**THE KINGDOM OF SWAZILAND STATEMENT TO THE HUMAN RIGHTS COUNCIL WORKING GROUP BY SENATOR EDGAR E. HILLARY MINISTER OF JUSTICE AND CONSTITUTIONAL AFFAIRS**

Honourable President,

Representatives of the Member States,

Observer states,

Ladies and Gentlemen,

1. **Introduction:**

1.1 I am greatly honored to lead the delegation of the Kingdom of Swaziland to the Universal Periodic Review (UPR) of my country, and to present our National Report to the Working Group today. On behalf of His Majesty’s Government let me take this opportunity to congratulate His Excellency Choi Kyong-lim on his election as President of the Human Rights Council.

1.2 The Kingdom of Swaziland greatly appreciates the opportunity provided by the UPR mechanism to reflect and assess, in a self-critical manner, our achievements as well as identify existing gaps and challenges in the promotion and protection of human rights in our Kingdom.

* 1. This is also an occasion to share best practices and bring about further improvement through constructive dialogue and international cooperation. We are confident that the outcome of this review will contribute towards Swaziland's efforts in further enhancing the enjoyment of the full spectrum of human rights of our people. We approach the whole review process with an open and a positive mind and are keen to engage with all delegations to receive and consider their constructive comments and recommendations.

1.4 Like many countries in Southern Africa, Swaziland’s resources are reaching their limits. The recent drought currently experienced in the Kingdom of Swaziland has hit hard on its economy outlook. This has historically diminished the ability of the government to efficiently underwrite some of the human rights that have financial implications. It has greatly constrained the ability to expand safety nets and other social protection systems.

1.5 Despite the diversity and complexity of the challenges, the Government and people of Swaziland have remained firm and determined to reverse the situation and advance development forward by tracking the economy back to the right and sustainable path in line with the Sustainable Development Goals (SDG) adopted by the UN in 2015. Seeing that Swaziland’s best asset is her people, Government has introduced a number of measures aimed at safeguarding the lives and livelihoods of the poor and vulnerable groups while at the same time keeping intact sound mechanisms to accelerate economic growth and recovery.

1.6 Innovative and creative programmes that selectively target vulnerable groups such as orphans, women, children, the disabled and the elderly have been put in place to rectify social imbalances and meet the pre-set targets for the Millennium Development Goals (2015). These included: establishment of the Youth Enterprise Fund, Regional Development Fund, Poverty Reduction Fund, subsidized farming inputs, establishment of Orphans and Vulnerable Children (OVC) grant, the elderly grant, Free Primary Education (FPE), Free Ante- and Post Natal care for women & children and Government Medical Aid Scheme for the poor called the Phalala Fund. Furthermore, measures to promote youth employment, regional and agricultural development as well as women’s empowerment projects were put in place.

1.7 Since the last review (2011), the Swaziland Government has continued to formulate and implement policies aimed at improving the quality of life of everyone in the country. These policies are included in the report mainly in paragraphs 64, 65, 67 and 69 and just to mention a few:

(a) A National Strategic Framework (NSF) 2009-2014 and Extended National Strategic Framework (ENSF) 2014-2018. These provide a blueprint for multi sectoral action for HIV.

(b) A National Parliamentary Strategy on HIV and AIDS (2009-2014) is being reviewed. A new strategy covering the period 2016-2021 is being developed. The objective is to enhance the engagement and effective participation of law makers in the national response to HIV and AIDS in Swaziland.

(c) A National Male Circumcision Policy (2009). The aim of the Policy is to scale up male circumcision as a proven HIV prevention strategy, alongside other prevention interventions. Similarly a national male circumcision programme (2014-2018) has been developed to accelerate access scale-up male circumcision from 27% in 2014 to 80% by 2018.

1. **Consultative Process**

2.1 The report at hand is a result of a process that involved the setting up of a multi-stakeholder Committee, that was tasked with data collection, collation, conducting consultations and verification process. The Committee was chaired by the Ministry of Justice and it included the Prime Minister’s office, Deputy Prime Minister’s office, Ministry of Labour, Ministry of Health, Ministry of Education, Academia, Non-Governmental Organizations and Civil Society Organizations.

