parties and introduce multi-party democratic elections (United Kingdom);**
79. **All conclusions and recommendations contained in the present report reflect the position of the submitting States and the State under review. They should not be construed as endorsed by the Working Group as a whole.**

## Annex

### Composition of the delegation

The delegation of Swaziland was headed by Chief Mgwagwa GAMEDZE, Hon. Minister, Acting Ministry of Justice and Constitutional Affairs and composed of the following members:

- Mr. Jinno Nkhambule, Principal Secretary, Ministry of Justice and Constitutional Affairs;
  - Mr. Sabelo MASUKU, Acting Chairman, Commission on Human Rights and Public Administration;
  - Mr. Mndeni VILAKAZI, Principal Crown Counsel, Ministry of Justice and Constitutional Affairs;
  - Mr. Phumlani DLAMINI, Principal Crown Counsel, Ministry of Justice and Constitutional Affairs;
  - Mr. Mpumelelo SIMELANE, Legal Advisor, Children's Unit, Deputy Prime Minister's Office;
  - Ms. Thembayena DLAMINI, Ambassador/Permanent Representative, Permanent Mission of Swaziland, Geneva;
  - Mr. Lucky L. MSIBI, Counsellor, Permanent Mission of Swaziland, Geneva;
  - Mr. Alton S. LUKHELE, First Secretary, Permanent Mission of Swaziland, Geneva.
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