



**Convention on the Elimination  
of All Forms of Discrimination  
against Women**

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**Committee on the Elimination of Discrimination  
against Women**

**Consideration of reports submitted by States parties under  
article 18 of the Convention on the Elimination of All Forms  
of Discrimination against Women**

**Combined initial and second periodic reports of States parties**

**Swaziland\***

[12 March 2012]

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

**DEPUTY PRIME MINISTER'S OFFICE GENDER  
COORDINATION AND FAMILY ISSUES UNIT**

**FIRST AND SECOND CEDAW REPORT FOR SWAZILAND**

## **PART I: BACKGROUND AND INTRODUCTION**

### **1. Background**

1.1 Swaziland acceded to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) on 26<sup>th</sup> March 2004. The accession attested to the country's recognition of discrimination against women as a problem and to Government's commitment to recognize and promote women's rights in the attainment of gender equality. On the same date, the country also acceded to the United Nations Covenant on Civil and Political Rights (ICCPR), United Nations Covenant on Economic, Social and Cultural Rights (ICESCR) as well as the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) which all contain the recognition and protection of important fundamental human rights also applicable to women.

1.2 The accession to CEDAW was followed just a year later when, in a historic development on 26<sup>th</sup> July 2005, the Constitution of the Kingdom of Swaziland was adopted. The Constitution's entrenchment of provisions pertaining to equality, non-discrimination and the rights and freedoms of women can be viewed as being part of the implementation of measures aimed at domesticating CEDAW and a further confirmation of Swaziland's commitment to the principles of equality and non-discrimination espoused and promoted by the Convention.

1.3 The Government of Swaziland acknowledges that according to Article 18 of the Convention, the country's initial State Party Report to the United Nations CEDAW Committee was due in 2005, a year after the accession to the Convention. However, mainly due to resource constraints, Government was unable to undertake the necessary activities that were required to compile the requisite report. Fortunately, with the assistance of UNDP and the European Commission (EC), a 3 year project from 2008 – 2010 has been commenced that seeks to strengthen the implementation of CEDAW in the country, including the submission of the requisite progress reports in this regard. It is this assistance that has supported Government to undertake the necessary work and in turn enabled Swaziland to submit the current progress report.

### **2. Compilation of Swaziland's Initial State Party Report**

2.1 The preparation of Swaziland's initial State Party Report commenced in May 2008 and it was originally envisaged that it would be completed by August 2008. However, a number of challenges were encountered in data collection and in a number of other planned activities for compilation of the report which have caused a delay in its completion as initially planned. In addition, important data for the report from national events such as the elections and the 2007 Census were not finalized as these were still ongoing during the preparation of the report. It was difficult to conclude the report without this important up-to-date information that had implications on the report's findings.

2.2 As part of compiling Swaziland's initial CEDAW report, a CEDAW Reporting Committee was established by the Gender Coordination Unit in May 2008. The Committee comprises of representatives from different Government Departments such as the Central Statistics Office, the Ministries of Agriculture, Economic Planning and Development, Education, Foreign Affairs and Trade, Health and Social Welfare, Justice and Constitutional Affairs, Public Service and Information, and Regional Development and Youth Affairs. The Committee also included representation from a number of non-governmental organisations (NGOs) such as the Council of Swaziland Churches (CSC),

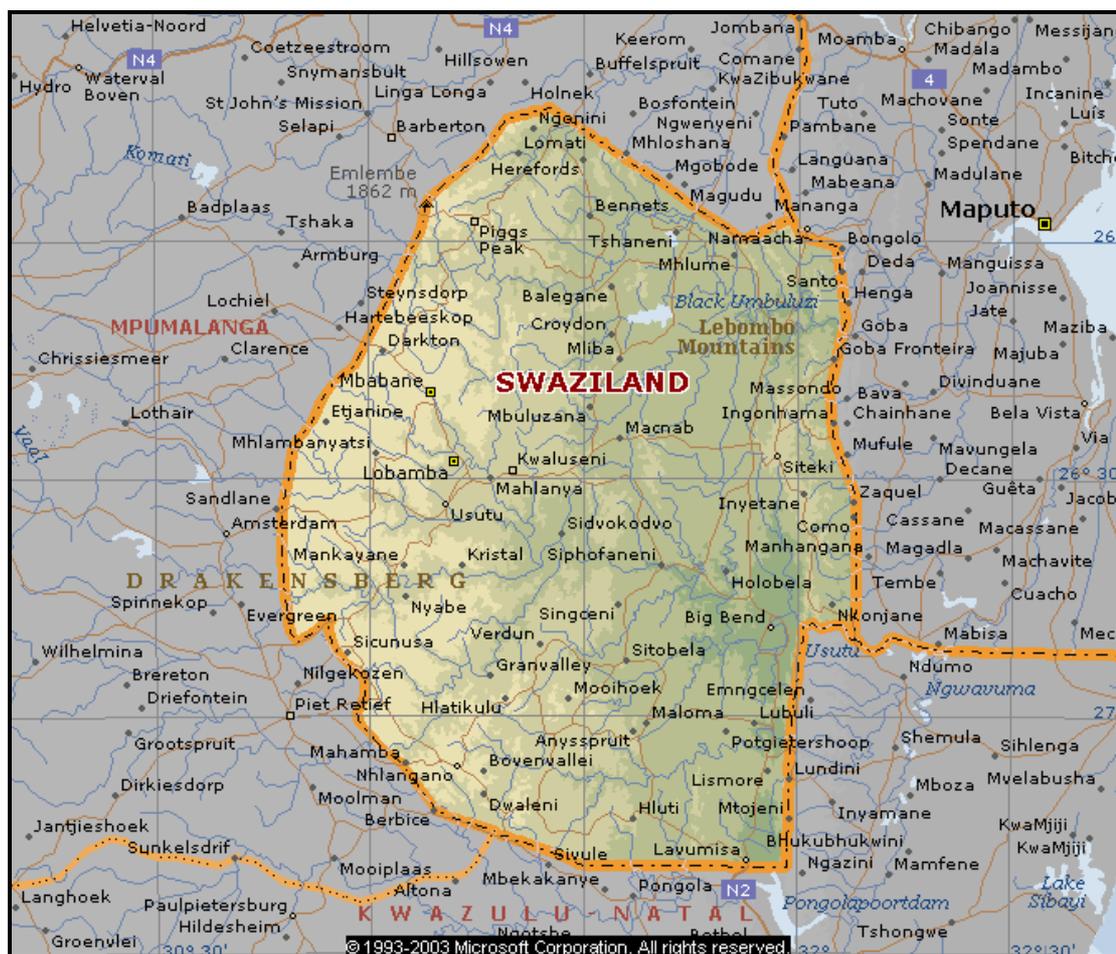
Federation of Organizations of People with Disabilities in Swaziland (FODSWA), Lutheran Development Service (LDS) and Women and Law in Southern Africa (WLSA). Support in the committee was also received from development agencies: the United Nations Development Programme (UNDP), United Nations Population Fund (UNFPA) and United Nations Children's Fund (UNICEF).

