



**Convention on the  
Rights of the Child**

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**COMMITTEE ON THE RIGHTS OF THE CHILD**  
**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES**  
**UNDER ARTICLE 44 OF THE CONVENTION**

**Initial report of States parties due in 1997**

**SWAZILAND\* \*\***

[30 November 2005]

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\* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

\*\* Annexes can be consulted with the Secretariat.

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## Preface

1. The Government of the Kingdom of Swaziland ratified the Convention on the Rights of the Child on 26 August 1995, thus expressing its commitment to implement its provisions.
2. Government's co-ordination structures for promotion of respect and protection of children's rights, established during the development of the National Programme of Action for the Children of Swaziland 1993-2000 had become dormant following the Mid Decade Goal review undertaken by the Technical Working Group. These were revived by ESRA 1 in the third quarter of 1997, with appropriate revisions to their terms of reference and composition.
3. The Technical Working Group (TWG) was mandated to oversee the preparation of this report. A regional report preparation workshop was hosted by Swaziland with the support of UNICEF. Subsequently, the three-person delegation from Swaziland recommended that a national workshop be held to sensitise the TWG and that representatives from a wider section of individuals and organisations working on issues related to those of children should be included.
4. This National Workshop was held in November, 1997 and was attended by participants from Government, NGOs and United Nation agencies. Topics discussed included Human Rights concepts, Children's Rights, Culture, Report Writing and the submission to the UN Child Rights Committee. It was agreed that a government and NGO partnership was essential and that a single report would be produced with an NGO coalition on Children's Rights facilitating data collection and reporting. Subsequently, eight teams were formed to draft chapters corresponding to the thematic areas outlined in the UN's reporting guidelines. Each team was mandated to undertake extensive research and to consult as wide a spectrum of stakeholders as possible. Thus, a number of consultations and working sessions were undertaken during the reporting process.
5. In the process, different ministries and NGOs concerned with children and development have made substantive contributions. The process of reporting built upon simultaneous national discussions. These included the formulation of the National Development Strategy which is Swaziland's 25-year development vision, the Mid Term Review of the GoS/UNICEF Programme of Co-operation 1996-2000 undertaken in 1998, as well as, more recently, inputs from the May 1999 Youth Consultation held as part of the Situation Analysis for the next GoS/UNICEF Programme of Co-operation.

### **Abbreviations**

ADB	African Development Bank
AGEI	African Girls Education Initiative
AIDS	Acquired Immuno Deficiency Syndrome
ARI	Acute Respiratory Infections
BFHI	Baby Friendly Hospital Initiative
CA	Continuous Assessment
CBR	Community Based Rehabilitation
CDD	Control of Diarrhoeal Diseases
COSAD	Council on Smoking, Alcohol and Drug Dependence
CRC	Convention on the Rights of the Child
CSO	Central Statistics Office
EPI	Expanded Programme on Immunization
ESRA	Economic Social Reform Agenda
FLAS	Family Life Association of Swaziland
HIES	Household Income and Expenditure Survey
ILO	International Labour Organization
MOE	Ministry of Education
MOHSW	Ministry of Health and Social Welfare
NACSA	National Advisory Committee on Substance Abuse
NCC	National Committee for Children
NNC	National Nutrition Council
NDP	National Development Plan
NDS	National Development Strategy
NGO	Non-Governmental Organization
NPA	National Programme of Action

NPC	National Psychiatric Centre
OAU	Organization of African Unity
ORS	Oral Rehydration Solution
POLASCO	Political Asylum Committee
RHMs	Rural Health Motivators
SACRO	Swaziland Association of Crime Prevention and Rehabilitation of Offenders
SHAPE	Schools HIV/AIDS & population Education
SCF	Save the Children Fund
SNAP	Swaziland National AIDS Programme
SWAGAA	Swaziland Action Group Against Abuse
TBAs	Traditional Birth Attendants
TSC	Teaching Service Commission
TWG	Technical Working Group
UNDP	United Nations Development Programme
UNICEF	United Nations Children's Fund
UNHCR	United Nations High Commissioner for Refugees
WHO	World Health Organization
WLSA	Women & Law in Southern Africa

## **Background**

### **A. Geography and population**

6. The Kingdom of Swaziland is a landlocked Southern African country, measuring approximately 17,000 km<sup>2</sup>. The Republic of South Africa lies to its west, north and south, and, in the west, it is bordered by the Republic of Mozambique. Despite its small size, Swaziland has four distinct agro-climatic zones known as the Highveld, Lowveld, Middleveld and Lubombo Plateau.

7. For administrative purposes there are four regions and the country is further divided into 55 tinkhundla (administrative constituencies), which also have development functions. The Swazi Nation consists of one ethnic group, the Swazi. There are two official languages, English and siSwati. Whilst there is freedom of religion, the country perceives itself as predominantly Christian.

8. The latest national census was completed in 1997. Preliminary findings estimate a population of approximately one million persons (965,859), and suggest that 60% are between the ages of 0-21 years of age, while 47% of the total are fifteen years of age or younger. Population growth is 2.7% and the fertility rate is estimated at 6:1.

### **B. The economic and political system**

9. Swaziland has a small export-oriented economy, the growth of which is highly dependent on world and regional markets and trends. The World Bank classifies Swaziland as a lower-middle income country. GNP per capita was US \$1,160 in 1992 and \$1,104 in 1998. The major economic sectors are - agriculture, manufacturing, tourism and public enterprise. GDP growth has fluctuated in the past decade from as low as 1.2% in 1991/2 to 3.8% in 1996/7.

10. Since the end of the last century Swaziland has operated a dual legal regime. Two distinct sets of legal norms constitute separate but co-existing systems. In the local context, recognition of rules and principles of law largely drawn from the traditional and customary practices of the Swazi people are known as Swazi law and custom. Legal principles expounded through judicial decisions and modified from time to time by statute constitute Roman-Dutch common law. The latter was incorporated into the general law of the land by British colonial authorities through the General Law and Administration Proclamation of 1907.

11. The system of governance is characterized by the same duality. A parliamentary system and traditional or customary constitutional governments. The Establishment of Parliament Order (1978) enacted five years after the repeal of the 1968 Westminster style constitution implemented at Independence introduced this dual and experimental system of governance.

12. The King (known as the *Ingwenyama* or Lion of the Swazi people) is the Head of State as well as the head of customary government, while the Prime Minister is the executive head of parliamentary government. The King is vested with all executive, legislative and judicial powers in terms of the 1978 Order and cannot be subjected to court proceedings of any kind.

13. The position of the iNdllovukazi or Queen Mother is not, legally speaking, as clear. Section 30 (1), retained under the repealed 1968 Constitution, provides that:



“Until the King has been installed, that is to say, until he has publicly assumed the functions and responsibilities of King in accordance with Swazi law and custom, or during any period when he is by reason of absence from Swaziland or any other cause unable to perform the functions of his office, those functions shall be performed, save as otherwise provided in this section, by the iNdllovukazi acting as Regent.”

14. The iNdllovukazi enjoys the same immunities as the King from civil and criminal prosecution. Although her duties are not spelled out in legislation, her political influence is immense and she commands great respect as the “Mother of the nation”.
15. Swaziland is a non-party state, in the sense that political or multi-political party democracy is illegal and unconstitutional under the King’s Proclamation to the Nation (1973) and the King’s Proclamation (Amendment) (No. 2) Decree (1981). Swaziland’s non-party democracy is unique under its Tinkhundla system of government (or constituency based) government. In practice, the Tinkhundla system has no opposition, as opposed to what is the case in other parliamentary systems, and electoral nominations are carried out by consensus with direct election to parliament of nominated candidates being by secret ballot.
16. At present, several pieces of legislation make up the country’s constitutional framework. These include saved provisions of The Constitution of Swaziland (1968), The King’s Proclamation to the Nation (1973), unofficially the supreme law of the land, The Criminal Procedure and Evidence Act (1938); The Establishment of the Parliament of Swaziland Order (1992) and the Swazi Administration Order (1998). The Establishment of the Parliament of Swaziland Order (1978) restored legislative powers to Parliament and established the Electoral Committee but was superseded by a further Order in 1992.
17. The popular view is that the King’s Proclamation to The Nation (1973) is the supreme law of the land. However, this was amended by Decree No. 1 of 1981 which provides that should any other law be inconsistent with the 1973 Proclamation, such other law shall, to the extent of the inconsistency, be null and void. This Decree empowers the King to amend or repeal the Proclamation. However, a subsequent decree No. 2 (1981) provides that, subject to the rules of interpretation, the 1981 Decree be read and construed as one with the King’s Proclamation to the Nation (1973). If there is any conflict or difference between this Decree and the King’s 1973 Proclamation, the provisions of the Decree prevail and all legislative, executive and judicial power would be vested in the King.
18. The Establishment of Parliament Order of 1992 introduced a number of changes. The most significant being “direct representation”. The current legal position is that a person is elected from that their inkundla (constituency) to be a Member of Parliament. This is unlike the position that prevailed under the 1978 Order, where the elected person would as a member of the Electoral College further elect persons to be Members of Parliament.
19. Under common law the judiciary includes the Magistracy, the High Court and the Court of Appeal. Under customary law it encompasses the Chief’s courts, Swazi Courts, Regional Appeal Courts, the Swazi Court of Appeal, the Higher Swazi Court of Appeal and the Judicial Commissioner. Once proceedings reach the Judicial Commissioner under the customary legal system they are then passed into the general legal system at the High Court with a final right of appeal to the Court of Appeal.

20. All presiding officers in these Courts are appointed by the King except in the Magistracy where they are appointed by the Judicial Service Commission, chaired by the Chief Justice. All Courts have both civil and criminal jurisdiction.

**I. GENERAL MEASURES OF IMPLEMENTATION  
(arts. 4, 42 and 44, paragraph 6)**

**A. Measures taken to harmonise national law with  
the provisions of the Convention**

21. Swaziland has no clearly defined policy with regard to the signature, ratification and incorporation of the provisions of international treaties or conventions. Some assistance is provided by the decision of High Court case of R v Mngomezulu 1977/78 SLR at 159 where the court held that unless an international treaty is incorporated into local law it confers no rights to a citizen of Swaziland. Research shows that since independence in 1968 no international treaty, convention or protocol based on or derived from the principles of human rights has ever been incorporated into national or domestic laws of our country.

22. Incorporation of these instruments into national law should not be a problem as the responsible ministry or authority could simply prepare and present a Parliamentary Bill embodying the treaty or convention. Indeed, any Minister or other authority concerned with the treaty or convention presently signs on behalf of the Government. The issue which requires clarification is which ministry has the authority to undertake this on behalf of the CRC.

23. Section 33 of the Establishment of Parliament of Swaziland Order (1992) states that the King and Parliament may make laws for the peace, order and good government of Swaziland. Further, Section 41 (1) of the same Order provides the King and Parliament with the power to make laws to be exercised by Bills passed by both chambers of Parliament. From Section 53 of the Order comes Legal Notice No. 194 (1996) which assigns to the Ministry of Foreign Affairs and Trade the responsibilities of international relations and cooperation; control of Swaziland Diplomatic Missions Abroad; custody of International Treaties and Conventions and Foreign Policy.

24. The same legal notice gives the Ministry of Justice and Constitutional Development responsibility for human rights promotion and protection, law reform and development, and assigns the Master of the High Court as upper guardian of children. The Ministry of Home Affairs is responsible for Refugees, Non-Governmental Organisations and Voluntary Organisations, Youth Matters and Gender Issues whilst the Ministry of Health and Social Welfare is accountable for Nutrition and Social Welfare and the Ministry of Economic Planning and Development for the co-ordination of cooperation with the donor community.

25. This assignment of responsibilities to different Ministries contributed to Swaziland's delay in ratifying the Convention. In this case, the Ministries Foreign Affairs, Home Affairs and Health and Social Welfare were involved, resulting in disagreement as to which Ministry should initiate the processes of ratification.

26. The existing Policy on Infant Feeding in Health Care Practices of 1991 placed Swaziland as one of the first to develop a policy on breastfeeding. The policy, amongst other objectives,

prohibits the routine use of breast milk substitutes, promotes exclusive breastfeeding in the first 4-6 months of birth and encourages mothers to breastfeed for at least 2 years. The implementation of this policy has seen a significant increase in breastfeeding rates, which stood at 8% in 1983, increased to 26% in 1995 and currently stands at 56% (National Nutrition Council assessment of household infant feeding in the light of HIV-March 2000). In addition, a draft Code on the Marketing of Breast milk Substitutes has been finalised by stakeholders and is being submitted to the Ministry of Health and Social Welfare. Legislation prohibiting the retail sale of non-iodatised salt was enacted in 1997 and forms part of the importation restrictions.

## **B. Existing measures conducive to harmonisation**

### **Law and policy**

27. The King's Proclamation of 1973, referred to above, provided for the "protection of fundamental rights and freedoms of the individual". These rights include the right to life and personal liberty; protection from slavery, forced labour, inhuman treatment; deprivation of property; protection against arbitrary search or entry; provisions to secure the protection of the law; freedom of conscience, expression, assembly and association, movement, freedom from discrimination on certain grounds and enforcement of these rights and freedoms.

28. However, as noted, this proclamation repealed certain provisions of the 1968 Constitution. The right to "freedom of assembly and association" was severely curtailed as political parties and similar organizations were banned and prohibited. Swazis have continued to enjoy these freedoms and rights but are no longer protected by legislation and rely on the courts' inherent jurisdiction and common law.

### *Constitutional issues*

29. In 1996 the King decreed the establishment of a Constitutional Review Commission (CRC). The functions and terms of the Commission in relation to the Convention and its likely impact on the rights of children include a review of documents relevant to Swaziland's current constitutional framework. These include the Independence Constitution that covers obtaining information, guidelines or principles that may be included in the new Constitution; a review of any legislation, Decree or Proclamation which has a bearing on constitutional and human rights matters and receipt of oral submissions and representations from members of the public. This latter function includes visiting all Tinkundla (constituency) centres to access individuals and organisations concerned with children's rights. The legal, economic, educational, social and health welfare of children would be added considerations.

30. The Commission was also formed to examine and provide for fundamental human rights and freedoms and to examine any legal instruments or documents that may contain them. Further, it is to examine and determine the desirability of including principles of state policy in the Constitution.

31. Decree no. 2 of 1999, dated June 30<sup>th</sup>, 1999, has extended and fixed the date for the presentation of a final report by the Commission to the King. Presently, the Commission is still conducting civic education with respect to the issues that may be contained in a Constitution.

32. Decree No. 1 of 1996 has a bearing on children's issues by establishing The Swazi National Council Standing Committee. Section 3 of this Decree states that the Standing Committee shall advise the King on all matters regulated by Swazi law and custom and connected with Swazi tradition and culture, with a view to ensuring good governance and building a coherent and integrated Swazi Nation.

33. Codification of Swazi law and custom is for the first time being undertaken by the Recording and Codification Of Swazi Law and Custom Commission sponsored the UNDP and is expected to submit a final report by the 31<sup>st</sup> October, 1999. This will identify the strengths and weaknesses of the promotion of child rights under Swazi law and practice.

#### *Administration and planning*

34. In response to underlying structural weaknesses in economic growth and management, some of which have existed since Independence, a number of economic and social reform measures have been initiated. These include an internal structural adjustment programme within the public sector, the Public Sector Management Programme (PSMP), a National Development Strategy (NDS) facilitating consultative development planning and 2-3 year rolling plan of the Economic and Social Reform Agenda (ESRA), which is the short-term implementation plan for the NDS.

35. In order to control public expenditure the Government, through its internal structural adjustment programme, has introduced a zero real growth policy on the creation of new posts in the public sector and, through its PSMP component, called for revenue diversification, including reforms of both the public enterprise and public sectors. Despite the internal structural adjustment programme the country's macro-economic position has deteriorated over the past few years. Revenue continues to grow more slowly than total government expenditure and the country is experiencing a budget deficit.

36. Over the past five years, government expenditure on social services has averaged 36%. In 1995/6, government allocation for education was 24.9% (343.3 million Emalangeni (E) or US\$ 57.2 million). Allocation for health was 7.9% (E111.1 million or US\$ 18.5 million). Most of this expenditure is recurrent and reflects personnel costs. Although it is difficult to estimate total government expenditure on children and youth, a significant proportion of the budgets allocated to the Ministries of Health, Education and Home Affairs go towards programmes and activities for children.

#### *National Programme of Action*

37. Swaziland was represented by the Prime Minister at the World Summit on Children in New York in 1990 at which the Declaration on the Survival, Development and Protection of children was made. In 1991 the Government of Swaziland formed a multi-sectoral National Committee for Children (NCC), chaired by the Minister of Health and Social Welfare, and reporting to the Prime Minister. A Technical Working Group (TWG) was formed to assist the NCC in preparing the National Programme of Action (NPA) for 1993-2000. Subsequently, a small drafting committee was formed to prepare the NPA document, submitted to the NCC

in 1992 when it was officially launched. The NPA emphasised survival and development but inadequately covered protection issues and since 1993 has served as the basis for the development of programmes and activities in social sectors such as education and health.

*Role of NGOs in civil society*

38. In August 1995, Cabinet approved the ratification of the CRC following submission of a Cabinet Paper submitted by the Ministry of Health. NGOs played a crucial role in educating individuals and current public awareness is largely due to the active role of NGOs in education and advocacy for the promotion and protection of children's rights. NGOs have conducted workshops for parliamentarians, community leaders and regional administrators on rights and gender issues. Training in peer education and counselling for school teachers and children has been conducted by the SHAPE project. Radio broadcasts on child rights issues and adolescent sexual and reproductive health have also contributed to some awareness of child rights. The Family Life Association of Swaziland (FLAS) has played a leading role in educating adolescents and youth on sexual and reproductive health.

39. Close collaboration between the SCF, SWAGAA, SACRO and the police has helped to highlight the plight of children, particularly those increasingly subject to various forms of abuse including rape and incest.

40. The Government realises that its capacity to reach all communities in implementing the CRC is limited and therefore relies on the NGOs, as they have extensive grassroots networks. The NGO community does not compete with government but rather works in close partnership.

*Implementation of the Convention on the Rights of the Child*

41. The CRC has not been implemented in full since its ratification in 1995. The main reason for the delay is that co-ordinating structures became dormant. In addition, it was unclear which Government Ministry had responsibility for co-ordinating children's issues.

42. At the Mid-Term Review in March 1998, the Government of Swaziland and the UNICEF country programme held a workshop where a rights-based approach was recommended, including decentralisation. It was agreed that the Tinkhundla structures be strengthened and used more effectively, with emphasis on the need for capacity building at this level. It was suggested that only through Tinkhundla that the majority of the population can be reached and sensitised on the CRC. Thus, Government, traditional government (Tinkundla) and NGO structures will be used reach both children and adults.

43. It is planned that in the future national laws will be changed in order to comply with the CRC. The NCC and TWG will recommend that key provisions of the CRC be included in the constitution that is currently being drafted. Plans include consolidating laws on children's rights, including those relating to special institutional structures for children, for example children's courts.

*Article 42*

44. The CRTF has been mandated to publicise and disseminate the CRC. The CRC summary has been simplified and translated into siSwati. Rural Health Motivators have been trained in its contents. The Ministry of Education (MOE) intends incorporating children's rights into the school curriculum in order to promote a clear understanding of these rights.

45. All available media forms will be used by the CRTF to publicise the CRC. Currently, UNICEF supports the publication of a magazine "Children First". Further orientation of teachers, lawyers, other health workers, social workers and media personnel on children's rights is planned.

*Information/data*

46. A number of studies on children issues have been carried out in Swaziland. These include:

1. Dlamini (1994) conducted a study on the status and rights of a child under the current laws of Swaziland, and noted that these laws were inconsistent with some key provisions of the CRC. Further, it was found that no juvenile justice system exists in Swaziland. Children were tried and incarcerated in the same courts as adults. Laws relating to children remain scattered and fragmented throughout existing legislation. There is a need for the creation of children's statutes and for customary law and Roman Dutch common law to be harmonised. This study was prepared as part of the CRC ratification process;
2. A study on child abuse by Manzini (1993) noted the violation of children's rights in Swaziland;
3. In 1997, Kaseke conducted a situation analysis for the Department of Social Welfare under the Ministry of Health. Results revealed major weaknesses in the structure of social welfare services and a lack of social welfare policy and legislation relating to children's rights;
4. A study on rape in Swaziland by Masilela (1997) showed an increase in rape cases and also showed that most of these involved young girls abused by older people, including family members;
5. The Women and Law in Southern Africa (WLSA) has completed studies on inheritance and maintenance from the perspective of women and children in Swaziland;
6. A paper on juvenile crime was compiled by Ntsangase and presented to UNICEF in 1997. It noted an increasing number of marginalised young people resulting from limited education, training or work experience leaving them with little prospect of employment;

7. The first survey of street children by Kanduza (1992) provided data including age distribution, gender, education, food, shelter, parental and marriage status for this group. A second survey by Maphalala (1995) characterised street children in Swaziland;
8. An SCF study of orphaned and destitute children in selected communities by Mgabhi, Mkhabela and Ndzimandze (1997) determined causative factors amongst which were the death of one or both parents, poverty, unemployment, disability and other family disruptions;
9. An SOS study by Dlamini and Eyeington (1997) demonstrated that there are growing numbers of orphaned and abandoned children in Swaziland. This study was commissioned as part of its justification for recommending that a second SOS Children's Village be built;
10. A cluster survey on the Expanded Programme on Immunisation (EPI) by the Ministry of Health revealed immunisation coverage of 91% among children from birth to 23 months. This is one of the highest in the world;
11. A household survey on the use of Oral Rehydration Treatment (ORT) in 1997 found high utilisation of these fluids;
12. The evaluation of the Rural Health Motivators Programme was completed in 1996 by the African Medical Research Foundation (AMREF) on behalf of the Ministry of Health and Social Welfare and UNICEF.