2.2 Following the appointment of the Committee, a workshop was held in order to provide technical assistance on the preparation of Swaziland’s Second National Report. This workshop was conducted with the assistance of the Regional Office for Southern Africa of the United Nations High Commissioner for Human Rights and the United Nations country team. The forum provided an opportunity for the stakeholders to reflect on the common understanding of the UPR process and to discuss the national experiences on the last UPR, implementation and progress made on the recommendations.

2.3 The Committee then started with data collection from all relevant sectors, each member of the Committee being a representative of and responsible for consultation within their respective sector. The Committee then narrowed down to a working group which was responsible for consolidating all the inputs and this led to the first draft of the report. The draft was then circulated to all stakeholders for their inputs once again; thereafter a validation workshop was held with all stakeholders and in this workshop further input was made. After the validation workshop, the report was presented to Cabinet, before submission to the UN.

1. **Protection and Promotion of Fundamental Human Rights in the National Constitution**

In 2005 Swaziland adopted the Constitution with a justiciable Bill of Rights. The Constitution also establishes an independent Commission on Human Rights and Public Administration whose mandate is to investigate complaints concerning alleged violations of fundamental human rights and freedoms. The Commission has been receiving complaints of alleged violations of fundamental human rights. Presently there are 86 complaints, of which 69 of these are under investigation and complaints referred to other state institutions are 11. Some of the complaints have resulted in the Commission appearing in court as an intervening party in order to protect and promote human rights.

The commission has made significant strides towards implementing its mandate despite challenges. It is anticipated that there will be achievements and adequate allocation of resources to enable the commission to continue its mandate efficiently.

Significant progress has been achieved towards strengthening the commission. This includes the recruitment of 8 key staff members, 5 of whom focus on the investigative and the legal framework of the commission. The commission has developed a 5 year strategy and is working on the Human Rights and Public Administration Bill 2011, to ensure full adherence to the Paris Principles. Accreditation by the International Accreditation Committee (ICC) is one of the Commissions’ priorities for 2016 and government has been collaborating with the Commission to ensure that the independence articulated in Section 166 of the Constitution is adhered to.

The newly established secretariat will enhance the Commission to achieve its constitutional mandate of promoting and protecting human rights, ensuring equitable access to public services for all and fostering leadership that is accountable to all people.

1. **Rights of Children**

The country enacted a comprehensive and protective piece of legislation for children in 2012 (Child Protection and Welfare Act 2012). This legislation seeks to provide protection for children from abuse and to promote their welfare and best interests.

The legislation was benchmarked against the most important legal instruments of children’s rights. The Act recognizes emerging child protection and welfare challenges brought on by a high HIV prevalence leading to many children being orphaned. Importantly, this legislation domesticates international instruments on child rights for Swaziland. The Government of Swaziland gave careful consideration in drafting the Act to give effect to its international obligations.

 Over and above this legislation, the country has a children’s policy which also provides a clear position of the policy statements that illustrate prioritization of the protection and promotion of children’s rights, in particular vulnerable children. Under the strong government social protection program, government offers an Orphan and Vulnerable Children’s (OVC) grant which caters for their education.

The Government of Swaziland has ensured free primary education for all Swazi children as enshrined in the Constitution and the Free Primary Education Act, 2012. The Free Primary Education programme is designed to remove barriers and increase access to primary education for all school-going age children. It provides relevant quality education and eliminates all forms of disparities and irregularities in primary education. It is calculated to eradicate illiteracy and to equip every child with basic skills and knowledge in an endeavor to alleviate poverty. This is in line with Section 29(6) of the Constitution of Swaziland, which guarantees the right to free primary education in public schools. Even though secondary school education is still not free, the government supports the vulnerable children by paying their fees through the OVC grant under the Deputy Prime Minister’s portfolio. Where there have been challenges, the Government has acted swiftly in addressing same.