2.3 As part of the preparation to write the report, the Swaziland CEDAW Reporting Committee underwent training on CEDAW and its implications as well as on the UNIFEM model for the multi-sectoral implementation of the Convention. The Committee then formulated a work plan according to which the information required was to be gathered, analyzed and consolidated into this report. In this regard, a 15-member CEDAW Report Drafting Task Force was established from amongst the members of the Reporting Committee to undertake the necessary stakeholder consultations, data collection, data analysis and the drafting of the report. The Principal Secretaries of the various Government Ministries were briefed on the process by the Gender Coordination Unit prior to the commencement of the drafting process.

2.4 The CEDAW Report Drafting Task Force undertook a number of activities aimed at informing the preparation of this report. These included hosting a stakeholders' meeting to sensitize stakeholders on the process of drafting the report and to request their support of the process by availing the required information insofar as their mandates and programmes are related to the various Articles of CEDAW. The Task Force also collected and analysed data which was from both primary and secondary sources. With respect to the latter, national and sectoral policies and strategies, legislation and research studies and other documentation was reviewed. Primary data was collected through a number of processes: a consultative meeting held with Chiefs from the different regions of the country; focus group discussions held with women of different age groups and social status; key informant interviews with officials from various Government Departments and Ministries as well as those in NGOs; and in-depth interviews with individual women on selected Articles of the Convention.

2.5 A draft report was prepared and presented to stakeholders and groups of women in the four regions whose comments were incorporated into the report as part of its finalization. Every effort was made for the preparation of the report to be as consultative as possible and as submitted it presents an accurate picture of the situation of women in Swaziland in relation to the elimination of discrimination against them and their rights to equality in all spheres of life, as well as the progress of the implementation of CEDAW in the country.

### 3.1 Country Background and Information



3.1.1 The Kingdom of Swaziland is situated in the south east of the Southern African region. It is the smallest country in the region with a total geographical area of 17 364 square kilometers and is one of two kingdoms in the region (the other one being the Kingdom of Lesotho). Swaziland is completely landlocked, surrounded on the north, west and south by the Republic of South Africa and bordered by Mozambique to the east. The formation of the Swazi nation may be dated back to the 19<sup>th</sup> century as amongst the outcomes of the violent *Mfecane* era which saw a number of wars and upheavals involving the peoples in Southern Africa. The Kingdom is a former British protectorate - having been declared as such in 1889 - and gained her independence on 6<sup>th</sup> September 1968 under the leadership of King Sobhuza II. The current monarch is King Mswati III who ascended to the throne in 1986 aged 21 after the demise of Sobhuza II in 1982.

3.1.2 While the society is essentially multi-racial, it is predominantly comprised of Africans, in particular members of the Swazi nation who consist of one ethnic group, the Swazi. The official languages are siSwati and English. While Section 23 of the Constitution provides for the right for the protection of freedom of conscience or religion, the majority of the population aligns itself with Christianity.

3.1.3 The country's land tenure system consists of Swazi Nation Land (SNL), Title Deed Land and Crown Land. SNL land is held in trust by the King on behalf of the Swazi Nation and is administered on the King's behalf by chiefs who are placed in charge of one or more demarcated areas. SNL land is not sold but is accessed through the traditional *kukhonta*

system through male family members who pledge allegiance to the chief of the areas. This land can be allocated for residential purposes as well as for subsistence farming. In recent years, small development and income generating activities by local community associations has been allowed. TDL and Crown land is privately owned sold on the open market and is used for a wide variety of purposes.

3.1.4 Women cannot traditionally access SNL independently and must do so through male relatives, whether they be fathers, uncles, brothers husband's or sons. Likewise unmarried males cannot singlehandedly access SNL. However, the National Constitution and the exigencies of contemporary times such as HIV and AIDS and the increase in female-headed households have seen chiefs in some areas relax the traditional rules and allocate land to women. These developments are in line with the removal of the existing discrimination against women as envisaged by the Constitution, which provides in Section 211(2) that, '*Save as may be required by the exigencies of any particular situation, a citizen of Swaziland, without regard to gender, shall have equal access to land for normal domestic purposes.*'

3.1.5. Access to TDL is also a challenge to women in Swaziland. Firstly, in as much there is no expressly articulated discrimination against women and the only requirement is money for purchasing the land, the majority of Swazi women do not have the resources required. This is exacerbated by the legal minority status of some married women, who, even where eligible to apply for credit to purchase land, require their husband's consent to do so. Even where a woman is ultimately able to secure the husband's consent and the land is purchased, if she is married in community of property (as the majority of women married under civil rites are) her ownership and control over the property is virtually removed as the land cannot be registered in her name but is registered in her husband's name. However, efforts are currently underway to amend the laws in order to ensure that they do not deviate from the provisions of the national constitution.