### **Constraints**

47. Swazi culture does not recognise rights, but emphasises obligations, entitlements and the basic needs of the child. With education this perception will change for the better.

48. Government is implementing a zero growth policy and is reducing spending on services. However, there is shortage of trained personnel to undertake child rights work. This is compounded by a decrease in donor funding and the HIV/AIDS epidemic which will consume much of Swaziland's remaining funds and resources.

49. The promotion of an environment allowing free political expression and clear guidance to the political process is needed in order to ensure that all sections of society have wide representation in the constitution-making process. This would include educational campaigns on constitutional development to ensure the effective participation of people so that the new constitution is based on national consensus.

50. Efficient administration of justice in Swaziland requires the establishment of structures, including law reform, to strengthen and consolidate the judicial system. This includes measures to strengthen the offices of the Attorney General, the Director of Public Prosecution, and the police. This would assist in putting in place mechanisms for the decentralisation of power and decision making to ensure delegation and execution of national functions.

51. A fundamental challenge results from the reservation made concerning Article 28, which promotes the right to universal free primary education. This challenge is further increased in the current context of the HIV/AIDS epidemic. Possible solutions include improvements in the quality of the education and the implementation of flexible policy measures regarding repetition at all levels of the school system. The measures could include the following, many of which are included in the 1998 National Education Policy, towards which the Ministry of Education is now working.

*Planning measures*

*Public Sector Management Programme (PSMP)*

52. In order to improve the efficiency and effectiveness of the civil service, government launched the Public Sector Management Programme (PSMP) in 1994. This is a locally designed civil service reform programme, established to complement the NDS.

*National Development Strategy (NDS)*

53. In 1988, government embarked on an improved and more comprehensive planning system. This became necessary as a number of serious challenges emerged and the new system comprised the following key documents:

- The National Development Strategy (NDS) spelling out long-term objectives, policies and strategies for implementation over a twenty-five year period;
- Three-year rolling NDPs focussing on the medium-term and serving as a link between the NDS and the annual budget;
- Periodic reviews analysing recent developments in the economy and their implications;
- Monitoring reports focussing on the financial and physical progress of the capital expenditure programme.

54. See Appendix for the aspects of the NDS relevant to the implementation of the CRC. There are however some constraints to the implementation of the NDS. Political will may be insufficiently strong to implement these far reaching objectives and strategies. Furthermore, the NDS was not formulated in consultation with children and youth, reflecting local perceptions of obligations as opposed to a child rights-centred approach.

*The Economic and Social Reform Agenda (II) 1999 to 2001 Programme*

55. This programme stipulates government's actions in response to the NDS over the stated plan period. It is the second such short-term development plan under the reform agenda. See attached Appendix for its specifics.

56. These short to medium-term action plans also have constraints. As a programme of action it is well intended and ambitious. It is however partly dependent on putting in place



*revised* as well as *new legislation* to change, introduce and enforce the implementation of new policies. A constraint is likely to arise in the Legislative Drafting Section of the Attorney-General which is short-staffed.

57. A further constraint is likely to be encountered in the legislature whose unfamiliarity with human rights issues has led for example to the situation where Members of Parliament strenuously criticised certain provisions of a human rights nature found in the Industrial Relations Bill, 1998.

## II. DEFINITION OF A CHILD

### **Attainment of majority**

58. As noted in Chapter 1, Swaziland operates under a dual legal system. Consequently, the definition of a child under Swazi law and custom varies significantly from that in general law which is made up of the common law and statutory provisions.

59. Under customary law maturity is not determined by age but by puberty, which obviously varies between individuals. Further, this may be arbitrary as the age of puberty, once averaging 14 to 17 years, has dropped over the years due to an increased intake of nutritious food by children and other environmental factors (Barnes, 1995). This definition is also inherently discriminatory as puberty differs between girls and boys.

60. Under the general law, the Age of Majority Act (1853) stipulates the age of majority to be 21 years. However, age determination and the terminology used in reference to a child lacks uniformity across statutory instruments and much depends on the purpose for which the definition is required.

61. For example, the Child Care Service Order (1977) considers a child to be below 16, whilst the Employment Act (1980) states a child as a person below 15 years and The Reformatories Act (1920) defines a juvenile adult as between 16 and 21 years (for purposes of detention). The Adoption of Children Act (1952) defines a child as being below 19 years while the Immigration Act (1982) considers a child to be below 18 years of age. The Establishment of the Parliament of Swaziland Order (1992) places the minimum age for voting at 18 years. Children who have reached the age of 16 are eligible to obtain their own travel documents.

### **Sexual consent**

62. For girls, the Girls' and Women's Protection Act (1920) places the minimum age of consent at 16 years, modifying common law prescription of a minimum of 12 years. The same Act raises this minimum to 16 for boys in a proviso to its provisions protecting girls which states that this would constitute a defense to any charge under this law. The inference is that boys are afforded a similar status in the provisions of the Act. Under common law a boy of 14 and below is presumed incapable of rape. This does not apply to crimes against morality (e.g., sodomy and incest), if it can be proven that he knew the difference between right and wrong and understood that he was committing an offence.

63. The Criminal Procedure and Evidence Act (1938) provides that trials of rape or unlawful carnal connection with girls below sixteen may take place *in camera*, protecting the child from publicity.

### **Marriage**

64. Under customary law and practice, the age of marriage for girls is considered to be puberty or the ability to procreate. Puberty for boys is not an indication of their capacity to marry under customary law but often depends on the declaration, usually by the King, that a particular age regiment of male peers now has such capacity. This might only occur when this male cohort is in their late twenties. In the only existing monograph on the principles of Swazi Customary Law it was acknowledged that marriage must in any event occur after puberty.

65. According to the Marriage Act (1964), the minimum ages are 16 and 18 for girls and boys respectively. This provision discriminates between boys and girls by providing a lower minimum age for marriageability with respect to girls. This is compounded by the fact that the Act empowers the Deputy Prime Minister to consent should the girl be below 16. However, in all cases parental consent is still required should either the bride or groom be under 21.

66. The 1998 census estimates that there were 139 380 marriages, 1659 (1%) of which were of children in the age range 10-19 years. Of these latter, 1502 (90%), were girls. The overwhelming majority of these marriages were executed in accordance with Swazi customary law.

### **Military forces**

67. The Umbutfo Swaziland Defence Force Order (1977) provides for both voluntary enlistment and conscription of persons aged 18 years. No military conscription is practised in Swaziland.

### **Hazardous, part-time and full-time employment**

68. The Employment Act (1980) contains no minimum age for employment but does prohibit the employment of children (persons below 15) and young persons (above age 15 and below age 18) from underground, dangerous or unhealthy work. "Dangerous and unhealthy work" is however not defined, but the Control of Radio-Active Substances Act (1964) prohibits the employment of persons under 18 in an operation involving the production, emissions or use of ionising radiation. To date there have been no such industrial undertakings in Swaziland.

69. The Employment Act does prohibit the employment of a child under 15 during school hours, but education is not compulsory in Swaziland. In Swaziland, children enter primary school at the age of six and official policy is that all children should complete the first nine years of basic education.

70. The Employment Act does provide that no person under the age of 18 shall be employed on a foreign contract, where an employment contract made within Swaziland is to be performed substantially outside Swaziland.

71. The Act does permit the employment of children in enterprises in which only members of the immediate family are employed. This is to be for no longer than 33 hours per week and on the condition that this work is for no more than six hours a day.
72. Young persons are permitted to be employed between specified hours at night in agricultural undertakings, for apprenticeships and vocational purposes.
73. The Act, in relation to the Liquor Licensing Act (1964), prohibits the employment of a person under 18 in premises where liquor is sold or stored.
74. No distinction is made between part-time and full-time work. The Act focuses on the formal labour sector but is also intended to sanction informal sector employers, an area which remains outside Government control.
75. Swaziland remains a signatory to but has not ratified ILO Convention No. 138 on the Minimum Age for Employment.
76. The 1997 census data indicate that there were 10,952 children between the ages of 12-19 years who were part of the labour force. The 1986 census set this figure at 8662 and that of these, the second largest proportion, had received no education. Most had not completed their primary schooling.

### **Medical counselling and treatment**

77. The provisions of the Mental Health Order (1978) state that voluntary applications for admission to a mental hospital may be made by a person above 18 years (persons under 18 would require parental consent). With the exception of this statutory requirement, children under 21 require parental consent for access to medical services.

### **Legal counselling**

78. Eligibility for seeking independent legal advice is not prescribed. Generally minors, i.e. persons under 21, cannot normally be sued or enter into a binding contract without parental assistance.

### **Criminal responsibility**

79. According to general law, a child of 7 has criminal responsibility, rebuttable up to the age of 14. Criminal responsibility is dependent on proof that the child knew the difference between right and wrong, knowingly intended to do wrong and understood the consequences of that act.

### **Deprivation of liberty and imprisonment and capital punishment**

80. Apart from provisions related to criminal responsibility from which inference may be drawn regarding minimum ages, the Criminal Procedure and Evidence Act (CP&E) (1938) generally provides for the apprehension, detention, prosecution, conviction and sentencing of all persons. The CP&E Act (1938) provides that on conviction, a court may place a person under the age of 18 in the custody of any suitable person. It further prohibits the imposition of the death penalty on persons under 18.

81. The Prisons Act (1964) states that persons shall be admitted to detention only with accompanying documents authorising arrest, remand, commitment or conviction. Certificates issued in accordance with the Immigration Act (1982), or by police officer of the rank of Inspector or above regarding detention or arrest without warrant, provide for the minimum age of detention. Section 28 (7) of the Prison Act (1964) provides that the Commissioner of Correctional Services has the discretion to detain a mother and her unweaned infant.

82. The Reformatories Act (1921) indicates the categories of juvenile offender under which detention and treatment after conviction and sentencing is regulated. The Act curtails the discretion of a court to sentencing a juvenile adult to not less than 2 years and not more than 5 years. In Swaziland there is only one reformatory that provides for the detention of boys and this has been reclassified as an Industrial School. In practice, boys from ages 12 to 17 years are detained in the Industrial School and males from 18 to 25 years are detained in the Young Persons Prison situated on the same premises.

### **Giving testimony in court, civil and criminal proceedings**

83. Under The Attestation of Documents Act (1895) males and females above the age of 16 are competent to attest notarial and other contracts, deeds and documents. The Wills Act (1955) also states their competence to witness and execute wills at 16 years of age.

84. There is no minimum age for testifying in criminal proceedings, the criterion being the capacity to respond to questions. However, legal authorities on procedural rules of evidence state that “there is no statutory requirement in (Roman-Dutch) law that a child’s evidence has to be corroborated ... a court has to approach a child’s evidence with caution and show that it is aware of the dangers inherent in such testimony.” Therefore, despite the capacity of children to give evidence in criminal proceedings, this is limited to the extent that the cautionary rule is applied.

### **Placement of children in welfare institutions**

85. The Child Care Order (1977) provides that the services it establishes are empowered, inter alia, to remove children (defined as persons below 16 years) from the custody or care of unfit persons or from conditions likely to be physically or morally harmful to them, and to place them in welfare institutions, foster homes, hospitals, schools, or other suitable place. To date these services are not fully operational, lacking capacity and administrative structures, but the Order envisages the existence of a juvenile justice system by specifically referring to a juvenile court.

### **Giving consent to change an identity, including name and adoption**

86. The Births, Marriages, and Deaths Registration Act (1983) and the Swaziland Citizenship Act (1992) provide for a change in identity at the age of 21. According to the Swaziland Citizenship Act, an illegitimate child not claimed by the father in accordance with customary law but whose mother is a Swazi citizen becomes a citizen by birth. The Act further deems abandoned infants found in Swaziland to be citizens at birth. Ordinarily, the nationality of a child follows that of the father and birth certificates contain a description of the parents’

nationality. The justification for this discrimination is the assumption that the child of a Swazi mother and foreign father, though resident, would automatically be entitled to the citizenship of his father's country.

87. The Adoption of Children Act (1952) states that a court shall not grant an application for the adoption of a child above the age of 10 if the court is not satisfied that her/his consent has been given. There are no provisions regarding access to information concerning the biological family. However, there are provisions permitting biological parents who have requested and been granted non-disclosure of the details of the adoptive parents, to have access to the adopted child for a period not exceeding two years from the date of application.

### **Legal capacity to inherit and to conduct property transactions**

88. Section 6(3) of the Adoption Act (1952) provides that an adopted child's right to inherit *ab intestato* from her/his natural parents or relatives is not affected by the order of adoption. The Intestate Succession Act (1953), which regulates the devolution of estates of the deceased in the absence of a will, discriminates between illegitimate and legitimate children with the former having no right to inherit from the property of the father. This statute reinforces the common law position regarding illegitimate children with inheritance rights deriving only from the mother and her relatives.

89. The Administration of Estates Act (1902) provides that any estate dealing with immovable property inherited by a minor is subject to the approval of the High Court, as upper guardian of all minors, through the office of The Master. Monies devolving to a minor must be paid into the Guardian's Fund. Where minors do not have natural parents or guardians to administer their estates, the Act provides for the appointment of tutors or curators whose powers are limited to the administration of property.

90. Under customary law, girls have no capacity to inherit or conduct property transactions. For boys, the determinant factor would appear to be attainment of marriageable age.

### **Consumption of alcohol and other substances**

91. Section 27 (1)(k) of the Liquor Licenses Act (1964) makes it an offence for the holder of a license to sell or deliver for any purpose, including consumption on the holder's premises, to a person under the age of 18. The provisions make it an offence to allow a person under 18 to be in a bar or other premises where liquor is stored or sold for consumption, except for those licensed as a general dealer. However, practice is that law enforcement agents and the inspectorate established under the Act have limited control and it is not unusual to find children under 18 buying and consuming liquor in public.

92. The draft of the Public Health Bill (1997) provides for the control of the manufacture, procurement and distribution of drugs and other controlled substances. The Bill also contains various provisions which prohibit the manufacture, sale, distribution and use of opium-based or habit forming drugs and subject to certain conditions being met in the administration of medical treatment. However, minimum ages for the use of such substances are not provided.

### III. GENERAL PRINCIPLES

#### A. Non-discrimination (art. 2)

##### Law and policy

93. Currently, equality is not guaranteed and Swaziland is presently reviewing its constitution. The terms of reference for the Review Commission include an examination of principles and laws pertaining to human rights to be incorporated in the Constitution. The country's current legal framework has not embraced the rights of the four key general principles as envisaged in the Convention as guiding all actions for and with children. At present, both customary and general law discriminate, particularly in terms of gender, age, nationality, education, occupation, income, political affiliation, religious differences, disability, location (urban/rural) and infrastructure.

94. Both systems of law allow for girls to be married at an earlier age than boys. By custom, girls can marry at puberty whilst boys are thought to be too young to marry at this age. Under general law a girl can marry at 16 whilst a boy can only marry at 18. Girls are also subjected to the traditional custom of arranged marriages (*kwendziswa*) and may have to assume the position of the one who will bear children for her barren relative (*inhlanti*).

95. Under both customary and general law, children born out of wedlock are deprived of certain rights, in particular inheritance from their fathers. These children are only entitled to paternal maintenance and are believed to be the responsibility of their mother and her family.

96. There is no integrated policy for children with disabilities, including those which relate to the provision of health, education and sporting facilities and the physical environment. This results in discrimination and limits the opportunities available to disabled children.

97. However, these issues are examined in the NDS, Swaziland's 25 year development vision and its planning component, ESRA. Those aspects relating to the reduction of social and economic disparities have already been highlighted in Chapter I.

98. The government is working on the formulation of a resettlement policy towards rural community organisation and to ensure the provision of infrastructure in rural communities, and other social services.

##### Implementation

99. In collaboration with NGOs, Government has introduced a number of initiatives to address the economic, social and geographic disparities in the country. Several of these have been discussed in Chapter 1.

100. A situational analysis of social welfare services in Swaziland has been undertaken by a government consultant with extensive experience in policy formulation and strengthening service delivery within the social welfare sector. The study considered the effectiveness of social service delivery and has made recommendations with regard to the development of a National Social Welfare Policy addressing inequalities and inequities in social safety nets. Its findings highlight an acute shortage of staff with a ratio of one social worker to 50 000 people.

101. Parliament in 1997 passed a motion that all children born in or out of wedlock should be treated equally. The Ministry of Justice stated that such a law would only be promulgated when the Convention is incorporated into domestic law.

### **Constraints**

102. No legislative review has been undertaken. Laws have not been amended and the Attorney General has not received an instruction to conduct such a review. Customary law on the other hand is unwritten, enabling its manipulation to the disadvantage of the children. This situation should improve once customary law is written. As early as 1994, in a summary assessment of existing laws and their enforcement, it was recommended that to realise the rights of children there was a need to amend all laws to comply with the Convention.

103. There is a general lack of knowledge concerning human rights which is compounded by traditional and customary emphasis placed on responsibilities/obligations. This has led to misunderstandings and negative publicity about rights issues in Swaziland.

104. The allocation of resources between rural and urban children is unequal. This is manifested in a lack of adequate schools, hospitals, playgrounds, sporting and social welfare facilities in rural areas. In these areas some schools are without electricity and laboratories and children cannot pursue science subjects. Inadequate allocation of resources for the specialized needs of disabled children excludes them from health and educational facilities.

105. Swaziland has scholarship programmes for tertiary education but anecdotal evidence indicates that children whose parents are not influential or are affiliated with certain political groupings have been refused these. The issue is compounded by a lack of transparency in the selection process and a lack of consistency in releasing funds to different students. Legitimate or illegitimate Children, whose fathers are Swazis are not given scholarship, with the understanding that they are not Swazi citizens.

106. Swazi society is patriarchal and perpetuates gender discrimination within the socialization process; girls and boys are denied equal opportunities in certain aspects of their development. Girls assume household chores at an early age, often adversely affecting their school attendance. Within the school system the choice of subjects for girls (i.e. needlework and cookery) reinforce gender roles and stereotypes.

107. Boys are given preference when families lack funds for school fees, as it is believed that his education benefits the family clan, while a girl's education is of benefit to the family of her future in-laws. This discriminatory practice undermines female access to education.

108. Children are also discriminated against at birth according to: birth order within the family, status of their mother, genealogical lines within the extended family, the marital status of parents, race and nationality.

109. Children have tended to be labelled, often by derogatory words defining certain ethnic groups. For example, "coloureds" to denote children of mixed race or "shangaan" which mainly refers to other African groups.

110. There are instances where children have been excluded from certain schools that prefer to admit children who belong to the same religious sect, for instance Catholic or Nazarene.

111. Children with disabilities are not mainstreamed and there are few special schools inadequately meeting the needs of such children. Even those schools offering integrated education are physically unfriendly to children with disabilities, with no ramps and other facilities for physically disabled children. Sensory impaired children require urgent attention as there are no Braille facilities in schools and few individuals are trained in sign-language. This also hinders speech and hearing impaired children from accessing health services. Children with hearing disabilities are excluded from the education system from the secondary level. Children who are blind are excluded from tertiary institutions as these lack facilities catering to their needs.

## **B. Best interests of the child (art. 3)**

### **Law and policy**

112. Swaziland is still grappling with the concept of the best interest of the child. In *Ex parte Eric Mvana Dlamini* 1977-78 SLR 73, where a father wanted to sell property belonging to a minor, there was debate as to whether the “best interest” of the minor should be taken into consideration. The court held that the authorities do not support the notion of “best”, they merely refer to general interest, which is defined as “no reason to believe that the interest of the minor will be detrimentally affected”. Although the “general interest” definition appears to address the issue of best interest it falls short of a thorough guarantee of security for the interests of the minor which would require that these interests be paramount in the decision-making process.

113. This principle of “general interest” has always been part of general law, particularly under family law in custody and adoption matters. Further, the interests of children are the underlying consideration in certain laws as demonstrated in chapter 2 of this report.

### **Implementation**

114. The Maintenance Act (1970) provides for the appointment of maintenance officers, the investigation of complaints relating to maintenance, the issue of maintenance orders by the courts, the imposition of penalties for failure to comply with such orders and matters incidental thereto. The Act seeks to facilitate the investigation of maintenance complaints to ensure children are provided for at all times. Under customary law maintenance is paid to the mother of the child, by giving one cow for a male child and two for a female child. In addition the father is required to provide for the upkeep of the children.

115. To a limited extent, customary law provides for the best interest of a child. For example, a father of an illegitimate child is required to pay one cow to the mother’s family, which allows him to claim certain rights over the child. Payment of the cow (*kutsenga*) results in the child assuming the father’s identity. The custom of *kufaka umntfwana esiswini* is similar to adoption where a woman who fails to conceive may be given a child from within the family or where a woman has no male child, she may similarly be given a son.

### **Constraints**



116. The lack of understanding of the concept of the best interests of the child is a major problem and is compounded by the differences under general law and customary law.

117. Another major constraint is the lack of adequate provision in the national budget for advocacy in planning and implementing the promotion of children's rights. Education about and the implementation of programmes related to the best interests of children within our dual legal systems will not be realised without these resources.

118. Ineffective implementation of current laws has resulted in the rights of children being undermined. For example, crimes committed against children are not urgently dealt with, resulting in erosion over time of the evidence of child witnesses.

119. Psychological support services are not readily available for child victims in criminal cases. Law enforcement agents fail to demand psychosocial therapy for child victims. Limited counselling services are provided by NGOs.