FPE was successfully rolled out from grades 1-2 in 2010, and it was extended to grade 7 in 2015. The enrolment rate has increased from 231 555 in 2009 to 239 422 in 2012 and 247 717 in 2015. Indicators suggest that Swaziland is on track in achieving universal access to primary education specified in Millennium Development Goal 2. Achievement of access is but one aspect of the progress, there is need to ensure that all children complete primary education. Completion rates at primary levels suggested that repetition and dropout may have still pushed some of the children out of the system. In 2006/2007 the completion rate was about 59.3 percent, it increased to 76.4% in 2012, suggesting that more children stayed on to complete primary education. This is an improvement, which implied that more children are being retained by the system.

 **5. Promotion of Gender Equality and Empowerment of women**:

To illustrate the country’s commitment towards gender equality, over and above the ratification of Convention on the Elimination of Discrimination Against Women (CEDAW), the country has committed itself to a number of instruments to this effect. These include the Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa. Additionally, the following measures have been undertaken:

a) The Deeds Registry Act 37/1968 was amended in 2012 to give effect to the rights of women married in community of property to own land and have it registered in their own names.

b) The Sexual Offenses and Domestic Violence Bill has been put in place and seeks to address all forms of sexual violence against women and children. The Government of Swaziland is investing all necessary efforts to accelerate enactment of the Bill into law. Since the last Parliament was dissolved in 2013 before it was promulgated into law, the Bill therefore lapsed and the process starts *de novo*.

c) The common law rule that married women had no capacity to litigate without the assistance of their husbands was declared inconsistent with the constitutional right to equality by the High Court in the case of ***Sihlongonyane and others v Sihlongonyane*** decided in 2013.

The Government has made significant strides in policy and legislative reform in addressing the challenges of gender based violence in the country evidenced by the approval of the National Gender Policy of 2010 and the enactment of People Trafficking and People Smuggling Act of 2012 Implementation of these legal frameworks included:

* Introduction of toll free lines;
* Establishment of the Domestic Violence and Victims support Centres in police stations; and
* Establishment of a **One Stop Centre** to provide care and support for gender based violence survivors.

**7. Rights of Refugees**

The Ministry of Home Affairs is responsible for protecting refugees and asylum seekers. The Ministry has a fully-fledged Refugees Department under its portfolio. The Department is designed to be a one stop shop for providing asylum seekers and refugee services, for example, status determination, voluntary repatriation and resettlement. The Department also forms part of a tripartite team, which includes the United Nations High Commissioner for Refugees (UNHCR) and a local NGO called Caritas, that co-ordinates refugee issues in Swaziland.

The Government of Swaziland through the Ministry has drafted and published the Refugees Bill No. 22 of 2015. The Bill provides for the recognition, protection, and control of refugees by giving effect (through domestication) to the 1951 Convention relating to the Status of Refugees, the 1967 Protocol Relating to the Status of Refugees and the 1969 Convention Governing the Specific Aspects of Refugee Problems in Africa.

The Ministry operates and has recently upgraded a refugee reception center. This center has a fully-fledged school and a clinic. In this center asylum seekers and refugees are also equipped with livelihood skills to sustain themselves while staying at the center and once they move out to integrate with society.

The clinic provides high quality health services to the refugees as well as the surrounding community. The Refugees Department also continues to keep an up to date electronic statistical data base for asylum seekers and refugees in the country.

Additionally, the Departments issues and renews status permits and convention travel documents to enable refugees to make frequent business trips to neighboring countries. Swaziland continues to host many Refugees from different countries.

**8. Freedom of Expression and Political Participation**

Freedom of expression does exist in Swaziland, subject to the limitations as provided for by law.

Section 16 of the Constitution guarantees the right to freedom of expression including the right to a free media subject to respect for the dignity of others.

There are 3 privately owned print media companies which publish 7 titles between them. The Government and government owned companies advertise extensively in these privately owned media.