## 3.2 The Population

3.2.1 The population census, which is conducted every 10 years, has revealed a high population growth rate in the past 4 decades since 1966 when the first census was conducted. According to the 2006 – 2007 Swaziland Demographic and Health Survey (DHS), 'in 1976 the population of Swaziland was about half a million. Two decades later in 1997, the population had almost doubled.'<sup>1</sup> The DHS attributes the high growth rate to high fertility, declining mortality levels and a rise in life expectancy at birth which was at 60 years in 1997. In as much as the fertility rate continues to be high, it has declined significantly. The advent of HIV and AIDS whose adult prevalence rate was 38.6 in 2004 has had adverse effects on all spheres of life in the country, increasing mortality and also impacting on life expectancy which was reported to have been reduced to 31.1 years in 2004.

3.2.2 According to the 2007 Population and Housing Census, Swaziland's current population is 1018 449 inhabitants, comprising 478 672 males and 539 777 females. In terms of the characteristics of the population, it is very young with 39.6% being below the age of 15 years, 50% being below the age of 20 years and less than 2% being 65 years or above.<sup>2</sup> Women have consistently been found to be more in number than men in the census

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<sup>1</sup> Government of Swaziland, Central Statistics Office, *Swaziland Demographic and Health Survey 2006-07*, May 2008

<sup>2</sup> Government of Swaziland, Central Statistics Office, *2007 Population and Housing Census Information Brochure*, 2008

figures and the 53% women recorded in the 2007 census is similar to that found by the 1986 and 1997 censuses.

3.2.3 The 2007 census data reveals that the urban-rural distribution of the population is 22.1% and 78.9% respectively as illustrated in the following table:

Area	Sex		Total
	Male	Female	
Urban	108 071	117 222	225 293
Rural	373 357	419 799	793 156
Total	481 428	537 021	1 018 449

### 3.3 System of Governance

3.3.1 Swaziland is a monarchy whose current head of State is King Mswati III. Swaziland gained independence under a Constitution that established Westminster-based system of a constitutional monarchy and bicameral parliament which also accommodated the operation of political parties. However, a number of political challenges that led to the view that multi-party politics were inappropriate for Swaziland in that political parties were ‘alien to the essentially democratic Swazi way of life and that they were the cause of discontent, conflict and strife,’<sup>3</sup> political parties were banned in 1973.

3.3.2 Currently, therefore, Swaziland is a no-party State with Section 79 of the Constitution describing the system of government for Swaziland as ‘*a democratic, participatory, constituency based system which emphasises devolution of state power from central government to tinkhundla areas (constituencies) and individual merit as a basis for election or appointment to public office.*’

3.3.3 The system and institutions of governance comprise the Executive, being the King and Cabinet. According to section 64 of the Constitution,

(1) *The executive authority of Swaziland vests in the King as Head of State and shall be exercised in accordance with the provisions of this Constitution.*

(3) *Subject to the provisions of this Constitution, the King may exercise the executive authority either directly or through the Cabinet or a Minister.*

3.3.4 The Constitution further confirms the existence and operation of Cabinet of Ministers and states in section 66, that ‘*There shall be a Cabinet which shall consist of the Prime Minister, Deputy Prime Minister and such number of Ministers as the King, after consultations with the Prime Minister, may deem necessary for the purpose of administering and executing the functions of the Government.*’

3.3.5 Until recently the Executive has been comprised of the following Government Ministries:

- i. Prime Minister’s Office;
- ii. Deputy Prime Minister’s Office;
- iii. Ministry of Agriculture and Cooperatives
- iv. Ministry of Economic Planning and Development;

<sup>3</sup> King’s Proclamation to the Nation, 1973 (commonly referred to as the “1973 Decree”)

- v. Ministry of Education;
- vi. Ministry of Enterprise and Employment;
- vii. Ministry of Finance;
- viii. Ministry of Foreign Affairs and Trade;
- ix. Ministry of Health and Social Welfare;
- x. Ministry of Home Affairs;
- xii. Ministry of Housing and Urban Development;
- xiii. Ministry of Justice and Constitutional Affairs;
- xiv. Ministry of Natural Resources and Energy;
- xv. Ministry of Public Service and Information
- xvi. Ministry of Public Works and Transport;
- xvii. Ministry of Tourism, Environment and Communication; and
- xviii. Ministry of Regional Development and Youth Affairs.

3.3.6 However, there has been a reconstitution of Government Ministries and following the 2008 election; incumbents have been appointed to the following Ministries:

- i. Prime Minister's Office
- ii. Deputy Prime Minister's Office
- iii. Ministry of Agriculture
- iv. Ministry of Commerce, Trade and Industry
- v. Ministry of Economic Planning and Development
- vi. Ministry of Education and Training
- vii. Ministry of Finance
- viii. Ministry of Foreign Affairs and International Relations
- ix. Ministry of Health
- x. Ministry of Home Affairs
- xi. Ministry of Information, Communications and Technology
- xii. Ministry of Justice and Constitutional Affairs
- xiii. Ministry of Labour and Social Security
- xiv. Ministry of Housing and Urban Development
- xv. Ministry of Natural Resources and Energy
- xvi. Ministry of Public Service
- xvii. Ministry of Public Works and Transport
- xviii. Ministry of Sports, Culture and Youth Affairs
- xix. Ministry of Tourism and Environmental Affairs
- xiv. Ministry of Tinkhundla Administration and Development
- xvv. Ministry of Defence