120. The lack of child specific institutions, in particular, child protection units in police stations, special children's courts and trained personnel able to deal adequately with children's concerns is a limitation.

### **C. Right to life, survival and development (art. 6)**

#### **Law and policy**

121. Current legislation in the country attempts to address some of the major issues covered by this principle. The law recognises the right to life from conception. Abortion, suicide and murder are criminal offences. The law further provides for the punishment of infanticide and concealment as crimes.

122. Abortion is only permitted where the life of the mother is in danger or where the child has no chance of living. In a bid to protect the unborn child, the law prohibits the sentencing to death of a pregnant woman.

123. If, at the trial of any person accused of murder or culpable homicide, it has been proven that the person alleged to have been killed was a recently born child, the accused may be convicted of exposing an infant or of disposing the body with the intent to conceal the birth of that child. (R. vs. Mamba 1979-81 SLR 45).

124. Regarding the survival and development of children, both Swazi custom and the general law provide for the maintenance of children. Maintenance includes health, physical, spiritual and psychological support. The right to maintenance for a child can be claimed against a deceased parent's estate. The claim is payable until a child reached maturity or becomes self-supporting. (In re Estate Kuhlase 1977 SLR at 78).

125. The Maintenance Act (1970) provides financial assistance for children who lack maintenance by providing the services of a lawyer at no cost to make a maintenance claim. The main shortcoming of the system is a shortage of manpower and a lack of adequate training of personnel, who are provided by the Directorate of Public Prosecutions.

126. Criminal law prohibits certain violent crimes, such as sexual abuse, physical abuse (assault), and self-abuse including suicide, against any adult or child. The provision of such protection is embodied in The Crimes Act (1889), The Girls' and Women's Protection Act (1920) and the common law.

### **Implementation**

127. The most common causes for concern are health and psycho-social problems which include suicide, violence, shelter, homicide, malnutrition and HIV/AIDS. The Government has the obligation to provide an environment conducive to the survival of children and to protect children in times of violence, strikes etc.

128. The Government has adopted a proactive approach to assist parents in providing adequate healthcare for their children and has implemented the Survival and Development Plan, set out in the National Programme of Action. The approach targets preventive rather than curative measures.

129. Survival and development issues addressed by the National Programme of Action for Children (1993-2000) include:

1. The Expanded Programme on Immunisation (EPI), whose mandate is to immunise all children under five years of age free of charge;
2. The control of diarrhoeal diseases through proper case management; to use appropriate drugs when needed and to provide oral rehydration to all children in Swaziland immediately they have diarrhoea;
3. A programme to supply the population with safe water and to provide a clean environment;
4. The control of Acute Respiratory Infections (ARI) is to be accomplished by proper case management and prompt referral of sick children;
5. The Nutrition Programme is aimed at monitoring the status of pregnant women and providing better health care for mother and child, before and after delivery;
6. Research on micro-nutrients in relation to the health of the mother and child is ongoing and forms part of the Survival and Development Plan.

130. The relatively newly-established Adolescent Health Programme has as its main aim to address health problems encountered by adolescent children, especially in the areas of sexual and reproductive health. This programme is meant to reach all children in and out of school. The

programme is implemented in collaboration with the Public Health Unit (PHU) and is supported by bilateral (Italian Cooperation) and multilateral assistance. Issues of concern include sexuality and pregnancy, alcohol and drug abuse, STD and HIV/AIDS prevention and control amongst adolescents. The objective is to empower youth with life skills and currently the programme has embarked on an intensive campaign throughout the country.

131. An early psycho-social infant development programme has just started and the target group is once again pregnant adolescents and community members. The programme emphasizes social interaction which is the basis for development in the Swazi society but has been neglected because of social changes in family structures.

132. The school health programme is working hand-in-hand with the adolescent health programme by addressing health needs for all children attending pre-school, primary, secondary and tertiary schools i.e. universities and training colleges.

133. The malaria programme has its emphasis on prevention, especially for pregnant women and children. Another initiative, the Programme for Prevention of Congenital Syphilis and Control, is being undertaken.

134. The Ministry of Health and Social Welfare has a breastfeeding policy and most babies are breastfed until 18 months. The main problem being that exclusive breast feeding is not so popular, most women tend to believe that they do not produce adequate milk for the baby. Breastfeeding is important for the survival of children within a natural environment.

135. The prevalence of HIV/AIDS among the general population is estimated at 22%. At the opening of Parliament in 1999, His Majesty declared HIV/AIDS a national disaster. A Cabinet Committee was then established to create and provide an enabling environment for HIV/AIDS programmes. This Cabinet Committee includes, the Ministers of Education, Health and Social Welfare, Economic Planning, Finance, Tourism and Communication, Agriculture and Enterprise and Employment. In addition, a Crisis Management and Technical Committee was formed, with multi-sectoral membership to promote prevention of HIV/AIDS. SNAP has conducted training of counsellors for children's groups, e.g. child-to-child peer education groups, SHAPE and anti-AIDS clubs and those under the Adolescent Reproductive Health programme.

136. In order that its health care delivery approach is holistic, the Ministry of Health has a working relationship with traditional healers. This gives the formal and informal sectors an opportunity to exchange ideas and discuss new diseases, e.g. HIV/AIDS. The ministry has succeeded in changing certain practices among traditional healers, in particular encouraging the use of one razor for each patient when making incisions (*kugatwa*) on the body.

137. In the spiritual sphere, parents have the responsibility that their children are able to exercise this right. There are no restrictions on religious matters, but access to certain facilities may be restricted by religion, i.e. schools and hospitals. Cultural values are taught at schools. Children are encouraged to take part in national cultural festivals such as the Reed Dance (*umhlanga*) for the girls and the (*Lusekwane*) for the boys.

## Constraints

138. Swaziland does not have a formal legal reform process and laws are reviewed on an *ad hoc* basis. In order to implement the CRC, the law reform process would require the formation of a standing committee to study all the laws, to decide whether there is a children's code and, if not, to amend each affected law.

139. There is a general lack of knowledge of human rights and the concept is negatively perceived by many. A rights-based approach in addressing human rights and children's rights concepts is needed.

140. Counselling and support for child victims of abuse is virtually non-existent. This needs urgently to be addressed by ensuring the availability of sufficient social workers to work with children with these problems. The lack of well-trained, specialised personnel to deal with maintenance issues is a limitation. Currently magistrates and prosecutors are designated maintenance officers but are preoccupied with criminal matters, and thus unable to afford child maintenance priority. Special court sittings specifically to deal with child matters are needed.

141. The system only takes care of the social aspect living out the psychological and emotional aspects of the child who has been neglected. Most parents believe that once they have catered for the physical needs of children they have accomplished their parenting tasks. There is a need for emphasis the inclusion of mental, spiritual and moral development in child care.

142. A major constraint is that most government initiatives concerning the allocation of resources favour curative rather than preventive measures. Further, the lack of co-operation between The Government and other partners results in duplication of services. HIV/AIDS issues do not have adequate funding, for preventive or curative programmes. Most initiatives are undermined by the threat of HIV/AIDS and the increase of sexual violations, rape, incest and indecent assault.

143. The Mother to Child Transmission (MTCT) of HIV, has set back the gains of breastfeeding activities, as some mothers are reluctant to breastfeed their infants out of fear of infecting them.

## D. The views of the child (art. 12)

### Law and policy

144. Judicial practice has been to allow children in criminal matters to give evidence in any matter that affects their life. In any criminal case where the child is a victim he or she is afforded a chance to give evidence, and the evidence in rape cases can be heard *in camera*.

145. Although children's evidence is heard in criminal courts, it is treated with caution as was stated in the Court of Appeal case of Maseko vs. R 1977-78 SLR 8 at 9A the court stated the following "...the courts are aware of the danger of accepting the evidence of young children without any corroboration of their story. Not that there must always be corroboration...". As alluded to in Chapter 2 this attitude undermines the expression of the views of children, especially in judicial and administrative proceedings.

146. In civil matters, certain laws stipulate that children's views are to be sought prior to passing judgements affecting their rights.

147. Traditionally *liguma* and *lisango* existed as a forum in which dialogue between boys and girls and family members of the same sex took place. Community forums were provided for children's views at national duties through songs and "praises" composed by children themselves, although children are precluded from participation in other community proceedings.

### **Implementation**

148. There are libraries and information centers where information is available, including the archives and those sponsored by NGOs, such as FUNDZA. Since 1987 this NGO has established libraries in over 70 schools, 60 of which are in the rural areas. According to its most recent report it has provided 65 000 volumes and 35 000 school children have access to these. However, children are not consulted about what they would like to read. Library facilities remain inadequate for all children to access and according to its estimates, 75% of schools do not have functional school libraries. The Government has libraries in all four regions, in cities and some small towns and in some schools. Most of the material in these facilities is in English and very few in siSwati.

149. Knowledge is imparted through organized groupings e.g. youth groups, church groups and school groups. Issues that are addressed include teenage pregnancies, drugs, mental health, HIV/AIDS, STD and school governance issues, contraceptives, career guidance and children's rights.

150. Traditionally, boys and girls had separate fora where information was imparted by female elders to the girls at *egumeni* and male elders to the boys at *esangweni*. The children were taught about many things, including growing up and moral behaviour. The main shortfall of this system was its gender bias.

151. In the Baartjies vs. Baartjies, a 1997 unreported case, the views of the children were sought and taken into consideration in the custody of the minor children. In certain judicial decisions the views of children are heard and acted upon. The Social Welfare Office report was the deciding factor of the custody after the undertaking of the fit-and-proper assessment to determine of the suitability of the applicant. The social workers interviewed each child and all the children preferred to stay with their father instead of their estranged mother. The children's views and best interests were the paramount considerations and the court granted the father custody of the children.

152. The child-to-child peer education strategy initiated and implemented by the MOHSW and the Ministry of Education through television focuses on the child survival programme, helps to testify to the children's knowledge of the rights of the child and provides children with an opportunity to express themselves.

153. Existing radio and TV programmes are insufficiently developed as an outlet for children's views. The School HIV/AIDS Programme helps to educate children and provides a forum for them to state their views as does the school debate programme between those in urban

and rural areas through the medium of television. The Family Life Association of Swaziland in cooperation with the MOHSW has involved children in acquiring information and knowledge of reproductive health.

154. Through the Day of the African Child commemoration activities, children have had an opportunity to express their views in public forums and to have direct contact with policy makers and key programme counterparts. With the support of UNICEF, children have recently had the opportunity, in a relatively new initiative on child participation, to use the Children First biannual publication as a forum for discussion and debate on issues of concern to them. The publication is managed by an editorial team made up of young people who participate in the compilation of articles, layout and design of the magazine. Plans are underway to disseminate this publication beyond the largely urban areas through the collaboration of the print media.

155. In school governance, children prefer the student representative council (SRC) system since they believe it is accountable to them through elections, as opposed to the prefect system that is thought by them to be accountable to the teachers. Children have more faith in SRCs in conveying their views to the school governing bodies.

### **Constraints**

156. The facilities that impart information to children are not accessible to most children, especially those in rural areas and those with disabilities. Some information sources lack child-friendly literature. Most parents, teachers and children do not know where to access certain types of information e.g. bursary/educational assistance, adolescent health etc.

157. The role of traditional structures in imparting information has been limited in that these structures perpetuated gender stereotypes and thus may not currently be very useful unless a change in attitudes and value systems is initiated. The cultural attitudes of parents towards the active involvement of their children in all spheres of life constitute a further limitation.

158. Swazi society has a problem in the implementation of children's rights. There is a need to balance children's rights. Children articulating their rights have encountered resistance, have been accused of being foreign and have been told that no Swazi child can speak like that. The public is not used to hearing children discuss their rights. Adults feel threatened and require respect, stating that modern children are uncultured. The public needs to get used to hearing children discussing rights and adults need to be educated about children's rights in order to appreciate children's debates.

159. Children's opinions as aired on television programmes suggest that parents do not listen to or value their views. Though these programmes are very effective, they are limited to those families who have access to television sets. Attention needs to be paid to airing the opinion of those children living in rural areas since their views are the least respected.

160. The level of child participation in programme planning and implementation is minimal, even with regard to key issues for children, i.e. the education curriculum. The proposed changes contained in the NDS and ESRA documents are dealt with by The Government without

children's participation. Fora for children to debate government plans which involve them are limited or non-existent. Children's participation in the formulation of policies on children is needed and their views should be taken into consideration in the decision making process.

#### **IV. CIVIL RIGHTS AND FREEDOMS (arts. 7, 8, 13-17 and 37 (a))**

##### **A. Name and nationality (art. 7)**

###### **Law and policy**

161. Matters pertaining to nationality are laid down in the repealed Constitution of 1968, Section 21, which stipulates that every person born in Swaziland on or after 6 September 1968 shall become a citizen of Swaziland if his father is a citizen of Swaziland. Section 27(1) states that a child born out of wedlock shall inherit the citizenship of the mother. Section 23(1) provides that for registration purposes, any person born in Swaziland on or after 6 September 1968 who was stateless at the time of the application is not entitled to citizenship of his father or his mother.

162. The Citizenship Order (1973), sections 3, 4 and 7 state that citizenship may be acquired by any person born in or out of Swaziland before, on or after the 12 April 1973, provided their father was a Swazi citizen. Section 6(1)(b) states that any child of at least one Swazi parent may apply for citizenship. The Citizenship Order (1992) states that any child born with a Swazi ancestor is entitled to Swazi citizenship except in cases where the father is a foreigner, where the child can take the citizenship of the father and cannot qualify for both.

163. The Births, Marriages and Deaths Registration Act (1983) Sections 6 and 3(a) requires that the birth of every child whether born alive or stillborn shall be registered. The Act is silent on the right of a child to be given a name at birth. Section 9 of the same Act permits a child who has been registered without a name may at a later date have his birth certificate amended and a name added to the register.

164. The Act also makes provision for all births and deaths to be registered within sixty days of occurrence to an Indvuna, Chief or Registration Officer. In the event that the child is born out of wedlock, the father is not required to give information pertaining to the birth of the child, nor are the names or particulars of the father necessary except with his consent. In this instance the father must acknowledge paternity before a Chief, Indvuna or Registration Officer. If the event has occurred outside Swaziland, it should be registered within ninety days with an Ambassador or other designated representative of Swaziland in the foreign country. The registered information must then be forwarded to the Registrar within ten days. Failure to register births or deaths after a grace period of thirty days is deemed an offence and one may be liable to conviction. An application must be made for late registration and a prescribed fee paid in order for the application to be considered. Furthermore, the Act permits the registration of a child's name at a date later than that of initial registration. The birth of a child must be registered by the father of the child accompanied by the mother, or in their absence, any person present at the actual birth of the child, in charge of the dwelling place in which the birth occurred, or having charge of that child.

165. Alteration of information in the Births Register reflecting any subsequent marriage of formerly unmarried parents, changes in names or surnames, adoption or any other particulars, pertaining to the parents of a child may be made and reflected in the Births Register after application and approval by the Registrar.

### **Implementation**

166. Swaziland is a country steeped in tradition and culture. In the case of the mother being a non-citizen of Swaziland, there seems to be some confusion and discrepancy in relation to Swazi culture as to whether the child would inherit the surname of the father. There is a definite need to improve registration mechanisms in this area and perhaps one solution would be that the particulars of the father of a child born out of wedlock be included in the birth certificate of the child. It is not uncommon, therefore, for a baby to leave the hospital, clinic or other place of birth without a name.

### **Constraints**

167. The birth certificate requires the marital status of the parents to be stated. However, it does not require the child's nationality to be identified.

## **B. Preservation of identity (art. 8)**

### **Law and policy**

168. Principles under customary law that seek to preserve the identity of the child would include *litsambo lemuntfu alidliwa*, simply meaning that no one has a right to claim someone else's child (maternal relatives inclusive) when its biological father or relatives of the father are there. This is usually stipulated in the case of an illegitimate child when the father wants the child to have or preserve his identity.

169. Under general law, The Child Care Service Order (1977) prevents the separation of a child from parents or family unless such separation is in the best interests of the child. Further responsibilities of the Service include protection of children exposed to ill-treatment or abuse and their removal from the custody or care of unfit persons or from conditions which may be physically or morally harmful to the child. When placing a child in alternative care, consent of a parent or relative must be sought, failing which a court order must be obtained.

170. Regulations of the Child Care Service Order (1977) do not stipulate the need for a child in care to maintain contact with other family members or members of the same community. However, the Order stipulates that foster homes and institutions are monitored and that finance is provided for the maintenance and education of the child.

### **Implementation**

171. At present, English is the medium of instruction in schools and in legislative, administrative and judicial proceedings (excepting traditional courts). Schools penalise children for using the vernacular outside of set lessons.



## **Constraints**

172. At present, there is no provision made in the Order for refugee children. The issue of monitoring and implementing items stipulated in the Order is a major concern.

### **C. Freedom of expression (art. 13)**

#### **Law and policy**

173. The repealed Constitution (1968), Section 12 (1), provides that no person shall be hindered from the enjoyment of his or her freedom of expression, from holding an opinion, receiving ideas and information and communicating these opinions and ideas whether publicly or generally, except by his consent. The King's Proclamation to the Nation (1973) repealed the Constitution, stating in Section 11, that all political parties and similar bodies that cultivate and bring about disturbances or ill feelings within the nation be dissolved and prohibited with immediate effect. Section 12 goes on to forbid the holding of political meetings, processions and demonstrations in public places without the written consent of the Commissioner of Police. Persons found to be contravening this order are guilty of an offence and are liable to conviction.

174. The Detention Decree (1/1978), popularly referred to as the 60-Day Detention Order, was repealed by Detention (Repeal) Decree (2/1993).

175. Part X of the Employment Act (1980) which states the conditions under which children may be employed provides limited protection to employed children and young persons. These conditions do not prevent a child from joining a union in terms of Sections 27 and 28 of The Industrial Relations Act (1996), which provides any child under employment with the means of expressing any grievances he or she might have.

176. Reasonable restrictions on the exercise of this fundamental freedom are imposed by law on individuals and the press. Commonly recognised limitations relate to contempt of court, defamation, sedition and treasonable offences, decency and morality. The Obscene Publications Act (1927) also regulates the type of material that is available to the public through the mass media.

177. There is currently no media or information policy. A draft Media Council Bill is the subject of ongoing consultations initiated by the Ministry of Public Service and Information. Its initial draft contains a provision excluding young people under 18 from eligibility for accreditation as journalists and in the production and dissemination of information. There are no special provisions exempting young people from the effects of this provision, thereby giving reality to their freedom of expression within their own and other literature in the mass media.

#### **Implementation**

178. Schools and clubs allow children to communicate their opinions on matters of relevance or interest to them. Many schools have debating clubs and debates are held against other schools where children can express their views on matters that are important to them and their society. Writing contests encourage children to express their views on social, environmental and economical problems relating to them, aiming at improving the world that they live in. NGOs also provide a forum for children to express their views. The Family Life Association of

Swaziland (FLAS), through its In-Schools Peer Education Programme, Out of School F-Team and its Clinic Based Service offers counselling, birth control, pregnancy tests, information on pre-reproductive health care, and reproductive health care to children in and out of school. The Schools HIV/AIDS Population Education Programme educates school going children about HIV and AIDS. The University of Swaziland Civic Education Programme, under the auspices of the University of Swaziland has been conducting workshops for High School students on Civil and Political Rights and the Constitution Making Process.

### **Constraints**

179. Reports of assaults by armed forces at illegal gatherings is an issue to be considered together with the question of arbitrary detention of people.

180. Despite repeal of the Constitution and enactment of various pieces of law the notion of freedom of the press is accepted. However, there remains a real lack of knowledge in relation to laws that protect children.

181. The fact that legislation exists but is not enforced indicates a lack of monitoring and inadequate policies.

182. There are no active youth fora where young people can voice their needs. Youth are not proactive as far as challenging policies that affect them.

## **D. Freedom of thought, conscience and religion (art. 14)**

### **Law and policy**

183. The repealed Constitution (1968) provided for the protection of every person's right to freedom of thought, conscience and religion by requiring that no person be hindered from the enjoyment of their freedom of conscience, including freedom of thought and religion.

### **Implementation**

184. Although children will often be in attendance at community gatherings and meetings, Swazi culture does not consider the views of the child important. Places of education are forbidden from enforcing their religious beliefs on minors or adults without their own or their guardians consent. Predominately, Swaziland is a Christian country and children are indoctrinated into the church at an early age. Generally, children attend the denomination of their mother because women are more likely to attend church than men.

### **Constraints**

185. There is no legislation curtailing freedom of thought, conscience and religion, although some schools do not permit children of Jehovah's Witness to follow the practices of their sect. Mission schools also force children to attend services and prayers regardless of the religion of the child.

## **E. Freedom of association and/or peaceful assembly (art. 15)**

### **Law and policy**

186. The protection of fundamental human rights as contained in the now repealed Constitution (1968) provided for the rights of a person to assemble and associate with others and to form unions and associations for the protection of their interests. The King's Proclamation Order (1973) subsequently dissolved and prohibited this right by deeming it a crime for people to assemble, hold meetings and associate with others in public places without the consent of the Commissioner of Police. Human rights bodies and political parties are presently calling for the repeal of this law.

187. The Industrial Relations Act (1996) Sections 27 and 28 permits the establishment of unions.

### **Implementation**

188. Though some children do work, they are neither members of existing labour unions nor have established any of their own. Marches and rallies to mobilise the public around the CRC and to highlight family issues such as women and child abuse, AIDS awareness campaigns et cetera have been undertaken at intervals.

