Child Rights Governance In-depth Analysis Report, 2014
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### Acronyms

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<th>Description</th>
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<tbody>
<tr>
<td>ACC</td>
<td>Anti Corruption Commission</td>
</tr>
<tr>
<td>ACPF</td>
<td>African Child Policy Forum</td>
</tr>
<tr>
<td>ACRWC</td>
<td>African Charter on the Rights and Welfare of the Child</td>
</tr>
<tr>
<td>CANGO</td>
<td>Coordinating Assembly of Non Governmental Organisations</td>
</tr>
<tr>
<td>CRG</td>
<td>Child Rights Governance</td>
</tr>
<tr>
<td>DPMO</td>
<td>Deputy Prime Minister's Office</td>
</tr>
<tr>
<td>DRM</td>
<td>Domestic Resources Mobilisation</td>
</tr>
<tr>
<td>DSW</td>
<td>Department of Social Welfare</td>
</tr>
<tr>
<td>EFA</td>
<td>Education for All</td>
</tr>
<tr>
<td>EITI</td>
<td>Extractive Industry Transparency Initiative</td>
</tr>
<tr>
<td>FAO</td>
<td>Food and Agriculture Organisation of the United Nations</td>
</tr>
<tr>
<td>GDP</td>
<td>Gross Domestic Product</td>
</tr>
<tr>
<td>GIFT</td>
<td>Global Initiative on Fiscal Transparency</td>
</tr>
<tr>
<td>GoS</td>
<td>Government of Swaziland</td>
</tr>
<tr>
<td>GCRGI</td>
<td>Global Child Rights Governance Initiative</td>
</tr>
<tr>
<td>HRBA</td>
<td>Human Rights Budget Analysis</td>
</tr>
<tr>
<td>ICESCR</td>
<td>International Covenant on Economic Social and Cultural Rights</td>
</tr>
<tr>
<td>IIC</td>
<td>Investment in Children</td>
</tr>
<tr>
<td>MTEF</td>
<td>Medium Term Expenditure Framework</td>
</tr>
<tr>
<td>NCCU</td>
<td>National Children’s Coordinating Unit</td>
</tr>
<tr>
<td>OBI</td>
<td>Open Budget Index</td>
</tr>
<tr>
<td>ODA</td>
<td>Official Development Assistance</td>
</tr>
<tr>
<td>OGP-IRM</td>
<td>Open Government Partnership Independent Reporting Mechanism</td>
</tr>
<tr>
<td>OVC</td>
<td>Orphaned and Vulnerable Children</td>
</tr>
<tr>
<td>PAC</td>
<td>Public Accounts Committee</td>
</tr>
<tr>
<td>PFMA</td>
<td>Public Finance Management Act</td>
</tr>
<tr>
<td>SACMEQ</td>
<td>Southern and Eastern Africa Consortium for Measuring Educational Quality</td>
</tr>
<tr>
<td>SACU</td>
<td>Southern African Customs Union</td>
</tr>
<tr>
<td>SCI</td>
<td>Save the Children International</td>
</tr>
<tr>
<td>SC-SWD</td>
<td>Save the Children Swaziland</td>
</tr>
<tr>
<td>SRA</td>
<td>Swaziland Revenue Authority</td>
</tr>
<tr>
<td>UDHR</td>
<td>Universal Declaration of Human Rights</td>
</tr>
<tr>
<td>UNCRC</td>
<td>United Nations’ Convention on the Rights of the Child</td>
</tr>
<tr>
<td>UNICEF</td>
<td>United Nation’s Children Emergency Fund</td>
</tr>
<tr>
<td>VAT</td>
<td>Value Added Tax</td>
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</tbody>
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Executive summary

Introduction
It has been argued that beyond representative democracy, which is the outcome of a democratic “free and fair” electoral process, good governance relies on the strength of underlying institutions and processes of democratic participation. To make this happen, the poor and marginalised, including the organisations that represent their issues, must have a voice at all stages of policy decision making, i.e. conception, formulation, adoption, implementation, monitoring and evaluation. Child Rights Governance (CRG) follows on the widely accepted notion that positive policy outcomes are a direct consequence of the quality of interactions between stakeholders, loosely referred to as “duty bearers” and “rights holders” in human rights lingo. CRG is therefore a major breakthrough in child rights programming as it can have major spin-offs for children and all stakeholders interested and working on children’s issues in Swaziland. This report is an in-depth analysis of child rights governance in Swaziland focussing on priority areas which were identified after a sectoral CRG analysis was conducted by Save the Children International. These are, the General Measures of Implementation (GMIs) of child rights, focussing on law reform and judicial enforcement of children’s rights; and Investment in Children, looking at Human Rights Budget Analysis (HRBA) as well as participation, transparency and accountability.

Methodology
In the “In-depth analysis for child rights governance in Swaziland”, we used the Child Rights Governance tool produced by the Global Child Rights Governance Initiative (CRGI) of Save the Children International (SCI) to assess the state of governance infrastructure, from policy, legislation and practice, down to systems and mechanisms that need to be in place to effectively make children’s rights a reality.

In the absence of a culture in Swaziland of robust data capturing, periodic reviews of policy implementation and publication for access by policy audiences, the study relied on extensive yet non exhaustive sources of both primary and secondary information from key informant interviews with stakeholders to project and programme reports. A selected list of policy documents, pieces of legislation and the Swaziland Constitution were also used extensively in coming up with this report.

The analytical framework used varies according to the requirements of each of the three chapters of this report. The second chapter falls under the general measures of implementation (GMIs) of child rights. The Chapter focuses on Law Reform and Judicial Enforcement of Rights and delves deeply into children’s rights to administrative justice. In this chapter, the compliance of Swaziland’s legislative framework and practical measures of implementation are assessed against international protocols and best practices from elsewhere. The third chapter of this report, which deals with Investment in Children, follows an analytical path centred on traditional Human Rights Budget Analysis (HRBA) where questions of priority, adequacy, progress and effectiveness are answered by analyzing trends in budgeting for child rights in Swaziland. The fifth chapter is on Participation, Transparency and
**Accountability** draws from a number of global initiatives, such as the Open Budget Index (OBI), Global Initiative on Fiscal Transparency (GIFT) and Open Government Partnership Independent Reporting Mechanism (OGP-IRM), to draw a set of global principles, norms and standards of participation, transparency and accountability which are then used to examine Swaziland’s own policies and practices on these matters. In all the above, the policy gaps are identified and summary conclusions and recommendations for policy reforms are made.

**Key findings**

Beyond democratic, credible, free and fair elections, good governance requires the prevalence of effective institutions that are mandated with the delivery of child rights. It follows therefore that the mere existence of institutions and the mere resourcing of these institutions is not enough and our enquiry should go on to measure the impact of these institutions and their processes. Under the **General Measures of Implementation**, we have considered how the state has domesticated and made provisions in law for the implementation of international instruments and protocols that advance children’s rights. We made a finding that Swaziland has taken some steps and made some measurable impact on the legal and policy environment for children. Not only did Swaziland ratify a number of instruments to advance child rights, she adopted the National Constitution in 2005 which has specific provisions for children and went on to promulgate legislation to incorporate into domestic law some of the provisions in the Constitution and the UNCRC. The Children’s Protection and Welfare Act, 2012 (The Children’s Act) is seen as a major milestone by many child rights activists in Swaziland, amongst others such as the Prevention of Human Trafficking and Persons Smuggling Act, 2010.

Since the study is on Child Rights Governance, we have also considered the process through which legislative, judicial and administrative reforms have been brought to life. This is founded on the firm belief that participatory democratic law reform processes yield better policy and legislative outcomes. The contestation involved also leads to a consensus driven process which takes into account cultural sensitivities and consideration of the voices of minorities and the marginalised. It generates ownership amongst citizens, confidence in and support for the judicial process as responsible for dispersing justice. The experience of practitioners on the ground presents a mixed picture wherein it has been stated that in some instances consultations have been broad and the process of legislative reform open and fair. In other instances however, the process was closed and quick leaving an impression that it was driven by external interests, particularly the donor governments funding its promotion; examples given were the Suppression of Terrorism Act, 2008 and the Prevention of Human Trafficking and Persons Smuggling (lProhibition) Act, 2010. In an interview, the Attorney General admitted that whilst they were relatively open to engagement with stakeholders at all times, they were constrained by resources including human from broadening participation in law reform processes.

It was also a finding of this study that child participation was absent in Swaziland law reform processes, exception is considered for the Children’s Protection and Welfare Act where consultative meetings with children were undertaken. The Attorney General and line ministries also did not have monitoring and evaluation mechanisms that could track broad based
participation in law reform and the level of compliance of the country’s laws to international protocols and the national Constitution. The enquiry found that it was not in the annual plans of the AG’s office to do so and neither did they see the need for putting such mechanisms in place. Asked whether they would consider providing a steer or guidelines to line Ministries detailing how the legislative reform process should be conducted, the Attorney General conceded that this was a possibility and that such would have to be a Cabinet decision.

In the area of **Investment in Children**, it is one of the major findings of this report that when it comes to child rights governance, political will is of utmost importance. Over the past 10 years, this has been demonstrated by the actions of the political leadership dominated by champions of children’s rights who made some progress despite the negative effects of a crushing global financial and economic crisis which saw Swaziland’s fiscal resources shrink by 25.6% in the 2010/11 budget year.

Our analysis shows that in order to continue to invest in children beyond current levels, Swaziland must invest in measures that will grow its revenue base substantially. The country’s reliance on SACU revenues makes it susceptible to external shocks and policy reversals outside its control. Such is ably demonstrated by the knock on effects of the global financial and economic crisis on Swaziland and the threat posed by the proposed review of the SACU revenue sharing formula. Looking closer at Swaziland’s revenue trends, one observes a shift from income/profit taxes to consumption based taxes which known to be regressive in nature and will tend to exacerbate inequality.

Swaziland spends on small amounts in measures that are intended to advance child rights. The commitment by the political leadership to this cause is not in doubt, and this is demonstrated by the behaviour of government agents at the peak of the financial crisis, where expenditure in health, education and social protection remained strong relative to all other sectors except the security cluster. However, it is in the internal operational efficiency of child rights budgets that signs of distress were most prominent. This was shown in the case of the education budget when we removed the “policy effects” and found that the introduction of free primary education was not accompanied by a corresponding match of resources but a reallocation of resources from elsewhere in the education budget. Whilst “pro-poor”, interventions such as the introduction of free primary education and the OVC bursary scheme, failures in their implementation may negatively impact on overall education policy outcomes. Preliminary evidence suggest that the quality of education delivered in public schools will decline, and that OVC’s will continue to be marginalised and not admitted into the “good” schools of their choice or ones closer to their homes because government imposed made a declaration that schools should not charge top up fees without broad consultation.

The same observations are made of the health sector; adequate provisions have been made in legislation and policy for the provision of the highest attainable standard of health to children in Swaziland. In practice however, starting with the internal allocation of resources within the health budget, it can be shown that the emphasis is towards curative medicine as compared to preventative medicine where children could particularly benefit the most. Whilst provisions have
been made to allow indigent children access to healthcare in public health facilities, the denial of the corresponding right of access to information is a major set-back.

Social protection is central to child survival, and there is evidence on the ground of strides made towards ensuring that children are protected in the country. However the discord between policy and practice betrays the well meaning efforts of child rights institutions such as the Deputy Prime Minister's Office (DPMO) and the National Children's Coordinating Unit (NCCU). Ensuring that children's basic needs are met, as dictated by the National Social Development Policy, 2010 goes beyond children’s rights of access to education, to health and to food. There are other non-food, non-education and non-health basic needs that are as detrimental to child survival as the other needs. Dlamini (2007) and REBA (2007) conclude of the OVC bursary scheme that the most vulnerable children are hitherto excluded since in order to participate(in education) at all it is necessary to undergo certain formalities and minor costs that are beyond the reach of truly destitute carers and children. Things such as uniforms, school shoes, bus fares, soap, toothpaste, sanitary pads amongst other determine whether an indigent child drops out or continues with schooling.

Indeed it is argued elsewhere that it is the daily burden of poverty and the relative experience of poverty that at times forces poorer children out of school¹. Unfortunately, inherent weaknesses in the manner that social policies supportive of advancing child rights in Swaziland are sometimes implemented in a way that exacerbates rather than ameliorate inequality. The stigma attached to OVC and subsequently their limited choices with respect to which schools to attend, will worsen the inequality picture in Swaziland in view of the fact that the well to do schools which charge higher fees will manage the risk associated with admitting OVC by excluding them. It so happens that these schools are the ones that deliver better quality education and badly educated OVC’s will lead to an unending cycle of vulnerability and poverty, passed from generation to generation for some households. We therefore recommend conditional cash transfers in the form of both child grants and foster care grants.

On Fiscal transparency, accountability and participation, the study agrees that these are at the heart of the social contract between states and citizens. The capable and effective state feels obliged to account to the citizen how it has fare in meeting its obligations. The active citizen on the other hand is aware of their rights and takes measures calculated to advance their rights by claiming these rights and also holding the government (as duty bearer) accountable for the realisation of these rights. The right of access to timely, accurate and important information on government operations is the leverage right that perhaps lead to the enjoyment in full of most other rights. The literature and findings of this study highlights how the denial of the right of access to information may lead to denial of access to other rights such as the right to free healthcare for indigent children in public health facilities. This brings us to the conclusion that there are both “demand side” and “supply side” governance constraints to democratic participation and influencing decisions for better policy outcomes.

¹ See Veerle Dieltiens and Sarah Meny-Gibert(2008)
Government must therefore take effective measures to produce accountability information by putting in place a robust monitoring and evaluation system that will track its delivery of socio-economic rights and the rights of children. Once produced, this information must be proactively disclosed to the public at timely intervals. Government must also put in place and institutionalise accountability mechanisms that will allow citizens to ask questions and receive responses on the content of such reports and corrective measures that government has taken to correct any wrongs. On the other hand, citizens, led by their respective civil society formations have a right to participate in accountability platforms made available by the government. Whilst doing so, citizens must ensure that they have the appropriate capacity, information and tools to challenge government decisions. Our reading of Section 56(2) of the Swaziland Constitution suggests that the Prime Minister has a responsibility to produce such a report to parliament at-least once a year and we recommend adherence to this requirement.

Key recommendations

- The AG’s office should put in place guidelines and secure adequate resources to roll out participatory legislative reform processes including provisions for capturing children’s views as active participants. The AGs office and the government at large should leverage the use of information technologies, including the use of social media, such as Facebook, Twitter, Mixit and others that are predominantly used by the youth in order to receive views, give and receive feedback about what works well and why.

- The AG’s office must work on its information function so as to be able to capture and analyse data on legislative reforms and perform outreach functions so that as broad as possible views are captured in the legislative reform processes.

- To improve the quality of participation shorter versions of legislative proposals, written in simple plain language, including SiSwati (popular version) must be produced and disseminated ahead of any major legislative review that impact on citizen’s rights.

- The Swaziland government has a duty to find the right balance in efficiency and equity in its revenue collection model and this requires a complete overhaul of the tax system and that measures be put in place to curtail base erosion and profit shifting practices of particularly multinational corporations operating in Swaziland.

- To ensure that children’s basic needs are met, as dictated by the National Social Development Policy, 2010, to go beyond children’s rights of access to education, to health and to food, we recommend that conditional cash transfers for vulnerable children be introduced. This will also ensure that children have other non-food, non-education and non-health basic needs met that are as detrimental to child survival as the other needs.

- Recognising the role played by access to information as a leverage right to advance children’s access to other rights, we recommend that government must pronounce itself on a number of provisions and make certain information publicly available such as which children qualify for free medical care and the requirements thereof. This also applies to
top-up fees for OVC bursaries where there is a need to assist schools budget adequately for the funding gap.

- The Prime Minister must as required by Section 56(2) of the Swaziland Constitution cause to be published annually a report to parliament detailing how government has fared in meeting its human rights obligations. This calls for adequate investment to be made in establishing a government wide monitoring and evaluation function in terms of capacity and resources.

- To improve accountability of key government institutions advancing children’s rights, and improve the operational effectiveness of non government entities supporting government in its efforts, there is an urgent need to clarify roles and responsibilities between the Department of Social Welfare and the National Children’s Coordination Unit.

- There is a need for Swaziland to put in place Freedom of Information (FoI) legislation, in line with Article 19 of the International Covenant on Civil and Political Rights, which not only guarantees the freedoms of opinions and expression, but also establishes the right to information as a human right.
Chapter 1 Introduction-Review of Child Rights Governance in Swaziland

Save the Children Swaziland conducted a preliminary Child Rights Governance (CRG) analysis in August 2012 in preparation for the in depth CRG Situational Analysis. The objective of the preliminary analysis was to collate initial information that would provide an overview of CRG in Swaziland. The analysis covered all areas of CRG programming namely, the General Measures of Implementation, key governance factors, and capacity and interaction of key actors on matters relating to the enjoyment of the rights of children. The Save the Children team used tools of data collection developed by the Child Rights Governance Global Initiative (CRGI) team, which focus on ensuring strengthened state institutions and mechanisms for the implementation and monitoring of children’s rights, and increased awareness and capacity in civil society and among children to promote children’s rights and hold duty bearers accountable. The team also reviewed selected secondary data and conducted key informant interviews with relevant officers from strategic government departments, civil society organizations and development partners.