3.3.7 The Legislature is comprised of the King and Parliament as reaffirmed by the Constitution in Section 106 which states,

*‘Subject to the provisions of this Constitution –*

*(a) the supreme legislative authority of Swaziland vests in the King-in-Parliament;*

*(b) the King and Parliament may make laws for the peace, order and good government of Swaziland.’*

3.3.8 National elections take place every 5 years for parliamentarians, *tiNdvuna tetiNkhundla* and *Bucopho*. Members of Parliament are elected through *tiNkhundla* (constituencies) which are local constituency areas comprising a number of chiefdoms and the process entails nominations of candidates at chiefdom level followed by primary elections where the chiefdom candidates are chosen and who then compete at *iNkhundla(constituency)* level for membership of Parliament.

3.3.9 The recently held 2008 elections were governed by the 1992 Elections Order and Voter Registration Order as well as the Constitution according to which the country was divided into 55 *tiNkhundla (constituencies)*. Hence currently the composition of Parliament is 96 members: 66 in the House of Assembly, 55 being elected from the *tiNkhundla (constituencies)* and 10 appointed by the King with the Speaker of the House having been elected from outside the House and 30 members in Senate, 10 members nominated by the House of Assembly and 20 members appointed by the King.

3.3.10 3.3.12 In terms of the recently conducted elections, 7 women were elected at *iNkhundla* level into the House of Assembly while 2 women were appointed by the King. In Senate, of the 10 members nominated by members of the House, 5 are women in accordance with Section 94(2) of the Constitution, and of the King’s 20 appointees, 7 are women. As these numbers are below 30% of Parliament’s total women membership, it will be necessary to comply with the requirement of the four additional women as stipulated by the Constitution.

3.3.11 In addition to the use of traditional structures such as chiefdoms and *tiNkhundla (constituencies)* to populate Parliament, Chapter XIV of the Constitution enumerates traditional institutions to be the following:

- (a) iNgwenyama - the traditional head of the Swazi State;
- (b) iNdlovukazi - traditionally the mother of the iNgwenyama and the symbolic Grandmother of the Nation;
- (c) Ligunqa (Princes of the Realm) - princes of the realm, the paternal uncles and half-brothers of iNgwenyama who exercise functions of a sikhulu (chief) over some area;
- (d) Liqoqo - an advisory council whose members are appointed by iNgwenyama from the membership of bantfwabankhosi (emalangeni), tikhulu (chiefs) and persons who have distinguished themselves in the service of the Nation.
- (e) Sibaya - the highest policy and advisory council (Libandla) of the nation;
- (f) Tikhulu (Chiefs) - local head of one or more areas;
- (g) Umntfwanankhosi Lomkhulu (Senior Prince) - a paternal uncle of the King selected and appointed in accordance with Swazi law and custom.
- (h) Tindvuna (Royal Governors) - in charge of the regiments and the royal villages.

3.3.12 The structures of the traditional system are male dominated. Notwithstanding the advisory and supportive role played by the *iNdllovukazi* (Queen Mother) to the King, women did not play a significant leadership or decision-making roles within this system and it is only recently that women have been appointed into the King's advisory council and permitted to attend and speak at *Sibaya*, the meeting of the Swazi National Council (SNC) which was previously defined as comprising "all male adult Swazi citizens."

3.3.13 Administratively, the country is divided into four regions, namely, Hhohho, Manzini, Lubombo and Shiselweni. Each region is headed by a Regional Administrator appointed by the King. The policy framework for local government administration is provided for by the national Constitution and the 2005 Decentralisation Policy.

3.3.14 Currently, in terms of the latter, there are 2 City Councils, namely Mbabane and Manzini; 3 Town Councils namely, Nhlangano, Siteki, and Pigg's Peak, and 7 Town Boards, namely, Hlathikhulu, Matsapha, Ezulwini, Vuvulane, Lavumisa Ngwenya and Mankayane. These are administered by the Ministry of Housing and Urban Development. On the other hand, local administration through *tiNkhundla* (*constituencies*) is the predominant practice in the rural areas through *Bucopho* Committees (inner councils). These are 55 in number aligned to the different *tiNkhundla* constituency areas described above. Their regional distribution is that in the Hhohho region there are 14, Manzini 16, Lubombo 11 and 14 in Shiselweni. As each *iNkhundla* is constituted by a number of chiefdoms, a chiefdom is represented on the *iNkhundla*(*constituency*) Committee by a democratically elected (she or he serves for a period of five years) representative called *Bucopho*(*inner council*). Heading the *iNkhundla* (*constituency*) Committee is the *iNdvuna yeNkhundla* who is also elected on an *iNkhundla* (*constituency*) basis, meaning that each of the 55 *tiNkhundla* has its own *iNdvuna yeNkhundla*, who also holds the position for a period of five years. The *iNdvuna yeNkhundla* and the *Bucopho* constitute the *iNkhundla* Committee, which is the executive council of the *iNkhundla* (*constituency*) and responsible for local development. The local Member of Parliament sits on the *iNkhundla* Committee as an ex officio member.

### **3.4 Swaziland's Legal System**

3.4.1 The general law – comprises Roman-Dutch common law and statute and was incorporated as the general law of Swaziland in 1907. General law has jurisdiction over all persons within the territory of Swaziland.

3.4.2 The operation of the general law system was retained after independence in 1968 and continues to date, with the Constitution confirming its operation in Section 252(1) as follows: 'Subject to the provisions of this Constitution or any other written law, the principles and rules that formed, immediately before the 6th September, 1968 (Independence Day), the principles and rules of the Roman Dutch Common Law as applicable to Swaziland since 22nd February 1907 are confirmed and shall be applied and enforced as the common law of Swaziland except where and to the extent that those principles or rules are inconsistent with this Constitution or a statute.'

