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Summary record (partial)* of the 3383rd meeting

Held at the Palais Wilson, Geneva, on Monday, 10 July 2017, at 10 a.m.

Chair: Mr. Iwasawa

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* No summary record was prepared for the rest of the meeting.

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The meeting was called to order at 10.05 a.m.

Consideration of country situations in the absence of reports, pursuant to rule 70 of the Committee's rules of procedure *(continued)*

Situation in Swaziland considered in the absence of a report (continued)
(CCPR/C/SWZ/Q/1 and Add.1)

1. *At the invitation of the Chair, the delegation of Swaziland took places at the Committee table.*
2. **Mr. Hillary** (Swaziland) said that the King's Proclamation to the Nation in 1973 had been repealed when the Constitution of the Kingdom of Swaziland Act 2005 had entered into force. Hence the Proclamation was not the source of the King's power and was not invoked to restrict the activities of political parties.
3. Section 36 of the Constitution concerning the declaration of a state of emergency specified cases in which the life of the nation was threatened and was therefore consistent with article 4 of the Covenant.
4. The right to freedom of thought, conscience and religion was not derogable under Swazi law.
5. **Ms. Simelane** (Swaziland) said that the Constitution contained no explicit provision prohibiting discrimination on grounds of sexual orientation or gender identity. However, all forms of arbitrary discrimination were deemed to be irrational and impermissible. Physical violence against lesbian, gay, bisexual, transgender and intersex (LGBTI) persons was prosecuted not as a hate crime but as assault, gender-based violence, culpable homicide or murder. With regard to Themba Zwane and the gay detainee who had reportedly been raped, the delegation had been unable within the time available to ascertain the facts pertaining to the two cases. However, it would undertake further investigations and report its findings to the Committee.
6. Sodomy was criminalized as a common-law rather than a statutory offence and there were no plans to decriminalize it. However, the State did not prosecute consensual sex among men. The sexual offences and domestic violence bill criminalized all forms of rape, including in cases where the victim was a male.
7. The number of persons tested for HIV had increased from 153,996 in 2010 to 431,187 in 2015. Although the country's anti-discrimination policy was not legally enforceable, irrational discrimination, for instance in connection with HIV, qualified as one of the forms of discrimination listed under section 20 of the Constitution. A national strategy had been developed to combat stigmatization. In addition, advocacy initiatives aimed at eliminating stigmatization had been launched at the national and community level.
8. Work was still under way on a national register of people living with albinism. The Office of the Deputy Prime Minister provided various forms of assistance to a number of persons requiring care.
9. According to a report published by the Ministry of Health in 2015, the high rate of maternal mortality was primarily due to non-pregnancy-related causes such as HIV. As medical staff were required to report maternal deaths within 24 hours, reliable statistics were provided by health facilities, but it was difficult to obtain relevant data in community settings.
10. The Ministry of Justice and Constitutional Affairs had consulted all stakeholders in recent months on the marriages bill, which should soon be submitted to the Cabinet. There was also family-related legislation in the pipeline, which would address aspects of customary law that discriminated against women. The issue of dispossession of widows of their inheritance was addressed in the administration of estates bill, and the issues of forced marriage and bride inheritance were addressed in the marriages bill. Consent would henceforth be required for both customary and civil marriages. The marriages bill also criminalized marital rape. The Girls' and Women's Protection Act adopted in 1920 had sought to protect girls under the age of 16 from sexual exploitation. Customary law

permitted girls under the age of 16 to marry, but the marriages bill provided for a uniform age of consent for all marriages.

11. The National Strategy and Action Plan to End Violence (2013-2018) had been developed in line with the National Gender Policy. The National Study on Drivers of Violence against Children had identified gaps in the National Gender Policy and a relevant institution had been mandated to remedy the shortcomings.