189. Children from different schools are encouraged to take part in sporting, cultural and music competitions and in other non-curriculum activities which might include sponsored walks, clean up campaigns, concerts, marches and the Prince Makhosini Award Scheme.

## **F. Protection of privacy (art. 16)**

### **Law and policy**

190. Section 11 of the repealed Constitution (1968) provides that, in a court of law, persons other than the parties and their legal representatives may be excluded from proceedings where publicity would prejudice the welfare of any persons under the age of 18 years.

191. In cases of rape (including statutory rape) the CP&E Act (1938) aims to protect the privacy of girls by allowing court proceedings to take place *in camera*. The Reformatories Act (1921) provides that subject to the presence of a parent or guardian or other interested persons, the case of the juvenile may be held *in camera*. Further, it is illegal to publish any information that may reveal the identity of a child in a rape case.

192. Searches and seizures by competent authorities can only take place under warrants issued by judicial authorities. Statutory safeguards do exist for searches of the person or the home without warrants to prevent procedural abuses.

193. The publication of defamatory information, i.e. that which injures the reputation of another person, is a criminal offence in Swaziland. The publication of true information is also considered defamatory if it can be shown that the publication is of no benefit to the public.

### **Implementation**

194. Generally, courts do not seem to exercise the discretion to hold proceedings of juveniles *in camera*, except to a very limited extent in cases of rape. The print media has on occasion been brought before court on defamatory charges. However, this is not consistently enforced and the media has been able to infringe this law regularly with impunity.

### **Constraints**

195. Awareness or enforcement of this law is questionable, particularly in cases of children having the right to give evidence in court *in camera* as a rule and not as an exception.

196. The issue of medical examinations and compulsory testing conflicts with customary Swazi practice where the parent of the child must be in attendance. It is questionable which legislation should be implemented when a traditional healer is consulted.

197. Also relevant to article 16 of the Convention in relation to Swazi society is the issue of adoption and placement procedures and The Maintenance Act (1970).

## **G. Access to appropriate information (art. 17)**

### **Law and policy**

198. The Education Policy (1999), Section 3, States that Universal access to basic education will remain a priority within available financial and other resource capacities. Such education shall be pragmatic enough to not only permit students to move on to higher education but also permit students to make a living through gainful employment in both the formal and informal sectors of the economy after completion this level.

199. Section 14.0 states that the National Library Services shall be named the National Resource Information Centre and it shall advise in the development and upgrading of school libraries.

### **Implementation**

200. Within the education system parents are required to provide children with exercise books and stationery at all levels except the tertiary level. Textbooks are often lent out to students by the school but these are often scarce. As already alluded to in Chapter 3, FUNDZA plays a contributing role within this school setting by establishing school libraries, training teacher librarians to manage those libraries, promoting improved literacy of school children, improving literacy in English language and generally upgrading the standard of education and access to information in the country. Recently the Ministry of Education introduced a book loan scheme to assist in the provision of educational textbooks and materials.

201. Social and cultural information is available from the various government departments and from some NGOs.

202. As a further medium of information, Swazi TV is a quasi-state body established and governed by statute. It operates one TV station which predominantly operates in English, with

news bulletins being broadcast in both SiSwati and English. The SBIS operates one radio service on two channels of SiSwati and English. Radio reaches the majority of the population, whilst television is limited mainly to the urban areas. There are very few television programmes aimed at both children and adults on English and other language skills, health and family planning, the environment, family relationships and most recently on child abuse and its prevention.

203. Print media published in the country consists mainly of two daily newspapers. The Swazi Observer is Government run whilst The Times of Swaziland is privately owned. The latter has wider dissemination and has recently resumed its siSwati publication.

### **Constraints**

204. Many schools in the rural areas are inadequately staffed, with many graduate teachers not prepared to teach in these areas due to a lack of equipment and facilities such as laboratories as well as a lack of housing.

205. Although some programmes have been developed to ensure the realisation of children's rights, it must be questioned whether national resources are adequate or channelled and allocated appropriately in compliance with the Convention. The major concern is whether children in the country receive the appropriate and relevant quality education and information they are entitled to.

206. There is no media or information policy in place. Concerns have been expressed that unless there is a revision to the provisions of the draft Media Council Bill discussed above in section C there will be no guarantee of access by young people to information or their involvement in its production and dissemination, including through the Internet.

## **H. The right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment (art. 37 (a))**

### **Law and policy**

207. The repealed Constitution (1968), Section 6(1) and 6(2) provides that no person shall be held in slavery or servitude, nor that he or she shall be required to perform forced labour. Section 7(1) states that no person shall be subjected to torture or inhuman or degrading punishment or treatment.

208. The Crimes Act (1889), Sections 41, 42 and 43 makes it an offence for a parent or guardian or any other person to allow for the defilement of a ward or girl respectively. Section 46 further prohibits the abduction of a girl of less than 18 years of age.

209. Under the Education Act (1981), guidelines have been developed by the Ministry of Education regarding corporal punishment. This may be administered by heads of schools and their deputies upon receiving a complaint from the teacher about a pupil. The guidelines stipulate the diameter of the cane to be used and further provide for the number of strokes that may be administered. These provisions legalise assault, which is otherwise a criminal offence.

## **Implementation**

210. Corporal punishment within schools has been administered contrary to existing guidelines, particularly regarding privacy and the type of cane to be used. Clearly, this does not promote respect for human dignity and such punishment has resulted in humiliation, serious injury and even death.

211. NGOs have taken the responsibility for raising awareness about physical abuse of children.

## **Constraints**

212. Criminal investigations have been flawed by allegations of the use of torture, particularly in the eliciting of confessions from suspects.

213. It is difficult to monitor corporal punishment in schools as students are afraid to report teachers and also because a significant percentage of parents encourage this practice. There is currently no legislation or instrument to monitor corporal punishment administered by family members. This is also within the context of widespread use of corporal punishment as a social and cultural practice to chastise women as well as children. There is no legislation that protects pregnant women from being beaten by their spouses.

## **V. FAMILY ENVIRONMENT AND ALTERNATIVE CARE**

### **Family forms**

214. Families are characterised by being generally male-headed and extended. “Extended” in Swazi society means that the family includes ties of kinship, traced through blood, that go back several generations. The Swazi say “a child is one blood with its father and mother”. However, the most important kinship ties are those transmitted through the father’s lineage as the father and children belong to the same clan, but the mother belongs to a different clan. (Family in Transition: The experience of Swaziland, WLSA, Mbabane, 1998.)

215. Whilst two types of family forms, namely the nuclear and extended, can be identified and are recognised within Swazi society, there are other forms that are in existence such as: single-parent families, blended families, polygamous families, cohabiting families, parents and step-children, grandparents and grandchildren, divorced or deserted women with children, street families and same sex partners. All the above mentioned forms have either negative or positive implications for the psychosocial well being of children in Swaziland.

216. The evolution of the different family forms referred to above is not only as a result of increased stress (from internal and external migrant labour, unemployment and lack of access to productive resources) on families but also the increasing problems faced by families and communities in the care and protection of children.

217. Results of the 1995 Household Income and Expenditure Survey (HIES) released in 1997 indicate that most families (66% of the country) are living below the poverty line. According to this report, 30% of the urban population was found to be poor compared with the 55% in the rural areas.

218. Both the HIES and the 1997 Participatory Poverty Assessment (PPA) confirm that women are more vulnerable to poverty. The HIES estimated that 30% of households in the rural and 22% in the urban areas were headed by women and tended to be poorer than all other households. The PPA found that women assessed the causes of their poverty as their minority status, their excessive workload as they are increasingly responsible for household food security and education of children, as well as the lack of support in their role as heads.

#### **A. Parental guidance (art. 5)**

##### **Law and policy**

219. General law contains a concept of ‘parental power’ which embodies the rights and duties parents have in respect of their minor children. This concept includes the general supervision of the maintenance and education of children and the administration of their property. In general and in practice this power is exercised by the father as the head of the family and administrator of the family estate in community, unless the father dies, when the mother would be instituted as such.

220. In contrast, the customary legal concept of parental power at no time extends to women and the institution of the mother as the head and administrator of the family estate is alien to Swazi law and custom.

221. Where the child is illegitimate, parental power in general law is solely vested in and exercised by the mother even though maintenance must be shared between the parents. Such power is also vested in and is exercised by her where she has been granted custody consequent to divorce or separation. Parental power is, as is the case in guardianship and custody, subject to the overall supervisory power of the court.

222. Under customary law, the concept of parental power is somewhat more pervasive since the end of minority is indefinite in the case of women. An unmarried man technically remains a minor and to avoid regaining minority a widowed man would have to ensure that he remarries. A male living with his wife in his father’s household is regarded as a minor. As long as the father is still alive, a man is never sued without his father or uncle being notified of the suit and his father may be fined for his crimes should the man still be living in the father’s household. Even the establishment of a separate homestead requires the consent and cooperation of the father who has either to allocate a portion of his own land where the son may set up his home or approach the local authority responsible for allocating land to new families on behalf of his son.

223. The power exercised by a parent usually includes the provision of the relevant ritual and health care for the child, food, clothing, shelter and general maintenance, education, training and discipline, representation in all public and legal proceedings, provision of guidance and counselling in upbringing to be a responsible citizen and a loyal subject of the King.

##### **Implementation**

224. The Government has taken some steps to provide alternative care for children without families. For example, the SOS Children’s Village is expected to provide guidance to children in

a family-like environment. The extension of parental guidance to institutions, teachers, matrons and boarding masters does apply and these institutions are expected to provide guidance to children as if they were their own.

225. Street and abused children should be placed where their best interests will be served and the Government is to provide adequate resources for this.

### **B. Parental responsibilities (art. 18)**

#### **Law and policy**

226. As seen above, there are inequalities both in general and customary law in the sharing of parental power. Save for a statement in general law that the legal duty of support (maintenance) owed to the child, whether legitimate or illegitimate, applies equally to both parents, primary decision-making power rests with the father. In contrast, under customary law the illegitimate child has only such a right provided his father has acknowledged him through the performance of certain rituals resulting in the payment of cattle to the maternal relatives of the child.

227. As part of the limited assistance to parents to help them discharge their responsibilities, there are provisions in The Employment Act (1980). The Occupational Health Bill (which has been submitted to Parliament for debate) stipulates a right to maternity leave for three months, one month of which is paid. Employees in the civil service have had the right to three months paid maternity leave guaranteed since 1976. The Employment Act, as amended, provides an extra hour of time off for the working mother for breastfeeding in the first six months of the child's life. There are no provisions however for flexible work schedules to accommodate family responsibilities and the use of sick leave for the care of sick children.

#### **Implementation**

228. The department of social welfare in MOHSW has a mandate to promote and safeguard the welfare of children. The department administers certain pieces of legislation designed to promote the welfare and protection of children, particularly in ensuring that parents discharge their responsibilities.

229. In reality, most of the direct responsibility for the care of children falls on women. As noted above, a sizable proportion of households are headed by women and these tend to be the poorer ones. Women's access to land, resources and formal employment is unequal to that of men. Despite their *de facto* headship of households, they do not necessarily enjoy decision-making power over their own income and resources within the home. [see WLSA Family in Transition].

230. Childcare services and facilities for children of working parents, especially children below primary-school age, are few and the majority of these facilities are preschools whose main aim is the preparation of children for entry into primary school. There are efforts being made to improve child care services, particularly in rural communities, in the light of the HIV/AIDS epidemic and the implications of its projected impact on the care and protection of children.



## **Constraints**

231. The absence of data on child rearing practices and the current viability of the extended family network for caring and protection of children makes it difficult to assess the efficacy of existing measures. Maternity protection is not communicated to women and it is also not observed by some private companies.

## **Way forward**

232. To support policy developments within the education sector to broaden the concept of childcare beyond the mere preparation for entry into the formal education system, employees should be given copies of the general orders.

## **C. Separation from parents (art. 9)**

### **Law and policy**

233. The Child Care Service Order referred to above mandates the Service, whose functions are carried out by the Department of Social Welfare, to remove children from abusive situations including those of their families. According to the Act this is sanctioned by a juvenile court and envisages the placement of such children in places of safety. Such removal would be effected if necessary and in the best interests of the child.

234. The other legally regulated separation from parents is in situations of divorce or judicial separation of the parents where the exercise of parental power would then be regulated by the court. Normally, where custody of the child has been granted to one parent, the other would be granted a right of access. The court may apply conditions to the custody of the child whilst giving directions regarding the exercise of the right of access.

235. As referred to above, the situation is different for the child born out of wedlock since in general law the mother has the sole rights of both guardianship and custody whilst the father has no right of access. Access to the child is at the discretion of the mother unless granted by the court.

236. The Prison Act (1964) Section 28(7) Provides that subject to such conditions as the Commissioner may specify, an unweaned infant of a female prisoner may be received into the prison with its mother and be supplied at the public expense with clothing and other necessary things. It also states that after weaning, the officer in charge shall, if satisfied that it is in the best interest of the child received into prison under subsection (7), cause such child to be handed over to relatives or friends of the mother who are able to support the child or else cause the child to be handed into the care of such welfare authority as the Minister may approve for such purpose.

### **Implementation**

237. The welfare of the babies is taken care of, by two qualified nurses, who are supervised by a departmental doctor. Before birth, antenatal care is offered by the nursing mother to the expectant mother. When in labour, mothers are taken to the Mbabane Government Hospital and Raleigh Fitkin Memorial Hospital for delivery. On return, postnatal care is continued by the

nursing staff. From the time of delivery up to when the nurses deem fit, the mother and the baby are together (rooming in) as the baby is depending on the mother's milk. When the mother assumes duties, she is allowed to have breastfeeding breaks.

238. Immunization and growth monitoring is conducted within the institution. Basic needs such as milk, toiletries are provided by the department. Mothers and relatives are also expected to provide clothing for the babies. Several NGOs sometimes donate toys and clothing.

### **Constraints**

239. As noted in Chapter 2, imprisoned mothers are permitted to keep their children with them if the children are under 3 years old. This has created such an outcry that this policy may have to be reviewed, particularly with regard to the care and protection of these children. Despite the provisions of the law that state that the responsibility for clothing, food and care of the children is the responsibility of the Department of Correctional Services, this has not been matched by budget allocations within the Service.

240. There is also no special diet provided for expectant mothers. Government hospitals do not treat prisoners' children. Extended family members and relatives do not morally and materially support incarcerated mothers and their babies, probably due to public perceptions of "incarceration"

241. There are no counselling centres for children and parents involved in family separation.

242. The limited provision of social welfare services is a major concern. The services provided by the few officers are not well understood by the society.

243. There is only one half way house in Manzini City.

244. The issue of taking children to places of safety cannot be clearly defined, as some have suffered physical and psychological abuse from people granted custody of such children.

245. The few available programmes that provide counselling services are operating on shoe-string budgets. Hence the focus is only on problem solving rather than on prevention of family separation.

246. The act that requires that there should be a juvenile court has not been followed.

247. The Ministry of Health and Social Welfare fee structure does not state who should be paid and who shouldn't, hence the Department of Correctional Services experiences problems in accessing medical treatment for prisoners' children.

248. There is a low Psychologists – prisoner ratio and a low psychology nurse-prisoners' children ratio.

## **D. Family reunification (art. 10)**

### **Law and policy**

249. Other than the national legislation regarding protection of refugees, which is applied within the international legal framework outlined in Chapter 8 below, there are no laws specifically guaranteeing the reunification of children with their parents.

250. The law provides a right to move freely within the country and every Swazi has a right to a travel document which enables movement within certain countries in Africa. In comparison, the right to a passport, which enables the holder to travel freely in the world, is to a certain extent restricted and has been known to be arbitrarily limited, particularly for those referred to as 'coloureds'.

### **Implementation**

251. There are no government programmes for re-uniting children who have been abandoned, including those who are increasingly coming to live on the streets in urban centres.

252. Some efforts, though small-scale, have been made by NGOs to provide services to children living on the street.

### **Constraints**

253. Public perceptions of abandoned children and those living on the streets are that these children are truant. Ignorance of the situation of these children is still widespread.

254. Reintegration of street children with their families remains a major challenge. The reasons have been highlighted earlier in the 1997 study by Maphalala, who found that children left home due to insufficient food, clothing and lack of other resources to meet their basic needs. Therefore, the real challenge becomes supporting the immediate and extended families who can take these children in.

255. The lack of coordinated collective action by NGOs currently working for and with children on the street to reintegrate them with their families has contributed to this issue remaining unaddressed. Related to this is the absence of NGO collaboration with respective communities and the children themselves in facilitating the processes of reintegration.

## **E. Illicit transfer and non-return (art. 11)**

### **Law and policy**

256. There are no statutory laws safeguarding and guaranteeing protection of children illegally taken out of the country. This is a serious constraint in effecting protection of children. Abduction, illicit transfer and non-return of a child taken abroad are prohibited in favour of family re-unification. Where separation is unavoidable, sale of and trafficking in children for any purpose or in any form by any person (including parents) is prevented by the State (Dlamini, 1994).

## **Implementation**

257. There have been some reports of children who have been unlawfully taken out of the country, usually by a defaulting parent in family law disputes relating to custody and maintenance.

## **Way forward**

258. The Government needs to enter into bilateral treaties to help redress this problem. It should also ratify the inter-country adoption treaty (Hague Convention) as well as the CRC Protocol on the sale and trafficking of children.

## **F. Recovery of maintenance (art. 27 para. 4)**

### **Law and policy**

259. Presently the law requires that every parent must contribute towards the maintenance of their minor children, the rate of which support depends on the respondent's means.

260. The Act makes no provision for parents who are not gainfully employed, although it provides punishment for offenders. However, enforcement is lacking and as a result the upbringing of the child becomes the burden of the custodian parent, who in most cases is the mother.

### **Implementation**

261. In practice, the Social Welfare Department has been called upon to play a key role in gathering information, fostering dialogue between parties with a view to reaching agreement and submission of maintenance claims referred to the magistrates court constituted as a maintenance court. The majority of cases involve mothers as complainants; ultimately social workers are responsible for receiving and disbursing maintenance payments. According to the 1998 Kaseke situation analysis of the social welfare services in Swaziland, regional social workers would handle about 300 cases a month, constituting the biggest single activity undertaken by them.

262. For those who can afford legal fees, lawyers are often engaged to file civil claims regarding maintenance; this can result in the issuance of garnishee orders in respect of defaulters according to criminal proceedings under the Maintenance Act. As highlighted in section C in Chapter III, it is prosecutors from the Directorate of Public Prosecutions Office that will act as maintenance officers during court proceedings instituted under the Maintenance Act.

263. The Department of Social Welfare also administers a public assistance programme which provides means-tested benefits to the needy or destitute in the country. Those who benefit are mainly the elderly, widows, persons with disabilities and those who are terminally ill. Assistance ranges from E40.00 to E65.00 per month and is usually paid out on a quarterly basis. According to the 1998 Kaseke report, social workers estimated that about 40% of the population is needy and yet less than 10% are eligible to access this programme.

## **Constraints**

264. Although the handling of maintenance cases is the largest single activity in the whole range of its activities, the Department of Social Welfare within the Ministry of Health and Social Welfare lacks a framework for action to address issues of child welfare in particular. This gap also affects the work of its partners, whose intervention strategies need to be informed by a national policy.

265. The current structure of the Department of Social Welfare inhibits effective supervision and management, which is reflected right up to regional levels. In addition to this, social welfare services are not all coordinated by the Department notwithstanding the partly-implemented recommendations of the PSMP whereby the post of Coordinator of Social Services was created and subsequently filled.

266. The office of the DPP is itself overburdened and inadequately trained to deal effectively with maintenance matters and the enforcement of court orders issued under the Act.

267. Kaseke highlights a number of staffing weaknesses within the Social Welfare Department relating to low morale, severe manpower shortages, skills and competencies and the absence of a proper staff development programme.

268. Due to the inadequacies of the public assistance programme, children are owed a duty of support by their parents and by the nation at large. Its ineffectiveness would seem to be rooted in the inadequate government allocation of resources, both financial and human.

## **G. Adoption of children (art. 21)**

### **Law and policy**

269. The Adoption Act (1952), which provides for adoption of Swazi children, states that adoptive parents must be at least 25 years of age and at least 25 years older than the child. It permits non-Swazi citizens to adopt Swazi children.

270. Customarily, a child may be given to a family within the extended family network. This family then becomes fully responsible for the child and these children can have inheritance rights, having followed certain customary adoption processes. However, these are not formal systems as in those required under the Adoption Act.

271. In a polygamous family, when the husband dies, if the first wife has no children, particularly no son, a son from another woman is given to the first wife and is made an heir.

### **Implementation**

272. There were a number of adoption cases disposed of through the Magistrate Courts. This number includes those children who went through the informal adoption practices within the extended family. There is no mechanism for identifying and monitoring the situation of these children. Customary practice is that if children are orphaned, relatives adopt them without signing any legally binding instruments.

## **Constraints**

273. The Service envisaged in the Child Services Order (1977) that has the duty of removing children living in circumstances detrimental to their well-being to a place of safety has yet to be established. Also envisaged in the same instrument, but also not yet created, is a juvenile court that would dispose of such matters following careful consideration and would sanction any provision of suitable alternative family arrangements, including a child's admission to a children's home, placement in a foster home or being returned home with or without counselling.

274. There are no records of children adopted through the informal system.

## **Way forward**

275. Three initiatives are deemed to be important:

- (a) Ratification of the Hague Convention on inter-country adoptions;
- (b) Implementation of the Child Care Services Order by the creation of a juvenile court and establishment of a Child Care Service acting at its own instance;
- (c) Development of regulatory guidelines for the placement and tracking of children informally adopted within the customary system.