3.4.3 The customary law of Swaziland has been and continues to be unwritten but is said to comprise the traditions and customs of the Swazi people as practiced and passed on over the generations. Section 252(2) of the Constitution also recognizes the operation of Swazi customary law, providing, Subject to the provisions of this Constitution, the principles of Swazi customary law (Swazi law and custom) are hereby recognized and adopted and shall be applied and enforced as part of the law of Swaziland.

3.4.4 The Constitution unequivocally states in section 2 that, *'This Constitution is the supreme law of Swaziland and if any other law is inconsistent with this Constitution that other law shall, to the extent of the inconsistency, be void.'*

3.4.5 Section 268 further entrenches the supremacy of the Constitution in its relation to existing law. The section provides the following:

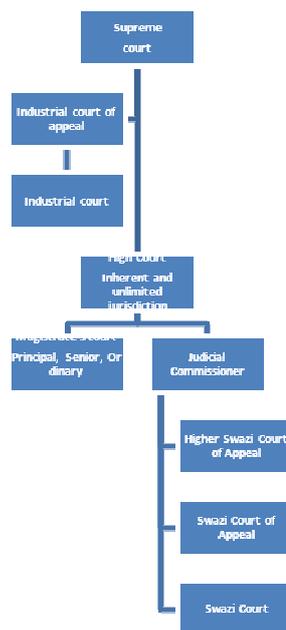
(1) *The existing law, after the commencement of this Constitution, shall as far as possible be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring it into conformity with this Constitution.*

(2) *For the purposes of this section, the expression "existing law" means the written and unwritten law including customary law of Swaziland as existing immediately before the commencement of this Constitution, including any Act of Parliament or subordinate legislation enacted or made before that date which is to come into force on or after that date.*

3.4.7 In as much as the Constitution has introduced some significant changes, in particular insofar as the rights of women are concerned, the challenge is that Government has been unable – due to lack of resources – to align existing legislation with the standards stipulated by the Constitution. There cannot be a vacuum in the law and currently, it is the existing law that is being relied upon, even where it does not comply with the Constitution. This situation has acted to the detriment of women seeking to assert their rights to equality and non-discrimination. Government recognizes and is concerned about this and is undertaking the necessary legislative reform. To date Government has been assisted by various development partners such as the Commonwealth and United Nations to audit current legislation for inconsistencies with the Constitution and draft the requisite amendments towards compliance. The current CEDAW implementation project being supported by the UNDP and the EU also seeks to ensure compliance of the law with the Convention.

3.4.8 The country's judiciary comprises the Supreme Court, High Court, Magistrates Courts (classified as Ordinary, Senior and Principal depending on their jurisdiction) and the Industrial Court. The judges of the superior courts (Supreme and High Courts) are appointed by the King on the advice of the Judicial Service Commission and Magistrates by the Commission. However, also in operation are the Swazi National Courts of various classes and Chiefs' Courts. The current court structure reflecting the general law and Swazi national courts is as follows:

## Court Structure



3.4.9 Access to justice within the dual legal and court systems is a challenge for the majority of the Swazi populace in general. This is due, in particular, to the high cost of engaging in legal process, a situation which is exacerbated by the lack of a national legal aid system through which the indigent can be provided with legal assistance and representation at minimal or no cost. *Pro deo* legal assistance is only provided by the state where a capital offence is involved. Women face a disproportionate challenge in accessing justice as they generally do not have the resources required to obtain legal representation. Records of pending and unresolved client cases of NGOs such as CSC, SWAGAA, WLSA and Save the Children Swaziland attest to the reality of women not being able to access justice because of its cost.

## 3.5 Swaziland's Economic Landscape

3.5.1 In terms of her economic profile, Swaziland's economy is small, open and highly dependent on South Africa. About 60 percent of exports are destined for South Africa and 80% imports originate there.<sup>4</sup> The economy is agro-based with sugar and maize, meat, dairy products, pineapples, citrus, avocados, granadillas, litchis and guavas being income-generating products for the country. In addition to the agricultural sectors, manufacturing and the textile industry have also been highly productive sectors whose performance was at some point spurred on by the African Growth and Opportunity Act (AGOA) initiative which provided an opportunity for greater trade to occur with the United States and which generated a lot of revenue for the country.

3.5.2 However, Swaziland's economic growth has gradually declined to an annual rate of about 1.5 from an average annual rate of 8.2 in the 1980s where in addition to the success of its export products, the political instability of neighbouring Mozambique and South Africa made Swaziland attractive to investors. However, the 1990s saw this latter advantage diminish mainly as a result of the positive political changes in Mozambique and

<sup>4</sup> World Bank, *An Assessment of the Investment Climate in Swaziland*, June 2007

South Africa which saw foreign direct investment been redirected away from Swaziland to those countries because of the sizes and diversity of their markets, competitiveness, economic policies, investment climates and governance. Consequently, economic growth between 1995 and 2000 averaged 2.1%.