The information gathered was then used to identify three priority areas on which an in-depth analysis was conducted, the findings of which have been documented in this report.

1.2 The situation of Children in Swaziland

Swaziland lies at the epicentre of the Southern African HIV AIDS pandemic, with a very high HIV prevalence rate which currently stands at 26 percent. The high HIV and AIDS prevalence has contributed to the continued breakdown in social service delivery, reduction in household incomes and a less optimal national economic growth rate. The AIDS epidemic has already orphaned more than a quarter of the country’s children. The HIV prevalence rate for the population aged 2 and above is 19 percent; for the 15 to 49 years group the HIV prevalence rate is 26 percent, the highest country prevalence in the world. There are approximately 16,000 children living with HIV in Swaziland. More importantly, the HIV epidemic in Swaziland has a significant gender dimension. At 15 years, 10 percent of females are HIV positive as opposed to only 2 percent males. As a result of the HIV and AIDS epidemic, Swaziland has seen the emergence of child-headed households-an altogether new phenomenon. In 2012, Swaziland enacted the Children’s Protection and Welfare Act which seeks, among other things, to address the long term effects of HIV and AIDS in so far as it comprehensively addresses interests of children in need of protection and those in conflict with the law. This law will ensure that systems and laws are in place that can address many of the causes and effects of HIV and AIDS. For instance, there is a clear linkage between HIV and AIDS and child justice. These relate to ensuring prevention programmes are focussed on children who commit crimes as they are often the most marginalised group. In addition, interventions for orphans or abused and abandoned children will ensure that these children do not end up in trouble with the law as in Swaziland, it is these children that inevitably are found living on the streets and involved in crime.

The weak human development and fragile basic social services find expression in the significant wealth distribution challenges; decelerating population, weak education and training structures; a frail health system; and weak human resource capacity for the provision of quality basic social services. The country also faces significant challenges with the increased burden of communicable diseases, non communicable and epidemic diseases-which sees a lot of children being hardest hit. Consequently, the infant and maternal mortality ratios have increased by 26 percent and 160 percent respectively within the last decade.
The education system in Swaziland remains generally weak despite improvements in enrolment. It is characterised by inadequate capacity of institutions, high drop-out rate and repetition rates as well as inadequate access, quality and oversight. The orphaned and vulnerable children are the most likely to drop out of school as a result of the multiple effects of poverty, stigma and discrimination. Consequently they may form a growing number of young people who are out of school and unemployed. The result may be engagement in crime which may result in incarceration within the criminal justice system.

Hunger and malnutrition are prevalent in Swaziland and are a direct consequence of household food insecurity. It is estimated that a quarter of the population is food insecure and dependent on assistance and that 39 percent of children under 5 are stunted, which is above the WHO thresholds. The factors contributing to food insecurity are low agricultural production and productivity, negative impact of HIV and AIDS as well as poverty. These and other factors show how children are particularly vulnerable and in need of protection.

Swaziland is one of the 12 countries in Sub-Saharan Africa with a Primary Completion Ratio of greater than 90% and therefore projected by UNESCO to be having a medium likelihood to achieve Education for All goals by 2015 (Table 1.2.1 below). Sukati (2013) however concludes from comparing EFA data for the years 2007 through 2011 that there is no drastic increase in Net Enrolment Ratios; that the rates seem to have remained static at 93% and that if this trend continues, EFA will not be achieved by 2015.

<table>
<thead>
<tr>
<th>High (EFA achieved)</th>
<th>Medium (EFA within reach for 2015)</th>
<th>Low (EFA likely to be achieved beyond 2020)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 country (PCR&gt;100%)</td>
<td>12 countries (PCR&gt;90%)</td>
<td>31 countries (PCR: 90-70%)</td>
</tr>
<tr>
<td>Botswana; Cape Verde; Gabon*; Ghana; Kenya; Mauritius; Namibia; Sao Tome and P.; South Africa*; Swaziland; Tanzania*; Zambia</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cameroon; Comoros*; Congo*; Ethiopia; Gambia; Madagascar; Nigeria*; Sierra Leone*; Togo</td>
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<td></td>
</tr>
<tr>
<td>Benin; Burundi; Côte d’Ivoire*; DRC*; Equatorial Guinea*; Guinea; Guinea Bissau*; Lesotho; Liberia*; Malawi; Mali; Mozambique; Rwanda*; Senegal; Uganda</td>
<td></td>
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</tbody>
</table>

Source: EFA Global Monitoring Report, 2011, UIS, 2012 and authors\(^2\) elaboration

Numerous input and output indicators can be used and have been used to measure performance of Swaziland where it comes to making adequate provision for good quality basic education. Compared to other SACMEQ countries, it has been shown that Swaziland has attained (by 2007) a 1:1 textbook to pupil ratio, something that is attributable to the success of the Ministry of Education and Training’s materials and textbook programme at the primary level\(^3\) (the SACMEQ Mean is 41.2\%). The trend is similar for other indicators as well, for pupil to teacher ratio (34 compared to SACMEQ 43), and for average number of Grade 6 pupils per class at 40 compared to the SACMEQ mean of 46.

On the health front, perhaps the most instructive source in Swaziland is the 2011 African Report on Child Wellbeing.\(^4\) The report looks at immunisation coverage, nutrition status, infant and child mortality rates, as well as levels of access to clean water and adequate sanitation facilities. Whilst showing marked improvements in some areas such as under five mortality rates (from 122 deaths per 1,000 live births in 2000 down to 94 deaths per 1,000 live births in 2009), the report concludes that Swaziland is unlikely to meet the MDG target of 41.7 deaths per 1,000 live births.\(^5\)

Table 1.2.2 Indicators on children’s state of health and access to health services in Swaziland (Most recent year between 2000 & 2009)

<table>
<thead>
<tr>
<th>Indicator</th>
<th>Percentage</th>
</tr>
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<tbody>
<tr>
<td>Deliveries attended by skilled health workers</td>
<td>69</td>
</tr>
<tr>
<td>One-year old infants immunised against measles</td>
<td>87</td>
</tr>
<tr>
<td>Children under-weight for age</td>
<td>6.1</td>
</tr>
<tr>
<td>Infant mortality rate (per 1,000 live births)</td>
<td>62</td>
</tr>
<tr>
<td>Under 5 mortality rate (per 1,000 live births)</td>
<td>94</td>
</tr>
<tr>
<td>Percentage of children with pneumonia taken to health provider</td>
<td>73</td>
</tr>
<tr>
<td>Per cent of population with access to safe drinking water</td>
<td>69</td>
</tr>
<tr>
<td>Per cent of population with adequate sanitation facilities</td>
<td>55</td>
</tr>
</tbody>
</table>


Swaziland is also shown as one of the countries with a significant reduction in the percentage of underweight children for the years 2005-2010 according to the 2013 African Report on Child

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\(^4\) Produced by the African Child Policy Forum (ACPF), available on [www.africanchildforum.org](http://www.africanchildforum.org)
Wellbeing. This indicates that Swaziland is doing well in implementing some of its obligations on socio-economic rights for children.

Figure 1.2.1 Countries with a significant reduction in percentage of underweight children 2005-2010


1.3 Data Collection and Methodology

(a) Literature Review
An initial step involved the collation of all instruments pertaining to child rights governance. This will include international, regional and national legal instruments. A compilation of an inventory of such instruments will include but will not be limited to:

- The United Nations’ Convention on the Rights of the Child
- The African Charter on the Rights and Welfare of the Child
- General Comment No. 5 & other relevant General Comments
- The Constitution of Swaziland, 2005
- The Children’s Protection and Welfare Act, 2012
- The Children’s Policy
- The People Smuggling and Peoples Trafficking Act
- The Youth Policy
- The Education Act & Policies there under
- The Sexual Offences and Domestic Violence Act
- The Criminal Procedure and Evidence Act
- Anti-Corruption Act
- CRC Report-Swaziland (2006)
- Universal Peer Review Report-Swaziland (2011)
- Various Estimates books of public revenue and expenditure up to March 2016

A further list of documents and articles relied on will include, but will not be limited to:

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(b) Stakeholder Consultation
Understanding that the approach of this Project requires extensive consultation and participation, at this stage relevant individual, sectoral or institutional stakeholders were interviewed. The interviews were structured along the respective roles and programmatic objectives of all stakeholders. The key informant interviews were carried with representatives of the relevant stakeholders who by their expert knowledge and work experience in the issues of child rights governance provided the much needed insights and data for this study.

(c) Data Analysis
Ultimately this report is about government performance where it comes to programmatic efforts to realise the rights of children. Governments have additional obligations that are spelled out in Article 2(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR), which provides that, “Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.”

An analysis framework was therefore used to quantitatively interpret financial data so that it provides some useful insights into the resource allocation, utilisation and fiscal discipline practises of the government of Swaziland.

Moreover, the focus of this study is not only about the allocation and use of resources for realising child rights, it is also about access to the law, administrative justice and general equality. This requires the enquiry therefore to move to more nuanced institutional, process, systems and legal provisions for the protection of children’s rights.

(d) Limitations
In order to have a complete picture of the overall effectiveness of policies, institutions and processes concerned with child rights governance in Swaziland, one has to have access to timely, accurate and important information datasets, collected, coordinated and maintained by
the various stakeholders in child rights. This requires the prevalence of a culture of deliberate setting out of monitoring and evaluation frameworks across actors and the religious collection and reporting of data against indicators, targets and milestones. The starting point would have been the executive budget proposal which indicates the overall fiscal resources allocated to secure children’s rights. To meet this threshold, the Annual Budget as the proposal is called would have had to have financial, quantitative and qualitative data against each of the expenditure units serving children.

Swaziland is the poster child governance secrecy and suffers in most instances from one or any combination of the following;

- Information not produced
- Information produced for internal use and not made publicly available (published)
- Information produced but not in a useful format

This poses a challenge and a limitation to the study. Tsabedze et al. (2012) reflects that “Sound records management underpin principles of good governance including accountability, transparency and integrity in administration of public services. For these reasons democratic values are severely curtailed providing fertile ground for corruptible practices. Without sound records management, the government of Swaziland cannot be accountable and service delivery to citizens is hampered.”

This study therefore to some extent relied on information published by third parties and not the institutions that produce it. Programme and project reports of the numerous institutions serving children in Swaziland were interrogated for this purpose. Where appropriate information was validated and gaps filled via key informant interviews.
Chapter 2 General Measures of Implementation-Law Reform and Judicial Enforcement of Child Rights

2.1 Children and the Law

Over the past decade, the Kingdom of Swaziland has worked hard to ensure that children are at the centre of government programming. This has resulted in positive changes in the lives of children in Swaziland mainly because of the country’s obligations under the United Nations Convention on the Rights of the Child (CRC). The ongoing process of legal and judicial development in Swaziland lays a sound framework for children’s survival and development in that it links directly to economic imperatives, specifically to programming and service delivery, to achievement (at least partially) of the Millennium Development Goals (MDGs), and to the recognition of Swazi children as actors in their own right. This section of the report will examine the legislative framework and structures responsible for overseeing and coordinating the country’s response to ensuring children’s rights are upheld. The extent to which the government can be held accountable for failing to uphold children’s rights is a critical factor in creating an environment where child participation can be promoted. This, in turn raises questions of whether there is enough legislative framework for holding government accountable for realising children’s rights. This section will address this and other related questions before recommendations for improvement are given.

Despite committing to international and regional standards for children, the reality in Swaziland is that the children’s rights infrastructure necessary to deliver all the rights for all the children in all circumstances still requires more work to be done in the area of law reform and judicial enforcement of rights in Swaziland. For instance, both the Constitution and the Children’s Protection and Welfare Act have gaps in so far as they do not expressly state that where omissions in legislation emerge, such cases should be interpreted in light of provisions of the CRC and the ACRWC.

In its General Comment No.5 on General measures of Implementation (GMIs), the CRC Committee specified the need for States to engage with all sectors of society, including children in their drive to implement children’s rights. States are also required to ensure that domestic legislation is fully compatible with the CRC and that the provisions and principles therein can be applied and enforced in practice. The GMIs include, but are not limited to, issues of ratification of regional and international instruments; ensuring that legislation is fully compatible with the CRC and other international and regional instruments. It also addresses coordination through the development of permanent mechanisms in government to ensure effective coordination, monitoring and evaluation of implementation; impact assessment through ensuring that there is a systematic process of assessing new laws, policies or programmes for their impact on children’s rights. Further includes the development of a detailed comprehensive national strategy or agenda for children based on the CRC and taking into account policies of decentralisation and privatisation; co-operation of civil society as well as creating statutory children’s rights institutions which should ensure that the voice of children is represented in all areas of government programming.
2.2 The legal situation of children in Swaziland

As explained above, Child Rights Governance (CRG) promotes the putting in place of child rights infrastructure (of which law reform and judicial enforcement is part) necessary to deliver all rights for all children in all circumstances. Law reform has been identified as one of the priority areas requiring in depth analysis mainly because Swaziland has reviewed legislation and policies touching on children and their rights without always adhering to CRG and the general measures of implementation as set out in the CRC. Put differently, even though Swaziland has done a lot to improve children’s rights, there are several gaps in the implementation thus the need to assess structures and mechanisms needed to ensure sustainable and long lasting changes for children. Recently, efforts to mitigate the vulnerability of children have gained momentum in Swaziland. In 2006, the country submitted its first periodic report on the domestication of the UNCRC. Subsequently in 2008, a member of the UN’s Compliance monitoring Committee visited the country to assess progress in strengthening human rights based frameworks for children and to review Swaziland’s general efforts to secure their health and wellbeing. Other significant developments in this respect include:

- Passing the Children’s Protection and Welfare Act, 2012. This law aims to fully domesticate the provisions of the UNCRC and other international and regional children’s rights instruments.
- Approval of the National Children’s Policy, 2009
- Passing of the Constitution Act, 2005 which has a section on children’s rights as well as the Bill of Rights Chapter which enshrines fundamental rights and freedoms
- Establishment of the National Children’s Coordination Unit (NCCU) within the Deputy Prime Minister’s office
- Uptake of Children’s issues within key parliamentary portfolio committees.
- Establishment of the Human Rights and Public Integrity Commission
- Establishment of the Children’s Consortium to coordinate NGOs active in children’s issues.
- The ratification of a number of international and regional legal instruments protecting children’s rights, including the African Charter on the Rights and welfare of the Child (ACRWC).

2.3 Overview of International and Regional Instruments Relating to Children

Swaziland ratified the CRC in 1995 but also qualified the ratification by stating that implementation of its obligations must be achieved progressively and that it would strive to fully comply with the CRC as soon as possible.

In 2012 Swaziland ratified the following instruments: the Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Pornography; the Optional Protocol to the CRC on the involvement of Children in Armed Conflict; the UN Convention against Transnational Organised Crime; the Convention on the Rights of Persons with Disabilities; Optional Protocol on the Rights of Persons with Disabilities; the Convention on the Protection of Children and Cooperation in Respect of Inter-country Adoption; the African Charter on the Rights and Welfare
of the Child; the African Youth Charter as well as the Protocol to the African Charter on Human and Peoples’ Rights of Women in Africa. Following its low rating in the 2008 African Report on Child Wellbeing and with the support of UNICEF, the Prime Minister expressed his concern and constituted a ministerial team to address relevant issues concerning children. Among the issues addressed was that of ratification of international and regional instruments as well as the review of legislation and policies concerning children. The King summoned the Nation to the Cattle Brye (people’s parliament) to consider the international and regional Conventions and advise Parliament accordingly. It was the first time in the history of the country that the Nation was required to deliberate on international instruments before such was taken to Parliament to be considered and recommendations for ratification made.

The recent upsurge in ratification of international and regional instruments has borne fruit in so far as Swaziland’s ranking as a child friendly State has moved from a low rating in 2008 to a high rating in 2013.\(^7\)

Ratification alone is not enough. International and regional standards need to be incorporated and national laws need to be harmonised.\(^8\) Swaziland has not adopted implementing legislation relating to the international instruments it has ratified. In addition, no institutional arrangements have been made specifically for the implementation of human rights instruments in general and children’s rights instruments specifically. It remains unclear therefore what form the legislation for domesticating international instruments should take. The Constitution does not give guidance in this regard. In practice, the Swazi Parliament has often incorporated international instruments by or without implication. Parliament can also use its discretion and reproduce the entire text of the international instrument in the incorporating act of Parliament\(^9\). The uncertainty created by the availability of the different form of domesticating international instruments calls for a need to amend the Constitution Act, 2005 to clarify what form should be taken by legislation that domesticates the state’s treaty obligations.

