

COMMITTEE ON THE RIGHTS OF THE CHILD

Meeting of the 43rd Session (Geneva, 11 September – 29 September 2006)

Swaziland (initial report)

Information submitted to the Committee

The Government of the Kingdom of Swaziland (Swaziland) ratified the *Convention on the Rights of the Child* (the Convention)¹ on 26 August 1995. Its initial report was due in 1997, but owing to its administrative difficulties consideration of its report was postponed to the 43rd Session. Swaziland also submitted written replies to the Committee on the Rights of the Child's (the Committee's) list of issues.² The delegation assured the Committee that it would submit its future reports in a timely fashion.

Ms Nomathemba Diamini, Principal Secretary of the Ministry of Health and Social Welfare, headed the Swazi delegation. Other members of the delegation consisted of the Chargé d'Affaires and the First Secretary Information of the Permanent Mission of Swaziland to the UN, a Director of Social Welfare, a Senior Development Officer of the Ministry of Regional Development Youth, a Senior Crown Counsel for the Attorney General and a Legal Advisor of the Ministry of Foreign Affairs and Trade,

Three Non-Governmental Organisations (NGOs)³ submitted parallel reports to the Committee.⁴ These reports focused on issues such as the need for a child phone helpline, the overall implementation of the Convention and the legal status of corporal punishment.

Themes and Issues⁵

General Implementation Measures

The Swazi delegation made it clear that the Convention has no direct effect under domestic law. The recent adoption of a Constitution in 2005 has meant that the Government has been very cautious in its implementation of new laws. Sections 29 to 31 of the Constitution specifically focus on children's issues, including abolishing the status of illegitimacy. Swaziland has many pending legislative and policy measures designed to bring it into compliance with the Convention. These include draft legislation criminalising sexual offences and domestic abuse against children, a Poverty Reduction Strategy and Action Plan, an Orphan and Vulnerable Children (OVC) Action Plan, a Children's Act, a National Policy for Childhood, a Marriage Act, and a Criminal Procedures and Evidence Act. By 1 January 2007, the Government intends to establish a semi-autonomous body called the Children's Coordination Unit,⁶ which will be charged with the coordination of all interactions between government, international agencies and NGOs concerning children's issues. During the interactive dialogue, the Committee expressed

¹ <http://www.unhcr.ch/html/menu3/b/k2crc.htm>.

² The state report, list of issues, answers to the list of issues, General Comments, and the Concluding Observations of the Committee are available at <http://www.ohchr.org/english/bodies/crc/crcs43.htm>.

³ Child Helpline International, Orphans and Vulnerable Children Network and Global Initiative to End All Corporal Punishment of Children.

⁴ NGO reports are available on the Child Rights Information Network at <http://www.crin.org/docs/resources/treaties/crc.25/annex-vi-crin.asp>.

⁵ For a press release of the proceedings, please see [http://www.unog.ch/unog/website/news_media.nsf/\(httpNewsByYear_en\)/77C7CDAE524478A3C12571ED0042CB_EB?OpenDocument](http://www.unog.ch/unog/website/news_media.nsf/(httpNewsByYear_en)/77C7CDAE524478A3C12571ED0042CB_EB?OpenDocument).

⁶ To be staffed by independent experts.

considerable confusion over the nature of this body, how it will function, and with what resources.

The Committee noted that a major problem affecting the implementation of the Convention was the extreme lack of statistical data, especially in the areas of infant mortality, HIV/AIDS prevalence among children, child-headed households, drug abuse, and disabilities.

In response to the Committee's queries, the delegation replied that Swaziland intended to establish a National Human Rights Institution in order to guarantee the rights set forth in the new Constitution. However, it has no plans to create an Ombudsman position.

Definition of the Child

The Committee raised the concern that Swaziland's legal definition of the child did not comply with the Convention. The State Party conceded this fact, and stated that it will hopefully introduce the Children's Bill by the end of 2007 to address this concern. It also mentioned a forthcoming Marriage Act, which will place the legal age of marriage at 18. The Committee urged Swaziland to expedite the progress of this legislation.

Health and HIV/AIDS

The Committee expressed concern over the extremely high HIV/AIDS prevalence rate in Swaziland, which is as high as 42.6% among pregnant women

The Committee expressed concerns that, according to the delegation's written replies, immunisation rates had dropped from 83% to 71%. Swaziland replied that this was due to difficulty in obtaining vehicles suitable to some terrain, in addition to the impact of HIV/AIDS on health care workers and general resource complaints.

Swaziland highlighted several of its healthcare measures, including campaigns aimed at de-worming, polio, measles, vitamin A provision, and free anti-viral treatments (AVTs) for mothers and children. In addition, it announced a very successful breast-milk campaign spearheaded by the Queen Mother, and confirmed its intention to adopt the International Code for Breast-Milk.

The Committee also raised the issue of child drug abuse and the lack of criminal sanctions. The delegation responded that drug abuse among children was a huge problem, strongly linked to the HIV/AIDS epidemic. The delegation announced that mental institutions currently rehabilitate drug addicts, even though they do not have the capacity to do so. It announced a forthcoming bill in Parliament to address this issue.