3.5.3 The decline in economic growth is attributable to its vulnerability to exogenous shocks such as climatic changes that have resulted in successive droughts. International trade regime reforms have also reduced the preferential market access to the European Union and United States. All these factors are set to reduce the income received by the country from trade. According to the Swaziland National Export Strategy, 'Small developing states such as Swaziland have found the current global trading environment hostile because of its vulnerability to external economic shocks, the global trend towards elimination of preference arrangements, as well as the reliance on a narrow range of low value products that are facing increasing competition in export destinations from other developing countries. Swaziland is also landlocked which means that destination economies are farther away, thereby increasing the cost of her products abroad.'<sup>5</sup>

3.5.4 The decline in economic growth has contributed to an increase in the rate of unemployment which is presently estimated at about 30% of the population. Of this number it is estimated that 70% of the unemployed are women while 40% the youth. Unemployment is also skewed against the rural population with 40% of the unemployed being based in the rural areas. It is estimated that the unemployment rate is set to increase as available labour continues to far exceed available employment opportunities. According to the Poverty Reduction Strategy and Action Plan (PRSAP), 'for the period 1997 – 2002, the country's labour force grew at an annual average rate of 2.9% whilst average employment growth was 1.7%. The country has also failed to gain from job opportunities presented by AGOA as the garment industry is facing serious marketing problems and some companies have retrenched while others are in the verge of closing down. Unfortunately, these developments have coincided with a decline in migrant labour opportunities in the South African mines.'<sup>6</sup> The advent of HIV and AIDS has also had a negative impact on the economy, affecting the most productive stratum of society and in turn its contribution to economic growth.

3.5.5 The Government of Swaziland has been alive to the need to address the declining economic performance over the years and has sought to implement a number of programmes to address the economy's gradual downturn. In the 1995/1996 fiscal year, Government put in place the Internal Structural Adjustment Programme (ISAP) to address issues such as 'revenue diversification, expenditure control, public sector reform and public enterprise restructuring.'<sup>7</sup> In 1997 the Economic and Social Reform Agenda (ESRA) whose objectives included the acceleration of economic growth in order to increase national income and alleviate poverty' was launched by government and was followed in 1999 by the formulation in 1999 of the National Development Strategy: Vision 2022 amongst whose aims is to address the reduced economic growth rates and high unemployment levels. In 2007 the Government adopted the Poverty Reduction Strategy and Action Plan (PRSAP) whose bases for reducing poverty include 'macro-economic stability and accelerated economic growth based on broad participation.

3.5.6 All these policy documents and programmes acknowledge the peculiar situation of women and the need to address it through specific and targeted interventions. Currently, as can be seen from the unemployment and poverty rates, women in Swaziland do not

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<sup>5</sup> Government of Swaziland, *National Export Strategy 2006 – 2009*, 2006

<sup>6</sup> Government of Swaziland, *Poverty Reduction Strategy and Action Programme*, 2006

<sup>7</sup> UNDP, *Swaziland Human Development Report 2000: Economic Growth with Equity*, 2001

participate as much as men in the country's economic arena. Women total earnings are still below that of men. According to the 2006 UNDP Human Development Report, 'in 2004, Swazi women earned an estimated PPP (purchasing power parity) of US\$ 2,576 per year, 29% of men's income.'<sup>8</sup> Women's economic activity has tended to be mainly within low-paying jobs and in the informal sector.

3.5.7 Nonetheless, Swazi women have demonstrated that they are very enterprising and 'a 2003 study by the Ministry of Enterprise and Employment indicated that over 70% of small businesses are owned by women.'<sup>9</sup> The challenge for women is a result of the laws that affect their legal status; ability to access resources such as land and credit; and limit to own and administer property. Government is confident that changes to the law that have been precipitated by the Constitution will strengthen the implementation of the appropriate strategies identified by the cited policies and programmes to address women's inequality in the economic sphere.

### 3.6 Swaziland's Social Landscape

3.6.1 Similarly with the economy, Swaziland has been facing increasing social challenges over the past decade and again women are the most affected. Widespread poverty - currently at 70% of the population and with a significant urban-rural difference - has been the overarching challenge with sharp inequalities in the distribution of income being a key feature with the trend showing in 1995 that the richest 20% owned 59% of the national income while 3% was owned by the poorest 20% and that in 2001 the latter owned 4.3% of the national income while the former owned 56.5%.<sup>10</sup>

3.6.2 Again, within the area of poverty, gender disparities exist attesting to the feminisation of poverty in the country. In this regard the PRSAP notes that 63% of female-headed households are poor and lack productive assets compared to 52% of their male counterparts' and further that the 1995 Swaziland Household and Expenditure Survey (SHIES) found that amongst the elderly (defined 60 years and above), poverty prevalence was 83.1% for women compared to 76.9% for men.

3.6.3 In terms of healthcare, Government has increased its expenditure since independence at an average rate of between 7 and 9 percent annually. Positive developments have been made over this period with respect to health facilities and the proportion of health personnel to the population. There are a variety of healthcare facilities provided by the Government, the private sector, missions and non-governmental organisations which complement each other in national healthcare provision.

3.6.4 However, Government acknowledges that a number of challenges exist in this sector. Amongst these are the insufficient budget allocated to health; Healthcare facilities and personnel is concentrated in the urban areas even though 70% of the population resides in the rural areas, the HIV and AIDS pandemic which has seen the increase in the demand for health services. It has resulted in a strain on the health system and infrastructure such that women now bear the burden of care due to their socially ascribed care and nurturing roles.

3.6.5 The Government of Swaziland acknowledges the importance of education as a key factor in improving human and all other aspects of development in the country and has

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<sup>8</sup> Physicians for Human Rights, *Epidemic of Inequality: Women's Rights and HIV/AIDS in Botswana and Swaziland*, 2007

<sup>9</sup> Ibid.

<sup>10</sup> Government of Swaziland, *Poverty Reduction Strategy and Action Programme*, 2006

therefore had a policy of investing in the country's education system, demonstrated by the increased allocations in the national budget. Amongst the positive outcomes of this investment has been the improvement in the gross enrolment rates for primary education, which according to the Ministry of Education have increased from 101% in 1986 to 128% in 1996. Nonetheless, challenges still exist due to disparities between urban and rural population and the impact of HIV and AIDS which have affected the availability of income for families to educate their children and reduced the human resources available for the provision of quality education.