## **H. Periodic review of placement (art. 25)**

### **Law and policy**

276. According to the Adoption Act (1952), the social welfare officer appointed as guardian by the relevant Minister is to make regular assessment visits to adopted children. The guardian so appointed may visit for a period of two years following the granting of the adoption order.

277. The Child Care Service Order (1977) provides for care following the granting by a magistrate a place of safety order whose period is not to exceed 28 days, within which time the statute requires the referral of the matter of placement to a juvenile court for adjudication.

### **Implementation**

278. In practice, social welfare officers often make assessment visits to children in various institutions and may recommend a change of placement if the institution is no longer acting in the best interests of the child concerned. Case files are updated by the relevant social welfare officer, who is also responsible for recommending children in foster homes for adoption. Child welfare matters were however found by Kaseke to have been dealt with in an *ad hoc* manner without effective coordination. The Kaseke report found that children are being placed in institutions or with foster parents without the necessary order from a juvenile court, a court that would have heard, adjudicated and provided directions concerning periodic review.

## **Constraints**

279. The absence of an operational juvenile court has been a key constraint in the legal protection of children.

280. Deficiencies in the organisational, human and financial resources of the Department of Social Welfare which is currently bearing this burden.

### **I. Abuse and neglect, recovery and reintegration (arts. 19 and 39)**

#### **Law and policy**

281. The Child Care Services Order (1977) seeks to protect children in need of care or those in difficult circumstances. This includes making arrangements for the care and protection of orphaned, abandoned or abused children or those living in circumstances that are detrimental to their well being. It further provides for the removal of children from situations in which they may be abused or harmed.

#### **Implementation**

282. Social workers currently carry out the duties stipulated in the Child Care Services Order and work to remove children to a place of safety. The capacity of the Social Welfare Department is inadequate to deal with the numbers of children in need of these services, particularly as a result of the HIV/AIDS pandemic.

283. Current practice in Swaziland has shown that families and society resist such protection measures. These are practices they would prefer to remain within the family, “temndeni atingenwa” or tibi tendlini atikhiswa.” Both statements loosely imply that family embarrassments should not be exposed. Reports by Nomcebo Manzini (1993), Masilela (1997) and Mgabhi, Mkhabela and Ndzimandze (1997).

284. There is only one institutional place of safety for children in the country, the Halfway House located in Manzini city. However, there are homes owned by churches and NGOs that provide shelter to children in difficult situations. Some of them are: Ekuthuleni, Macorkindale orphanage, SOS village, Enjabulweni and Zondle Homes.

285. As referred to above, much of the actual work of the Government and NGOs is without the sanction of court orders. Social workers, together with NGOs, do provide family counselling services. Family counselling is a response to the growing problem of marital disharmony, particularly in urban areas, and a problem that has psychological effects on children. Traditional society also has mechanisms for handling family problems. The role of the extended family can be seen in counselling by family members.

## **Constraints**

286. The range of constraints already referred to earlier in this chapter also apply for this aspect.

287. The Kaseke report highlights the fact that the country's only place of safety is under-utilised largely because of the bureaucratic procedures involved in securing access for the placement of children. This, in particular, adversely affects access of NGO social workers who have to obtain decisions on admissions from the Head of the Department of Social Welfare.

288. Family counselling services provided by the Department of Social Welfare are not well coordinated and are not perceived by social workers as being a significant part of their work.

289. People are not aware of the protocols of dealing with family misunderstandings, customarily or otherwise.

290. The low social status of women incapacitates them.

## **VI. BASIC HEALTH AND WELFARE (arts. 6; 18, para. 3; 23; 24; 27; 27, paras 1-3)**

### **A. Disabled children (art. 23)**

#### **Law and policy**

291. The Mental Health Order (1978) and Public Health Act (1969) make provisions for children with disabilities to have equal access to health care services, including mother and child welfare, immunisations, antenatal care, growth monitoring and clinical consultation.

292. The 1983 National Health Policy mentions rehabilitation as one of the four major areas of health service provision but does not provide operational guidelines, leading to a fragmentation of service development and a continued lack of budgeting for these services within the MOHSW. The policy is under review and included in the focus of the review are, in addition to the objectives and strategies for rehabilitation, critical areas in service provision and building of capacities of personnel. The policy review includes putting in place operational guidelines for rehabilitation, including collaborative mechanisms for working with other sectors such as education, social welfare, community development and labour.

293. The National Programme of Action (NPA) has identified as one of its indicators for monitoring progress towards year 2000 goals the eradication of poliomyelitis and neonatal tetanus, reducing the proportion of disabled children without access to social services as well as reducing the incidence of alcohol and drug abuse among children. As one of its supporting goals for child health the NPA has targeted the virtual elimination of Vitamin A deficiency and its consequences, including blindness. Among the goals for maternal health is to have all health facilities by the year 2000 utilise the risk approach in screening pregnant women and to increase to 60% the proportion of women making one or more ante-natal care visits in the first trimester.

#### **Implementation**

294. According to the 1986 census results, 2.6% of the population had significant disabilities. This had risen to 3% in the 1997 census data. The MOHSW, through its Community Based Rehabilitation (CBR) programme, estimates that the figure is higher due to weaknesses in enumeration and analysis.



295. It is difficult adequately to define disabled children in Swaziland, as the data does not disaggregate age sufficiently. In 1997 there were 8338 people aged 0-24 years with disabilities. However, a significant number of respondents had not stated their status in this regard. Of those that did respond, the largest proportion was found in the age group 5-14 years (a total of 3938). Physical disabilities were the highest number, with negligible gender differences.

296. The Participatory Poverty Assessment (1995) indicates that disabled people are among the more vulnerable. Furthermore, households headed by disabled persons tend to be disadvantaged as their access to entitlements is often compromised.

297. Since 1990 the MOHSW has been implementing, in conjunction with the non-governmental organization Save the Children Fund, the CBR programme as an improvement on the 'traditional' medical approach that focussed on impairments and restoration of function for individual patients. Funding for the programme has been provided by Comic Relief Projects. The programme was initially piloted in three areas in northern Hhohho region, subsequently extended to one area in Manzini region (Mankayane district) and extended to one other in 1993.

298. The philosophy behind the community development and primary health care approach of CBR is to take the services to the people and to involve the family, child and community at large in the planning, programming and implementation of rehabilitation services. Measures are being taken to improve social attitudes and discrimination and the approach looks beyond disability and aims to promote full integration of the child into the mainstream of community life.

299. The CBR programme also targets attitudes towards disability and seeks to promote a positive self-image on the part of the child. The programme has integrated children with disabilities into their communities by facilitating the setting up of parent support groups and child-to-child peer education clubs in local schools and seeks to provide training to care givers of those children with disabilities. The facilitative strategy for integration of children with disabilities into regular schools is the establishment of peer education clubs in 15 schools in the Hhohho region. Children with visual and hearing impairment or severe learning difficulties are still admitted to the special schools of St. Joseph's Resource Centre for the blind, Ekwetsembeni School and the Siteki School for the Deaf.

300. The CBR programme was evaluated in 1993 and this resulted in the development of a five year strategic plan the following year. The evaluation reaffirmed the need to raise public awareness on issues of disability, particularly in the area of prevention. Its findings also outlined a clear need for developing early detection, intervention and referral strategies and the provision of services for children at risk and those with disabilities.

301. Rural Health Motivators (RHMs) have also been trained to identify children with disabilities in their communities.

302. The Swaziland Mental Health Society (SHMS) does most of the work for the emotionally and psychological disturbed children. Among the referrals to the National Psychiatric Centre (NPC) include pregnant women (especially teenagers).

## **Constraints**

303. Such services however, lack the necessary infrastructure and policy guidelines. Despite provision of rehabilitative services being included in the National Health Policy, these units are often inadequately resourced and understaffed and are not accessible to the majority of children in need of the service. Though the MOHSW continues with to meet the recurrent costs of personnel and other resources, much of the logistical support that was provided by SCF is no longer available due to restructuring within the NGO and the prevailing donor climate.

304. Swaziland has only is one speech and hearing pathologist, one audiologist, two occupational therapists, one physical therapist, one orthopaedic technologist, two CBR coordinators, and four rehabilitation technicians (two of which are deployed to the two refugee camps at Malindza and Ndzevane). Four CBR technicians have just completed training in South Africa and Zimbabwe.

305. Efforts to date, including those of the CBR programme to ensure the participation of the disabled child within the community and the protection of his or her rights, fall short of the standards outlined in the Convention. Disabled children have continued to be viewed as a charity, and many have been isolated in institutions with poor service and inadequate organisation and management.

306. Other shortcomings include a lack of trained personnel to provide appropriate services for the disabled child, with some educational information and health messages not being communicated to the child with either visual or hearing impairment. According to a recent position paper prepared by the CBR there is only one CBR coordinator and one nursing assistant trained in community rehabilitation work for the entire programme in the country.

307. With the provision of office space for the establishment of a CBR office as part of the primary health care programmes administered through the Primary Health Unit there is a need for an urgent follow up in budgetary allocations within the MOHSW for the administrative and programme costs.

308. Parents with disabled children, out of embarrassment and shame, do not send them to well-baby clinics for immunization and growth monitoring services.

309. Health facilities are inaccessible in terms of the way the buildings are structured.

## **B. Health and health services (art. 24)**

### **Law and policy**

310. The National Health Policy (1983) states that the Ministry of Health is committed to the World Health Organisation goal of Health for All by the Year 2000. The strategy to achieve this goal is to develop a comprehensive primary health care system for all.

311. Following the World Summit for Children in 1990, the Government of Swaziland developed the NPA launched by the Prime Minister. The NPA was the culmination of two year's work under the leadership of the National Committee for Children (NCC), chaired by the

Minister of Health. In support were an NPA Task Force, Technical Working Group and Drafting Committee. The NPA provides the guidance and framework for all developmental efforts to ensure the survival, protection and development of children in Swaziland.

312. More recently, the Ministry of Health and Social Welfare (MOHSW), with the assistance of the World Health Organisation (WHO), prepared a draft of the Public Health Bill (1999), which was debated in Parliament and referred back for further stakeholder consultations in the last quarter of 1999. In line with national health policy, the objective of the Bill is to provide preventative, curative, palliative and rehabilitative health services, which are relevant and accessible to all. This objective is also contained in the final report of the Health Sector Study that seeks to promote and accelerate the shift from curative to preventative services.

313. The Bill contains regulations respecting affirmative action for disadvantaged persons, women and children and states that every parent, custodian or guardian shall ensure the immunisation of their child, regardless of ethnicity, culture, custom, race, gender, age or religion, and that immunisations will be provided free of charge. Further, the Bill makes it an offence to, knowingly or otherwise, transmit a sexually-transmitted disease, including HIV. The Bill also provides for the protection and treatment of child rape victims of either sex and provides for the adequate treatment and notification of communicable diseases, including STDs and HIV/AIDS. It specifies that all institutions should provide healthy drinking water and that all children be provided with sufficient nourishment.

314. As referred to in Chapter I, in 1999 HIV/AIDS was declared as a national disaster with national structures established for an expanded response to the epidemic. Prior to this a policy on HIV/AIDS and STD Prevention and Control was passed in 1998. This was translated into the 1998-2000 Strategic Planning Document for the Swaziland National AIDS Programme (SNAP). In September 2000 the draft National Strategic Plan for HIV/AIDS 2001-2005 was produced by the HIV/AIDS Crisis Management and Technical Committee which proposes specific strategies to prevent and control HIV/AIDS among children and youth, in and out of school as follows:

- Promote active involvement of youth in the formulation and implementation of strategies targeted at them;
- Promote awareness of HIV/AIDS among children and youth;
- Promote utilisation of youth, sports, religious clubs and cultural programmes for HIV/AIDS education;
- Provide children and youth with recreational facilities;
- Strengthen advocacy of indigenous cultural practises which promote delay in sexual debut and responsibility;
- Strengthen training and capacity building for teachers, parents, community leaders and peer educators to transfer knowledge to children and youth about HIV/AIDS, life skills, growing up and sexuality; and

- Integrate HIV/AIDS in pre-schools, schools and institutions for higher learning curricula.

315. With regard to prevention of mother to child HIV transmission the following specific strategies are proposed:

- Develop and disseminate guidelines on prevention of vertical transmission of HIV/AIDS from mother to child;
- Facilitate access to available treatment; and
- Develop policy on mother to child transmission and infant feeding.

316. To reduce vertical transmission of HIV, tested positive mothers are recommended for caesarian section and to be advised on options for infant feeding. The mother is also to be advised on positive living.

### **Implementation**

317. The situation of women and children in Swaziland has improved remarkably since Independence in 1968, largely as a result of Swaziland's substantial investment in the provision of social services, particularly in the health, education, water and sanitation sectors. The infant mortality rate (IMR) has dropped from 150:1000 live births in 1983 to 98:1000 in 1991, and 72:1000 by 1997. It is expected that the infant mortality rate will be further reduced.

318. According to a Ministry of Health statistical report, Government expenditure on health has remained relatively low over the last 15 years, averaging 7.6% of the total Government budget. The majority (75%) of the recurrent Government health budget is allocated to curative care, with 15% being allocated to preventive care, 8% to administration and 2% to support services. A budgetary shift in recurrent expenditure from curative to preventive services, in line with the Ministry of Health and Social Welfare Policy, has not matched the increase in access to primary level ambulatory services. 22% of the Ministry's budget is now allocated to Mission health facilities.

319. The Ministry is exploring mechanisms to enable subvention to NGOs. Whilst Government outlays have shown stability, donor contributions to health have substantially declined over the past several years. In addition, the majority of development sponsorship is in the form of technical assistance, indicating the strong interest of donors to support for capacity building rather than to capital or recurrent costs.

320. Malnutrition, diarrhoeal diseases and respiratory infection are major causes of child mortality, a direct consequence of the interactions of population, poverty and environment. According to national surveys conducted in 1995, the causes stated above accounted for 64% of child mortality. With the exception of micronutrient malnutrition, most health indicators did not vary significantly by tenure or sex. More recently, HIV/AIDS has emerged as the leading cause of death among children under five years of age.

321. The Expanded Programme on Immunisation (EPI) has contributed substantially to the reduction of infant mortality. Neonatal Tetanus (NNT) has all but been eliminated with statistics now standing at 1:100,000. The last case of clinically confirmed polio occurred in 1989, and measles has shown a steady decline in the average annual caseload, though is still prone to epidemics. This has been achieved by a sustained increase in immunisation coverage, which peaked at 91% of children in 1995. One cause for concern, however, is that data from a coverage survey in 1997 indicates that it has dropped by 9% to 82%.

322. The EPI programme is currently strengthening its surveillance of acute flaccid paralysis and measles in line with its goals of eradication and elimination of polio and measles. Mass campaigns are being conducted in order to prevent a forecast national measles epidemic. The programme is further investigating how coverage can be maintained at a figure above 90%. Research conducted recently, indicates that maximising immunisation opportunities could be an effective strategy. The programme benefits from an extensive network of health facilities and outreach services and therefore enjoys widespread geographical coverage.

323. Diarrhoeal diseases and acute respiratory infections continue to be common causes of morbidity and mortality among children under five years. In 1995, respiratory diseases and diarrhoeal disease accounted for 25% and 15% of out-patient diagnoses for children under five years respectively. In the same year, 17% of admissions to health facilities were due to pneumonia, with 9.3% of those admitted dying of the disease.

324. Dysentery and shigella continue to be a major problem in the country, with a number of risk factors being related to susceptibility to acute respiratory and diarrhoeal infection. Some are determined by the environment and nutritional status of the child, whilst others are associated with the knowledge and behaviour of the caretaker or by the quality of care provided by health workers.

325. Strategies implemented by the Control of Diarrhoeal Disease (CDD) and Acute Respiratory Infections (ARI) programmes have focussed on these risk factors by producing and distributing home care guides, sensitising community leaders, and training health workers in improved case management. Distribution of drugs and Oral Rehydration Solution (ORS) has also been a programme priority. Ninety-nine per cent of children receive oral rehydration therapy when they have diarrhoea, 63% of whom receive ORS. A recent ARI health facility survey has shown that the training of health workers has had a positive impact on improving the case management of children with ARI.

326. Statistics regarding children's access to safe drinking water are not known, although the latest estimates for coverage of rural water supplies and rural sanitation are 50% and 59% respectively. Fifty-two percent of schools have access to safe water and 80% have some form of sanitation. However, at present there is no documentation regarding the quality of service provision.

327. Percentage figures of children with low birth weight are currently estimated at 10.7%. Anthropometric results from the 1995 Vitamin A and Iron Deficiency Study by the National Nutrition Council (1997), show that 27% of this figure may be attributed to stunted growth,

7% to inadequate weight and 1.7% to wasting. Compared to the 1983 nutrition survey, these figures represent a reduction of 3% for both stunted and underweight children. However, it should be noted that the 1995 study was conducted following two years of drought.

328. The national prevalence of marginal Vitamin A status and Vitamin A deficiency accounting for 46% and 8% of the population respectively, identifies a widespread problem in Swaziland, with the rural areas being worst affected. Forty percent of children were found to be suffering from anemia, and iron depletion was present in 9% of children. Urban areas were worst affected. The National Nutrition Council is currently finalising its policy on Vitamin A supplementation and a 1998 study identified sugar as the most effective means of food fortification. The Council plans to implement food fortification during the remainder of 1999.

329. Iodine deficiency disorders are also being addressed. A 1993 study revealed prevalence ranging between 6% and 38% depending on geographical location. Over 80% of pregnant women, 50% lactating women were projected in the same study to be in serious danger of iron deficiency anaemia. In the 1997 study it was found that over 21% of adolescents were found to be anaemic. As a result, a regulation was promulgated to ensure that only iodized salt is imported into the country. Customs officials, police and health inspectors have been trained in salt monitoring and a follow-up study will take place this year to consider the impact of salt iodisation.

330. One major strategy to improve nutritional status has been to train health workers and other extension agents in the promotion of breastfeeding, improved child feeding practices, growth monitoring and income security. Home economists, together with the Ministry of Agriculture and Cooperatives, are engaged in food demonstrations, baby competitions and the promotion of home improvement. The total number trained is not known but in 1992 alone 5,783 women were trained in nutrition and income generating skills. Audio visual aids and radio plays have been produced and growth monitoring is now routinely conducted in all health facilities.

331. The Baby Friendly Hospital Initiative (BFHI) was implemented some years ago and there are now five facilities in Swaziland with BFHI Status. As referred to in Chapter I Swaziland was one of the first countries in Africa to develop a policy on breastfeeding. Breastfeeding is actively promoted in the country by the National Nutrition Council and the Swaziland Infant Nutritional Action Network (SINAN). In 1995, 24% of mothers exclusively breastfed their infants of 0-4 months, indicating a substantial rise in the exclusive breastfeeding rate from 8% since the last national survey in 1983. Additionally, the mean duration of breastfeeding at 16 months has been maintained since 1983. The greatest concern in the light of the HIV/AIDS epidemic is that of mother to child transmission given the gains made in exclusive breastfeeding and ESRA 11 plans to increase this by 50%.

332. Numerous advocacy and other IEC activities have been conducted over the past ten years and materials to educate and inform mothers and caretakers on infant and child nutrition have been produced and distributed. Community-based programmes involving entire families were initiated over a year ago and are an efficient way of reaching isolated areas. Periodic awareness and information dissemination campaigns on the issue of infant and child nutrition have been conducted through the newspapers, usually on a weekly basis.

333. According to a study by Lech and Zwane (1995), the maternal mortality rate is 229:100,000 live births. The rate is estimated to be higher in rural women, with figures estimated at 260:100,000. Factors believed to contribute to this situation include the fact that almost 50% of mothers deliver at home, possibly due to cultural preferences, lack of hospital fees and inaccessible roads to some health facilities. In 44% of cases these mothers are assisted by untrained traditional birth attendants (TBAs), 23% by mothers and relatives, 12% by RHMs and 3% by neighbours. Sixteen percent of women deliver on their own with no assistance.

334. A high proportion of pregnancies and deliveries occur amongst high-risk groups, particularly those under 20 years of age. Pregnancy-related causes of mortality include haemorrhage (24%), hypersensitive diseases of pregnancy (19%), unsafe abortions (19%), sepsis (14%) and other causes (24%), which include a lack of clinical skills to handle obstetric and abortion emergencies. Adolescents are considered to be a particularly vulnerable group considering the breakdown of traditional structures for educating young people about the risk of STDs, HIV/AIDS, unplanned pregnancies and illegal abortions.

335. In order to improve maternal health and to increase access to maternal health services, pre-natal and post-natal care is offered at all service delivery points in the country. This has resulted in 98% of women attending antenatal care at least once during pregnancy. The contraceptive prevalence rate (CPR) rose from 5% in 1984 to 24% in 1991 and 34% in 1997, but use is lower in rural areas than in urban.

336. The MOHSW has adopted a three-year plan for Safe Motherhood, based on WHO recommended strategies and the findings of a Rapid Evaluation Methodology study and a Traditional Birth Attendance baseline survey. Health workers have been trained in resuscitation of the newborn and TBAs have been trained in clean and safe delivery. A communication plan has been developed to substantially raise contraceptive prevalence, including a community based distribution system.

337. An adolescent health programme has been established to conduct research, to train teachers in counselling techniques and, in collaboration with the Family Life Association of Swaziland, to implement innovative communication strategies targeting young people and their parents. Peer education is being facilitated. Training in regional planning and implementation through the District Team Problem Solving Approach is also being implemented.