### 2.4 National Laws Concerning Children

Article 4 of the CRC requires that there must be comprehensive assessment of legislation in relation to all the areas covered by the CRC articles and places obligations upon the State to ensure the realisation of adequate, protective, developmental, participatory and survival rights in domestic law. In recent times children’s rights have made a measurable impact on the legal and policy environment in Swaziland. The Constitution of Swaziland has a section on children’s rights. There is also the Children’s Protection and Welfare Act, 2012—a law that has attempted to incorporate, albeit not entirely, Swaziland’s international obligations under the United Nations’ Convention on the Rights of the Child (CRC). There is also the Free Primary Education Act,

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\(^7\) See the African Report on Child wellbeing, 2013 on [www.africanchildforum.org](http://www.africanchildforum.org)

\(^8\) See the African Report on Child wellbeing, 2013 on [www.africanchildforum.org](http://www.africanchildforum.org)

2010—a law that was passed as a sequel to a decision of the Superior courts pronouncing that the government was under a duty to implement free primary education in accordance with the Constitution. On the Policy level, the government adopted the National Children’s Policy in 2009; the Youth Policy in 2010 and the Swaziland Education and Training Sector Policy, 2011.

The Constitution Act, 2005

The Swazi Constitution was passed in 2005 after a period of ten years in the making. In the terms of reference for the Constitution Review Commission, a Committee responsible for collecting and collating people’s views, there was no specific requirement to consult children. By the same token, group formations were not allowed to make representations before the Constitution Review Commission as only individual submissions were permissible. The Constitution provides for fundamental rights and freedoms as well as greater decentralisation in the provision of services. Other issues relate to human rights; the protection of social, cultural and economic rights, transparency and accountability in public sector management and fast tracking the domestication of international and regional instruments. Section 29 of the Constitution provides for children’s rights. As far as children’s rights are concerned there are a number of problems. First, there is no general section in the constitution providing for the principle of the best interests of the child as an interpretive guideline when dealing with children’s issues. Secondly, although there is mention of the child’s right to education, other socio-economic rights necessary for the child’s right to survival and development are omitted in the Bill of Rights chapter. Specifically, section 29(7) of the Constitution provides that a child is entitled to special care, assistance and maintenance from its parents, but does not state who assumes this responsibility should the parents fail to undertake their rights and responsibilities in respect of their child.

The Constitution of Swaziland provides for rights and freedoms, some of which are curtailed in ways that are at odds with the CRC and the African Charter on the Rights and Welfare of Children (ACRWC). For instance Section 29(2) of the Constitution explicitly incorporates corporal punishment in the pretext of “moderate chastisement”. The CRC Committee has criticised and expressed concern at legislation which, while it protects children against serious physical assaults defined as child abuse or child cruelty, it allows for parents or other care givers to use physical forms of punishment. The Committee has called for a clear prohibition of all corporal punishment in the family, in other forms of care, in schools and in the penal system and has proposed that legal reform should be coupled with education campaigns in positive discipline to support parents, teachers and others. The Children’s Act, in section14(2) on the other hand, provides for discipline of a child and does not expressly refer to corporal punishment. The Constitution further abolished the status of illegitimacy of children.

Furthermore, there is no provision in the Constitution that children’s liberty should be deprived as a matter of last resort and for the shortest possible period of time as contained in the CRC and while the Criminal Procedure and Evidence Act, 1938 prohibits the imposition of the death penalty on children, Section 15 of the Constitution (which retains the death penalty) does not mention this prohibition in relation to children. International human rights law, case law,
resolutions and general comments should inform courts’ interpretation of constitutional provisions to ensure that the country’s laws are evaluated and applied in line with the country’s obligations under international law. In the High Court cases of Rex v Siboniso Sifanyana Mngometulu & Another\textsuperscript{10} and Rex v Makhosi Dlamini\textsuperscript{11} (Makhosi Dlamini) the court referred to the CRC provision. These cases dealt with juvenile boys who were charged, tried and convicted by a magistrate’s court of the crime of rape. All of them were sentenced to a term of five years in prison without the option of a fine. The accused were 14 years old when the offences were committed. On review, the High Court observed that Swaziland is a state party to the CRC and that “principles enshrined therein may therefore…be properly taken into account in dealing with matters before this court”\textsuperscript{12}. In the case of Makhosi Dlamini, the court pointed out that it ought to be guided by the principles set out in the CRC, which include the principle of proportionality, the best interests of the child and the possible restrictive deprivation of the child’s liberty and that detention, if appropriate, must be a measure of last resort and, even then, for the shortest appropriate period of time. Section 103 of the Children’s Protection and Welfare Act now provides that detention of a child in police custody shall be used as a measure of last resort and for the shortest possible period of time. The Children’s Act now provides for a separate juvenile justice system and diversion-provisions that are in line with article 40 of the CRC, which is principally to ensure that the child is reintegrated into society and is able to assume a constructive role in society. Additionally, this must be achieved in a manner which promotes the child’s sense of dignity and worth, which reinforces the child’s respect for the human rights and fundamental freedoms of others, and which takes into account the child’s age. These aims militate against a system which is solely punitive or retributive, and do not permit a system in which a lack of respect for children’s human rights is allowed to continue. The Children’s Act has sought to create a criminal justice system that has a child centred approach regarding children in trouble with the law, as required by international and regional instruments.

The reality on the ground, however is that in Swaziland there is a growing trend of incarcerating children who are not in trouble with the law, but are sent to the Correctional Juvenile facility at the instance of their parents or guardians to be corrected for being truant. The children’s voice in these arrangements about their lives still remains unheard. This is a concern that can be better addressed through training of personnel dealing with children’s cases within the justice sector on the provisions of the CRC and the ACWCR. The government must be supported on training and capacity building of professionals dealing with children in the criminal justice sector. This can be done through the development of training programmes and publications targeting the relevant specialists. Such efforts should be focused, consistent and institutionalised.

One of the most innovative features of the CRC is its emphasis on children’s right to be heard and to have their views considered, which signifies the right to be heard. Children’s participation is low in Swaziland. There is need for change in cultural and societal attitudes towards children.

\textsuperscript{10} Unreported High Court Review case No.57/2009.

\textsuperscript{11} Unreported High Court Review case No. 5/2010.

\textsuperscript{12} Siboniso Sifanyana Mngometulu (supra) paragraph 17 at p.11.
as well as legal and policy development. There are some encouraging signs despite the scarcity of formalised institutional mechanisms for children’s participation. For instance, the Constitution includes the right to freedom of opinion and expression for all citizens, including children while the Children’s Act specifically provides for the right of the child to participate in matters concerning his care. Thus, children can and do participate, albeit in a limited way in court proceedings—mainly in divorce and adoption proceedings. The Criminal Procedure and Evidence Act, 1938 allows children to be heard in criminal proceedings and when the child is a victim or witness of crime but requires the court to apply the cautionary rule when it is confronted with a child witness. All these provisions limit participation either on grounds of age or in particular contexts and so do not follow the principle of allowing children to participate in accordance with their evolving capacity. The Children’s Act has made radical inroads in the area of child participation as can be seen in Section 3(2)(h) which states that if a child is able to form and express an opinion about his care, the views shall be given consideration taking into account the child’s age, capacity and ability to understand.
The Children Protection and Welfare Act, 2012

This Act addresses issues of rights and responsibilities of children; children in need of care and protection; administration of children’s property by the Master of the High court; adoption; trafficking of children; children in conflict with the law; restorative justice and diversion; maintenance of children; institutions; as well as employment of children. The aim of the Act is to give effect to international and regional instruments to which Swaziland is a party on the protection of children. The Act reflects the four guiding principles for implementation of the CRC and also provides for responsibilities of a child as required by the ACRWC. The four “guiding principles around which all other rights are to be adjudged are the rights enshrined in article 2 of the CRC and Article 3 of the ACRWC (non-discrimination), article 3 of UNCRC and article 4 of the ACRWC (the best interests of the child), article 6 of the UNCRC and article 5 of the ACRWC (the right to survival and development), and article 12 (the child’s right to participate in matters affecting him or her). All the “pillars” of the CRC and ACRWC are found in Sections 3 and Section 4 of the Act.

In the Children’s Act, the best interests of the Swazi child appears to be a major determining criterion in regard to legal decision-making around children, such as with regard to care and placement of abandoned children or those without families or care-givers. It also plays a role in affecting decisions concerning diversion and sentencing of children in trouble with the law, and is also the criterion for adoption placements.

The CRC includes a number of rights relevant to survival and development in addition to article 6. Article 6 must be interpreted to extend beyond the mere right to life and must dynamically be interpreted to refer to developmental processes that all children undergo in the passage to adulthood. This includes the expansion of the range of positive measures to be adopted by Swaziland to further the health and education of the growing child. This guiding principle requires the existence of a comprehensive system of social security for children. Section 9 of the Act provides for the child’s right to access education, preventative health services, adequate diet, medical attention...or any other service required for the child’s development. The section provides further, that a child has a right to education regardless of the type or severity of the disability he or she may have. This provision expands on the constitutional provision about the right to free education at primary school level in public school. The National Children’s Policy, 2009 on the other hand defines education as a key issue and that efforts should be directed to, inter alia:

- Promoting education as a basic right and that children, including OVC receive equal treatment and benefits of the education system
- Provision of free and compulsory education
- Provision of secure and friendly environment in schools.

In 2010 Parliament passed the Free Primary Education Act which provides for the implementation of free primary education in public schools in Swaziland. Notably the Free Primary Education Act is not in conformity of the CRC in so far as it discrimimates between Swazi children and foreign pupils. Section 4(3) states that a foreign pupil shall not be enrolled at a public school if the pupil’s enrolment has the effect that a Swazi child…who is entitled to enrol
and has applied for enrolment is not able to be enrolled. Section 6 of the Act further requires foreign pupils to pay fees for primary education much against the provisions of the CRC and the Constitution. There is need to review this new Act to bring it in line with the CRC, the Constitution and the Children’s Act which advocate for the principle of non-discrimination.

The Education Act provides a duty to parents to ensure that the child attends school in order to access education. The Act provides no corresponding positive duty to particular government officials of the Ministry of Education to ensure school attendance. In Swaziland, a number of children do not attend school on account of poverty and the need to work, therefore, the Children’s Act as well as the sectoral laws on education should have provided for a system of social security grants to ensure that children are free to attend school. These social security grants would be over and above the provision for free, basic primary education as the grants would provide the economic relief necessary to feed and clothe the child in order for him or her to attend school instead of having to earn an income to provide for food and clothing for him or herself.

Like health in relation to children, inclusion of core minimum requirements for the country in providing for the education of all children is required by Article 28 of the CRC and Article 11 of the ACRWC. These would include at the very least:

- Free primary education
- Compulsory education
- Financial assistance to enable children to continue with their education after primary level
- Protection of dignity and bodily integrity of the child by prohibiting corporal punishment in the schools and training teachers in alternative forms of discipline
- Legislative policy provisions protecting the girl child from any discrimination in access to education.

In outlining inclusive educational policy objectives, the Education and Training Sector Policy, 2011 states that the Ministry of Education will strive to provide sufficient financial, physical and human resources…to educate every child, whatever the circumstances.13 There is need to spell out precisely how the government of Swaziland would accomplish this objective if there is no comprehensive law dealing with provision of social security in general, and specifically for children.

2.6 The role of Law in child rights and governance
Law plays a critical role in improving the lives of children in Swaziland. The Children’s Act is a recent legal development which will soon prove to be the most effective way of ensuring that government is bound to enforce programmes and policies that relate to the substance of the law. With the ratification of the CRC and the inclusion in the constitution of children’s rights, as well as the domestication of the CRC and ACRWC in the Children’s Act, the burden on the government of Swaziland to deliver in terms of its obligations is potentially enormous. For

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13 Paragraph 6.3.3 at p.18.
example, a new juvenile justice system including increasing the availability of places of safety for children, a more effective Children’s Court, and maintenance system, all require an outlay of expenditure on the part of the government. Ultimately, therefore, it requires a delicate balance between legal and political will before it can truly be said that children have been accorded their rightful place within the legal system.

2.7 Conception of children’s participation and law reform

The need to consult children is important in the light of the move in Swaziland towards the reform of laws and policies relating to children, and particularly because of the potential for giving effect to the CRC relating to child participation. The CRC contains provisions which reflect elements of participation in all the rights contained in the CRC. As a “cluster of rights”, children’s participation rights are comprised primarily of the respect for the views of the child, the right to freedom of expression as well as the evolving capacities of children as a legitimate ground for parental guidance. The CRC focuses on the role of the child (the beneficiary of the instrument) as an active participant in the implementation of the instrument. Through the provisions of the CRC, children should participate in judicial and administrative proceedings such as divorce and administrative proceedings. As an off-shoot of the CRC children are also entitled to express their views freely in all matters affecting them including even in law and policy reform processes.

2.7.1 The need for child participation

The right to participation in general and child participation in particular presupposes the individual and collective articulation of response to law reform and development policies. In their proactive forms, child participation rights demand that children be consulted at the initial stages of the creation of laws and policies impacting them as well as after the drafting of the laws and policies have been finalised. Also, children’s involvement in debate constitutes an important area for social democratization because it represents the extension of some democratic rights to disenfranchised group. Another reason child participation is important is that it gives us access to essential information that we could get from no other source.

2.7.2 The law reform process in Swaziland

The process of reforming children’s legislation in Swaziland began in September 2004. The process began through the engagement of a consultant to undertake a legislative review of child law in Swaziland. The findings of the study revealed that most of the laws pertaining to children were “fragmented and not easily accessible to those charged with their implementation”.

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18 Gallinetti, (above) p.5.
laws were found to be outdated, but more importantly, there was an absence of provisions for the implementation of laws, roles and responsibilities were poorly defined and co-ordination and monitoring, as important factors of legislative validity were absent. The fact that Swaziland is a party to the CRC meant that domestic legislation needed to be aligned to these obligations. The process culminated in the enactment of the Children Protection and Welfare Act, 2012.

Save the Children Sweden, and UNICEF funded the law reform process while Save the Children Swaziland housed and co-ordinated the process. Both UNICEF and Save the Children Swaziland sought to involve different stakeholders in the development of the new legislation, and to this end, established the multi sectoral Technical working group whose membership included government representatives and NGOs. This Committee established five thematic areas in order to create the framework for the new legislation. These included children in conflict with the law; centralised child welfare and protection courts; Education; Health with a focus on HIV/AIDS and Adoption.

The Committee sought to make the process as consultative as possible and to this end conducted a range of consultations amongst professionals, children, youth and traditional leadership structures to source input on the intended legislation. The inputs were then collated and fed into the drafting process.

During the consultation process, the children who participated were made aware of the law reform process in Swaziland. This process was facilitated by a children’s participation consultant contracted by Save the Children Sweden. The children who were consulted were school going children (both primary and secondary) as well as out of school youth. The let-down was that the children were subsequently not briefed about the progress on law reform. The draft legislation was not published in a child-friendly language, nor was it widely disseminated and explained to children through media that children use. At the instance of Save the Children, there was subsequent consultation with children on the five year National Plan of Action aimed at making operational the Children’s Bill. 19

There have been other initiatives of child participation in Swaziland which are school based, community based or government linked. These initiatives have engaged children on a range of issues even though there are many aspects that are central to children’s experiences in Swaziland that have not been addressed in any depth. Some of the most obvious issues are poverty, development, HIV/AIDS, good governance, democracy and corruption. If future participation efforts are to be ethical (and therefore meaningful to children), it would appear that they need to engage in a far more realistic way with the day to day issues that shape the lives of children in Swaziland.

Concerning the issue of ethical considerations, it is important to note that children cannot be viewed as a homogenous group and the views of one child or group of children may not

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necessarily reflect those of another. One of the major challenges in ensuring the ethical and authentic participation of children in largely adult-driven initiatives (such as law reform) is to clarify whose views the children are representing—are they expressing individual views? When the opinion of children are presented to law makers or people in positions of influence in any sphere, there should be a genuine effort to ensure clarity with regard to this issue.

Ethical considerations also suppose that all work with children must be guided by practices that uphold the best interests of the child.

2.7.3 Addressing barriers to participation
It remains to consider whether and how participation efforts actively seek to address some of the real barriers that conditions in Swaziland may place in the way of children’s participation. It has been suggested that despite the acceptance of children’s rights by governments around the world as demonstrated by the widespread ratification of the CRC, there is a lack of national policies that allow for the formal, ongoing participation of children.20 This report has found that even amongst children’s rights organizations, there have been few attempts to integrate the participation of children into the way in which these organizations do their business, and that both national policy and general practice needs to be addressed to accommodate this. Respondents representing the UN agencies dealing with children’s issues in Swaziland21 all confirmed that child participation is resorted to on an ad hoc basis and is not integrated in their way of doing business.