12. Between January 2012 and December 2016, the Royal Swaziland Police Service had recorded 6,003 complaints of violence. Prosecutions had been instituted in 3,575 cases and had led to 3,471 convictions and 104 acquittals. As judges were not authorized to issue rulings on compensation, victims were required to lodge civil claims for damages. No statistics were available for the number of claims lodged.

13. Customary law did not stigmatize orphans. When both parents died, the extended family was traditionally required to take care of the children. Problems arose, of course, if the extended family lacked the requisite resources.

14. **Mr. Vilakati** (Swaziland) said that, during the period under review, the following three persons had died while in the custody of the police or correctional services: Mathousand Ngubeni, Siphon Jele and Luciano Reginaldo Zavale. Inquests had been conducted to ascertain whether anybody could be held civilly or criminally responsible for their deaths. According to the coroner's findings, the deaths of Mr. Ngubeni and Mr. Jele were not attributable to any police or correctional officer. The inquest into the case of Mr. Zavale had not yet been completed because the responsible coroner had resigned from the judicial service and a new coroner had been appointed. Mr. Zavale's dependants had lodged a civil claim against the State for wrongful death; the proceedings were currently at the pretrial stage.

15. Swaziland had not set a timeline for ratifying the Second Optional Protocol to the Covenant, aiming at the abolition of the death penalty. However, the moratorium on the death penalty had now acquired official status.

16. The Constitution, particularly section 141, reflected the basic principles of independence of the judiciary. Judges had security of tenure and retired at the age of 75. However, they could be removed from office through an independent and impartial inquiry in the event of serious misconduct or if they were unable to perform their functions owing to infirmity of body or mind. They enjoyed financial security based on a consolidated revenue fund and also received secure pensions.

17. The Constitution established objective criteria for appointments to judicial office. Candidates for appointment to the High Court should have practised law for at least 10 years. Candidates for appointment to the Supreme Court should have practised law for at least 15 years or should be promoted from the High Court. The procedure for appointment to the High Court was open and transparent. Vacancies were advertised and interviews conducted in public by the Judicial Service Commission. Section 62 of the Constitution prohibited inappropriate or unwarranted interference with the exercise of judicial functions.

18. The enactment of the legal aid bill had been delayed by extensive consultations and disagreement among stakeholders regarding its content.

19. The pro Deo services granted to persons charged with capital offences were provided by experienced private legal practitioners.

20. The amount of bail to be set by judicial officers was fixed by statute and specified for different offences. There was no difference between the amounts set for political and non-political issues. Bail also frequently consisted partly of cash and partly of surety.

21. The duration of pretrial detention for all categories of offences presented a major challenge for the criminal justice system. The State had increased the number of judges, created additional posts for public prosecutors and promoted active case management to reduce its duration.

22. **Ms. Nsibande** (Swaziland) said that corporal punishment in schools had been abolished and replaced by positive discipline. Training courses in positive discipline and

awareness-raising initiatives for teachers had been organized throughout the country. The Ministry of Education was currently investigating the case of the head teacher who had administered corporal punishment to children for failing to bring empty milk cartons to school. Moderate chastisement was permitted in the family environment in accordance with the Constitution, but excessive corporal punishment constituted a criminal offence. The Children's Protection and Welfare Act prohibited corporal punishment.

23. The State had strengthened legal protection for juvenile offenders, victims and witnesses. Minors in conflict with the law enjoyed fair trial rights, including the right to be presumed innocent and to be assisted by their parents or guardians in preparing and presenting a defence.

24. Child marriage would be eliminated by the introduction of a uniform age for all types of marriages.

25. The Children's Protection and Welfare Act contained a clear definition of a child as any person under the age of 18 years.

26. Childbirth registration statistics for 2015 and 2016 were not yet available.

27. **Mr. Dlamini** (Swaziland) said that the State had conducted extensive consultations with the general public prior to the enactment of the Constitution. The nation had supported the granting of immunity to the King and the Queen Mother from any suit or legal process and from being summoned to appear as a witness in any civil or criminal proceedings.