The Committee inquired about efforts taken to de-mine the Mozambique border, commenting that a public awareness campaign was necessary. The delegation answered that 90% of the mines had been removed.

Among other things, the Committee recommended in its concluding observations that Swaziland: ensure adequate nutrition and hygiene for children, especially orphans and vulnerable children, through neighbourhood Care Points; provide at least one point of access to safe drinking water in each neighbourhood; undertake a study to assess the nature and extent of adolescent health problems; abolish the prohibition of land ownership of women, especially widowed mothers and orphans; conduct awareness raising campaigns to combat HIV/AIDS; ensure access to child-

sensitive HIV/AIDS counselling; continue to strengthen efforts to prevent mother-to-child transmission of HIV; and seek closer cooperation with UNICEF and UNAIDS.

Disabilities

The Committee also noted that Swaziland currently has no policy on disabled persons. The delegation replied that this fact was once again due to the lack of statistical data, but that it intends to establish a national disability policy. In its Concluding Observations, the Committee expressed concern over disabled children's limited access to health, education, sporting facilities and the physical environment. It encouraged Swaziland to collect adequate disaggregated statistical data on children with disabilities and to raise awareness to combat social stigmas and misconceptions.

Alternative Familial Care

The Committee inquired into what assistance the Government provided to child-headed households, a result of the high HIV/AIDS prevalence. The delegation replied that volunteer women in the community visit the children everyday, ensuring that schoolwork is completed and that they receive necessary healthcare. Furthermore, the Government has established programs to provide child-headed households with supplies, such as agricultural materials, as well as instruction on how to grow food.

The delegation also announced that it was in the process of conducting a study that would aim to identify, and subsequently de-register, illegal foster childcare institutions. This would mostly comprise organisations promoting "certain religious beliefs".

In its concluding observations, the Committee recommended that Swaziland develop a comprehensive policy for children lacking parental care, especially those affected by HIV/AIDS. This includes the developing of clear standards for the operation and inspection of orphanages, as well as psychosocial and financial support.

Education

The Committee noted with appreciation Swaziland's implementation of universal primary education through cooperation with the United Nations Children's Fund (UNICEF). However, it expressed alarm that only approximately 20% of children completed primary school, and that only 50% of the remaining students finished secondary school.⁷ The delegation explained that the high drop-out rates were directly linked to poverty and the prevalence of HIV/AIDS in the country, which necessitated that many children work to support sick relatives. The delegation also noted that in these situations it was generally girls who were removed first from schools, leading to a gender disparity in enrolment rates. It also stressed that the HIV/AIDS epidemic was further affecting educational capacities by causing numerous deaths of teachers, who must be replaced by untrained volunteers.

The Committee inquired as to why Siswati, the native language of Swaziland, was banned in schools. The delegation answered that it was necessary for students to be proficient in English in order to graduate.

⁷ The delegation insisted that the actual figure was not this high, and hence something must be wrong with its statistics.

The Committee advised Swaziland to increase enrolment in primary and secondary education, specifically by tackling socio-economic and regional disparities with respect to access to education. It also counselled the removal of indirect school fees to allow better access for orphans and vulnerable children, including children with disabilities. Finally, the Committee suggested the improvement of teacher training as well as the strengthening of vocational training, including for drop-outs.

Name and Nationality

Although the new Constitution of Swaziland guarantees the rights to a name and an identity, the Committee argued that domestic law still fails to comply with the Convention. This is due to the fact that under certain circumstances a child's family name could be changed after his or her birth. The Committee also raised the issue that mothers could not pass their nationality to their children, except in the case of children born out of wedlock. In addition, these children are subject to discrimination, as the father is not bound to declare or give a name to his child. It was also unclear what identity was provided to a child of stateless persons.

According to a 2004 study, only 27% of children in Swaziland are registered with the government.⁸ The delegation insisted that it was conducting extensive campaigns to address this issue and reach people in remote areas of the country. The Committee also raised the issue of inter-country adoption, which the delegation insisted is extremely rare.

In its concluding observations, the Committee suggested that the State Party immediately take the necessary legislative measures to ensure that a child can derive its nationality from its mother. Furthermore, the Committee welcomed the fact that a new Bill addresses inter-country adoption, but expressed concern that many organisations still bypass the Social Welfare Department when conducting such adoptions. The Committee also recommended that Swaziland introduce mobile units to make child registration easy and free of charge.

Corporal Punishment

The Committee criticised Swaziland for the fact that corporal punishment remains legal in the home, school and penal system. The delegation responded that corporal punishment was indeed commonly practiced, but that the Government has recently conducted research on this issue, with the results being tabled and disseminated to a wide range of stakeholders. Furthermore, the Ministry of Education is in the process of examining its current guidelines, with a view to establishing stricter controls.