The report also notes that at the project level of most children’s organizations, there are cultural and familial practices that may inhibit or act against the participation of children. According to UNICEF, the principle that children should be consulted on issues that affect them often meets with resistance from people who see it as undermining adult authority within the family and society. In the Swazi culture a child is viewed as less rational, less secure about his identity and therefore less autonomous than an adult. Such sentiments are also expressed through our Common law in the nature of the cautionary rule. This rule says a court of law must always take the evidence of a child with a pinch of salt by warning itself before it accepts the child’s evidence.

The above examples provide a reminder of some of the more specific and practical realities that relate to the lives of children in Swaziland. Seeking to engage children in participation under these conditions requires not only careful planning, but a nuanced understanding of the social and cultural system that govern children’s lives in Swaziland.


21 We interviewed Phumzile Dlamini, Programme Analyst-Gender at UNFPA, Mbabane on 26 August, 2013. We also interviewed Linda Le Blanc, UNICEF, Mbabane on the 23 September, 2013 and Senelisiwe Ntshangase, Program Analyst-HIV & Governance at UNDP, Mbabane on 27 August, 2013 and Emmanuel Ndlangamandla, Director of CANGO, Mbabane on 30 August, 2013.
There is need therefore for formalised, institutionalised channels for children’s ongoing participation on issues that affect them. This may be done through law reform and progressive judicial enforcement of children’s rights as spelt out in the CRC and the laws of Swaziland.

The country’s development hinges on the respect for the rights of children among other pillars. Participation is deeply ingrained in a human rights approach to development, as are other critical concerns such as equality, empowerment and accountability. As with child participation, the principles that are contained in this approach may be seen as both an end in themselves and a means to the broader ends of development in Swaziland. Child participation offers increased opportunities to engage children in processes that affect them and our view is that ensuring that children’s voices are heard in processes of law reform will only enrich and make legitimate this and other processes affecting children. Looking into the future, there is a need to assess the extent to which a clear role for children has been carved into development efforts so as to ensure investment in the eventual development outcomes.

The issue of cost is another factor that above all else, shapes and defines the nature of children’s participation, especially in Swaziland where there may be far more immediate needs that compete for attention. There is need therefore to give active and specific consideration in the planning of child participation processes. This can be done by monitoring how well the government honours its pledges in its national law and how well it carries out its international obligations.22

2.8 The role of monitoring mechanisms
Monitoring mechanisms are an important part of the vigilance and activism of organisations dealing with substantive improvements for children. Without concrete steps being taken to collect reliable information, to take up grievances and complaints, to oversee legislative developments and to provide reliable indicators of progress, legal rights may remain symbolic.

Both within the government machinery-(in the absence of an independent children’s ombudsman, a separate commission for children), youth ministry and even the Human Rights Commission-and through the efforts of children’s rights organisations, monitoring must follow to ensure that the rights for children as stated in the Constitution translate into actual improvements in their daily lives.

Swaziland has the National Children’s Coordination Unit (NCCU) being an organisation responsible for overseeing and coordinating the country's response to ensuring children’s rights are upheld. Criticism centre around ineffectiveness and inefficiency of this structure23 with concerns raised about the inadequate resourcing to enable such a structure to be effective24


23 Interview with Ndlangamandla, Emmanuel, Director of CANGO.

24 Interview with Masuku Sabelo and Thwala Phumelele, Acting Chairman of the Human Rights Commission and Commissioner respectively.
and its failure to make a valuable contribution to advancing children’s rights. Ordinarily, the Human Rights Commission should also be playing a role in ensuring children enjoy their rights but because it is also poorly resources and without an enabling legislation it remains ineffective in executing its mandate.

Additional concerns raised have been the absence of monitoring and inadequate reporting on progress, as required internationally and in terms of ensuring transparency and promoting democracy nationally. This may be addressed by civil society organisations through preparation of supplementary reports to the UNCRC Committee. It is in supplementary reports that extensive and detailed information on the non existence of monitoring of children’s rights can be made known. It is in such reports that civil society should provide detailed information about the problems as well as when feasible solutions and advice on measures to be undertaken should be made known to the UNCRC Committee.

The extent to which the government of Swaziland can be held accountable for failing to uphold children’s rights is an important factor in creating an environment where child participation in democracy can be promoted. The Constitution, the Children’s Act as well as Swaziland’s obligations under international law are sufficient legislative framework for holding government accountable for realising children’s rights. In the absence of opportunities for Civil Society and children in particular to input into government responses to children’s rights in Swaziland, the courts can be used to hold government accountable for realising specific rights. In the case of any conflict in legislation, it is submitted that courts should give preference to the CRC in light of article 27 of the Vienna Convention on the Law of the Treaties. Gaps in the Constitution and the Children’s law exist as both legislation have no provision which say court should give preference to the CRC if there should be omission or conflict in law with provisions of international law.

There is need therefore for the legislative reform initiatives to be built into the machinery of all government ministries and departments coupled with other independent reviews by, say, relevant parliamentary committees, NGOs, academics as well as affected children and young people. Awareness regarding law reform initiatives must be raised among professionals and other people working with children. Professionals like teachers, social workers and health staff working with children should be made aware of new laws and policies impacting on children’s rights.

The government is expected to make the relevant policies based on the findings of the mapping exercises. It is recommended that Swaziland should develop a national strategy based on the CRC. Such a strategy should be developed through consultation with children and young people as well as those living and working with them. Such consultation with children requires special child-sensitive materials and processes. The strategy must be adequately resourced in human and financial terms.

\footnote{See the case of The Swaziland Ex-Miners Association v The Government of Swaziland.}
2.9 Conclusion

Law reform is an important aspect of CRG as it provides the basis through which children’s rights programming can be carried out. In order for law reform to be meaningful to the notion of CRG it has to be carried out in a comprehensive and consultative manner and special attention should be paid to child participation. A meaningful law reform process should be open, inclusive, consistent and participatory as opposed to an inconsistent, non participatory and ad hoc process. There is need to establish Institutions (like the Law Reform Commission) to facilitate the participation of various stakeholders in the law reform process. This, in turn will give the process momentum, validity and societal ownership. The principle of child participation in law reform and judicial enforcement should be recognised, with children’s perspectives solicited in friendly and creative ways. The institutional monitoring mechanism such as the Law Reform Commission may be placed in the Attorney General’s office and would be in charge of coordination and implementation of children’s rights in the country and this would include advising government on preparation of state reports and for institutionalising child participation in key decision making.

The challenge that ultimately remains in relation to child participation is how we integrate the authentic voices of children into all aspects of our engagements with them and on their own behalf. Basically, this calls for an ongoing and deeper engagement with children, as well as asking for the establishment of respectful and accountable relationships with children. Lastly, it demands the conscious negotiation of the many barriers that stand in the way.

2.10 Recommendations

- The Attorney General’s office should put in place guidelines for adoption by Cabinet and secure adequate resources to roll out participatory legislative reform processes including provisions for capturing children’s views as active participants. This would further ensure that government’s call for capacity building and awareness raising of the international, regional and national laws and policies for children become a reality.

- The Attorney General’s office and the government at large should leverage the use of information technologies, including the use of social media, such as Facebook, Twitter, Mixit and others that are predominantly used by the youth in order to raise awareness, receive and impart views, give and receive feedback about what works well and why.

- The AG’s office must work on its information function so as to be able to capture and analyse data on the progress and impact of legislative reforms and perform outreach functions so that as broad as possible views are captured in the legislative reform processes.

- To improve the quality of participation shorter versions of legislative proposals, written in simple plain language, including SiSwati (popular version) must be produced and disseminated ahead of any major legislative review that impact on citizen’s rights. This should also apply to all guidelines and policies developed by government and its partners for the benefit of children.
• Save the Children Swaziland should work together with other cooperating partners in civil society and beyond to produce extensive supplementary reports to the UNCRC Committee. The supplementary reports should provide extensive and detailed information on the non existence of monitoring of children’s rights, highlight problems of rights violations, as well as propose feasible solutions and advice on measures to be undertaken to the UNCRC Committee.
Chapter 3 Government capacity to invest on Swaziland’s Children

3.1 Investment in Children
Investment in Children (IiC) is the “Breakthrough” for SC’s Child Rights Governance Initiative at the global level which refers to a wide array of decisions and actions aimed at effectively responding to immediate and long term children’s issues; in the mobilization, allocation and utilization of private and public resources in order to realize children’s rights in both development and emergency situations. It is informed by Article 4 of the UNCRC, which places an obligation on all governments and the international community to “… undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation’ to ensure that children’s rights are realized.

3.1.1 Investment situation on Swaziland’s Children
Indications on the ground show that children have been at the centre of government programming in Swaziland over the past decade. It all started in 2002, when then Minister of Education, Hon. Ms Constance Simelane instructed all schools to admit Orphans and Vulnerable Children (OVC) locally known as Bantfwana Bendlunkulu free of charge, and the Ministry of Education eventually reimbursed the schools for the associated costs. The immediate impact was a 5% increase in enrolment nationwide, mostly girls (World Bank, 2006). The announcement was sudden and without warning, it left no doubt however that at times, all it takes is political will. Dlamini 2007, however cited serious management shortfalls with the introduction of the fund, mainly due to poor policy formulation and planning, yet it certainly was a turning point for Swaziland.

Save the Children Swaziland, (2007 p 36) concluded even then that “There are many children in Swaziland who do not have their basic needs met. The basic needs are generally described as being food, clothing, shelter and access to both education and health care. Swaziland’s children face many challenges including the impact and effects of HIV&AIDS and drought. Many children are now OVCs and are growing up without parents. Their daily struggle is made worse by their limited access to their basic needs”. Also, in the preliminary CRG Analysis conducted by Save the Children Swaziland officials in August 2012, Swaziland scored poorly in most obligation areas under general measures of implementation.

3.1.2 Prudent financial management
Sound fiscal management is critical in optimising investments in children and requires that each tax Lilangeni be spent on the priorities that matter for most of Swaziland’s children. The literature identifies three objectives for sound fiscal management; fiscal discipline, allocative efficiency and expenditure efficiency. Fiscal discipline speaks to the way that the country’s fiscal planning takes into account the relevant macro-economic fundamentals such as debt sustainability, deficit financing, price level stability, interest payments e.t.c as they impact on the country’s ability to sustain operations over time and matters of intergeneration equity. Allocative efficiency speaks to decisions of resource allocation, where efficiency is achieved when the expenditure priorities are perfectly aligned to the needs and priorities of citizens. Expenditure
efficiency on the other hand refers to value for money, the notion that for each tax Lilangeni spent, an equivalent or more in value of benefits should accrue to the citizens.

3.1.3 Debt Management
While Swaziland’s debt ratios remain comfortably within the recommended ratios, public external debt poses a significant threat due to the depreciation of the local currency against the US dollar and other major currencies in which foreign debt is denominated. Table 3.1.3.1 below shows that even within a short space of time, Swaziland is increasingly relying on the domestic markets to finance its requirements; something that could be attributed also to the improved market confidence which has allowed the Government to borrow more from the domestic market by the issuance of Treasury Bills and Government Bonds.

Table 3.1.3.1 Swaziland Debt Position

<table>
<thead>
<tr>
<th></th>
<th>Previous</th>
<th>Current</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public Domestic Debt</td>
<td>E. 2.0 Billion (Dec 2012)</td>
<td>E. 2.4 Billion (March 2013)</td>
</tr>
<tr>
<td>Public Domestic Debt as a % of GDP</td>
<td>6.20% (Dec 2012)</td>
<td>7.60% (March 2013)</td>
</tr>
<tr>
<td>Public External Debt</td>
<td>E. 2.7 Billion (Dec 2012)</td>
<td>E. 2.8 Billion (March 2013)</td>
</tr>
<tr>
<td>Public External Debt as a % of GDP</td>
<td>8.40% (Dec 2012)</td>
<td>8.80% (March 2013)</td>
</tr>
</tbody>
</table>

Source: Central Bank of Swaziland

3.1.4 Swaziland’s Overseas Development Assistance

It can be shown that Swaziland does not attract substantial Official Development Assistance (ODA) flows. This could be attributable to Swaziland’s classification as a lower middle income country. Swaziland does not receive direct budget support from any of its development partners; aid is implemented through specific projects such as infrastructural development and various sectors such as health, education, agriculture, rural electrification and others. It has been argued elsewhere that the combination of the lower middle income status, high levels of inequality and not up to date systems for prudent public financial management prevent Swaziland from either increasing its share of ODA or accessing direct budget support facilities. The OECD estimates that approximately 85% of Swaziland’s ODA goes to education, health and other social sectors, with the lions share, approximately 70% dedicated to health and
population. Table 3.1.4.1 shows which ODA sources Swaziland was able to attract in 2011/12 and the overall amount is not impressive.

### 3.1.4.1 Grants to Swaziland 2011/13

<table>
<thead>
<tr>
<th>Development Partner</th>
<th>ODA (US$)</th>
<th>% of Total</th>
<th>Grants US$</th>
<th>% of Total</th>
<th>Proportion of ODA provided as grants</th>
</tr>
</thead>
<tbody>
<tr>
<td>African Development Bank</td>
<td>9,074,858.00</td>
<td>6.8%</td>
<td>2,382,668.00</td>
<td>2.0%</td>
<td>26.3%</td>
</tr>
<tr>
<td>BADEA</td>
<td>2,530,048.00</td>
<td>1.9%</td>
<td>-</td>
<td>0.0%</td>
<td>0.0%</td>
</tr>
<tr>
<td>European Union</td>
<td>19,122,559.00</td>
<td>14.4%</td>
<td>19,122,559.00</td>
<td>15.7%</td>
<td>100.0%</td>
</tr>
<tr>
<td>Global Fund</td>
<td>16,079,855.00</td>
<td>12.1%</td>
<td>16,079,855.00</td>
<td>13.2%</td>
<td>100.0%</td>
</tr>
<tr>
<td>Japan (JICA)</td>
<td>17,784,702.00</td>
<td>13.4%</td>
<td>17,784,702.00</td>
<td>14.6%</td>
<td>100.0%</td>
</tr>
<tr>
<td>Republic of China (Taiwan)</td>
<td>22,267,169.00</td>
<td>16.7%</td>
<td>22,267,169.00</td>
<td>18.2%</td>
<td>100.0%</td>
</tr>
<tr>
<td>United Nations</td>
<td>16,756,388.00</td>
<td>12.6%</td>
<td>15,201,969.00</td>
<td>12.4%</td>
<td>90.7%</td>
</tr>
<tr>
<td>United States (PEPFAR)</td>
<td>29,201,667.00</td>
<td>22.0%</td>
<td>29,201,667.00</td>
<td>23.9%</td>
<td>100.0%</td>
</tr>
<tr>
<td>World Bank</td>
<td>131,047.00</td>
<td>0.1%</td>
<td>63,797.00</td>
<td>0.1%</td>
<td>48.7%</td>
</tr>
<tr>
<td>Total</td>
<td>132,948,293.00</td>
<td>100.0%</td>
<td>122,104,386.00</td>
<td>100.0%</td>
<td>91.8%</td>
</tr>
</tbody>
</table>

Source: Aid Coordination and Management Section

### 3.2 Revenue/Domestic Resources Mobilisation

Revenue mobilisation is perhaps the most important tool at the hands of any government in facilitating the process of correcting market failure. Market failure can also be caused by the existence of inequality throughout the economy. Wide differences in income and wealth between different groups within our economy lead to a wide gap in living standards between affluent households and those experiencing poverty. These wide disparities in incomes, assets and power, often lead to denial of access to the basic essentials required for one to live a dignified life to their full potential, something that is guaranteed by international protocols and national constitutions as economic social and cultural rights. By law, only governments and their mandated private entities are empowered to levy and collect taxes (described as a compulsory payment to government exacted pursuant to legislative authority, which is not a fine and is not linked to any supply of goods or services by the government) in direct correlation with its status of duty bearer where it comes to realising the rights for all. It is against this background that attempting to assess state capability; one has to look at the state of health of its revenue mobilisation mechanism.

#### 3.2.1 Efficiency in tax collection

One way to do this is to look at the tax to GDP ratio, which tells us about the intensity of tax efforts when compared to the value added during the period concerned.

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26 See, Swaziland, Bilateral ODA by Sector 2010/11 available online at http://www.oecd.org/dac/stats/SWZ.gif
*Based on nominal GDP figures compiled by Central Bank of Swaziland and Ministry of Economic Planning. The GDP figures used are for the calendar year (January-December) concerned, whereas government budget figures are based on fiscal years (April-March)

On the surface, Swaziland tax to GDP ratio ranged from 26% to 38% during the five year period 2009/10-2013/14 (Figure 3.2.1 above). The picture presented is of a highly uncertain fiscal environment that relies heavily on receipts from the Southern African Customs Union (SACU) which renders the country susceptible to external shocks such as those experienced in 2010/11 and 2011/12 in the aftermath of the global economic and financial crisis.