3.6.6 Gender disparities also exist in the education sector in Swaziland. Although not significant at primary enrolment levels the differences become more pronounced in the higher levels of education and in girls' completion rate due to the high pregnancy rates and early marriages. In addition, gender roles that designate females as caregivers, have also meant that girls will be the ones expected to stay at home and provide care to the sick.

3.6.7 The Constitution reinforces access to education stating in section 29(6) 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.*' Government has also provided grants for the education of orphaned and vulnerable children to mitigate against the impact of HIV and AIDS.

The Kingdom of Swaziland recognizes the family as the fundamental and natural unit of society and it requires the full protection of the state. In terms of social welfare, much of the population's social security needs have in the past been dependent on the extended family which has traditionally provided a social safety net for the Swazi people, particularly at the rural community level. However, changing social dynamics such as urbanization and its attendant impact on family values have weakened the capacity of the extended family network. However, Government is currently in the process of strengthening the social security system and has recently approved the National Social Development Policy which stipulates several strategies towards addressing the social challenges.

3.6.8 Another social challenge which affects women disproportionately is gender-based violence. Police records, NGO case reports, as well as media coverage reveal extremely high rates of violence within the Swazi society particularly amongst women and children. This violence is manifested in all forms whether physical, emotional, verbal, financial and/or sexual. The findings of the 2007 UNICEF National Study on Violence Against Children and Young Women, reveal that 1 in 3 females experienced some form of sexual violence as a child; 1 in 4 females experienced physical violence as a child; nearly 3 in 10 females experienced emotional abuse as a child; approximately 9% of females experience coerced intercourse before the age of 18 years; and 2 in 3 females had experienced some form of sexual violence in their lifetime. The study also found that sexual violence against females is most commonly perpetrated by boyfriends, husbands, men and boys from the victims' neighbourhood's and male relatives. Gender-based violence in Swaziland has also been linked to the increased vulnerability of women and girls to infection with HIV.

3.6.9 Government has, with the assistance of development partners such as UNDP and UNICEF, put in place a number of programmes to address this issue i.e the development and gazetting of the Domestic Violence and Sexual Offences Bill.. Government has also established a Domestic Violence and Child Protection Unit in a number of police stations in the country. A Sexual Offences Unit has also been established in the Directorate of Public Prosecutions (DPP) and a child-friendly court set up at the High Court. Government has also conducted wide awareness and education campaigns on issues of violence and many criminal justice personnel have been specially trained to deal with such matters. While services do exist, they require strengthening if they are to be accessible and effective. Government is therefore committed to addressing the gaps that currently exist and in ensuring that violence against women and children is eliminated.

### 3.7. The National Gender Machinery

3.7.1 The Government of Swaziland has adopted a policy of integrating and mainstreaming gender into all its policies and development frameworks. In this regard, national and sectoral development strategies such as the NDS, ESRA, PRSAP all recognize the need to address gender inequalities in the country.

3.7.2 The national gender machinery established by Government to spearhead the implementation of the country's development agenda in a coordinated gender-sensitive and transformative manner commenced with the launch of the Swaziland Committee on Gender and Women's Affairs (SCOGWA) within the Ministry of Home Affairs in March 1994. This was followed, pursuant to the country's participation in the Beijing Women's Conference in 1995, by the establishment of a Gender Coordination Unit (GCU) within the Ministry of Home Affairs in 1997 which is charged with providing leadership and oversight in the implementation of the envisaged gender programme. As part of fulfilling its mandate, the Unit initiated the establishment of Gender Focal Points (GFPs) in every government ministry as a way of promoting gender mainstreaming in all sectors of national development. In 2001 as part of an initiative to assist in the formulation of a national Gender Policy, the World Bank, UNDP, UNESCO, and UNIFEM created "An Integrated Approach to Gender Equality in Swaziland."

3.7.3 Lutsango Lwaka Ngwane, the traditional women's regiment that was established by King Sobhuza II in 1975 is also charged with ensuring women's welfare and promoting women's participation in all spheres of life for the nation's development.

3.7.4 The work of Government through the GCU is complemented by the work of a number of NGOs that deal with gender issues. In this regard, the Coordinating Assembly of Non-governmental Organisations (CANGO) has within its structures, a Gender Consortium comprising of a number of NGOs namely, the CSC, Family Life Association of Swaziland (FLAS); Federation of the Disabled in Swaziland (FODSWA), Gender and Media in Swaziland (GEMSWA), *Imbita* Women's Finance Trust, Red Cross Society of Swaziland, Save the Children Swaziland (SCS), SWAGAA, Swaziland Conference of Churches, WLSA, World University Services (WUS) Swaziland.

3.7.5 In addition, a Women's Coalition was established in 2007 which deals with the issues affecting women and girls in the context of the country's challenge with HIV and AIDS. In addition to CSC, FLAS, *Imbita* and WLSA, the Women's Coalition membership also includes the International Community of Women Living with HIV and AIDS (ICW), AMICAAL, the Swaziland Network of People Living with HIV and AIDS (SWANNEPHA); Swaziland Positive Living (SWAPOL) and Women Together. Further, Skillshare International (Swaziland Country Office) has been implementing a programme during the past year on empowering women with knowledge of their rights as contained in CEDAW and the Constitution.

3.7.6 The size, mandates, programmes and extent of these organisations vary but they all have in common the promotion of gender equality and women's rights.

3.7.7 The initiatives and programmes aimed at the promotion of gender equality have been and continue to be supported at a national level by development partners such as the United Nations Agencies (mainly UNDP, as well as UNFPA and UNICEF) and EC which is currently supporting a 3 year programme on the implementation of CEDAW in Swaziland.