There is only 1 privately owned radio station and 1 privately owned television station. The radio and television stations with the widest reach are owned by the Government. However, the government is liberalizing the broadcast media space. To this end, the government enacted the Swaziland Communications Commission Act. The Act creates a communications commission which will license community and commercial radio and television stations.

The Electoral Process with regard to participation of political parties is governed by Section 79 of the Constitution which has been further interpreted by the Supreme Court Case of **Sithole No and Others vs. The Prime Minister and Others, decided in 2009**. Although the case pronounced that political parties are not allowed to field candidates, members of such parties on individual merit can stand for elections. For example, in the current Parliament we have members of Political Parties who were elected to Parliament by individual merit.

**9. Freedom of Assembly**

The Public Order Act, 1963 which currently regulates the organization of peaceful assemblies is under review. The Government has drafted a new Public Order Amendment Bill which repeals the current Act. The Bill guarantees the freedom of peaceful assembly and expression. It also provides for amongst other things, notification and consultation in respect of public gatherings and the regulation of powers of the Police during public gatherings.

The Bill does away with the requirement that organizers of a public meeting or public gathering have to obtain a permit from the Police. Conveners of meetings or gatherings will have to give the Police at least 7 days notice or in special circumstances not less than 48 hours where valid reasons are advanced on why the 7 days’ notice could not be given. The Bill has been tabled before Parliament. At the moment it is at the stage of public participation in that the public has been afforded an opportunity to comment on it.

The Government also amended the Industrial Relations Act, 2000 to allow for registration of workers and employer federations and thereby ensuring that workers and businesses enjoy freedom of association as provided for under ILO Convention No. 87 concerning freedom of association and the right to organize.

**8. Access to Justice and Rule of Law**

Since the last review, reasonable strides have been taken by the Government of the Kingdom of Swaziland towards addressing challenges within the Judiciary to enhance efficiency. A Legal Aid Policy has also been formulated with the help of UNDP. Furthermore a Legal Aid Bill has also been drafted and is yet to be tabled in Parliament for promulgation. This is an initiative by government aimed at improving access to justice for the indigent.

The Constitution of Swaziland guarantees the Independence of the Judiciary. The Government of Swaziland respects and upholds the independence of the judiciary. The Government does not interfere with judicial officers in the discharge of their judicial functions. The Government is committed to giving the judiciary adequate resources to enable it to fulfill its constitutional mandate.

Candidates selected for judicial office are persons of high moral character and integrity and must have practiced law for 10 years in the case of the High Court and 15 years for Supreme Court Judges. The tenure of judges is secure. Judges hold office until the age of 75. Judges may only be removed from office for serious misbehavior or incapacity established after an independent inquiry at which the judge has legal representation.

In an attempt to address the backlog of cases in our courts, the Judiciary recruited 4 additional High Court Judges in 2015 to further enhance efficiency in the judicial system and subsequently improve access to justice. These positions were advertised in the media and the process was transparent. The move is aimed at addressing the challenges that the judicial system faced. Also in addressing the challenges, continued legal training for the judicial officers is much needed and will be appreciated.

**9. Access to clean potable water and electrification**

The country is committed to ensure the protection and promotion of the rights to access potable water and sanitation.

The country has made substantial progress in accessing safe drinking water by the population. The proportion of people with access to safe drinking water has increased by 16% from 56.4 percent in 1997 to 72.4 percent in 2014 at national level. The improvement is observed in both the rural and urban areas. In 2014, 63.4 percent of the rural population had access to improved water sources compared to 95.8 percent for urban areas. As of 2014, the proportion of the population estimated to have access to electricity is 65 percent. Urban and rural households had electricity access of 83.8 percent and 53.8 percent, respectively.

**10. The Suppression of Terrorism Act**

The government has drafted the Suppression of Terrorism (Amendment) Bill, 2013. The purpose of the Bill is to amend the definition of “terrorist act” and to provide for incidental matters.

The intention behind the amendments of the two pieces of legislation is to bring them in line with the Constitution of Swaziland and the country’s international human rights obligations. To this end the Government received technical assistance in drafting the amendment Bill from the International Labour Organisation.