The formula attempts to compensate member states for the economic costs of belonging to a customs union, namely loss of fiscal discretion in setting of tariffs, economic polarization, trade diversion and price raising effect. The whole formula is redistributive in nature and so one cannot single out one component and say it would be what would be collected at Swaziland’s borders if she did not belong to the SACU. The Swaziland Revenue Authority Annual Report 2012 shows that the domestic tax to GDP ratio was 14% for 2011/12. Whilst we do not agree with this manner of reporting tax to GDP ratio, it suffices to say that it does highlight more important challenge of reliance on SACU revenues for Swaziland.

Trends in revenue collection, including medium term projections reveal a mixed picture with respect to the mobilisation of domestic taxes. The graph below shows that total revenue expectations will somewhat deteriorate in 2014/15 only to recover to current levels in 2015/16.

**Figure 3.2.2: Total revenue expectation 2010/11-2015/16**
This is not a good enough outcome considering that even though modest, the Swaziland economy is expected to grow on average by 2.3% between 2013 and 2015 according to preliminary estimates of the Central Bank of Swaziland and Ministry of Economic Planning and Development.

One way in which we can measure the government of Swaziland’s performance in levying taxes in a fair and equitable manner, is to consider the impact that taxation as the number one known effective measure of redistribution has had on inequality. Swaziland remains one of the most unequal societies in the world, following after South Africa.

3.2.2 Equity and fairness
The role of an autonomous revenue authority such as the Swaziland Revenue Authority (SRA) is to collect with efficiency and effectively the taxes imposed by the legislature. In doing so, issues of equity and procedural fairness are a priority. Fairness is achieved where same or similar taxes are paid by people with similar incomes and circumstances, whilst equity is achieved where the tax system follows the ability to pay principle.

The period under review saw the introduction of Value Added Tax in Swaziland to replace the Sales Tax which was seen as largely regressive and cascading in nature. It is easy to tell from Figure 3.5.3.1 below that Sales Tax/VAT has become the second most important revenue source for the government of Swaziland. Civil society in Swaziland missed an opportunity during its introduction to expand for the benefit of children the first and second schedule of the VAT Act which lists exempt ad zero rated supplies for VAT purposes respectively.

Figure 3.2.2.1: Comparison of different revenue streams 2007/08-2013/14
Figure 3.2.2.1 above clearly shows Swaziland’s increasing reliance of trade taxes in the form of Sales Tax/Value Added Tax and the Customs and Excise component embedded in the SACU revenue share. Company income taxes have consistently declined in real terms over the years. Evidence on the ground suggests that despite shut down of a number of companies in Swaziland, there is still some significant business activity, which means a number of entities are still profitable. Swaziland has significant exposure to tax evasion and avoidance, and the use of aggressive tax planning methods because of the dominance of transnational corporations in its business environment. In the section below, we expand more on this scourge by giving examples.

There are also specific provisions in the Income Tax Order, such as the Development Approval Order Notice which grants the Minister of Finance in terms of Section 69(2) of the Income Tax Order as amended, to grant tax concessions which could include for a period not exceeding 10 years, a 10% rate of corporate tax for that period and no withholding tax on dividends. Despite accepted international best practice, we could not find a record of current concessionaires and the associated tax expenditure accounts. A request made to SRA for same could not illicit a response. This information should be made available with the documents that accompany the annual budget proposal. There has to be a balance between tax-based incentives and direct subsidies with infrastructure development and investment in backbone services such as telecommunications, energy and transport, skills development, vertical and horizontal linkages. Swaziland has for a number of years investing significant tax eMalangeni in constructing and servicing factory shells, a periodic review of such incentives should be carried out by independent providers to keep the country in check with respect to whether there are real economic benefits and value addition associated with this programme.
3.3 Tax dodging and transfer pricing
Finally, one has to make a judgement call as to whether the Swaziland tax system encourages tax evasion and the use of tax shelters. Establishing this fact is beyond the scope of this study, and in the absence of publicly available research studies on especially the tax practices of multinational corporations, of which there is quite a number operating out of Swaziland; it would be difficult to tell. However one immediately thinks about some of the key industries in Swaziland dominated by multi-national, such as the sugar, mining, textiles and others.

In the realm of international taxation for instance, taxpayers know that if their income is booked offshore, not necessarily in the classic tax haven, favourable tax results can be achieved. Rosenbloom (2003) argues for an example that related parties may differ between themselves in a number of tax characteristics; residence, method of accounting, functional currency, exempt versus non exempt status, the interest deduction and commensurate income from related party debt may produce overall beneficial tax results within a single economic unit.

Of relevance here is a recent study by Action Aid International which investigated the tax practices of Associated British Foods the company that owns Ubombo Sugar in Big Bend Swaziland. The report states that “This Illovo group of sugar companies has long been an African-headed operation. The Illovo group is owned by ABF through a central parent company in South Africa, Illovo Sugar Ltd, described as the “corporate centre of the group”, from where Illovo’s African operations have in practice been coordinated since they were established in the 1990s. Yet our investigations have found that the ownership, management, procurement, finances and profits of their onshore African sugar operations are routed through a network of companies registered in the tax havens of Mauritius, Jersey, the Netherlands and Ireland”. In Zambia, the company used a number of complex financial arrangements to minimise the tax it paid there.

This is just a snippet demonstrating just how aggressive tax planning by multinational corporations can steal from poor African governments with weak tax legislation and revenue administrations with limited capacity.

Whilst Section 13(1) of the Income Tax Order of 1975 gives the Commissioner powers to make an assessment of the correct taxable income on the basis of “those "assets" in Swaziland actually employed to produce the income by way of apportionment, Swaziland still lacks a comprehensive transfer pricing regime in its tax legislation.

3.4 Recommendations

- The Ministry of Finance and Swaziland Revenue Authority must improve their capacity to conduct research, collect data and publish information that will inform citizens about how well they fare in terms of their mandate to collect adequate revenues to fund government. Innovative approaches to domestic resources mobilisation should be considered and adopted if feasible to balance the over reliance on SACU revenues such as the financial transactions tax. The Swaziland government should also account in full for tax expenditures.
• Swaziland should also support within in SADC, the AU and the UN, global calls for a multilateral agreement on automatic exchange of tax information. This is mainly to address the problem of information asymmetry as the practice is for resident persons not to declare their foreign source income to the revenue authority even as they know they are supposed to do so and are liable to Swaziland tax.

• Swaziland should join other mineral rich countries and sign on to the Extractive Industry Transparency Initiative (EITI) which encourages industry stakeholders such as government, civil society, private sector, parliament and media to collectively identify, prioritise and implement actions that promote accountability and transparency in the mining industry.

• Save the Children should launch research and advocacy campaigns aimed at influencing the government of Swaziland to adopt a more comprehensive list of exempt and zero rated supplies for VAT purposes that will benefit children. Other than school textbooks, school uniforms, school shoes, sanitary pads and other like items predominantly used by children should not pay VAT.

• The Swaziland government needs to urgently put in place a comprehensive transfer pricing regime with measures to curtail base erosion and profit shifting in its domestic tax legislation. These reforms should bear the following characteristics;
  - Mandatory filling of transfer pricing policy by any company involved in any form of intra company transfers
  - Transfer pricing policies should be accompanied by contemporaneous documentation detailing the methods applied for arriving at the Arms Length Standard transfer price, including comparables
  - Provisions for Advance Pricing Arrangement on the basis of shared cost between taxpayer and revenue authority.
  - Mandatory reporting of all payments and some key information, on a country by country, and project by project basis for all entities in the company group
  - Make public who owns and controls companies and trusts, by publishing a beneficial ownership register.

• A detailed study of the tax gap is Swaziland should be conducted so that the Swaziland Revenue Authority can establish modalities to try to close this gap through a combination of base broadening measures, administrative and legislative reforms and increasing enforcement. Similarly studies should be conducted to inform policy makers on tax incidence in the Swaziland system so that adjustments could be made where necessary.

• A review of Swaziland’s tax incentives schemes should be carried out by independent providers to keep the country in check with respect to whether there are real economic benefits and value addition associated with such programmes including their fitness for purpose.
Chapter 4 Social expenditure on children

4.1 Public spending that aligns to social goals
Public budgets are raised through citizens’ contributions and the income generated by public assets. Thus, the founding belief among budget advocates that participation in the decisions related to public budgets is a fundamental right and responsibility of all citizens. Since this analysis is about child rights governance, this section will focus on the three key elements of a progressive budget for children; allocative efficiency, expenditure efficiency and fiscal discipline. A whole chapter will be dedicated to budget transparency, accountability and participation later on, due to its relative importance to child rights governance situational analysis. This is founded on the belief that, better budget outcomes can be achieved when sufficient accurate, reliable and important information on government programmes and resources is made available to an empowered citizenry, to chart their own destiny as a people. When citizens are part of the process of identifying needs, setting priorities, implementation of government programmes and their oversight, it is possible to achieve better targeting of interventions, to minimise wastage and realise “value for money”.

In order to do this, it will be important to juxtapose a human rights based budget analysis framework, across a traditional quantitative analysis that looks at shares, growth and sustainability in order to attribute prioritisation, adequacy, adaptability and accessibility.

4.2 Review of public expenditure
A snapshot preview of the 2013/14 recurrent budget shows that approximately 38.86% of the national cake was allocated to the three main social services cluster made up of DPM’s office, Educational and training, and Health. Although this figure compares favourably to the public order, safety and defence cluster made up of the police, defence and correctional services by more than two times at 18.33%, it should be borne in mind that Swaziland has limited exposure to external security threats to warrant such priority and expenditure outlays to put in place security apparatus. Moreover, compared to 2012/13, the budget for the same social services cluster grew in nominal terms by 8.05% compared to 10.94% for the public order, security and defence cluster.

These two clusters account for close to 60% of the country’s proposed recurrent expenditure hence the view we hold that they represent the key thrust of government policy and expenditure focus. We could have included the agriculture function in the interest of the children’s right to food and adequate nutrition, but at only 2.39% of total recurrent budget, agriculture and food security is clearly not a priority for the current government. This is despite having made a commitment in 2008, together with other AU member states to commit 10% of national budget.

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27 See The Dar es Salaam Declaration on Budget Transparency, Accountability and Participation available online at http://www.globalbtap.org/declaration/

28 The DPM’s office houses the Social Welfare directorate and the Children’s Unit which looks at issues of vulnerable children and the elderly by disbursing grants.
resources to the development of agriculture. So insensitive is the de-prioritisation of agriculture and the citizen’s right to food that despite its relative size, the ministry of agriculture budget does not even come close to that of the much junior department of correctional services.

**Figure 4.2.1: Selected expenditure outlays for 2013/14 by administrative classification**

![Selected expenditure outlays for 2013/14](chart)

Source: Ministry of Finance Budget Estimates (2013/14-2015/16)

In the next section we consider a sectoral analysis of the Swaziland budget as it relates to children. This is because we understand that even though an issue, such as is clearly the case of education in Swaziland is prioritized, there might be some structural and inherent rigidities in the system that prevent or hamper the delivery of accessible education of good quality. The section will focus on four areas; right to good quality education; right to the highest attainable standard of health; right to social security; and the right to food security and nutrition.

**4.3 Expenditures for Children**

**4.3.1 Investment in Children’s Equal Education**

The right to education is a fundamental and globally recognized human right, established in texts of varying legal and standard setting nature. They include conventions, recommendations, declarations, frameworks for action and charters. These texts, often referred to as **instruments**, according to UNESCO, do not, legally speaking, involve the same obligations. But they all serve the same end: the promotion, protection and fulfillment of the right of every person, without discrimination, to enjoy access to education of good quality.

Investment in education is critical in many respects, both for individuals and the society at large. For instance, education plays a central role in enabling children to develop to their full potential as well as it equips them with the skills necessary to lead a healthy and productive life.

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Swaziland is projected to spend a 6.54% of the nominal GDP projection for 2013 of E35.130 billion on education. Compared to 2007, where Swaziland spent 7.60% of its GDP on education, the figure is found wanting as it also falls below the Dakar commitment of 7 percent (ACP, 2010). However, one must hasten to state that Swaziland spends no small amounts on education, something that needs to be lauded of the current political leaderships unwavering support for the sector. Our analysis shows that even in years that the country faced severe constraints in revenue collection, expenditure in education remained strong and took an upswing as soon as the outlook got better.

This is further confirmed by the education sector always getting the highest budget allocation in the annual budget. On the surface, Swaziland has long nailed its colours on the mast of “Education for All (EFA)” and has reaffirmed its commitment by endorsing Universal Free Primary Education in its Constitution. The Constitution of the Kingdom of Swaziland (2005) at Section 29(6) says that;

“Every Swazi child shall within three years of the commencement of this Constitution have the right to free education in public schools at least up to the end of primary school, beginning with the first grade”.

Despite this clear constitutional provision, it was not until parents took the government to court to claim this right. Justice M.B.C. Maphalala, in Swaziland National Ex-Miners Workers Association v The Ministry of Education and Others [2010] SZHC 258, whilst dismissing the application to direct and compel to make primary education free, noted that, the Right to Free Primary Education as enshrined in the Constitution and declared by the court means more than removing payment of school fees by Swazi children.

Despite the fact that on the overall, government spending on education has increased substantially over the past decade suggesting a firm commitment to education, evidence suggests that in recent years, there has been a decline. Table 4.3.1 below shows that the share of education in the overall budget is declining, from a high of 25% in 2011/12, to only 19% in 2013/14. The rate of increase in education budget allocations should also be taken into consideration, for instance between 2010/11 and 2011/13, at the height of the effects of the global financial and economic crunch on Swaziland, the education budget remained unchanged hence its strong representation as a share of total budget.

<p>| Table 4.3.1: Total (Recurrent +Capital) Education Budget Allocations, 2010/11 to 2013/14 |
|-----------------------------------------------|-------------------------------|-------------------------------|-------------------------------|-------------------------------|</p>
<table>
<thead>
<tr>
<th>Total Education budget allocations</th>
<th>2010/11</th>
<th>2011/12</th>
<th>2012/13</th>
<th>2013/14</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Education budget allocations</td>
<td>2,267,171,65</td>
<td>2,274,994,40</td>
<td>2,407,704,58</td>
<td>2,565,851,61</td>
</tr>
<tr>
<td>Education as a percentage (% of total budget allocation)</td>
<td>22%</td>
<td>25%</td>
<td>20%</td>
<td>19%</td>
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</tbody>
</table>

Nominal growth (%) in total education budget allocations

<table>
<thead>
<tr>
<th></th>
<th>0%</th>
<th>6%</th>
<th>7%</th>
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</thead>
<tbody>
<tr>
<td>Source:</td>
<td>Ministry of Finance Budget Estimates 2013/14-2015/16</td>
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</tbody>
</table>

Against a background where 2010/11 total revenues were 25.6% less than the 2009/10 total revenues, only to improve slightly by 10.0% in 2011/12, this was an impressive demonstration of prioritisation of the sector and political will to implement free primary education. This was confirmed in interviews with Ministry of Finance officials who were operating on the basis of a cabinet steer to that effect and had changed to almost weekly cashflow management meetings to consider key issues, challenges and prioritises payments. Starting in 2012/13, the revenue picture improved significantly by 74.2% and continues to improve. Whilst it is understood that the focus for that year was clearing expenditure arrears, it is disappointing to note that education budgets only grew in nominal terms by 6% in 2012/13 and 7% in 2013/14 (Table 4.3.1 above).

There are three issues that militate against the slow growth in education budgets for 2012/13 and 2013/14. First is the issue of inflation, where average inflation for 2011/12 stood at 7.2% and for 2012/13 it was 8.3%. In essence this means that the education budgets have not been growing in real terms, because of the higher rate of increase in the price of goods and services than the rate of increase in budgets. The second is the impact of the revenue crisis on the budget for education. We have shown in Table 2.4.1 above that between 2010/11 and 2011/12 that the budget for education did not grow in nominal terms as a result of the absent revenues. The 6% and 7% nominal growth in education budgets for the 2012/13 and 2013/14 fiscal years respectively are minute when considering that they represent growth from a lower base than would have been the case if revenue developments had not deteriorated significantly after 2009/10.

The last is the introduction of free primary education, which is what could have negative “policy effects” on overall education budgets. In budget analysis we are expected to remove the effects of introducing a new policy before making a finding on real growth in budget allocations for a particular purpose. It can be concluded from the analysis therefore that there has been no structural adjustment to the education budget after the revenue crisis and that the introduction of free primary education has been driven largely from reallocating funds from other programmes within the education budget.

Drilling further into the budget allocations for education by programme, we can show that programmes such as Post Secondary Grants and National Library Services have been de-prioritised in order to free the resources required to implement free primary education. Additional resources allocated to education in Swaziland, do not lead to corresponding outcomes for education. It can be concluded that an imminent educational crisis is brewing in Swaziland. Among the issues raised by the education stakeholders we interviewed as part of this study were the following;
• Non admittance of OVCs fees for failure to pay top-up fees—government has issued Circular No 14 of 2012 to try to resolve this issue. Subsequently Circular Number 17 of 2013 titled; Suspension of top-up fees and withholding of examination results was issued and led to an outcry. It is not clear how consultations were conducted prior to the release of this circular. Its timing of February 6, 2013 is also suspect in that this was way beyond the schools budgeting period.