338. Considering the fact that almost 80% of Swazi will visit a traditional healer before consulting a modern practitioner, traditional healers (over 6,000 in the country) are also being incorporated into the health sector and are being trained in areas such as safe delivery, breastfeeding and growth monitoring.

339. The first case of HIV was reported in the country in 1986. The Sixth Sentinel Surveillance Report showed that 31.6% of pregnant women were HIV positive in 1998, a figure that has risen from 26% in the 1996 sentinel surveillance data amongst antenatal care attendees. The increase is mirrored by the high prevalence of notified AIDS cases. From 1987 to 1997, over 2,000 cases have been notified to SNAP, though notification figures are affected by under-reporting. According to the 1998 survey, 25.8% pregnant women between the ages of 15-19 years are HIV positive, whilst those between 20 and 24 years have the highest HIV infection rate of 32.2%. Available data shows that women are more at risk of being infected

with HIV than their male counterparts. As reflected in the table below it was found in the 1998 sentinel site survey that there were almost 5 times as many girls as there were boys in the age group 15-19 of cumulative reported.

340. AIDS cases for the period 1987 to December 1999.

**Cumulative reported AIDS cases as from 1987 to December 1999**

Age group	Male	Female	Unspecified	Total
0-4	105	106	0	211
5-14	13	20	0	33
15-19	29	151	0	180
	147	277	0	424

*Source:* SNAP (2000).

341. Anecdotal evidence indicates that orphaned children due to AIDS are a growing problem. Whiteside and Wood (1993) estimated that by the year 2000 there would be 45,540 AIDS orphans in Swaziland. Subsequent HIV sentinel surveys suggest their estimates may be three years in advance of the likely scenario (Ministry of Health, 1996), with estimates made 23,960 by the end of 2000. The most recent provided by the National HIV/AIDS programme places this at 35 000 as at the end of 1999.

342. SNAP has primarily focussed on preventing HIV transmission through implementing AIDS and life skills education in primary and secondary schools, supporting voluntary testing and counselling, promotion of safe sexual behaviour, ensuring a safe blood transfusion service, and strengthening the STD programme. Voluntary testing and counselling services are however very limited.

343. Given the facilitatory role STDs play in HIV transmission, and the high STD prevalence in the country accounting for 19% of antenatal care attendees, the MOHSW is in the process of strengthening STD surveillance and has adopted a syndrome approach to case management.

344. Presently, the treatment of AIDS patients is based on the treatment of symptomatic illnesses only, and the Ministry has developed a national community/home based care and prevention programme for the chronically and terminally ill. The programme includes strengthening clinical and nursing care, counselling and social support for people living with AIDS. Hospice care is being given by affiliated NGOs.

345. In addition to AIDS and life skills education, health education has been integrated into various subjects at primary school level with teaching materials having been updated to include this material.

346. The MOHSW also collaborates with local NGOs such as Swaziland AIDS Support Organisation, and with bilateral donors such as the Italian Government which is currently assisting in strengthening the health information system and supporting other primary health and home based care programmes. In addition to WHO, UNFPA and UNICEF are also major partners in supporting the maternal and child health programmes described above.



347. Demand for health care is expected to increase rapidly as the AIDS epidemic takes hold. The major priority for Government is to realise efficiency gains in the provision of health services at a tertiary level and to allocate a greater proportion of resources to primary and home-based health care.

348. The Public Sector Management Programme is set to improve accountability and responsibility, whilst the Health Sector Study will help to provide direction within the MOHSW to affect reform and to prioritise resource allocation. It is hoped that these changes will enable the Government of Swaziland to provide a more effective, efficient and equitable health service.

349. RHMs are deeply involved in the Primary Health Care Programme. They are available in all the communities. They promote safe water supply, cleanliness of homes, immunization of children, conduct home deliveries in case of emergency and teach about HIV/AIDS.

### **Constraints**

350. Existing child survival programmes place little emphasis on holistic development, and need to adopt a more integrated approach to cater for all aspects of child health, including the physical, mental, social, spiritual and psychological aspects of the child. However, efforts are made to ensure that it is ratified through the Early Child Development programme. A workshop sponsored by WHO in December 1997 was a step towards developing detailed action plans.

351. There is concern about the impact of the introduction of user fees on EPI coverage. Further, anecdotal evidence suggests that a growing number of parents or guardians are denying their children the right to immunisation because of their religious beliefs. Strategies to address these problems are presently being assessed.

352. The Ministry of Health and Social Welfare fee structure and the bad roads to some health facilities contribute to the number of women who prefer to deliver at home.

353. Complex factors determine and affect the nutritional status of Swazi children, including inadequate household income, lack of parental knowledge of children's nutritional needs, inadequate supervision of the child, disease, cropping patterns and the low status of women. It has also been noted that cultural factors may contribute to the unequal distribution of high protein food sources within the Swazi household.

354. The present structure of health facilities does not promote good counselling services. Shortage of transport for routine supervisory visits and outreach services and of personnel hinders the provision of quality care to clients.

355. The situation is made worse by the low ratio of nurses to clients, and is further aggravated by the increased crime rate in the country, which has led to the closure of some health facilities and the abandonment of some outreach centres.

### **C. Social security and child care services and facilities (arts. 26 and 18, para. 3)**

#### **Law and policy**

356. At present, legislation is inadequate and inappropriate for a social security system. Some related legislation includes statutes already discussed in the previous chapter such as The Child Care Service Order (1997) and The Maintenance Act (1970).

357. The Government is currently working on the formulation of a Health and Social Welfare Policy that includes the establishment of Child Welfare Services.

#### **Implementation**

358. The findings of a situation analysis of social welfare services commissioned by MOHSW in 1998 highlighted the need for a review and update of certain child protection and welfare laws. This review is specifically to incorporate the principles of the UN Convention on the Rights of the Child as well as the African Charter on the Rights and Welfare of the Child.

359. In addition to maintenance payments and the public assistance programme, discussed elsewhere in this report as neither effective nor able to reach the majority of needy and destitute and not containing a specific focus on children as a specific group, the Department of Social Welfare administers military and other pension payments as well as disability grants. A military pension scheme is administered for World War Two veterans whereby an amount of approximately E100 per month is disbursed to those disabled as a result of injuries sustained during the war. A register of these veterans is maintained by the Department.

360. A rudimentary services is provided to persons with disabilities. Those determined by the Department as destitute qualify and benefit from the public assistance programme. Those determined to benefit from training are referred to the vocational rehabilitation centre managed by the Ministry of Home Affairs. In some cases the Department will provide material support, particularly orthopaedic appliances, for persons with disabilities.

#### **Constraints**

361. As referred to earlier in this report the Department of Social Welfare is, however, severely under-staffed and under-resourced. It does not have a comprehensive policy on social welfare services and focussing on child welfare issues. Consequently, there is no clear vision or operational plans to address these issues, including those pertaining to children's rights.

### **D. Standard of living (art. 27, paras. 1-3)**

#### **Law and policy**

362. The National Development Strategy (NDS), launched by the government in 1999 has as its main thrust the reduction of poverty and equitable distribution of resources for the people of Swaziland. The Government, together with several non-governmental organizations, is developing a poverty alleviation strategy.

363. Access to land, in terms of ownership and control, is limited for women under the systems of law and cultural practice. A woman cannot obtain land on Swazi Nation Land in the absence of her husband or a male member of her family. A woman married in community of property cannot acquire land and obtain title in her name, it having to be registered in the husband's name following the principal of marital power.

364. The national Food and Nutrition Plan of Action of 1997 sets nutritional health standards for the country. The Maintenance Act (1970) and The Wages Act (1964) respectively provide for the payment of financial support to mothers and children and the payment of minimum wages set for the various industries in the country. There are, however, disparities in those set for persons below 18 from those above 18.

365. The government has initiated and completed a process of review and consolidation of land-related laws. In particular the draft Land Policy seeks to address the issue of land ownership by proposing that both men and women can independently have access to land and housing without discrimination and has introduced the concept of a 99 year leasehold on Swazi Nation Land. The intention is to provide a form of security for income-generating activities undertaken on it.

### **Implementation**

366. Current figures reveal that approximately 60% of the population live below the poverty datum line, the majority of which reside in rural areas, although it is severe in suburban areas due to lack of infrastructure. Typically people in the rural areas rely heavily on agricultural and subsistence livelihood which in turn are highly susceptible to weather conditions. Production levels have tended to fluctuate over the years, and were at their lowest during the drought period of 1991/2.

367. Most households derive incomes from paid employment. Whilst rural households rely on subsistence farming, the tendency over the years has been to have at least one member engaged in wage employment. This has increased rural to urban migration leaving more frequently the elderly, women and children to tend the land. About 30% households are headed by women and tend to be the poorest of households. Women rely on men for the most vital means of survival, such as land. Women shoulder enormous responsibilities in terms of production, reproduction, child care and rearing, home management and maintenance, and many do so in the absence of their partners or husbands.

368. To support food security at both household and national level, a National Warning Unit has been established within the Ministry of Agriculture and Cooperatives. The role of this Unit is to provide information on food security prospects in advance. It carries out assessments of expected production, food supplies and requirements. The information that is disseminated includes that relating to crop and weather conditions, assessment of emergency drought relief and feeding programmes.

369. According to the UNDP Human Development Report (1993), 40% of the population cannot afford clinic fees and are thus prevented from seeking appropriate healthcare.

370. By developing world standards, Swaziland has the highest literacy levels – 77.5% for men and 76.3% for women (1997, HD). However, there are wide urban–rural disparities in educational attainment. According to the 1995 Swaziland Household and Income Expenditure Survey, 14% of the 110 000 population of 6 years and above had no education at all. The rate was twice as high in the rural population, about 16% to the 8% of the urban. 64% of the same population age group had no secondary education. At that time there was no significant disparity regarding gender distribution.

371. The National Enterprise Fund and the recently launched E40million Development Fund are part of government’s initiatives to promote and support cooperatives and small-scale income-generating activities. Linked to the operationalisation of the NDS and in recognition for the need for a vibrant domestic economy that will complement the role of Foreign Direct Investment the government established the Swaziland Investment Promotion Authority in 1998. Its role is in essence to promote and create a favourable climate for local and international investors.

### **Constraints**

372. Men are not socialized into helping with domestic duties and laws are weak in requiring them to maintain their families. The heavy workload on women affects their health, and that of their children due to depleted energy levels and chronic illness.

373. It is still likely that the presence of working children is due to the large proportion of the population living below the poverty line, lack of knowledge of children’s rights and the inadequacy of law enforcement regarding the issue.

374. HIV/AIDS is actually wiping away people who are employed and are supporters of their families.

375. There are no programs to support children who have to work for a living because of poverty.

376. There are no programs for orphaned and vulnerable children.

377. There is no enforcement of laws that protect children from losing the property of their deceased parents.

## **VII. EDUCATION, LEISURE AND CULTURAL ACTIVITIES**

### **A. Education including vocational training and guidance (art. 28)**

#### **Law and policy**

378. The Ministry of Education is governed by the Education Act of 1981 and the Teaching Service Commission (TSC) Act of 1982. The main thrust of the 1981 Act is administrative, i.e., establishing education boards, school committees, the adult education council and the procedures to regulate board meetings.

379. The Education Act further outlines four general functions that the Minister shall perform, the promotion of education for the people of Swaziland and to that end the development of institutions; the establishment of an educational policy responding to the needs and aspirations of the people with a view to providing a comprehensive educational service; the establishment of a coordinated educational system; contributing to the spiritual, moral, mental and physical development of people “by ensuring that, as far as practicable, efficient educational facilities are available to all to meet their needs”; and to ensure the effective execution of government’s educational policy. The Act empowers the Minister of Education, in consultation with the National Education Board it established, to provide for the administration and maintenance of schools. It empowers the Minister to establish and maintain (or assist in the maintenance) of vocational schools.

380. Guidelines have been produced by the Ministry to which all schools must adhere, including those for discipline, testing, admission and re-admission of pupils. The Ministry of Education encourages teachers to refrain from administering corporal punishment to children, encouraging the use of other forms of punishment.

381. The TSC Act of 1982 and its Regulations provides for the registration of all teachers in Swaziland, and the administration and management of the teaching service through a code of conduct for teachers. The Regulations contain detailed provisions relating to misconduct by members (registered teachers) and penalties for breaches of this code. The Regulations do not cover persons working within schools but not registered as members of the Teaching Service Commission. These are mainly temporary, unqualified teachers.

### **Implementation**

382. The impact of the investment in education since Independence is reflected in improved indicators and greater coverage throughout the country. Significant progress has been made in expanding access to primary, secondary and tertiary education. Literacy rates according to age groups:

- 5-9 years 49.3% males, 53.7% females (census 1997);
- 10-14 years 87.5% males, 90.8% females (census 1997);
- 15-19 years 91% males, 93.5% females (census 1997).

383. Education’s share of social services expenditure has increased over the years. Between 1990/91 and 1994/95 the proportion of GDP expended on education increased from 6.3% to 7.3%. For fiscal year 1995/6 the total education budget was nearly one quarter (24.9%) of the national budget and Government has currently set aside 31.9% for fiscal year 1999/2000. However, allocation within the sector is skewed towards the tertiary level where full recurrent and capital costs, including scholarships and allowances, are being provided by government. This is not the case at primary and secondary level. Current policy discussions within government are focussing on strategies for reallocating funds more favourable distribution to primary and secondary education.

384. Government's commitment to education for all by promoting both formal and non-formal education is demonstrated by the efforts being made to increase the output and quality of teachers. These include distance education and in-service teacher training which are being emphasised through projects supported by the University of Swaziland (UNISWA) and Government.

385. Presently there are 530 primary schools in Swaziland, an increase from 358 at independence in 1968. At independence there were 31 secondary schools and there are now 177. With the support of the World Bank (in the establishment and upgrading of many schools and a growth in teaching staff) Swaziland attained universal primary education in 1985.

386. The enrolment of pupils at primary school was 205,829 in 1997 and 208,779 in 1998 (1.4% increase). Secondary and High school enrolment was 60,830 in 1998 and 58,197 in 1997, an increase of 4.5%. These figures however do not mean that all Swazi children have equal access to education. Geographically, there is a greater concentration of school going children in rural areas, and 51% of these children are boys. In urban areas there are more boys than girls enrolled in primary schools as shown in the Table 2 below. On the other hand, enrolment in private schools is higher for girls than boys. There has been a significant decrease (68%) in enrolment of girls in rural private schools this year compared to 1997. Enrolment in private schools is not reflected in the figures except for the Manzini region yet private schools are on the increase.

**Table 1**

**Primary school enrolment by district, rural and urban schools, sex of pupils and type of school (Swaziland Government, Education Statistics, 1997)**

District	Rural Government		Rural aided		Rural private		Urban Government		Urban aided		Urban private		Total
	Girls	Boys	Girls	Boys	Girls	Boys	Girls	Boys	Girls	Boys	Girls	Boys	
Hhohho	2 466	2 552	18 167	19 443	961	866	2 523	2 448	2 378	2 277	0	0	54 081
Lubombo	2 516	2 644	14 728	15 340	1 231	1 136	332	334	1 466	1 480	0	0	41 207
Manzini	2 467	2 641	19 909	21 308	1 051	1 038	3 089	2 900	3 003	3 016	84	52	60 558
Shiselwenni	2 666	2 790	17 606	18 187	1 896	1 817	2 184	2 269	287	281	0	0	49 983
Total	10 115	10 627	70 410	74 278	5 139	4 857	8 128	7 951	7 134	7 054	84	52	205 829

**Table 2**

**Primary school enrolment by district, rural and urban schools, sex of pupils and type of school (Swaziland Government, Education Statistics, 1998)**

District	Rural Government		Rural aided		Rural private		Urban Government		Urban aided		Urban private		Total
	Girls	Boys	Girls	Boys	Girls	Boys	Girls	Boys	Girls	Boys	Girls	Boys	
Hhohho	2 490	2 532	18 968	20 629	307	343	2 557	2 618	2 366	2 329	0	0	55 139
Lubombo	1 830	1 977	16 965	17 687	0	0	323	299	1 546	1 575	0	0	42 292
Manzini	1 789	1 977	21 464	23 011	671	650	3 030	2 924	2 999	3 102	95	51	61 763
Shiselwenni	2 075	2 268	19 112	20 058	499	517	2 206	2 358	251	241	0	0	49 585
Total	8 184	8 754	76 509	81 385	1 477	1 510	8 116	8 199	7 162	7 247	95	51	208 779

387. The number of primary school teachers increased by 1.6% between 1997 and 1998, although there are more unqualified teachers. These are "temporary teachers" working mainly in the rural areas, as graduate teachers often decline offers of employment due to the lack of

adequate housing, clean and safe water and electricity at these schools. While urban schools have improved infrastructure, there are variations in teaching methods, teaching facilities and the quality of teachers.

388. The literacy rate is lower in rural areas than in urban areas, with the Manzini and Hhohho regions being higher than the Shiselweni and Lubombo regions. In general, literacy rates are higher amongst males with an exception of urban settings.

389. NGOs such as SEBENTA that administer the national adult education programme and the Catholic Mission Schools are addressing the issue of illiteracy and assisting with school drop-outs. SEBENTA offers literacy classes for students of all ages it is also in the process of developing child user-friendly curriculum. The Catholic Missions and Government also provide vocational training in subjects such as woodwork, home economics and agriculture. These courses are particularly beneficial to those students who leave school to contribute to the financial welfare of their families.

390. Swaziland does not provide free or compulsory primary education. However, a few educational sponsorship programmes exist at primary and secondary school levels, through church groups, King's Trust Funds (Tibiyo TakaNgwane), NGOs and Government. However, according to it's the Save the Children Fund 1997/98 Annual Report, assistance with regard to fee sponsorship and school feeding project is to be phased out by December 2000 and end March 2001 respectively. This has been confirmed by its subsequent report on evaluation of school feeding and sponsorship fund report completed in the second quarter of 2000.

391. Ministry of Education collaboration with UNICEF and DFID with focus on quality and relevance and on in-service training respectively, provides technical support and funding for primary schools. As part of measures to improve quality and relevance, UNICEF in 1996 assisted in securing Norwegian funding under the African Girls Education Initiative (AGEI) for primary education. The introduction of pre-vocational training from secondary and high school is planned with ADB funding. At the tertiary level the Ministry of Education's main partners are the British Council and European Union, mainly in the provision of scholarships.

392. Other programmes have been implemented to assist children cope with emerging socio-psychological factors affecting their education. The Guidance and Counselling programme now forms an integral part of the education process by complementing and supplementing other educational programmes. It is offered to all students from primary school to tertiary education, and is developmental, preventive and remedial in nature and approach. It covers the total development of the individual by focusing on personal, social, educational, vocational and health aspects of life outside school. It is time tabled at secondary/high schools with at least one class period per week. The guidance teachers are to be supported by all other teachers in the school and are appointed on the basis of recommendations by the head teacher and the staff in the school. Primary schools are in the process of establishing the same approach, starting with the training of head teachers and teachers.

393. Part of the preventative approach has been to integrate HIV/AIDS, STD education and counselling into all levels of the education system, starting at primary school, and extending to tertiary and non-formal institutions. The programme should: ensure that guidance and counselling services related to HIV/AIDS and STD control and care are accessible to students;

involve parents in discussion of school-based HIV/AIDS and STD education through Parent-Teacher Associations/School Committees; provide education on population and reproductive health; ensure education about substance abuse; integrate gender education and children's rights into the school system and ensure the provision of education for life skills to all students.

394. Continuous assessment (CA) has also been introduced and has been operational at primary school level since 1993 as a tool to assess learning and teaching progress and to review curriculum and teaching methods. Excluding problems experienced in its implementation, there is evidence to suggest that it may have had an impact upon repetition rates, thus reducing drop-outs in schools. The Ministry of Education and the Swaziland National Association of Teachers (SNAT) are further considering how to continue to implement the CA at primary level and to proceed with its introduction at secondary level.

395. An increase in the number of unemployed school graduates suggests that the education system does not equip school leavers with the necessary skills for self-development and employment. The introduction of a pre-vocational curriculum in Forms IV and V at sixteen schools in the country, and in-service teacher training, is part of a plan to improve efficiency within the education system. Subjects for curriculum development will include agriculture, business, home economics and technical subjects at the National Curriculum Centre (NCC) and a tracer study of the career and life paths of graduates will be conducted in order to evaluate the impact of the programme.

### **Constraints**

396. The infrastructure in rural schools lacks acceptable laboratory and library facilities. Supplementary reading materials are rare and often unrelated to the environment and lifestyles experienced by pupils in their communities. Classroom overcrowding is common in urban areas with about 70 students per class, while the recommended number is 40-50 students in a class. The result is that schools in the rural areas are underutilised.

397. The high rates of repetition, dropouts, and unemployment are giving rise to a variety of social problems, which hinder development and result in an unacceptable amount of waste within the education system. For example, the average child takes 11 years to complete the seven-year primary education cycle, with parents having to pay school fees, uniform and textbook costs for all of these years.

398. Inefficient use of resources and an unacceptably high pupil-teacher ratio in primary schools has resulted in fundamental questions being raised in order for every child to exercise his/her right to an education organized on the basis of equal opportunity (Education Statistics: 1998).

399. Low completion rates in primary education are a cause for concern. This situation is particularly true for girls from poor families and other disadvantaged and vulnerable children such as the disabled, street children and orphans. Full research on the latter group is not available.



400. In practice, the CA programme is test-driven and undue stress is placed on reinforcing academic skills, at the expense of creative thinking and problem solving. In addition, the process of routinely implementing CA in the classroom is made difficult by the large sizes of some classes, increased teacher work-load and time constraints.