A key feature of the Amendment Bill is its curtailing of the wide definition of “terrorist act”. Section 2(j) has been amended by removing the word “involves” which, in its existing form allows elasticity when assessing whether conduct and activities constitutes terrorists acts. The proposed amendment to the exiting definition will ensure that the provision is not unduly stretched to cover activities which are not otherwise terrorist acts.

The Amendment therefore seeks to direct the interpreter to establish whether a particular act prejudices national security or public safety, and thereby be termed a terrorist act. The decision of a Minister to proscribe an entity can now be subjected to judicial review.

The Suppression of Terrorism Amendment Bill gives effect to resolutions of the United Nations Security Council relating to the fight against terrorism. In this regard, section 11(b) of the existing legislation has been amended by giving effect to UN resolution 2178.

The Bill was tabled before Parliament under a certificate of urgency. The Legislature has invited the public for comments on the content of the Bill. Already, a significant number of civil society organizations and individuals have already registered to submit to the Parliamentary Portfolio Committee.

**12. Access to Health Care**

The Swaziland Government has continued to formulate and implement initiatives aimed at improving the health of everyone in the country. These include:

The HIV and AIDS Programme: As part of improving prevention of HIV, there has been an increase in the number of people accessing Anti-Retroviral Therapy (ART) due to the introduction of immediate access to ART, treatment for pregnant and breastfeeding mothers in the country. This is aimed at further reducing transmission of infections among people in the country.

There has been a drastic scale-up of ART by the Ministry of Health (MoH). By the end of 2014, a total of 125,421 people were on ART, with 7,906 (6%) being children under 14 years. With an increase in the number of people on ART, a key priority for the MoH is to ensure that those on ART stay alive. In this regard it is pleasing to note that ART retention for adults and children at 36 months is 78% and 83% respectively.

The percentage of HIV infected infants born to HIV positive mothers has continued to decrease from 16.4% in 2011 to 9.17 in 2014 with a target of reaching 5% by 2018. This is as a result of increased coverage on ART for pregnant and breastfeeding mothers. The Ministry is progressively rolling out early ART initiation for all pregnant and breastfeeding mothers who are HIV positive where they receive ART as soon as possible regardless of their CD4 count. ART is known to have a preventative effect on transmission of HIV.

There has been an increase in the proportion of children having access to HIV testing as early as 6 weeks, and the coverage has reached 81%. More than 80% of public facilities are now able to collect blood for early infant diagnosis of HIV. Early infant diagnosis of HIV has ensured that more children in need of ART are provided with ART, as a step towards Universal coverage for Children on ART by 2018. The Government remains committed to financing the procurement of antiretroviral drugs, catering for approximately 90% of the budget.

The Malaria Prevention Programme: Swaziland continues to do well in response to malaria with the country being recognized for its leadership and efforts in malaria response by the African Union Certification of Malaria Elimination by 2018. A strategic plan 2015-2020 has been developed to guide the country after achieving malaria elimination in 2015 up until WHO certification in 2018 and beyond.

Both the incidence and deaths rates of malaria in the country have significantly dropped as the country draws closer to elimination. The success could be attributed to:

* The strengthened health facility mentoring and monitoring visits by the programme, to ensure adherence to the National Diagnosis and Treatment guidelines by health care workers.
* The strong management and resource mobilization mechanism, which has enabled the programme to secure resources up to 2018.
* The introduction of active case surveillance of all confirmed cases by the programme. Cases are followed up immediately after confirmation before possibilities of onward transmission.
* The consistent Indoor Residual Spraying coverage of above 90% annually.

**15. Conclusion**

The Government of the Kingdom of Swaziland continues to be committed to its obligations under international human rights Conventions and Treaties. The Government appreciates that human rights are constantly evolving and is thus dedicated to ensuring that the human rights of its people are respected, protected and enforced. However, the shortage of personnel and financial resources hinders the compilation and analysis of data to produce requisite State Party reports and acknowledges the need for technical assistance in this regard.

We look forward to an interactive and fruitful dialogue.

I thank you.