The Committee also questioned the delegation about whether it would consider making its Child Helpline ("Greenline") available at all times. In addition, it asked whether children not attending school had access to the helpline. The delegation explained that it is the responsibility of the school guidance counsellor to report cases of abuse to the Ministry of Social Affairs, which subsequently reports them to the police. At present, the helpline is only available from 8:00-16:30, but the delegation expressed willingness to possibly making it 24/7. However, the delegation outlined other measures intended to protect rural children, including "neighbourhood care points," child-protector committees chosen by children, children's protection units in the police, and weekly committee meetings with a police officer in attendance.

In the concluding observations, the Committee strongly urged Swaziland to amend the Constitution to explicitly criminalise corporal punishment in all settings, including in the family,

⁸ This study drew from a relatively small sample.

schools, the penal system, and all alternative care settings. It also recommended that Swaziland conduct awareness-raising campaigns in order to publicise other forms of discipline.

Child Labour and Sexual Exploitation

The Committee lauded Swaziland for the steps it has made against child labour practices. However, the Committee was somewhat unclear on whether children under the age of 15 were permitted to work. The delegation responded that children over 15 were allowed to work for four hours after school provided it did not interfere with schoolwork.

The Committee urged the adoption of the proposed Bill on sexual offences and domestic violence, as well as the creation of a general policy addressing sexual exploitation. Furthermore, it recommended ensuring that child victims of sexual exploitation are not criminalised or penalised.

Juvenile Justice System

The Committee inquired about the conditions in jails when children were imprisoned with their mothers. The delegation answered that the Ministry of Justice works closely with NGOs to ensure that these children receive food and are properly cared for. Moreover, it is making efforts to send the children to 'SOS Children's Villages' to be educated.

In response to questioning, the delegation reported that when giving depositions, children are interrogated by "child-friendly" police cells. Moreover, they are not exposed to a Court gallery, and social workers are used as intermediaries. The delegation admitted a need for multimedia technology in order to record the statements of children.

Swaziland currently has one Children's Court, located in the capital city. It is currently attempting to train police, prosecutors, judges, and magistrates to deal with children's issues. Although the delegation expressed a desire to ideally have an entire network of Children's Courts, it acknowledged that this was impossible with current resources.

The delegation also commented that while boys under 18 are detained in separate facilities, the same is not true of girls.

The Committee recommended in its concluding observations that Swaziland: raise the minimum age of responsibility from 7 years; strengthen the Children's Court by providing it with financial resources; provide children with legal assistance; ensure that deprivation of liberty of children is a last resort and that girls are separated from adult women; abolish corporate punishment; and ensure an effective complaints mechanism for children.

Traditional Courts

The Committee noted with concern the *de facto* dual legal system in Swaziland, comprising both official and traditional courts. Swaziland replied that the traditional courts are superseded by national courts, to which one can appeal any ruling. Yet the Committee also raised the issue of parental responsibility under customary law, whereby parents would be whipped and be forced to pay a cow to atone for the offences of their child. The delegation responded that in modern times, the child is brought before national courts and either the parents pay a fine or the child spends some time in custody.

In particular, the Committee questioned the role of local chieftains in administering local justice, and whether they serve as an obstacle to the implementation of the Convention. The delegation answered that the chieftains are vital agents of implementation and are informed regularly about national policies.

Participation of Children

The Committee noted that children have many spaces in which to express themselves, such as [?], radio and TV programs and student councils. However, it pointed to cultural resistance to the idea of respecting the views of children. The delegation asserted that in 95% of chiefdoms, there are revived structures, called “social centres,” to allow families to voice problems and identify orphans and vulnerable children. Discussions for a Children’s Parliament are still ongoing, and hopefully one will be in place by 2008.

The delegation stated that the child’s right to play was respected through a compulsory recess period at all primary schools.

Conclusions and next steps

In her concluding remarks, the Committee’s Country Rapporteur, Ms Rosa Maria Ortiz⁹, thanked the Swazi delegation for its honesty and self-analytical responses. However, she stated that there appeared to be insufficient political will in the country to undergo serious reforms. She suggested that Parliament set up a committee to address children’s issues. Ms Ortiz stressed the need for increased public awareness and cultural changes with respect to how children were viewed. She also urged the State Party to ratify the two *Optional Protocols* to the Convention. Swaziland replied that efforts to do so are already underway.

In its concluding observations, the Committee urged Swaziland to expedite the promulgation of its pending legislation, especially the Children’s Bill and Sexual Offences and Domestic Violence Bill. Moreover, the Committee expressed deep concern about the discrimination, in both law and society, between girl and boy children, especially with respect to education. It entreated the State Party to ensure that all children within its territory enjoy the rights set out in the Convention.

The Committee remained very unsure of the role of the Children’s Coordination Unit, highlighting a lack of coordination of national programs. It pointed to a lack of preventative work, especially among girls, and urged the delegation to make better use of international assistance. Furthermore, it stressed the need for systematic human and children’s rights training for lawyers and social workers.

⁹<http://www.unhcr.ch/tbs/doc.nsf/647a2ab573a858f6c1256a2a0027ba29/c42e817f61a7da08c1256dc10030016f?OpenDocument>.