401. There are no school buses, hence some children have to travel a long distance from the home, and for young children especially, going to school involves physical effort which tends to be underestimated. Furthermore, most children leave home without eating breakfast, resulting in poor school performance, increased drop-out rate and cases of malnutrition. For these children, problems of health and nutrition take priority over primary education.

402. Other difficulties include the fact that at primary level, the curriculum is becoming increasingly irrelevant to the practical skills that children need in their lives outside school, by placing too much emphasis on academia. Government Vocational Training Institutions in Swaziland are unable to admit even half the number of students waiting to enrol in these courses. University students are not all employed.

403. Pregnancies have increased and among the repercussions are high repetition or drop out rates and low enrolment of girls in secondary and high schools.

404. There is some speculation amongst parents that the high incidence of pregnancy may be correlated to the reproductive health education taught in schools. The TSC policy regarding the code of conduct of teachers is not adequately enforced as sexual harassment, including impregnation of girls by some teachers, continues to be reported.

405. Having completed their high school education, some students have problems securing a place at the only university in the country, although Government sponsors for tertiary education, regardless of the child's background.

### **Special education**

406. The aim of addressing this section separately is not by any means promoting discrimination of children with learning disability, but to give it the best attention it requires.

### **Law and policy**

407. The education policy of 1999, Section 5 (5.1) states that educational programmes shall be designed and offered to all children with special needs, such as physical disabilities, visual and auditory impairment, mental disabilities, social behavioural problems as well as gifted children.

408. The Ministry of Education shall facilitate access to education for all learners with disabilities by improving the infrastructure to make it user-friendly from basic through tertiary level.

409. The Ministry shall support the integration and inclusion of children with special learning needs in the education system. Special facilities for gifted children shall be made available.

## **Implementation**

410. The Ministry of Education established a Special Education Services Unit in 1998, whose overall responsibility was to develop policies, strategies and programmes, that would enhance education for children with exceptionalities.

411. There are three government supported special schools, with an enrolment of approximately 340 children, indicating that less than 25% of the disabled population has access to education. Little provision in education is made for people with special needs and this school only goes up to Standard V. However, some schools are beginning to integrate or mainstream disabled children but this is very limited.

412. The Inspector for Special Education post was filled in 1998.

413. Four special education teachers completed training courses in 1999, financed by the Ministry of Education. Pre-service training in special education will be introduced into tertiary institutions.

414. The Ministry of Education has begun sensitising teachers and other service providers as to the importance of an inclusive society. The introduction of an inclusive education system in Swaziland would assist in ensuring that the disabled child's right to education, from pre-school to primary, high-school and tertiary level is realised.

## **Constraints**

415. There is inadequate information that documents the status and addresses the issues relating to disability in Swaziland. The Demographic and Housing Survey (1991) revealed that of 511,653 people, 21,239 (4.2%) were classified as disabled. Of this figure, 14,494 (68%) had no formal education, 4,652 had completed lower and higher primary education, 1,365 had completed secondary and high school and only 92 had a university or vocational diploma.

416. Children with special needs tend to be channelled to vocational training which limits them to being artisans. No provisions have been made for their inclusion at tertiary institutions. Currently, the university facilities do not cater for students with disabilities, who want to attain degrees. The construction of school facilities also limits access for students with disabilities.

417. There is no gender sensitive policy that protects disabled girl child from sexual abuse.

## **B. Aims of education (art. 29)**

### **Law and policy**

418. The Government's National Statement on Education (1998) identifies the following broad aims:

(a) To provide an opportunity for all children of school going age to develop themselves in order to improve the quality of their own lives and the standard of living in their communities;

- (b) To ensure that the basic needs of the education and training sectors are met by developing the democratisation of education and society as well as economic growth;
- (c) To continue to develop the intellectual, moral, aesthetic, emotional, physical, psychological, spiritual development and practical capabilities that are needed by the child in order to adapt to the ever-changing, complex and uncertain socio-economic environment;
- (d) To engender a sense of civic mindedness and to foster skills that are necessary to participate effectively in a democratic society that reflects the socio-cultural context of Swaziland;
- (e) To prepare new curricula, for schools and tertiary institutions, and to produce textbooks and other instructional materials.

### **Implementation**

419. The Ministry has supported capacity building to increase competency and efficiency in the education system. This support has included scholarship awards for teachers to further their education. The incorporation of topics on reproductive health is intended to address emerging issues like HIV/AIDS.

### **Constraints**

420. Discriminatory practices are still carried out by certain schools on the basis of the religious affiliation of the child and on the child's performance.

421. The current education approach is not child centred. Teachers have difficulty in identifying strengths of pupils early enough.

## **C. Leisure, recreation and cultural activities (art. 31)**

### **Law and policy**

422. The Government encourages co-curricular activities, which include cultural and artistic activities, music, dance, drama, sports and games. Rest is considered essential. This has particular relevance in a country where a child customarily may have duties towards society, tradition and the family, and is only incidentally entitled to rest and leisure.

### **Implementation**

423. In Swaziland, educational games and leisure activities still exist within a complex socio-cultural range of traditional activities. However, some leisure activities relating to the civic and moral upbringing of the child may be a cause for concern because of the manner in which they are organised.

424. Participation in traditional ceremonies such as the Reed Dance or *Umhlanga* which brings together maidens of varying ages from all areas of the country to pay respect and plead allegiance to the Indlovukazi (Queen Mother) and the Ingwenyama (King), and the Lusekwane ceremony for boys, should be encouraged but not forced.

## **Constraints**

425. There are few recreational facilities for children in urban areas. In rural areas these are non-existent with the exception of football fields.

426. Even though the law states that children are only incidentally entitled to rest and leisure, there are no laws protecting them from abuse while playing. There are schools which do not participate in school competitions because of different reasons.

## **VIII. SPECIAL PROTECTION MEASURES (arts. 22, 38, 39, 40, 37 (b)-(d), 32 - 36)**

### **Introduction**

427. As referred to in Chapter V, apart from NPA provisions regarding the programme for children in especially difficult circumstances, there is no comprehensive framework for the general protection of children from all forms of abuse and neglect within the family and those under institutional care. This area has remained underdeveloped and has been identified as requiring urgent attention, particularly in the light of a rapidly changing family situation.

428. Preventative strategies are lacking and those in place relate to treatment and rehabilitation, as evidenced by legislative provisions and the delivery of services to children. The few programmes that do exist are disjointed and scattered and resources are inadequate to reach all families, particularly those that are poorer. Further, it is difficult to measure the impact and effectiveness of these programmes.

429. Information and awareness campaigns are limited in scope and coverage despite the efforts of NGOs like SWAGAA and SCF. There are currently no standards of care in place for institutions caring for children and capacities within Government to monitor children in need of special protection measures are underdeveloped. Data gathering mechanisms and monitoring indicators are also weak and in need of review.

### **A. Children in situations of emergency**

#### **1. Refugee children (art. 22)**

### **Law and policy**

430. The Refugee Control Order (1978) regulates the incidence of refugees in the country. This Order establishes the Political Asylum Committee (POLASCO) that reviews all applications for asylum and makes recommendations to the Minister of Home Affairs, who has the final say in the determination of refugee status.

431. With regard to the treatment of refugees, the Order is applied within the framework provided by the provisions of the United Nations Convention (1951); its Protocol (1967) and the OAU Convention (1969). This is despite the fact that Swaziland only recently acceded to the UN Convention having only been a party to the 1967 Protocol and the OAU Convention. The country has also recently acceded to the 1954 UN Convention Relating to the Status of Stateless Persons and the 1961 UN Convention on the Reduction of Statelessness.

432. Calls for amendment of the Order, particularly in the processes, clear definitions and mandates for the determination of refugee status, have resulted in a draft Refugee Bill currently undergoing final revisions. The draft Bill seeks to address anomalies in current legislative provisions regarding the right of appeal to the Minister of Home Affairs that asylum seekers have when their applications have been rejected either by the POLASCO or the Minister himself. Currently national legislation empowers the Minister of Home Affairs to expel or deport refugees who have transgressed national laws. The draft Bill establishes an independent Refugee Appeals Board as well as a refugee advisory board with whom the Minister confers before making any decision on matters pertaining to refugees. In addition, the draft Bill provides for the issuing of identity cards to refugees. It is envisaged that this will provide improved safeguards for asylum seekers who have been granted asylum status, which is not currently provided for in national legislation.

433. Despite the specific goals and strategies contained in the NPA, data pertaining to children in especially difficult circumstances is scarce. Consequently the NPA remains underdeveloped in regard to goals and strategies specific to the situation of refugee children.

### **Implementation**

434. Swaziland respects the principles of admission and non-rejection of asylum seekers at its borders. In the determination of asylum seeker and refugee status, the definitions of asylum seeker and refugee contained in the UN and OAU conventions have been applied. The Refugee Section within the Ministry of Home Affairs deals with the registration of refugees on their arrival in the country, screening them for the purposes of granting refugee status. Prior to this, the asylum seeker is subject to screening by the police. In addition to the preparation of asylum seeker applications for POLASCO review, the practice in the Refugee Section has been to make *ad hoc* determinations as to whether a prima facie claim for refugee status has been made.

435. Whilst awaiting a decision from POLASCO, refugees are passed on to the Malindza refugee camp, where they receive assistance from CARITAS, a non-governmental organisation whose function is to implement refugee donor funds on behalf of the Government of Swaziland and UNHCR. Together with the other camp at Ndzevane, the Malindza refugee camp also functions as a settlement for registered refugees.

436. The government provides drinking water and sanitation, education, healthcare and food to refugees at these camps. Other services at the reception camp includes legal and social counselling, job placement, English language classes and vocational training. Those outside the camps are provided with education, assistance to access healthcare and facilities and participation in income generating activities.

437. On being granted refugee status, based on POLASCO recommendation, candidates qualify for renewable temporary residence permits valid for two years. They also qualify for UN travel documents. Where no prima facie claim to refugee status has been established the asylum seeker is directed to leave the country by the same route in which entry into Swaziland was made, subject to ordinary immigration laws.

438. Government continues with its efforts, with the support of the UNHCR, to fully integrate refugees in the community. Within the camps a number of refugees are engaged in

income-generation activities (poultry, gardening and sewing projects). The current focus of these efforts is on building the capacities of refugees in small-scale business management, marketing strategies and leadership skills. In addition, a micro-credit scheme for refugees has been piloted with the participation of a local bank.

439. Registered refugees are permitted to seek employment in Swaziland and their children are admitted into any school in the country. As at the end of 1998 CARITAS was paying school fees for some 108 refugee children in the country. Registered refugees are free to settle elsewhere than at Malindza camp and can apply for resettlement to any country of their choice.

440. Refugee children are registered at birth and issued with certificates. Where one parent (the father) is a Swazi, the child has an automatic right to Swazi citizenship.

441. Refugee children attending school can obtain travel documents to facilitate their participation in school trips undertaken outside the borders of Swaziland. They also qualify for healthcare, including specialised care outside Swaziland when necessary, for which they are provided with emergency travel documents. Following counselling, unaccompanied refugee children are fostered by families from their respective countries of origin, and are allowed free integration.

442. Several committees such as The Peace Committee, The Education Committee and The Children/Parents Education Committee exist to monitor such integration and any general adverse attitude towards these children.

443. The number of registered refugees and refugee children in the country fluctuates. Between December 1998 and March 1999, the number of refugee children in Swaziland has averaged 555, and these children, together with their parents and foster parents are accommodated mainly in the two camps. An unknown number of unregistered children in the country illegally are excluded from aid received by registered refugees. These children are the most vulnerable, being unprotected and exposed to exploitation and abuse by unscrupulous members of the community. Where girls fall easy prey to commercial, domestic and sexual abuse, boys are liable to be exposed to unhealthy labour conditions, drug trafficking, fronting for money laundering, over employment, underpaid farm labour and possible sodomy, particularly during incarceration.

444. Efforts to provide the unregistered refugee child with any form of service or outreach care are non-existent. Where the registered refugee child is catered for in a manner similar to that of the Swazi child, Swaziland's economy does not provide free education for its own nationals, making the provision of education for the "illegal" refugee an impossibility.

### **Constraints**

445. Whilst allowed to practice their own culture in their own languages and their own religion, refugee children face language barriers and problems of integration into society.

446. Studies to assess the general attitude of the public towards refugee children have not been carried out in depth and no data is currently available, though it is clear that unregistered children are ostracised by some members of the community due to their nationality. This tendency

however, seems to be decreasing as the younger generation in Swaziland, especially the disadvantaged, appear to befriend the refugee child. This does not alleviate the refugee's plight, and basic necessities tend to be provided by the children themselves.

447. The limitations of formal sector employment constrain existing efforts to integrate refugee professionals and many have been encouraged to take advantage of the informal sector. Refugee children work primarily in the urban informal sector. Employment is mainly in industries such as motor mechanics, panel beating, and building and domestic work in the urban areas and farm work in the rural areas. For unregistered refugees working conditions are less than attractive, with many being paid below the current market rate as they lack a valid work permit.

## **2. Children in armed conflicts (art. 38), including physical and psychological recovery and social reintegration (art. 39)**

### **Law and policy**

448. The Umutfo Swaziland Defence Force Order (1977) places the minimum age of recruitment or enrolment into the country's Defence Force (USDF) at 18 years.

449. In 1998 Swaziland became a party to the Landmine Treaty and has participated at international, regional and sub-regional meetings regarding the total ban on the production and use of landmines and increasing the amount of resources available for mine clearance, the latter being of particular interest for Swaziland.

### **Implementation**

450. Anecdotal information from the Umutfo Swaziland Defence Force is that there are still some unexploded landmines along the northeastern border shared with Mozambique. This legacy of the Mozambican civil war poses a threat to the communities in that area and publicity campaigns by the NGO, Baphalali Red Cross, have been conducted on the dangers of unexploded landmines.

451. A recent funding pledge to undertake mine clearance has been made through bilateral aid from the United States of America. Selected members of the defence force have received initial training on the mine clearance with the funding from the American Embassy.

### **Constraints**

452. Legal provisions for the promotion of any physical or psychological recovery or for the social integration of child victims of armed conflicts, torture, neglect, maltreatment or exploitation do not exist.

453. As Swaziland is a party to all four of the Geneva Conventions and recently, without reservation to the Protocols governing such, legislation specifically addressing the protection of children under the age of fifteen, pursuant to article 38 of the Convention, against conscription is now a necessary measure.

454. Several incidences of herd boys killed by landmines while herding cattle have been reported.

## **B. Children involved with the system of administration of juvenile justice**

### **1. The administration of juvenile justice (art. 40)**

#### **Law and policy**

455. There is no specific consolidated statute dealing with children involved with the justice administration system. Children are addressed under the general justice administration system and legislative provisions are scattered throughout various statutory instruments.

456. Common law presumes children below the age of seven years to be incapable of committing a crime as, legally, they are *doli incapax* and thus cannot form the intention, which the law requires for the commission of a crime. They cannot therefore be deprived of their liberty under any circumstances and are as such protected from the stigma of being addressed as criminals. This presumption however is rebuttable between the ages of 7 and 14 years. Customarily, at a chief's kraal a child is not brought for trial without parents. If found guilty, it is his parents that are charged and fined on their child's place.

457. With regard to civil proceedings it is stipulated that the burden of proof rests on the plaintiff and not the defendant. Children are considered competent to give evidence although in criminal proceedings, courts are obliged to apply caution to the weight given to such evidence.

458. The Criminal Procedure and Evidence Act (1938) generally provides for the apprehension, detention, prosecution, conviction and sentencing of persons who have infringed the law and contains specific provisions pertaining to the treatment of children. Except for those set out in the Non-Bailable Offences Order (1993) offences are bailable and a procedural rule governs that a person cannot be arrested and detained without being charged within 48 hours.

459. The assistance of an interpreter is part of the right to a fair trial and if necessary is to be provided by the Director of Public Prosecutions in a criminal proceeding. Furthermore it is a principle of law that persons cannot be forced to give self-incriminating testimony.

460. In cases of rape (including statutory rape) the CP&E Act (1938) aims to protect the privacy of girls by allowing court proceedings to take place *in camera*. The Reformatories Act (1921) provides that subject to the presence of a parent or guardian or other interested persons, the case of the juvenile may be held *in camera*. Further, it is illegal to publish any information that may reveal the identity of a child in a rape case. The Act seeks to promote the child's sense of dignity and reintegration into society by prohibiting the imposition of a custodial sentence on a child under 14 or the death penalty on a person under the age of 18 at the time the crime was committed.

461. Under criminal law, the fact that a person convicted of a criminal offence was a minor at the time of its commission, is taken into consideration when sentence is passed. The CP&E Act (1938) specifically gives discretionary powers to a court to receive such evidence in order that the proper sentence be passed and is empowered to place a person under the age of 18 in the custody of a person considered by it as suitable. The Act further allows the court to



conditionally postpone the passing of a sentence for a period not exceeding three years. Furthermore, the Minister of Justice is allowed to make regulations as to the circumstances under which courts may entrust convicted offenders to the care or supervision of probation officers, stipulating conditions to be observed by the offender. In an effort to ensure the best interest of the child in the adjudication and disposal of matters involving their care and placement, The Child Care Service Order (1977) envisaged the establishment of a juvenile court, pending which the Magistrate's Court is reconstituted as such.

462. In its sentencing provisions The CP&E Act (1938) prohibits corporal punishment for girls whilst permitting this for boys under 18. Stipulated conditions for its administration relate to privacy and the type of cane to be used. With regard to treatment The Prisons Act (1964) contains provisions prohibiting corporal punishment of women. The Act also prohibits the administration of different types of punishment simultaneously, for example, the administration of corporal punishment cannot be administered in conjunction with those of penal diet or solitary confinement.

463. Moreover The CP&E Act provides that in the imposition of a custodial sentence, a convicted child should be detained in a juvenile reformatory in terms of The Reformatories Act (1921). This latter Act provides that the court may make an order of committal for not less than two and not more than five years. The term of imprisonment would expire upon the attainment of 18 years by the convicted juvenile offender.

464. The Prisons Service was converted into a Correctional Service in 1995 15<sup>th</sup> September, thereby restating its goal as the rehabilitation and reformation all prisoners, juvenile and adult.

### **Implementation**

465. The lower courts, i.e. Magistrates Courts and Swazi traditional courts handle the largest volume of criminal cases while particularly serious cases are handled in the High Court. The decision as to which court to use is made at the discretion of the Director of Public Prosecutions.

466. As a rule English/siSwati interpreters are provided for all criminal proceedings. The proceedings of the traditional courts are however conducted in siSwati. No interpreter for other languages is provided as these courts have jurisdiction only over Swazi nationals, presumed to be native speakers of the language.

467. Provision for the detention of convicted child offenders is made at a reformatory that has been developed into two separate facilities. The Industrial School at Mdtshane provides for the detention of boys under the age of 18 years, whilst the Young Persons Prison, for boys between the ages of 18 and 25. Girls are detained at the adult women facilities throughout the country. Government is currently constructing a women's prison facility at Mawelawela which will include a separate wing for girls.

468. NGOs working for children involved with the justice system do so in conjunction with the Royal Swaziland Police, Correctional Services, the Judiciary, and the Ministries of Justice, Health and Social Welfare and Education.

469. A definable juvenile justice system through discussion, training courses, and awareness creation campaigns, both in and out of schools is currently being developed by these organisations. Provisions and alternative interventions are being discussed and sought for young persons at variance with the law and with detention to become a last resort.

### **Constraints**

470. Generally, the administration of the general justice system has not focussed on the specific situation of children. There are no facilities provided for children in police stations or existing remand centres.

471. The presumption of innocence that applies in law to all persons until proven guilty is not one contained in the administration of the customary legal system.

472. The absence of a comprehensive law for children and young persons goes some way towards explaining the lack of any comprehensive juvenile justice system in the country.

473. Swaziland, as a member of the UN and the OAU, has not ratified the international covenants on Civil and Political Rights and on Economic, Social and Cultural Rights or adapted to the national laws UN Rules generally considered to establish good practice in the treatment of juvenile offenders.

474. Despite the fact that all persons are entitled to a speedy and fair trial, remands pending trial are as long as investigations or criminal prosecutions are ongoing. Due to the congestion at the only remand facility in Manzini, boys have been remanded to the Mdutshane facility.

475. The Department of Correctional Services is severely constrained as it lacks social workers and qualified teachers to provide these services to juveniles at Mdutshane. According to information from the Department of Correctional Services, there is only one qualified teacher to cater for the education of juveniles incarcerated at Mdutshane.

476. No training programme for professionals working in the juvenile justice system has been developed although initial training sessions on the provisions of the Convention on the Rights of the Child have been conducted by NGOs such as SCF and SACRO.

477. There is an urgent need for the establishment of a Juvenile Court, with special sections in police stations, prisons and remand centres for the accommodation of children.

478. There is an urgent need for legislation to provide for the care and rehabilitation of children operating at institutional and non-institutional levels. Corporal punishment is in need of reform and there is a need for separate juvenile facilities for girls.

## **2. Children deprived of their liberty, including any form of detention, imprisonment or placement in custodial settings (art. 37 (b)-(d))**

### **Law and policy**

479. As noted above, the juvenile justice system has not adopted the minimum standards set out in the international instruments that are generally considered to set out good practice

regarding the treatment of detained juveniles, specifically the UN Standard Minimum Rules for the Administration of Juvenile Justice (the 'Beijing Rules'); the UN Guidelines for the Prevention of Juvenile Delinquency (the 'Riyadh Guidelines'); the UN Minimum Rules for Non-Custodial Measures (the 'Tokyo Rules') and the UN Rules for the Protection of Juveniles Deprived of their Liberty.