28. Swaziland had a dual legal system inasmuch as it recognized customary law. Issues that could be governed by custom included the appointment, revocation or suspension of chiefs, and the composition of the Swazi National Council.

29. The King did not appoint persons unilaterally but in consultation with relevant institutions and authorities. For example, he appointed the Chief Justice of the High Court on the basis of a recommendation by the Civil Service Commission and he appointed Cabinet ministers in consultation with the Prime Minister.

30. Chiefs were not involved in the management of elections and could not influence the outcome. Prior to the adoption of the Constitution, consultations had been conducted throughout the country on whether political parties should contest elections. Political parties were not banned, but the people had decided that it was preferable to elect individuals from the grass roots to represent them.

31. **Mr. Dlamini** (Swaziland) said that the majority of election observers had concluded that the 2013 election had been fair and credible. The few observers that had challenged the credibility of the election had done so on the grounds that it had not been organized on a multiparty basis. The delay in the release of the elections report had been due to logistical challenges. The claim that a woman had been prevented from standing for election because she had worn trousers to the nomination centre was unfounded; in reality, her candidacy had been deemed inappropriate because she had been inebriated.

32. The Anti-Corruption Commission enjoyed administrative and operational independence and was composed of officers from a range of institutions, all of whom possessed the necessary qualifications. The backlog of corruption cases would soon be cleared, thanks to the expansion of the judiciary.

33. The current legislation and policies on human trafficking were adequate and did not need to be amended. There had been no delay in the implementation of the victim-identification guidelines. Between 2012 and 2016, the Royal Swaziland Police Service and the Human Trafficking Secretariat had received 74 reports of trafficking in persons or smuggling of migrants, from Bangladesh, China, Lesotho, Mozambique, Nigeria and Uganda. All of those cases had been investigated, but, owing to a lack of coordination between the relevant departments and social partners, only one case had been prosecuted and one compensation order had been issued. Efforts were being made to improve coordination between the various parties, in order to raise the prosecution rate.

34. The Government had received no reports of sexual exploitation of girls. It should also be noted that local chiefs did not force adults or children to work for the King; tasks

carried out for the King were done willingly and considered “tribute labour”. Following reports that residents of border communities had been subjected to forced labour in South Africa, insofar as they had been recruited for work but not paid, the Human Trafficking Secretariat had organized consultations with the border communities to raise awareness of the issue.

35. The Government was aware that the Suppression of Terrorism Act of 2008 was too broad in scope and could be applied for the wrong purposes. An amended version of the Act, containing a narrower definition of the term “terrorist act”, was currently under consideration by Parliament.

36. With regard to the constitutional provisions on abortion, article 15 of the Constitution provided for legislation setting forth the circumstances in which abortion could be safely performed. The Government hoped to introduce legislation of that kind promptly, in order to avoid the reoccurrence of cases such as the one mentioned, where a 12-year-old girl who had been raped by her father had been obliged to carry the pregnancy to term. Decisions regarding the interpretation and implementation of article 15 of the Constitution were currently made by the Director of Health Services of the Ministry of Health.

37. With respect to the circumstances in which a public emergency might be declared, article 36 of the Constitution sought to clarify and expand upon the phrase “which threatens the life of the nation”, contained in article 4 of the Covenant. A state of public emergency might be declared in the event of a natural disaster, for example, if the disaster were considered a threat to the life of the nation.

38. **Mr. Mnisi** (Swaziland) said that the King did not simply impose his decisions but made judgments based on advice from the Swazi National Council, the local chiefs and the Cabinet, taking into account the outcomes of public consultations. Before the promulgation of the Constitution, for example, he had dispatched a delegation to assess whether the people of Swaziland were ready for the establishment of political parties; it had been concluded that they were not yet ready but that a referendum on the issue should be held in the future.