• The OVC grant is too small to cater for all the schooling needs of beneficiaries. In the interview with the Director of Education, an example was made of the cost of books such as those of Home Economics where 3 of the prescribed texts cost about E2000 when the grant itself was E2500 in Form IV (It is E550 for primary school going children). On the overall some urban and peri-urban schools can charge upto E7000 depending on the choice of subjects by the pupil. A costing exercise is ongoing and it is hoped that it will clarify and inform policy makers on the right steps to take.

• Late payments by government of OVC grants—sometimes payments are made towards the end of the year. This has the effect of ensuring that most school operations which has an impact on teaching and learning outcomes are grounded for a significant proportion of the school year. It is proposed that additional revenue from government be used for a once-off education adjustment budget which will entail allocating and disbursing education funds in the previous school year for the next year’s estimated enrolment figures. These could then be adjusted when the statistics has been made available at the beginning of the school year and the payment of the second and final tranche is made.

• School governance weak—usually a reflection of the socio-economic characteristics of the community. Limited capacity of schools to provide guidance and perform scrutiny and oversight functions of the schools operations including formulating policies, monitoring school development plans, and budgets. The director of education noted that the procurement systems as a result are flawed, and that this can be shown in variation in the prices of books charged by schools. The books are supplied by Macmillan who has an agreement with government to wholesale to suppliers at 30% below the Recommended Resale Price, leaving a reasonable margin for suppliers yet they still charged parents more than this.

• Education Management Information Systems (EMIS)—the weak capacity in producing quality information for purposes of education management and planning is not good for the country’s education sector. Absent this capacity, the Ministry cannot produce their required monitoring and evaluation information that can inform education stakeholders about developments in the sector and what intervention need to be strengthened and supported to improve education outcomes. There a need to expand this function in the Ministry and ensure that a system is in place and that there are people in place to populate the system with data in an accurate and timely manner. This information should also be packaged in an appropriate format and made publicly available.

• Unqualified teachers—it is estimated that there are over 4000 unqualified teachers in the system. This has a collateral impact on the overall quality of education that is delivered in Swaziland schools. The introduction of free primary education has seen an additional 110 teacher posts being created per annum whilst the gap at the inception of the
programme was 900 posts. The full implementation of free primary education would have required plans to double the existing capacity for teacher training and creation of posts to cater for the additional influx of pupils that would have otherwise been not at school if free primary education was not introduced.

2.4.2 Children’s Health for All

Investment in children’s health is a potentially powerful mechanism of building human capital, generating sustainable growth. Among the social objectives of the Kingdom of Swaziland, found in Section 60(8) of the Constitution, is to “Without compromising quality, the state shall promote free and compulsory basic education for all and shall take all practical measures to ensure the provision of basic health care services to the population”. It should be noted that this section is under Chapter V of the Constitution; Directive Principles of State Policy and Duties of the Citizen and therefore not enforceable in a court of law or tribunal in terms of Section 56(3) of the same constitution.

However, the Chapter obliges the Prime Minister to report to parliament at least once a year all steps taken to ensure the realisation of the directive principles. A major flaw of the Swaziland Constitution is its silence on the Right to Health in Chapter III: Protection and Promotion of Fundamental Rights and Freedoms. This would have the effect of making the citizen’s rights to the highest attainable standard of health justiciable in a court of law. A constitutional amendment bill to this effect should be introduced for consideration by parliament.

The right to health is broad and involves a number of measures intended to ensure that all citizens have access to at least the basic minimum level of healthcare in accordance with the availability of state resources.

International human-rights law recognises that the right to the highest attainable standard of health cannot be realised overnight; it is expressly subject to both progressive realisation and resource availability\(^\text{31}\). In this next section we consider the resources allocated to the provision of the highest attainable standard of health in terms of ICESCR in Swaziland.

Swaziland spends plans to spend E1.445 billion (or 11%) of its total budget for 2013/14 on health related expenditures. At only 11%, this figure falls short by 3% of the recommendations of the 2006 Abuja Declaration of Head of States of African Union countries of allocating to health at least 15 per cent of their annual budget.

Table 4.4.2.1: Total (Recurrent +Capital) Health Budget Allocations, 2010/11 to 2013/14

<table>
<thead>
<tr>
<th></th>
<th>2010/11</th>
<th>2011/12</th>
<th>2012/13</th>
<th>2013/14</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Total Health budget allocations</strong></td>
<td>990,303,511</td>
<td>1,030,423,815</td>
<td>,289,741,702</td>
<td>1,445,101,575</td>
</tr>
<tr>
<td><strong>Health as a percentage(%)</strong></td>
<td>10%</td>
<td>11%</td>
<td>11%</td>
<td>11%</td>
</tr>
</tbody>
</table>

Primary health care is the most important where it comes to the delivery of the highest attainable standard of health to Children in Swaziland. It is unclear when looking at the information presented with the budget how the programmatic and functional classification is made. It would seem that this function falls under Preventive Services programme, a programme that deals with development of preventive medicine and health standards. It also deals with the provision of inspection and information in fields such as malaria and tuberculosis and the operation of health units.

In the 2013/14 budget speech, the Minister of Finance cites amongst government recent successes the expansion of the Central Medical Stores which has minimised stock-out periods for drugs helping all to get access to the treatments that they need. It also noted the significant reduction in the under-five child mortality rate which has fallen from 120 deaths per 1000 births in 2007 to just 104 deaths per 1000 births in 2011. Also reported was that Swaziland’s programme for prevention of mother-to-child transmission of HIV/AIDS is one of the best in the world and that nearly 90% of health facilities offer these services.

Interviews with inter-governmental and civil society stakeholders in health also confirmed that there was a lot being done on the ground in realising the highest attainable standard of health. In line with Article 2 of the ICESCR, which rues in part that “Each State Party undertakes to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights by all appropriate means …”, the Swaziland government has drawn over the past few years significant grant aid to advance the right to health. Such measures, when added together with government’s own investment in health means there is substantial resource flows in the health sector, and that if these resources were to be managed well, they could put the country in good stead to produce positive health outcomes.

In the absence of concise government produced reports stating how the state has fared in meeting its rights obligations, it is difficult to tell the status of implementation of the right to health in practice. However, newspaper reports and anecdotal information from people who have accessed healthcare in public facilities reflects a mixed picture. Reporting in news media can sometimes be sensational, and is more likely to capture the negative stories whilst there are many satisfied consumers whose stories are not been told.

We also considered the issue of access to healthcare by particularly indigent children. The two major hospitals in Manzini and Mbabane (RFM Hospital and Mbabane Government Hospitals)
were approached under cover during the week beginning August 26, 2013. The reason why the two hospitals were not approached for official comment is that we wanted to find out the true picture of policy implementation in practice. The front desk officers of the hospitals (cashiers or admissions) were approached and the issue was that we were assisting an indigent child who needed healthcare. At Mbabane government hospital, we were informed that there was a social worker who deals with such cases and the officers were not clear about the procedure to be followed in such circumstances. At the time of the visit, the social worker concerned was not found at their usual base station and there was no information notice to the effect. At the RFM hospital we were informed that OVCs were assisted at the hospital free of charge provided they produced a letter from a social welfare officer.

At RFM hospital, a memo dated 17th January 2013, titled; the elderly will not pay for medical care at the RFM hospital and Nazarene clinics, the elderly and school children will be prioritised at the outpatient department and authored by the Chief Executive Officer of the Swaziland Nazarene Health Institutions, Dr. B.H. Makhubela is pinned visibly on the notice boards. Clearly the memo establishes the right to healthcare for the elderly and only speedy service for school children wearing uniform. There is no mention of access for indigent children. The right to the highest attainable standard of healthcare also includes a right of access to information about how citizens including children can access that right. It would seem that the government of Swaziland has policies in place to guarantee children’s access to their right to healthcare; however information to that effect is not proactively disclosed and widely known to citizens. As a result, indigent children may be denied access to their rights to healthcare because of lack of widely publicised information about how to go about claiming those rights.

4.4.3 Right to Social Protection
Social protection programmes supplement and augment the efficiency of investments in other sectors such as health and education. Investment in social protection also supports progress in the Millennium Development Goals (MDGs) and contributes to reducing children’s vulnerability to economic shocks and price surge in food items (ACPF, 2010). Social protection is central to the survival of Swaziland's children, and there is evidence on the ground of strides made towards ensuring that children are protected in the country. The main framework for intervention is the National Social Development Policy published by the Deputy Prime Minister's office in November 2010. The policy states at Page 19 that, “It is national policy to protect and promote the rights of children, to ensure their basic needs are met, and that they are provided with opportunities to reach their full potential”.

The policy deals with issues of orphans and vulnerable children by seeking to ensure that there are systems in place to ensure that; they are supported from the estate of their deceased parents, they are provided with public assistance and safety nets, they are provided with free access to primary health services in public health facilities. The policy also puts towards strategies to deal with street children, children of incarcerated parents and children in conflict with the law by mainly seeking to provide support and provide that decisions are always based on the best interest of the child.
Applying effective protection of children who are orphaned, abandoned and vulnerable in Swaziland has been enhanced by UNICEF-supported development of the National Guidelines for Alternative Care developed along with National Minimum Standards for Residential Child Care Facilities in Swaziland. Both of these documents were published by the Department of Social Welfare and will be used by both practitioners in the field of child welfare as well as by community members with an interest in the rights and needs of vulnerable children and families (UNICEF, 2012)32.

As part of strengthening social protection of children it became important to give status to the Department of Social Welfare as a way of bringing prominence to children’s by the establishment of National Children’s Coordination Unit (NCCU)—a policy and procedural arm that works with the Department of Social Welfare implementing activities in the field. As part this study, we considered the effectiveness of the social protection mechanisms put in place in ensuring that children receive the protection as enshrined in the countries legal framework and international instruments.

In view of the three areas of investment, the Standards for Quality Service Delivery to Orphans and Vulnerable Children (2012)33 presents five (5) service areas, namely education assistance, food and nutrition, health, water and sanitation, child protection and legal support and psychosocial support as critical in quality service delivery for children. These standards are critical in Child Rights Governance as they are meant to facilitate a culture that goes beyond service delivery to quality services delivery. This is a milestone for the Government of Swaziland in ensuring that appropriate interventions are put in place to adequately care for and protect vulnerable children. Ensuring that children’s basic needs are met, as dictated by the National Social Development Policy, 2010 goes beyond children’s rights of access to education, to health and to food. There are other non-food, non-education and non-health basic needs that are as detrimental to child survival as the other needs. Dlamini (2007) and REBA (2007) conclude of the OVC bursary scheme that the most vulnerable children are hitherto excluded since in order to participate(in education) at all it is necessary to undergo certain formalities and minor costs that are beyond the reach of truly destitute carers and children. Things such as uniforms, school shoes, bus fares, soap, toothpaste, sanitary pads amongst others determine whether an indigent child drops out or continues with schooling. Indeed

In the area of policies for child protection, it is clear that a lot has been achieved in the past decade. The most recent was the promulgation into law of the Children’s Protection and Welfare Act, 2012, which now sets the basis for resource planning and inter-agency collaboration when dealing with matters of children. In interviews with numerous role-players it was confirmed that this was indeed a major milestone that involved many years of hard work and that the outcome was a result of broad based stakeholder. Stakeholders however decried the fact that the process took s many years, and that some critical s role-players suffered fatigue in the process, partly also due to protracted contestation on certain issues.

32 UNICEF (2012) Swaziland’s Response to Violence Against Children

33 Deputy Prime Ministers Office (2012) Standards for Quality Service Delivery to Orphans and Vulnerable Children in Swaziland
4.4.3 School Meals to Food Security in Schools
The *African Economic Outlook 2012*, noted that food security in Swaziland was projected to deteriorate in 2012 due to reduced food supply, caused by erratic rainfall, outdated farming methods, and diminishing agricultural services provided by the government in the wake of the fiscal crisis\(^{34}\). The report further noted that given the possible lasting negative impacts of inadequate nutrition, this widespread food insecurity demands permanent and robust solutions as food emergencies in Swaziland, so far, tended to be addressed on ad hoc basis.

The recurrent expenditure in agriculture for 2013/14 is too small at 2.39% of total recurrent expenditure. Even considering investments in agriculture via the capital budgets, for 2013/14 it translates to a meagre E303.3 million and places the overall planned expenditure in agriculture at just over 4.23% of total national budget. Truthfully, because of the sheer size of the Ministry of Agriculture, its spread in terms of geography, functions and competencies, after personnel costs and CTA vehicle costs, little else is left by way of operational expenses (about E34.3 million or 0.01%). Household food insecurity leaves children in a precarious situation and the absence of broad interventions targeting children in the Agriculture budget does not help matters.

Health data available from the World Health Organisation (WHO) puts the rate of stunting among under-fives in Swaziland at 31% in the period 2005–2012\(^{35}\), however the Swaziland Ministry of Health believes they are much higher at about 40% of the total population. Among other things, the problem of malnutrition does not only cause growth retardation amongst children, but is to some extent responsible for child mortality, poor performance in schools and could have long term implication for productivity of the adult population affected by stunting during their formative years. This costs the Swaziland taxpayer millions of Emalangeni in lost productivity, medical care and grade repetition.

Strangely, addressing hunger in Swaziland’s schools has been the pre-occupation of policy makers since pre-independence times. The need for some form of school feeding programme has never been as detrimental as has been the case in recent years. The school meals programme began as a pilot in 1963 in Mbabane and Manzini with a grant from Save the Children Fund- UK with additional funds coming in 1965 from Oxfam UK. The programme was re-introduced in 2002 in response to the negative impact that HIV and


AIDS, drought and resultant food insecurity were having on the quality of learning according to the Schools Food Security framework document released in 2013\(^{36}\).

School feeding presents a unique opportunity for targeted intervention in this age group, both as a means for enhancing nutrition, improving school attendance and educational outcomes. A number of Swaziland’s key policy documents are supportive of a schools feeding and food security programme, amongst others the following:

- Poverty Reduction Strategy and Action Plan (PRSAP)
- Swaziland Education and Training Sector Policy (EDSEC, 2011)
- Education Sector Strategic Plan 2010-2022 (ESSP, 2010)
- Schools as Centres of Care and Support (SCCS)/ Inqaba Manual (2011)
- National Social Development Policy (2010)

The Government of Swaziland has already committed funds to procure foodstuff for the school feeding programme and has staff members committed to its implementation. Other non state partners such as NERCHA, WFP are key partners in providing the food resources and related non-food items to the schools addressing food security and nutrition\(^{37}\). In practice, there are still numerous bottlenecks to the efficient delivery of nutritious meals to schools based on the current model of centralised procurement and logistics. Amongst these identified problems is late arrival of supplies, delivery of food items approaching their expiry date and therefore a limited shelf life, lack of supplementary funding for local procurement of additional supplies such as perishables and the absence of local procurement guidelines with sufficient controls?

### 4.5 Recommendations

- A broader consultation is required in the case of top up fees for OVC bursaries. The government is asking fee paying parents to increase their contribution in order to subsidise the OVC. It is an appropriate policy that needs to be adequately consulted and introduced with consent of parents. The might be a need for government to relook into the way it allocates money for OVCs to schools in light of differing socio-economic characteristics of communities and OVC population as a proportion of overall enrolment per school.

- A periodic evaluation of the OVC bursary programme, including a costing of needs on the ground should be undertaken by the government of Swaziland with a view to explore different options to improve its operational effectiveness. Timely disbursements, ensuring


\(^{37}\) Ibid
that only deserving pupils access the grant, and preventing loss of funds due to fraud and other corrupt practices of controlling officers are detrimental to the success of the programme.

- The government should implement the school feeding programme by adopting the "contextualised combination model" proposed in the framework document which entails a mix of centralised and local procurement. The approach adopted should have sufficient controls and oversight mechanisms to be accompanied by additional staff coordinators for each region whose role is to also ensure community participation, empowerment, monitoring and oversight of school feeding programmes at the local level.

- To improve school governance, Regional Education Officers (REO’s) should implement a programme for capacity building of school committees, and communities beyond just conducting elections and carrying out induction programmes. Resources for this should be budgeted for and should include development of materials, human capacity and public campaigns in support of parental involvement in school governance.

- Government has an obligation to put in place a concise policy on how the poor and vulnerable can access healthcare in public health facilities which still charge user fees and this information should be made widely available and promoted through the mass media and other information channels.