480. The laws of criminal procedure generally protect all persons against arbitrary arrest and detention. However, as observed in Chapter 2, disturbing cases have been reported in the media regarding the arbitrary arrest of children indicating a lack of respect for the minimum age of criminal responsibility.

481. As discussed in Chapter 2, there are specific provisions in Part VI of The Prisons Act (1964) outlining the conditions under which a person shall be admitted for detention.

482. The law guarantees to all persons the limited right to bail and the right to apply for *habeas corpus*. It has been the practice under the Child Care Service Order (1977) for juveniles in court not to be required to pay bail but to be released into the custody of their parents.

483. As noted, the CP&E Act gives discretion to the court to place a convicted person under the age of 18 in the custody of a person it has determined to be suitable for this purpose. Section 296(2) of the CP&E Act prohibits the imprisonment of a child under 14.

484. Detention is provided for in terms of a custodial sentence and is to be in accordance with the Reformatories Act (1921) as noted previously. Common law is that a child under the age of 7 years cannot be deprived of their liberty under any circumstances. Children below this age are considered to be incapable of committing a crime because they are *doli incapax* and as such cannot legally form the intention which the law requires for the commission of a crime.

### **Implementation**

485. The practice is that children are usually released into the custody of their parents or guardians pending trial. Apart from the police cells there are no other custodial alternatives for juvenile offenders pending trial.

486. As noted, once incarcerated boys have access to separate facilities on sentencing whilst girls are incarcerated with adults. Pending imprisonment following conviction, boys are subject to the custody and care of the remand prisons which do not have separate facilities for juvenile offenders and the situation is exacerbated by the congestion.

487. Measures to ensure that incarcerated juveniles maintain contact with their family are provided through visits and correspondence. Entitlements are afforded to all prisoners irrespective of the type of sentence imposed on them. They are allowed visitations during weekends and public holidays. They are permitted to write letters once a month and are allowed to use the telephone through officers for emergencies. Capital sentenced prisoners are allowed visitations on a more frequent basis.

## **Constraints**

488. Existing law does not adequately provide the detained child with recreation, education or counselling facilities. While nothing exists in current legislation that could be construed as torture, an act specific to the treatment of children in legal detention is urgently needed for our laws on juvenile justice to fully comply with the United Nation's Convention on the Rights of the Child.

489. Administrative shortcomings are resulting in cases of children as young as twelve in correctional facilities. Protection against preventative detention and the minimum age for this is not provided in legislation promoting cases relating to arbitrary and unlawful arrest of children.

490. The law does not guarantee the right of legal representation or prior access to legal advice in matters involving juveniles. The rights of all persons, including juveniles, are severely prejudiced in the traditional court system where no right of legal representation exists.

### **3. The sentencing of children, with particular reference to the prohibition of capital punishment and life imprisonment (art. 37(a))**

#### **Law and policy**

491. As mentioned above, the law prohibits the imprisonment of a juvenile offender who is below age 14 and prohibits imposition of the death sentence on a juvenile offender below 18.

492. As noted with regard to custodial sentences the law places a limit on the term of imprisonment for juveniles.

#### **Implementation**

493. As previously referred to, information has shown that male children below 14 are in custody at the Mdotshane Industrial School. However, these are the exception and are due to apparent difficulties in the determining the juvenile's age in the absence of a birth certificate.

494. Information provided by the Department of Correctional Service, indicates that the average term of imprisonment imposed on juveniles ranges between six to eighteen months.

#### **Constraints**

495. Apart from the committal warrant, Correctional Services has no mechanism for verification of the contents of the order particularly with regard to identity and age of the juvenile offender. This has resulted in juveniles being released into the custody of families, which although stated as such in records, are not their own.

#### **4. Physical and psychological recovery and social reintegration of the child (art. 39)**

##### **Law and policy**

496. The law is silent with regard to custodians being guaranteed legal representation. As noted above the hearing of cases *in camera* is a discretionary power the courts have under the law. This is enforced as an exception rather than as a rule.

497. As noted above the stated goal of the Department of Correctional Services does the rehabilitation and reformation of all prisoners.

##### **Implementation**

498. Currently there are no formal rehabilitation programmes for juvenile and adult offenders. The main problem is with the psychological part that is not addressed. Limited educational and vocational training is provided. The Department of Correctional Services, with the support of SACRO, offers pre-vocational training at Mdutshane juvenile industrial school as well as at the Young People's Prison in Malkerns. Vocational skills training ranges from sewing and carpentry to leathercraft and upholstery. Educational services are paid for by the contributions made by charitable organisations, NGOs and individuals.

##### **Constraints**

499. Scientific rehabilitation of all prisoners remains a relatively undeveloped area in both law and policy in respect of psychologists, psychiatrists etc.

500. There are no comprehensive counselling services available to juvenile offenders and prisoners. What services exist are limited by the severe human resource constraints suffered by the social welfare office section within the Department. Services offered include: education, counselling, spiritual care, extra-mural penal employment, recreation and pre-release sessions. A chaplain has been added to assist with spiritual matters.

501. As noted, there is a shortage of teaching staff to provide education as there is only one (1) teacher to meet the needs of the juveniles at Mdutshane.

502. Despite successfully completing their primary education while incarcerated, the reintegration of juvenile offenders into the formal education system has been difficult due to their stigmatization.

503. The system has no child psychologist for those who need to be given psychotherapy treatment.

**C. Children in situations of exploitation, including physical and psychological recovery and social reintegration**

**1. Economic exploitation of children, including child labour (art. 32)**

**Law and policy**

504. As noted in Chapter 2, The Employment Act (1980) prohibits the employment of the categories of children that fall under 18 years in premises or any portion thereof that is partially or wholly used for sale of intoxicating drinks for consumption on the premises, in work which is likely to cause injury to the child's morals or conduct, work underground and in dangerous and unhealthy work. Dangerous and unhealthy work is not defined.

505. Swaziland is a signatory to the ILO Convention No. 138 on Minimum Age for Employment. No minimum age for employment is set in law. There is no distinction made between part-time and full-time employment.

506. The Liquor Licenses Act (1964) prohibits the employment of a person under 18 in premises where liquor is sold or stored.

507. The Control of Radio-Active Substances Act (1964) prohibits the employment of persons under 18 in an operation involving the production, emissions or use of ionising radiation.

508. According to The Employment Act, children below 15 are only to be employed in family undertakings and technical schools and even then for not longer than 33 hours per week, not more than six hours a day, not more than four hours continuously without an hour break and that this employment should not be during school hours. Insofar as children above 15 and below 18 are concerned the Act allows them to be employed. They can be employed at night (between 6.00 p.m. and 7.00 a.m.) in agricultural undertakings and for the purposes of apprenticeship or vocational training.

509. The Employment Act empowers the Minister on application to grant a license waiving the prohibition relating to hours and conditions of work for both children and young persons in the stipulated exceptional cases. However, the Act curtails these powers where the participation in such work may be dangerous to the life, health or morals of the child. The license granted by the Minister is required to contain conditions stipulating that work shall not continue after midnight and that the child shall be allowed a rest period of at least 14 consecutive hours, conditions outlining the safeguards to protect the health and morals of the child or young person and to avoid interfering with the child's education.

510. For children above 15 and below 18 the employer in an industrial undertaking is required by the Act to conduct at its own expense at the time of employment and subsequent annual medical examinations until the child's attainment of age 18.

511. The Wages Act (1964) governs the remuneration of certain categories of employees. Despite this and other subsequent legislation, there still exist wage disparities between those above and below the age of 18 years.

512. The Farm Dwellers Control Act (1982) provides for the regulation of the relationship between the farm owner and the farm dweller. Apart from requiring the dependants of the farm dweller, whose definition includes children, who provide labour to the farm owner to be remunerated at prevailing prescribed rates, there are no provisions for the protection of children in such work situations.

### **Implementation**

513. According to the 1997 Census results which captured working and non-working children by age group and sex, out of the 193 728 children aged 12 to 19, 10 952 stated they were working with negligible gender differences in the figures.

514. Of the total number of children, 37 863 were in the urban areas and 4 009 of these stated they were working. Again in the urban areas the gender difference was negligible. Insofar as the total number of 155 865 in the rural areas 6 943 were found to be working with the larger proportion being boys. Though the numbers of children by age, sex and major occupations were not available at the time it can be assumed that the position is similar to that during the 1986 census that showed that 40% of working children were in the agricultural/animal husbandry and forestry sector whilst 10% were working in the manufacturing sector, classified by CSO as production and related, transport equipment operators and labourers.

515. Working children have not received much attention in policies and existing programmes. During the 1998 Mid Term Review of the country's programme of cooperation with UNICEF the basic education sector highlighted that 23% of primary school-aged children were not in school which served to initiate preliminary discussions with regard to where they could be, if not in school. This further served to revive in earnest the 1997 discussions, initially held as part of preparations for the OAU preparatory meetings leading to the continent's input in the making of the new ILO Convention on the elimination of the worst forms of child labour.

516. This led to a decision to undertake further investigations. With the support of UNICEF a rapid assessment on child labour was undertaken in mid 1999 on the situation of working children, including those working for own or other families, focussing on the conditions of work, educational access and the participants' own assessment of the causes why children work. It is hoped that this will inform future policy and programme interventions, particularly in the light of the anticipated increase in demand for child labour arising from the consequences of the HIV/AIDS epidemic.

517. Indications from the preliminary findings of the assessment are that children start working as young as 8 or 9 and indeed 5% of the 152 working children interviewed were between ages 5 and 10.

### **Constraints**

518. The Farm Dwellers Control Act (1982) is silent on the issue protection of children against harmful labour practices that may be exercised by the farm owner. There are no specific legislative provisions regarding children in laws regulating the working conditions and use of machineries at factories and construction works, areas in which some working children are found.

519. Quantitative statistics provided by the CSO do not disaggregated by occupation in the informal sector, an area that thus falls outside of the scrutiny of competent authorities including Government for prevention and monitoring of abuses.

520. There is limited information relating to the types and conditions of work that children engage in. This has made the enforcement of employment laws in formal sector less than adequate. The informal employment sector poses special challenges, particularly in terms of domestic child workers and subsistence agricultural workers.

## **2. Drug abuse (art. 33)**

### **Law and policy**

521. There are laws controlling the use and consumption of both alcohol and drugs. As referred to in Chapter 2, there is a statute prohibiting the sale of alcohol to children under 18 and employment in premises licensed to sell and serve alcohol.

522. The Opium and Habit Forming Drugs Act (1922) prohibits any dealings with drugs, including the production, sale and distribution of drugs by unlicensed individuals, allowing only registered medical, dental and pharmaceutical practitioners and veterinary surgeons to import or export certain drugs. It provides for the total prohibition of the importation and exportation of opium. The Act also provides for the licensing of the production and use of drugs.

523. The Act further provides for the dispensation of drugs on prescription. Apart from the specific provisions relating licensing and medicinal use, there are specific prohibitions of the use of any instrument for smoking opium and marijuana; the possession or use of any habit-forming drug or plant from which it can be derived; and having or visiting premises used for opium and marijuana smoking.

524. The Pharmacy Act (1929) regulates the sale, supply and possession of drugs, medicines and poisons by providing that this be done by duly registered pharmacists.

525. The Public Health Bill, awaiting parliamentary debate, contains provisions prohibiting the sale of cigarettes to those under the age of 18.

### **Implementation**

526. According to the records of the Liquor Licenses Board, in 1998 there were over 200 establishments with a license to sell liquor in Swaziland (this includes sports clubs, restaurants, hotels and bars). This does not include the illegal bars and sellers of home-brewed alcoholic drinks.

527. Alcohol and drug abuse awareness was started in 1980 by the National Psychiatric Centre through a clinical Psychologist academically trained on drugs and alcohol. Youth Leaders with Mental Health Society volunteers were trained in Mauritius on alcohol and drug abuse control. Alcoholics Anonymous Clinics were started at the Psychiatric Centre for both in- and outpatients. Campaigns to mobilize community leaders including chiefs were conducted.



528. There has been a limited response to the issue of substance and drug abuse with this centred mainly on the efforts of the nine year old NGO, National Council on Smoking, Alcohol and Drug Dependence (COSAD) as well as the recently established Emafini Treatment and Rehabilitation Centre run by a church organisation. As a result of intense lobbying on the part of COSAD, the Government launched a National Advisory Committee on Substance Abuse (NACSA) in 1995. COSAD was requested to act as the secretariat to this committee. NACSA, which had been dormant since its launch, was reactivated at the end of 1998 at a workshop funded by WHO. A special committee was set up to follow up on workshop recommendations made at this meeting.

529. Collaboration between the Royal Swaziland Police and the Ministry of Health and Social Welfare led to drug prevention awareness campaigns throughout ten regional communities in the country in 1997 with the support of the American Embassy.

530. In a WHO-funded study, COSAD investigated the prevalence of tobacco, alcohol and drug consumption in 18 high schools and ten tertiary institutions. 1627 girls and 1504 boys in the high schools and 791 women and 892 men in tertiary institutions were interviewed. The study, completed in June 1998, found that alcohol is the main substance abused, followed by marijuana and cigarettes. The study further found that use and abuse of these drugs is predominantly among boys and that it is significantly higher in the age range of 20-34. According to COSAD's 1998 annual report, these findings were supported by an assessment commissioned by the UN Drug Control Programme (UNDCP) regional office for UNDP in support of the development of a drug strategy document for Africa. According to COSAD this latter assessment specifically noted that in the sequence of abuse, multiple abuse was common, with marijuana and alcohol most often present. It further noted that virtually all patients at the National Psychiatric Centre were admitted as result of alcohol and marijuana use.

531. Some peer education clubs - Anti-Drug Abuse clubs - have been formed in some 15 high schools in the country.

532. The Swaziland delegation (which included COSAD) to the 1998 SADC regional meetings participated in the formulation of the SADC Regional Drug Protocol and the SADC Regional Drug Control Programme. The regional programme focuses on the building of regional and national capacities, including those for coordination and monitoring and evaluation; development of laws; reduction in the demand and supply of drugs; illegal drugs and the HIV/AIDS epidemic. Unfortunately, as of the end of 1998 Swaziland had not ratified this protocol, and two-thirds member ratification is required before it comes into force, as negotiations for funding were not complete.

533. Swaziland's participation, which included COSAD, in the June 1998 Twentieth Special Session of the UN General Assembly enabled it to benefit from other national efforts as presented in the reports of other delegations. As reported at this meeting, Swaziland was in the process of updating relevant legislation in an effort to strengthen the role of law enforcement agencies and referred to the Drug Abuse Bill, the Medicines and Related Substances Control Bill amongst others. Swaziland highlighted its need for international assistance in its efforts to eradicate the cultivation and distribution of dagga.

### **Constraints**

534. However, the issue of children who are used to sell and traffic drugs needs to be specifically addressed. No legislation exists in Swaziland to address drug abuse by children. According to COSAD, a major constraint relates to the absence of clear strategies to address substance use and abuse in the NDS and ESRA planning documents nor in the recently released Health Sector Study.

535. The illegal sale of alcohol (through illegal taverns, shebeens and other sellers of *umqomboti*, *emaganu*) and other home-brewed alcoholic drinks to both adults and children is common.

536. Existing legislation provides neither a minimum age for obtaining prescription drugs nor a prohibition of the sale of tobacco to children under 18. Although the Public Health Bill provides for the latter, it does not address the former.

537. Challenges remain as a clear and comprehensive policy on drug and substance use and abuse is yet to be defined, despite political commitment. NACSA remains without adequate resources in terms of finance and personnel.

### **3. Sexual exploitation and sexual abuse (art. 34)**

#### **Law and policy**

538. The Crimes Act (1889), The Girls and Women's Protection Act (1920) and The Child Care Service Order (1977) all seek to protect the child against sexual exploitation and abuse. The first two are described in some detail below whilst the third has been discussed to some length in Chapter V.

539. The Crimes Act was designed to give protection from unscrupulous men and other adults, particularly prohibiting parents or guardians from making available a girl for unlawful sexual intercourse with any man. It makes it an offence to have the girl made available for defilement, seduction or prostitution in the hope of sharing in any proceeds therefrom. The Act also makes it an offence for a person to obtain a girl by false pretences or by means of any drug, intoxicating liquor or any other substance having the effect of weakening her resistance to have unlawful sexual intercourse with a man. It also makes it an offence for a person who allows premises under their control to be used by any man for unlawful sexual intercourse with a girl of any age. The Crimes Act also makes it an offence for a person to abduct a girl under the age of 18 years with the intention of having her involved in sexual relations.

540. The Girls' and Women's Protection Act prohibits any form of sexual intercourse by any man with a girl under the age of 16 years. It however stipulates that a boy below 16 years would not be held, nor would a man, if it can be shown that the girl was a prostitute. This proviso to the provisions has been criticised the then law lecturer in the University of Swaziland in his 1994 study on the status and rights of the child under the laws of Swaziland. The same Act however provides an exception for sexual relations between a man and wife, including those married under Swazi law and custom, which dilutes the protection sought since under custom girls are eligible to marry from the onset of puberty.

## **Implementation**

541. Certain NGOs, including the Swaziland Action Group Against Abuse (SWAGAA), SCF and SACRO are attempting to address the situation of sexually abused and exploited children.

542. Following several preliminary studies and reported cases confirming the existence of sexual abuse of children in Swaziland, SWAGAA undertook a qualitative study with the support of UNICEF. This was concluded in 1999 and its findings highlight that contrary to popular perception, the incidence of sexual abuse predominantly occurs within families and by caregivers. Also highlighted was the fragmentation in service provision to abused children and the lack of collaboration and clear coordinating guidelines for NGOs, including referral mechanisms. Reports on child abuse, incest and sodomy have increased, not necessarily because cases have increased, but due to greater population awareness. There is, however, no national quantitative data apart from the reports made to SWAGAA and the police.

543. In mid 1998 SWAGAA established a Child Abuse and Counselling Unit and has undertaken training to develop counselling skills responding to the special needs of children. From the end of 1999 SWAGAA has with the support of UNICEF worked towards progressive implementation of the recommendations of the study, working with children, parents, nurses, the police and teachers with regard to increasing awareness and improving skills in the case management and referrals on child sexual abuse. It has also worked to produce information and communication material on child sexual abuse. Other NGOs such as SCF and SACRO continue to work in the awareness raising and training activities, particularly for the strengthening the work of the child protection unit within the RSP.

544. Awareness and sensitisation activities have been undertaken through media programmes, mainly radio, but there remains a need for more programmes to be introduced to schools in order to create greater awareness to students at whom abuse might be directed. Intensification of media programmes, peer group intervention through age and culture strategies and open discussion at Tinkhundla level could be addressed.

545. There remains an urgent need for drastic intervention, deterrents and rehabilitation measures to expand the services currently provided by SWAGAA and its partners.

## **Constraints**

546. There are, however certain traditional and cultural practices which allow what would be seen as abuse in terms of the Convention. The practice of parental consent in arranged marriages of girls under the age of 16 years which confer a right on the husband to consummate the marriage.

547. There are no trained medical personnel to deal with abused children (crisis corners). There is lack of child protection guidelines to be followed by service providers that can be monitored by the mother Ministry.

#### **4. Sale, trafficking and abduction (art. 35)**

##### **Law and policy**

548. Under common law, the crime of abduction is defined as the unlawful removal of a child from the control of the parent or custodian with the intention of having sexual intercourse with or marrying that child. Kidnapping is also defined as a crime under common law, without the element of sexual intercourse or marriage.

549. Apart from the provisions of The Crimes Act (1889) referred to above there are no other statutory laws governing the abduction of children, especially across borders, for purposes of sale and trafficking.

##### **Implementation**

550. Some cases of abduction have been reported to the police but may only represent a small fraction of existing cases, as some are handled under the customary law. Few, if any, cases of sale and trafficking have been reported to and handled by the police. Anecdotal information exists with regard to child prostitution. Recent media reports highlighted the success of Interpol in intercepting 2 young Swazi girls in South Africa who were suspected to have been lured into a suspected Asian syndicate dealing in this type of exploitation.

##### **Constraints**

551. Very little information is available with regard to this situation in Swaziland.

552. The current legal framework leaves the door wide open for such abuses, especially with regard to the international trafficking of children, should this indeed become a problem for Swaziland. There is no system to facilitate collaboration with neighbouring countries in cracking down abduction syndicates

#### **5. Other forms of exploitation (art. 36)**

##### **Law and policy**

553. Some mention has already been made in section C. 1 above of the exceptional circumstances, which include participation in public entertainment and where this might occur outside of the prescribed hours, requiring the license by the Minister.

554. There is no specific legislation protecting children from being used or involved in organised crime syndicates.

##### **Implementation**

555. A 1997 Framework Paper on Child Protection Issues in Swaziland highlighted that although children had not been involved in situations of war they had been involved in another type of violence: organised crime. Particular reference was made to drug syndicates and motor vehicle theft and distribution of cars to countries in the sub-region as Swaziland appears to have become a key transit route in both these criminal activities.

**D. Children belonging to a minority or indigenous group (art. 30)**

**Law and policy**

556. There is no legislation for guaranteeing the children of minorities the rights to profess and practice their own religion, culture and to the use of their own language. As discussed in Chapters 1 (General Measures) and 4 (Civil Rights and Freedoms) the section in the 1968 Constitution guaranteeing the fundamental freedoms of people in Swaziland was repealed in 1973.

**Implementation**

557. Some mention has been made in Chapter III with regard to discriminatory practices of schools regarding Jehovah's Witnesses.

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