39. **Mr. Hillary** (Swaziland) said that steps were being taken to further the recruitment and promotion of women in the public and private sectors and to encourage women to stand for election. There was currently only one female member of Parliament.

40. The Government was aware of the need to review the constitutional provision that a child born to a Swazi woman and a non-Swazi man must acquire the citizenship of the father. Consensual polygamy was permitted by law; a wife who did not consent to her husband marrying another woman could file for divorce.

41. As for whether some traditional leaders restricted the access of political groups to the area under their jurisdiction, it should be noted that, before organizing any activity in a particular chieftom, it was necessary to seek permission from the relevant traditional authorities.

42. The right to form trade unions was guaranteed by the Constitution and the Industrial Relations Act. Trade unions must comprise a minimum of six workers. Registration of unions was encouraged but not required; however, only registered unions were entitled to collect dues via the payroll of the employing organization and to organize collective action. The Government was not aware of any cases of preventive detention of union leaders.

43. The public service bill had been considered by both the House of Assembly and the Senate, but the two bodies had not reached an agreement on the provision establishing the minimum retirement age; the bill had therefore been put to a vote before both bodies in a joint sitting, but there had been no quorum, so it had not been passed.

44. **Mr. Vilakati** (Swaziland) said that the State did not own any newspapers or online publications. There were three newspapers, two magazines and one radio station under private ownership, but no private television channels. The Government was confident that the number of private television and radio broadcasters would increase now that the Swaziland Communications Commission, which was responsible for granting commercial and community broadcasting licences, was properly staffed.

45. With respect to the civil claims lodged by Thulani Maseko and Bheki Makhubu, the pleadings had closed and both cases were pending. Torture had not yet been classed in criminal law as a separate offence, although progress had been made in that regard.

46. **Mr. Muhumuza** said that he would like some examples of cases in which widows and orphans had been able to obtain legal redress through the judicial system. In particular, it would be useful to know how many cases of property-grabbing directed against widows had been prosecuted. The Committee would also welcome more information on the participation of women and civil society in the drafting of the sexual offences and domestic violence bill.

47. In the light of reports that due process was not guaranteed in traditional courts, he asked what steps were being taken to bring the traditional justice system into line with the fair trial standards provided for in the Covenant. In particular, it was necessary to ensure that customary courts handled only minor civil and criminal matters and that their judgments were subject to State court validation and could be challenged by the parties in accordance with article 14 of the Covenant.

48. **Mr. Heyns** asked whether the possible changes to the Game Act (No. 51/1953) would be more protective of life or, as had been reported, give game rangers immunity from prosecution for killing any person suspected of poaching.

49. He was concerned about the lack of clarity over the legal status of the King's Proclamation of 12 April 1973, which, among other provisions, established the supreme power of the King and outlawed political parties. While the State party maintained in international forums that the Proclamation was no longer in force, at the domestic level it appeared to remain the basis for the exercise of absolute power by the King. Did the State party intend to revoke the Proclamation in order to give credence to its claim that it was no longer relevant? It would also be useful to know whether the State party planned to review its Constitution with a view to establishing a multiparty democratic regime.

50. **Ms. Waterval** asked whether corporal punishment had been abolished by law in all settings. She said she would also be grateful for clarification of the term "positive discipline" used in the replies to the list of issues.

51. **Ms. Cleveland**, seeking clarification of the relationship between customary and common law, asked whether customary law norms and practices could be challenged as discriminatory under the Constitution. If so, she would welcome information on specific cases. The delegation had repeatedly referred to pending legislation on issues of relevance to the Covenant. It would be useful to learn about the obstacles to finalizing and adopting such legislation. In that connection, she asked what progress had been made in establishing clear guidelines on legal abortion. She also wished to know whether there were any court rulings that recognized discrimination on grounds of sexual orientation, gender identity or HIV status as constituting arbitrary discrimination under the Constitution. With regard to polygamous relationships, she asked whether there was a mechanism under which women in such relationships could obtain a divorce, whether men and women had equal access to divorce and whether the children of all wives in polygamous relationships had equal inheritance and other rights. In that connection, she wondered whether the State party recognized the possibility of polyandrous marriages. Referring to the King's powers of appointment for government positions, she asked whether it was true that several key government positions were held by close relatives of the King.