- In the medium to long term, government should research, develop and adopt a policy on Universal Health Coverage, which will guarantee citizens access to healthcare free at point of use. The government and donors must prioritise general government spending on health on its own resources or pooled with formal sector payroll taxes so that all people can access care in public health institutions by virtue of citizenship and / or residency.
Chapter 5 Fiscal Transparency, Accountability and Participation in Swaziland

5.1 Why fiscal transparency, accountability and participation matters

Critical to child rights governance is that child rights cannot be fully enjoyed without effective, transparent and accountable governance mechanisms across all institutional actors working with and for children. Central to a rights-based approach is the state’s role as ‘duty-bearer’, with the responsibility to uphold the human rights of all people within its territory. Citizens have an important role to play in holding states and the international community accountable for their performance in this respect. Through transparent access to information, different branches of the government, citizens and other institutional actors can measure the government’s performance and guard against possible misuse of powers and resources. This serves to achieve accountability. Transparency and accountability thus serve as a check against mismanagement and corruption on the part of public officials and are pillars of sound governance, which is crucial to winning and maintaining the confidence of citizens, investors and the international community.

The central player and duty bearer in issues of transparency, accountability and participation is the state, all other players including civil society organizations are an extension of the state in making sure that these child rights are enjoyed. According to Article 19 of the Universal Declaration of Human Rights, “Everyone has the right to…. receive and impart information and ideas through any media and regardless of frontiers” and is the recognized basis upon which state parties should establish national level policies and legislation to allow citizens access to information. Since the inception of this declaration, access to information has been seen as a basic human right as well as an important leverage right, enabling citizens to secure all other fundamental rights.

Generally, government accountability is facilitated by approaches and practices that ensure the activities and outputs of the government in question meet the intended goals and standards. The concepts of transparency and accountability go hand in hand, since without adequate information on performance and outputs it is difficult to hold governments to account for their actions. Giving account for use of public resources and policy decisions is integral in making sure that citizens have enough ammunition to demand fundamental rights from their governments. Fiscal transparency is defined as “the public availability of information.” There are four main dimensions of fiscal transparency identified by GIFT that underpin compliance of countries to norms: public availability of information (disclosure, dissemination), clarity of roles, accountability and opportunities for public participation (GIFT, 2011).

5.2 Swaziland Country Situation

In conducting the analysis the dimensions of transparency were the central point of data collection, thus informed the questions and discussions. For purposes of analysis and benchmarks the study utilized the High Level Principles on Fiscal Transparency, Accountability and Participation (see Box 4.2.1) adapted from Global Initiative on Fiscal Transparency (GIFT) of 2011, as a yardstick to assess the performance of the country in these areas where children
rights governance is concerned. The following sections of the chapter outline and summarize thoughts generated from participants, which includes civil society organizations, United Nations, Department of Social Welfare (DSW), National Children Coordination Unit (NCCU), Ministry of Finance (MoF), and Ministry of Education, representatives.

**Box 5.2.1: High Level Principles on Fiscal Transparency, Accountability and Participation**

<table>
<thead>
<tr>
<th>Clarity of Roles</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Fiscal policy roles and responsibilities should be well defined between the three branches of government (the legislature, the executive and the judiciary), between national and each sub-national level of government, between the government sector and the rest of the public sector, and within the government itself.</td>
</tr>
</tbody>
</table>

**Disclosure of Information**

| 2. Governments should set clear and measurable objectives, goals and targets for fiscal policies, regularly report progress against them, and explain deviations from plans. This should apply to all levels of fiscal policy – aggregate, sector, agency, program or output, and front-line service delivery. |
| 3. The public should be presented with comprehensive, regular and timely information on past, present, forecast, and projected fiscal activities and public assets and liabilities. |
| 4. Governments should specify the quantities and qualities of the goods and services they are producing with the resources entrusted to them, and comprehensively disclose the anticipated and actual social, economic and environmental outcomes and impacts of fiscal policies. |
| 5. The presentation of fiscal information in budgets, fiscal reports, financial statements, and National Accounts, and the definition of the elements in those documents, should meet internationally-recognized standards, and should be consistent across the different types of reports. Specific mechanisms are required to provide assurances of the integrity and quality of fiscal data and information. |

**Access to Information and Public Participation**

| 6. Government should take specific measures to make fiscal data and information easily accessible to the general public, and to facilitate public participation in discussion and debate over the formulation and implementation of fiscal policies. |
| 7. Everyone has the right to seek, receive and impart information on publicly-owned resources. This right is also essential for the protection of other human rights. Access to fiscal information should be viewed as forming part of a "social contract" in which citizens agree to submit to compulsory taxation and to entrust authority over public resources to governments. Citizens have a responsibility to exercise their right to information to hold governments to account. |
| 8. Everyone has the right, and should have the opportunity without unreasonable restrictions, to take part in the conduct of public affairs relating to the formulation and implementation of fiscal policies, either directly or through elected representatives. Citizens have a responsibility to exercise that right by engaging in discussion with elected and other public officials who enjoy entrusted authority. |
| 9. There should be a legal obligation to fiscal transparency. The law should |
In as much as the analysis reviewed the progress made and the achievements of the country, it did not overlook gaps and areas of improvements. In light of the established high-level principles, international best practices, benchmarks, norms and standards, a number of government officials were asked about these measures in both central agencies and line ministries. Also asked were stakeholders in the form of civil society organisations working with children and the responses received presented a mixed picture. Therefore, conclusions and recommendations are made based on a review of progress made and gaps identified.

It is evident from interviews with different stakeholders that Swaziland has not done much to foster a culture of fiscal transparency where child rights governance is concerned. There is evidence of fragmented approaches that lack systematic coordination meant to address elements of child rights governance. Though the country is party to the CRC there has not been an equivalent effort and political commitment from the state towards the same. The principle of clarity of roles demands that fiscal policy roles and responsibilities should be well defined between the three branches of government (the legislature, the executive and the judiciary), between national and each sub-national level of government, between the government sector and the rest of the public sector, and within the government itself.

What transpires on the ground is outlined in the key findings below

5.2.2 Key findings
To integrate these principles into the country’s mode of operation Swaziland government through the MoF is in the process of creating a legal framework through the Public Finance Management Bill of 2013, seeks to establish systems that facilitate an environment that seeks to give citizens power to make demands on government to incorporate into her machinery more transparent, accountable and participatory mechanisms. The Public Finance Management Bill (2013) has been proposed and it is in the pipeline for discussion in the new parliament.

5.2.2.1 Government
From a government standpoint especially in the Ministry of Finance there was no evidence of concrete deliverables concerning what has been done but majority of the respondents mentioned prospective plans and proposals yet to be tested, and some of those that were under review and yet to be tested;

- The Public Finance Management Bill (2013) - The Ministry of Finance (MoF) has recently released the Public Finance Management Bill (2013), which seeks to introduce in part the principles of transparency, accountability and participation as an integral part of running more democratic processes within government. This Bill turned into law will create a conducive environment for citizens to engage and interact with government
systems in a bid to enforce good governance practices. The Bill presents an opportunity that needs to explored and tested as it opens space to hold government responsible for their processes. The following box (Box 3.3.1) outlines basic principles guiding the Public Finance Bill (2013).

- **Box 5.2.2.1: Basic Principles Guiding the Public Finance Management Bill (2013)**

  - All fiscal policy and commitments should be conducted in a way that delivers a sustainable fiscal position conducive for growth that is fair between generations.
  - All activities governing public resources should comply with good practices based on international standards.
  - The Ministry of Finance should have oversight of all fiscal risks and liabilities.
  - The political and administrative heads of each institution should be responsible for the performance of their institutions.
  - Each public entity, and Government as a whole, should be efficient and focus on its core business and not a wider set of objectives that could be better provided by another non-public institution.
  - Political roles should be restricted to legitimate areas and monitored wherever such roles may lead to an unnecessary cost to the Government.
  - All information should be made public unless there is good case in the public interest to with-hold it.
  - The accountability of each government institution should be enhanced by stating at the beginning of the year what activities will be taken with the budget and assessing performance against those claims at the end of the year.
  - Public money is the responsibility of all public officials and mismanagement or abuse of public assets or funds should be punished.

- Source: Public Finance Management Bill (2013)

### 5.3.1 Transparency

The Government through the Ministry of Finance (MoF), reported that they were in the process of improving budget participation by citizens. This will be done by issuing a simplified, less technical budget policy paper, through the use of local newspapers so that citizens can contribute to the budget process. Stakeholders interviewed stated that, policy papers published in the past have not been user-friendly to the public due to the utilization of technical language making it difficult for citizens to participate. Though the process was always meant to foster a transparent approach to conducting business, but it always had a very low or no response from the public. Simplified documents that will make it easier for the general public to participate are proposed in line with the citizen’s right of access to this information. In addition the Bill proposes
online publishing of all documents no longer than one week after they are tabled in Parliament, with the exception of the Budget documents which will need to be published online the same day as the Budget Speech is presented in Parliament, and the Fiscal Framework Paper which will be published online a week before being tabled in Parliament.

As part of the process of budget transparency the MoF is in the process of reviewing the Medium Term Expenditure Framework (MTEF), which is a three-year budget-rolling plan. The review will include improving user-friendliness of the document. In April 2013, the Prime Minister’s office published the **e-Government Strategy for the Kingdom of Swaziland: 2013 to 2017**. The strategy outlines how the government intends to use information and communication technology such as the Internet and mobile telecommunications to fast track the generation and dissemination of information on government operations. The Swaziland Public Finance Management Bill (2013) proposes a fiscal framework paper, which from 2016/17 fiscal year the Government will be required to present to Parliament a three-year economic and fiscal forecasts prior to the start of the Budget process (no later than 30 September of each financial year) and must publish the paper online at least one week before it is tabled in Parliament. As part of the fiscal framework paper, the Government would need to adopt a medium-term expenditure framework. This would effectively make the Budget Outlook Paper public whereas in the past, it was for internal use only.

For accountability purposes the MoF proposes through the Public Finance Management Bill (2013) to itemize head line items to facilitate the budget line tracking. This means in the near future it will be easy to know how investment on children in health, education, etc. Itemization of the budget will lead to the simplification of the budget book, by itemizing the heads within the budget.

To integrate the culture of accountability within government the MoF is proposing mainstreaming of Monitoring and Evaluation, Grant Management mechanism and Government Debt Management processes. The Public Accounts Committee (PAC) is a long standing accountability forum – and it is critical to note that it is open to public participation through members of the public participating through portfolio committees of each ministry.

During the course of conducting this study, a number of government departments were approached with a view to interview them as key informants. In most instances, the interviews were granted and questions were answered frankly by the officials to the extent of all information at their disposal. A number of government documents were requested and were received free of charge. This is an indicator of openness on the part of the government and this spirit is commendable. However, Save the Children being a longstanding development partner of the government, it is not clear whether the same reception would have been granted to an ordinary citizen desirous of exercising their right to access information. This right of access to information needs to be established in law.

### 5.3.2 Participation

**Public participation** – respondents decried the fact that in the context of Swaziland it is common for the government and the state to use a piecemeal approach, thus making the whole
exercise of representing people’s views insignificant. When there is some form of consultation in disguise to foster participation and to gather the views and opinions of citizens they are largely censored, thus the process loses its real meaning and intention. One of the respondents from civil society in his description of participation said, “The concept of participation requires meaningfulness rather than mere participation and numbers. Meaningful participation as a concept does not work if the views of participants will not be incorporated into the decision making process or neither informs the decisions taken. Citizens also have a right to know how their input affected the decision concerned.”

A people’s parliament “sibaya” was convened in July 2012 to avert amongst others a crisis in the education sector where teachers had been engaged in protest action for over a month and to adopt a number of international protocols. Especially with respect to the protocols, no prior information was provided on which protocols were to be adopted, no summary versions of the protocols in simple English and the local language were provided to participants also no process was applied to collate and aggregate dissenting views from certain elements of the protocols. These constrain other than advance the rights of citizens to participate meaningfully in policy processes.

During the review and discussions on the PFM Bill (2013) it was discovered that it does not clearly propose how the process of participation will unfold and in the event it is passed as an Act of Parliament the High Level Principles and the Spectrum of Public Participation in Fiscal Policy will be used to test its effectiveness. Interviews with a number of role players revealed that opening government processes to public participation was not a high priority, especially where it concerns how government revenues are going to be raised and spent. Value added tax was introduced during the period under review and there was no broad consultation, except within government and business mostly about its operational implications. As a result this tax was implemented without popular endorsement and because of lack of capacity on the part of civil society, efforts were only towards rejecting its implementation whilst wins could have been achieved by concentrating on the first and second schedules dealing with exempt supplies (under Section 19) and zero rated supplies (under Section 24(4)) respectively. We recommend here the re-opening of consultations on particularly these two schedules in order to make them child friendly and to orient government revenue policies to be pro-poor, fair and respect the rights of children and indigent households.

Public Consultations – During the interview with the Planning and Budgeting Committee representative, she said in the context of Swaziland the bone of contention becomes “whether consultations should be conducted for government purposes, and when conducted are they meaningful, and can they be relied upon to inform processes?” The conclusion was that there is need for a structured deliberate approach to consultation, which will make sure that it remains a meaningful and add to the process of fiscal transparency and accountability.

The Ministry of Finance (MoF) believes that public consultations should take place with key stakeholders whom in this context the child would be a critical stakeholder through a representation process. This is meant to inculcate a culture of responsible participation process where government will be held accountable for their promises. A bottom up approach is critical
to make sure that needs of children are represented in their entity. The involvement of civil society organizations and multilateral agencies in providing funding and technical assistance provides an area of leverage, to call them to account for opportunities they have had to promote democratic participation in line with best practices. These proposed changes will enhance public consultation, opinion and increase access to the otherwise scarce information from the government machinery.

From a civil society perspective, the general view was that there is need for “meaningful participation which not only demands involvement at consultation level but that involves a process of checks and balances that will allow children to be involved from inception through the whole cycle of the budget and further monitor how these resources are utilized.” Participation demands that there be clear processes of accountability.

Coordination - In view of the requirements of Convention on the Right of the Child, discussions were held with respondents from NCCU and triangulated with data from the Department of Social Welfare (DSW). Key findings hinged on issues of legal frameworks, monitoring and evaluation of child rights governance and other issues relating to children and the inculcation of accountability systems respondents;

- Discussions with NCCU in particular revealed a great need for a legal framework that will compel all partners working with children in the country to report to them for coordination purposes. This was said in view of the requirement from CRC, though great strides have been made in working collaboratively but it is still done from a point of personal understanding than partners being compelled to share information with the coordinating body. NCCU feels that a legal framework will give the NCCU the authority to demand data on who is doing what and where from all partners working with children.

- NCCU felt what was critical to the issue of accountability a licensing procedure for all partners working with children in child rights governance taking into consideration the ethical practices of working with children. The feeling was that they are better positioned to play the oversight role in making sure that partners do account. Thus the licensing procedure is meant to facilitate a renewal of license to practice for those organizations in compliance and the power to suspend or revoke when partners don’t comply with requirements for them to be licensed.

- Coordination Functions - There was a bone of contention between DSW and NCCU on the issue of NCCU being a department under the DPM’s Office, especially where it concerned NCCU reporting to the DSW. The respondent from NCCU stated that “a culture of accountability demands separation of coordination from implementation – for issues of children to be given the seriousness they deserve – there is need for a proper definition of what coordination is – and also integrating the same function into the government machinery.” Thus the general feeling was that there wouldn’t be a proper coordination from DSW since they are also implementing some activities related to children, i.e. adoption, alternative care etc. therefore, making it difficult for them to be a referee and a player at the same time. The partners (DSW & NCCU) agreed that all activities for children within the government machinery converge at NCCU as the
designated coordination body; therefore, government and development partners need to consider a reviewed definition of children coordination.

- Lack of proper coordination was seen as one ills that encourages a lack of transparency and accountability – making it difficult for ease of access to information and awareness of who is doing what and where. The NCCU felt strongly that for purposes of accountability it becomes important that as much as civil society demands accountability, transparency and participation from government, they also need to disclose to NCCU for the maximization of their coordination function – this included, declaration of finances and or resources received for technical support so that they could support gaps.

- Weak Monitoring and Evaluation Systems for Child Rights Governance - All partners within and outside government (MoE, MoF, DSW, MEPD, and NCCU, CANGO) agreed that Monitoring and Evaluation was one of their critical challenges as a nation. The weak M&E system makes it difficult to facilitate a culture of fiscal transparency and accountability. The need for the development of M&E System that has a functional M&E framework was viewed as long overdue, thus making it difficult for organizations working with children to report for the benefit of aligning the country to the CRC requirements.

**Representation of Children** – the study confirmed a weak representation of children and their issues within the spectrum of government, civil society though also demonstrated a very unsystematic approach to issue of representation of children. As the adage goes “nothing for us without us”, respondents spoke of efforts being made to advance properly integrated representation of children in the future. Otherwise, what currently suffices is representation of children through civil society organizations, government departments and some ministries, school system, UN system, etc. According to civil society respondents, representation of children’s views are diluted and censored because of the second or third party sources rather than direct consultation with them.