52. **Mr. Shany** noted that article 28 (3) of the Constitution provided that a woman should not be "compelled to undergo or uphold any custom to which she is in conscience opposed". He asked the delegation to explain the difference between non-compulsion and "free consent", which was the terminology used elsewhere in the Constitution when referring to rights. Given that the State party had acknowledged the existence of elements of discrimination in cultural norms and practices, he wished to learn of its position on polygamy. He asked what had been done to bring cultural norms and practices into line with the country's international obligations and the prevailing perception of women's rights.

53. **Mr. Koita** asked whether the State party intended to draft legislation providing for the establishment of political parties. In 2012, under the universal periodic review process,

the State party had undertaken to repeal laws and practices that were discriminatory towards women and children, including in respect of property, land ownership and marriage, and to enact legislation to ensure the protection of women's and girls' rights. He would be grateful if the delegation could provide a timeline for the implementation of those reforms.

The meeting was suspended at 11.20 and resumed at 11.40 a.m.

54. **Mr. Hillary** (Swaziland) said that all citizens, regardless of their gender or age, had equal access to justice. To the knowledge of his Government, there was no gender-based discrimination when it came to participation in civil life. All customary court rulings could be appealed before common courts.

55. With regard to the review of terrorism legislation, he said that his Government was cooperating closely with the International Labour Organization, which had provided useful input into reshaping the definition of terrorism. Concerning the Game Act, he said that poaching posed a serious threat to wildlife and needed to be addressed. When confronting a poacher, game rangers put their own lives on the line. The Government, while certainly not encouraging rangers to kill poachers, respected their right of self-defence against a person who might otherwise kill them.

56. The King's Proclamation of 1973 had long been an issue in international forums. The Government had been of the view that the Constitution overrode that Proclamation, as it granted the right to freedom of association, freedom of expression and other rights. However, given the continuing controversy, his Government would seek a way to address the issue.

57. Swaziland did not operate as a party political system; instead, individuals were entitled to contest elections in their personal capacity. The Constitution therefore contained no provision for the establishment of political parties. The system had been adopted in line with the view held by the population at the time that the Constitution had been drafted. Delays in adopting new legislation were due to the shortage of qualified drafters and the difficult logistics, including the time-consuming practice of popular consultation. Efforts were being made to address logistical obstacles to legal reform.

58. **Mr. Vilakati** (Swaziland) reaffirmed that customary law rulings could be appealed on constitutional grounds; a case challenging the customary rule that there was no minimum age for marriage was currently pending in court. Customary courts were bound by fair trial principles and courts of general jurisdiction exercised supervisory control. Although there was thus far no court ruling recognizing discrimination against LGBTI persons as being arbitrary, the Government had engaged in consultations with those groups and drawn attention to the possibility of recourse to justice. Groups of LGBTI persons were currently considering bringing a class action lawsuit on grounds of constitutionality. Termination of customary law marriages was possible, but the termination was performed by the spouses' families, not by the courts, and the union was subsequently expunged from the marriage register. There were no polyandrous unions in Swaziland.

59. **Mr. Hillary** (Swaziland) thanked the Committee for the useful guidance provided and reiterated his Government's firm commitment to bringing domestic legislation into line with the country's international obligations. He was optimistic that the myriad draft bills prepared to that end would pass into law without further delay, despite the lack of financial and human resources that had hindered progress thus far.

60. **The Chair** noted that the Committee's purpose was not to criticize but to assist States in meeting their obligations under the Covenant. Its concluding observations to the State party would be prepared in that spirit.

The discussion covered in the summary record ended at noon.