As earlier noted in the study, the country through the recommendation from the CRC set up a children coordination wing within the government system by establishing the National Child Coordination Unit (NCCU). The role of the NCCU is to coordinate all activities and or interventions dedicated to responding to issues of children in the country cutting across the public, private, and civil society’s sphere. The unit is housed under the Deputy Prime Minister Office (DPMO).

Due to a lack of legal framework that gives NCCU power to extend its oversight beyond government departments tends to defeat its coordination function as other partners working with children are not obliged to report to the unit thus making it difficult to call them to order or even make demands as it were.

**5.3.3 Accountability**

The study when interrogating the issue of accountability it come up with a similar conclusions based on prospective changes proposed by the constitution and its commissions, PFM (2013),
Public Accounts Committee (PAC) and such similar structures. In this section we discuss the whole gambit of accountability information, accountability institutions, and accountability mechanisms, e.t.c. We are required therefore to make an opinion under this section about mechanisms put in place to produce accountability information. In the absence of a robust culture and capacity for monitoring and evaluation of all key government programmes charged with advancing child rights, such a standard cannot be achieved. In interviews with the Department of Social Welfare, the Ministry of Education and numerous other agencies, a desire to put these in place was expressed. In a number of instances, intergovernmental agencies working with government departments had received request and provided resources for same. However, governance in the twenty first century is more complex than ever before and as such; to achieve the standard required a system wide approach is required.

In terms of accountability institutions, we are required to form a view about the strength of oversight institutions. These are institution of the kind that posit a system of “checks” and “balances” on the discharge of a public mandate in the public interest rather than the private interests of those discharging the mandate on behalf of the collective. We check the operational effectiveness of these institutions, how they play the role of scrutiny and oversight over the executive, we check their capacity and independence in both the financial and legal sense. We also check the degree to which these institutions are open to the general public on whose behalf they discharge this mandate. These institutions include, but are not limited to Parliament and its standing committees such as the Public Accounts Committee, the Auditor General’s Office, the Human Rights and Integrity Commission, the Anti-Corruption Commission, the Media, e.t.c.

A number of untested accusations pertaining to the independence of the Anti-Corruption Commission have been thrown around. The Ministry of Finance however asserted during interviews that in order to facilitate autonomy, speedy and unhindered operations of the commission, a special fund/account has been created where only the Principal Secretary in the Justice Minister needs to approve expenditure other than the known government bureaucracy. Numerous attempts to secure an interview with the staff of the commission were unsuccessful over a two-month period, leading to a preliminary conclusion that they do not see dealing with civil society organisations as a high priority.

High profile cases have been progressed to litigation by the ACC, however the commission has not been that visible in public education campaigns, except for few radio and television programmes as well as appearance in public functions. They need to do more because uprooting corruption requires a total change of mindset on the part of the general Swazi populace, which means that the values of honesty, integrity and fairness should be emphasised from the earliest stages of a child’s development. Here we are talking about some necessary changes to the curriculum to a values based approach, we are talking road shows and outreach programmes to rural areas as well, we are talking bill boards, pamphlets and other paraphernalia that consistently communicate the message. The conspicuous absence of the ACC in cyber space and all social media platforms is a cause for concern. Not only that, whistle blower protection mechanisms have not been refined and widely communicated, there is no toll free line where people can report without being identified or paying the costs and this could be easily put in place through an independent private provider.
Among the key constitutional bodies that are supposed to play a prominent role in child rights governance and advancing the interests of Children in Swaziland is the Human Rights and Integrity Commission. The Commission has a broad mandate derived from Section 164 of the Swaziland Constitution, which is to investigate violations of fundamental human rights and take action. It has sweeping powers to call and compel anyone to appear before the Commission and also has powers to subpoena and require the production of any documentation that can cast some light into the manner of the violation. The Commission has been in place since 2009 but it is yet to be operational. In interviews with the Commission, it was clear that the absence of enabling legislation was a major setback and that the process of putting it in place was frustrating and long and outside the control of the Commission. The commission does not have a secretariat and staff to assist it in carrying out its functions. The commission is not well resourced from a budgeting point of view and most activities thus far have been donor driven. As a result, there are no established mechanisms in place for he receipt and processing of complaints and the Commission has not been able to implement the public administration side of their mandate relevant to this study. A number of stakeholders interviewed decried the absence of political will to operationalize the Commission.

In reviewing the PFM Bill much as it defines proposed mechanisms of accountability to the general citizenry, but it not clear how children in the premise of Child Rights Governance and how these institutions through their different platforms account and become transparent to the people they represent, especially children. There is need for citizens to be empowered to demand the information and government and her partners make it available, packaged in a way that it can be easily understood and used. Organizations, for example, Save the Children who work with children directly, can leverage on their relationships and their proximity to the children to meaningfully represent their needs, whilst at the same time being able to feed data to NCCU.

From an NCCU perspective there is a lack of a strong Monitoring and Evaluation framework formulated through a participatory process that is meant to make sure that there is a strong sharing of information. NCCU believes that this could help them in understanding who is where and who is doing what, so that they can perform their role of coordination, whilst complementing it with vigilant resource mobilization mechanism informed by a resource gap analysis. As it stands there is no obligation for partners, especially, the non-governmental organization to share information regarding children related resources received internally or externally. Those organizations that decide to share are working on a gentleman’s agreement not on an obligation basis.

5.4 Recommendations

The progress made by the country is applauded, but it is important that following recommendations be made to make sure that progress translates into meaningful and sustainable implementation of the Child Rights Governance agenda.

- **Clarity of Roles between Department of Social Welfare and NCCU** – The study identified a lack of clarity of roles between Department of Social Welfare and NCCU where child rights governance is concerned. The High Level Principles state that there
should be oversight institutions established which is what the NCCU was designed for, to provide oversight and coordination of child related issues in the country. Currently, the role confusion undermines their role as a coordinator. A culture of accountability demands a separation of coordination from implementation, thus the recommendation of clarity of roles between DSW and NCCU. The study recommends the role of NCCU be clarified in relation to other organizations working with children to align it to the High Level Principle of the establishment of oversight institutions.

- **Monitoring and Evaluation Systems** - there is need for the development of clear institutionalized M&E Systems that will lead to a standardization of data collection tools and mechanisms so that all partners working with and for children will report for the benefit of aligning the country to CRC requirements. M&E systems must cut across government and all partners coordinated by the NCCU, which is a body whose responsibility is to coordinate children’s issues, and therefore, has to be a depository of data. A fully fledged Monitoring and Evaluation function, is recommended also for the Prime Minister’s office which could be achieved by broadening the mandate, duties and functions of the e-Government directorate and ensuring that monitoring and evaluation is integrated into all government line ministries and departmental operations. This recommendation is in line with the spirit and letter of Article 56(2) of the Swaziland Constitution, which requires the Prime Minister to report to Parliament annually all the steps taken to ensure the realisation of the legal, political, social, and economic and foreign policy objectives articulated in the Directive Principles of State policy. This is mandatory.

- **Disclosure of information by government** – the proposed Public Finance Management Bill of 2013, if passed by into an Act of Parliament presents an opportunity as stated in the same that “All information should be made public unless there is good case in the public interest to withhold it.” To foster accountability, transparency and participation of children in government processes that affect their lives there is need for deliberately packaged information to be presented in ways that will appeal to them especially through the use of social media platforms i.e. Twitter, Facebook etc. The High Level Principles also affirm this recommendation that the public should be presented with comprehensive, regular and timely information on past, present, forecast, and projected fiscal activities and public assets and liabilities.

  Disclosure by government presents an opportunity for civil society organizations that work with children to have access to information that will inform their advocacy campaigns. In a situation where the government machinery is not swift enough to engage children, they as representative groups of children will be in a position to support their interventions with factual information.

- **Public Consultation** – The argument that public consultation requires resources that the country does not have was prevalent during the research process, but at the same time it is an important platform that needs to be created to foster evidence based interventions by government and its stakeholders. Public consultation hinges on the
“views on the relationship between government and its people and shapes their perceptions of public participation.” In the context of Swaziland that becomes the bone of contention on whether consultations should be conducted for government purposes, when conducted are they meaningful, and can they be relied upon to inform processes.

- The recommendation therefore, is that, government should facilitate meaningful participation of its citizenry and desist from using piecemeal tokenism approaches that end up not informing the decision making process. This means there needs to be checks and balances in place to make sure that public input is clearly represented and taken into consideration when decisions are made, in this case when decisions are made, they should not be made for the children but made with the children.

To foster participation, the government of Swaziland should also implement beyond the current measures a “citizen’s budget document”. This is a simple plain language abridged version of the budget proposal which could include mostly narrative explanations, killer facts and figures, graphics and colourful representations that could reach out to ordinary people so that they also can effectively participate in the budget process. Government should leverage the use of technology as well, including the use of social media, such as Facebook, Twitter, Mixit and others that are predominantly used by the youth in order to receive views, give and receive feedback about what works well and why. All these measures are relatively cost effective and will require minimal efforts and resources on the part of responsible Ministries. The measures around the citizen budgets and setting up social media channels could be implemented by recruiting a few interns from the local university specialising in multimedia studies for instance.

- **Public Finance Management Bill (2013) adoption**– The study recommends its adoption into law because the proposed provisions contained in the Bill seek to promote the values of transparency, accountability and public participation. It is, therefore, recommended that the Bill be promulgated into law. It will promote the appropriate use of public funds.

- **Promulgation of Freedom of Information legislation**- the government must table before parliament for adoption a Freedom of Information (FoI) bill, in line with Article 19 of the International Covenant on Civil and Political Rights, which not only guarantees the freedoms of opinions and expression, but also establishes the right to information as a human right. This will allow information held by public bodies to be made available on request to the public after following the necessary administrative channels.

- **Publication of key budget documents**-Key to fostering a transparent, accountable and an environment that allows citizens participation the study recommends the adoption of publishing the following documents in line with international budget norms;
  - Budget Policy Paper – in a simplified and user-friendly language published in local newspapers, and online through government website.
- Fiscal Framework Paper – as stated in the Bill to be published online a week before being tabled in parliament

- Budget Outlook Paper – the study embraces as proposed by the Bill that the paper is made public instead of it being for internal use, it is recommended that it be published for purposes of citizen or public scrutiny.

- **Accountability** – the study recommends a deliberate institutionalization of measures of accountability in all areas especially in issues of child rights governance. The Public Finance Management Bill (2013) proposes to itemize head line items in the budget to facilitate the budget line tracking for ease knowing how much has been invested on child health, education, etc. Itemization of the budget will lead to the simplification of the budget book, by itemizing the heads within the budget.

- **Advocacy** - The study recommends that all civil society organizations and institutions working with children review and scrutinize the Public Finance Management Bill (2013), lobby and advocate for its adoption into law. The review process will help civil society to familiarize itself with the tenets of the Bill and make the necessary recommendations to the Ministry of Finance for purposes of integrating child friendly transparency, accountable and participatory processes.
Annex 1. References


DPMO (2012) Standards for Quality Service Delivery to Orphans and Vulnerable Children


International Budget Partnership, Centre on Budget and Policy Priorities, Washington online at www.internationalbudget.org and www.openbudgetindex.org


Regional Study of Children Participation in Southern Africa: South Africa, Swaziland and Zambia* a report compiled by Save the Children
https://www.google.co.za/#q=child+participation+in+south+africa (accessed 1/10/2013)


School Bursaries for OVC, Swaziland, REBA Case Study Brief Number 15, November 2007 available online at http://www.k4health.org/sites/default/files/OVCSchoolBursaries.pdf


## Annex 2: Schedule of people interviewed

<table>
<thead>
<tr>
<th>Interviewees</th>
<th>Organisation</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mr. Emmanuel Ndlangamandla, and Mr. Nkosingiphile Sihlongonyane, Executive</td>
<td>Coordinating Assembly of Non-Governmental Organisations</td>
<td>30 August 2013</td>
</tr>
<tr>
<td>Director and Programme Officer respectively</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Adv. Sabelo Masuku and Dr. Phumelele Thwala, Acting Chairman and Deputy</td>
<td>Swaziland Human Rights and Integrity Commission</td>
<td>29 August 2013</td>
</tr>
<tr>
<td>Commissioner respectively</td>
<td></td>
<td></td>
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<tr>
<td>Ms. Senelisiwe Ntshangase, Program</td>
<td>UNDP</td>
<td>27 August 2013</td>
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<tr>
<td>Analyst-HIV &amp; Governance</td>
<td></td>
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<tr>
<td>Ms. Phumzile Dlamini, Programme</td>
<td>UNFPA</td>
<td>26 August 2013</td>
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<tr>
<td>Analyst-Gender</td>
<td></td>
<td></td>
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<tr>
<td>Ms. Linda Le Blanc</td>
<td>UNICEF</td>
<td>23 September 2013</td>
</tr>
<tr>
<td>Mr. Majahenkhaba Dlamini, Attorney General</td>
<td>Attorney General’s Office</td>
<td>27 August 2013</td>
</tr>
<tr>
<td>Mr. Moses Dlamini, Deputy Director</td>
<td>Department of Social Welfare, DPM’s Office</td>
<td>27 August 2013</td>
</tr>
<tr>
<td>Social Welfare</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ms. Sibonelo Mdluli</td>
<td>World Vision Swaziland</td>
<td>28 August 2013</td>
</tr>
<tr>
<td>Dr. Sibongile Mntsali, Director of Education</td>
<td>Ministry of Education and Training</td>
<td>28 August 2013</td>
</tr>
<tr>
<td>Ms Sizakele Dlamini and Mr Nkululeko Horace Dlamini, Acting Principal</td>
<td>Ministry of Finance</td>
<td>29 August 2013</td>
</tr>
<tr>
<td>Secretary and Acting Director Budget respectively</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mphumelelo Simelane</td>
<td>National Children’s Coordinating Unit (NCCU), DPM’s Office</td>
<td>20 September 2013</td>
</tr>
</tbody>
</table>
# Annex 3: Swaziland Budget Cycle

<table>
<thead>
<tr>
<th>#</th>
<th>Activity</th>
<th>Calendar month</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Budget Committee meets to review budget timetable and policies, finalises</td>
<td>June</td>
</tr>
<tr>
<td></td>
<td>budget sectors using IMF functional classification and endorses timetable</td>
<td></td>
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<tr>
<td></td>
<td>for the year</td>
<td></td>
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<tr>
<td>2</td>
<td>Finalisation of Economic Classification</td>
<td>July</td>
</tr>
<tr>
<td>3</td>
<td>Macroeconomic framework preparation</td>
<td>July</td>
</tr>
<tr>
<td>4</td>
<td>Drafting of BOP by Budget Committee</td>
<td>August</td>
</tr>
<tr>
<td>5</td>
<td>Presentation of BOP to Cabinet</td>
<td>August</td>
</tr>
<tr>
<td>6</td>
<td>Ministry of Finance issues budget call circular to all</td>
<td>September</td>
</tr>
<tr>
<td></td>
<td>ministries with ceilings and draft budgets</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>Line ministries prepare draft budgets</td>
<td>October</td>
</tr>
<tr>
<td>8</td>
<td>Consultations between line ministries and sectoral officers from</td>
<td>October</td>
</tr>
<tr>
<td></td>
<td>central agencies take place</td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>Budget Committee meets with line ministries to discuss budget submissions</td>
<td>November</td>
</tr>
<tr>
<td>10</td>
<td>Budget Committee reviews submissions from line</td>
<td>December</td>
</tr>
<tr>
<td></td>
<td>ministries</td>
<td></td>
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<tr>
<td>11</td>
<td>Budget Committee discusses resource distribution</td>
<td>January</td>
</tr>
<tr>
<td></td>
<td>(in line BOP &amp; additional requirements), prioritises requests and</td>
<td></td>
</tr>
<tr>
<td></td>
<td>summarises data</td>
<td></td>
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<tr>
<td>12</td>
<td>Presentation of draft budget to Minister of Finance</td>
<td>January</td>
</tr>
<tr>
<td>13</td>
<td>Cabinet meets to approve proposed budget</td>
<td>January</td>
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<tr>
<td>14</td>
<td>Drafting of budget speech</td>
<td>February</td>
</tr>
<tr>
<td></td>
<td>Event</td>
<td>Date</td>
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<td>----------------------------------------------------------------------</td>
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<tr>
<td>15</td>
<td>Budget Speech, Estimates Book, Establishment Register, Audit &amp; Treasury reports printed (siSwati budget speech printed)</td>
<td>February</td>
</tr>
<tr>
<td>16</td>
<td>Minister of Finance presents Budget to Parliament</td>
<td>February</td>
</tr>
<tr>
<td>17</td>
<td>Parliament debates budget</td>
<td>March</td>
</tr>
<tr>
<td>18</td>
<td>Royal assent, then Minister of Finance issues treasury warrants to incur expenditure</td>
<td>March - April</td>
</tr>
</tbody>
</table>

*Source: Ministry of Finance, Government of Swaziland*