3.7.8 Amongst the challenges in government's implementation of national programmes of gender equality and women's rights is that the Gender Coordination Unit is extremely under-resourced both in terms of human and financial resources. The Unit currently has 3

professional officials, one of whom only commenced work in 2008 as part of the CEDAW implementation project.

The strategy of using gender focal points in the different sectors has also proved challenging as the work related to gender is designated to officers who already have their own duties and responsibilities which often take priority over that which is required by the GCU.

### **Policy environment for promoting Gender Equality and Women's Rights**

3.8.1 Swaziland's policy regarding the promotion of gender equality is comprised of commitments made at the international, sub-regional and regional levels and the national policy. At the international level, in addition to CEDAW, Swaziland has acceded to ICCPR, ICESCR, CAT, the Convention on the Rights of the Child (CRC) and the Beijing Declaration and Platform for Action. Regionally, the country is party to the African Charter on Human and Peoples' Rights (ACHPR) and has signed the African Charter on the Rights and Welfare of the Child as well as the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa.

3.8.2 Nationally, the Constitution, NDS, PRSAP and a number of other sectoral policies such as the National Multi-sectoral Policy on HIV/ AIDS, National Population Policy Framework and the National Youth Policy all recognize the problems associated with discrimination against women and the need to address the existing disparities. There is also a Draft National Land Policy that is waiting for approval by Government. These collectively demonstrate Government's commitment to gender equality and strengthen the nation's efforts at attaining it.

## **Part II: Status and progress of implementation of CEDAW by article**

### **Article 1**

For the purposes of the Convention, the term "discrimination against women" means any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

#### **1. Introduction**

1.1 On 25<sup>th</sup> July 2005, Swaziland adopted a National Constitution which was a progressive step in the development of the country. The enforcement of its provisions is expected to introduce positive change in many areas, including that of the promotion and protection of women's rights and gender equality

#### **1.2 Constitutional Definition of Discrimination**

1.2.1 Article 20 of the Constitution provides for equality before the law in political, economic and social life. The section defines discrimination as follows:

*(3) For the purposes of this section, "discriminate" means to give different treatment to different persons attributable only or mainly to their respective descriptions by gender, race, colour, ethnic origin, birth, tribe, creed or religion, or social or economic standing, political opinion, age or disability.*

1.2.2 As can be seen from the definition, the grounds upon which discrimination is prohibited are quite comprehensive. However, in terms of the definition of discrimination as contained in CEDAW, it is important to note that the grounds of “sex” and “marital status” according to which much discrimination is committed against women, are not included. Further, this definition does not include gender-based violence. Nonetheless, Government is confident that the definition is sufficient to protect women from discrimination.

1.2.3 Section 2 of the Swaziland Constitution states, “*This constitution is the supreme law of Swaziland and if any other law is inconsistent with this Constitution that other law shall, to the extent of the inconsistency, be void.*” In addition, section 252 recognises and confirms the operation of both the Roman-Dutch common law principles and Swazi law and custom. However, the section provides that the operation of these laws is subject to compliance with the principles of the constitution and statute. The implication of these sections is essentially that all existing laws that are discriminatory based on the stated differentials – whether general or customary – should be repealed or amended accordingly to comply with the Constitution.

### **1.3 Scope of Application**

1.3.1 The definition of discrimination in the Constitution does not expressly state its scope of application. It is submitted, however, that as a broadly articulated provision, it would apply to all acts of discrimination that fall within the categories identified. Further, Article 14(2) of the Constitution provides that “*the fundamental rights enshrined in this Chapter shall be respected and upheld by the Executive, the Legislature and the Judiciary and other organs or agencies of Government and, where applicable to them, by all natural and legal persons in Swaziland, and shall be enforceable by the Courts as provided in this constitution.*” The implication of this provision is that the issue of discrimination applies to all persons in Swaziland, inclusive of private institutions and individuals.

### **1.4 Challenges in implementation**

1.4.1 Despite the prohibition of discrimination by the Constitution and its requirement for compliance by all laws, institutions and practices, in practice there continues to be discrimination committed against women. Amongst these are the laws and practices related to marriage, access to and control of resources, legal capacity and inheritance and succession.

The country does not have a Law Reform Commission and has been constrained by resources hence the review and amendment of laws in accordance with the Constitution has been delayed. However, Government has been assisted with legal drafters by development partners and the Commonwealth to initiate this process and it envisaged that appropriate changes will be made accordingly.

1.4.2 In addition, the Government of Swaziland through the Ministry of Justice and Constitutional Affairs, has also been conducting community civic education on the Constitution so as to ensure that the populace understands its provisions and implications on their lives.

### **1.5 Definition of Discrimination in Sectoral Legislation**

1.5.1 There are a number of pieces of legislation that refer to “non-discrimination” but not necessarily in reference to women but in relation to the subject matter which the legislation deals with. Amongst these are the Race Relations Act of 1962, Immovable Property (Race Discrimination) Act of 1963 which prohibit discrimination on the basis of race, and the Swaziland Investment Promotion Act of 1998 which prohibits discrimination against

anyone seeking to initiate an investment through the Swaziland Investment Promotion Authority (SIPA). It is only the Employment Act of 1980 that specifically refers to and prohibits discrimination on the basis of sex in Section 29 which states that '*No employer shall, in any contract of employment between himself and an employee discriminate against any person or between employees on grounds of race, colour, religion, marital status, sex, national origin, tribal or clan extraction, political affiliation or social status.*' The section also imposes and sanctions a fine of not exceeding three thousand Emalangeni or imprisonment not exceeding one year or both.'

## 1.6 Conclusion

1.6.1 The adoption of the Constitution and its necessary implications on changes to the law because of the sections on equality and the rights of women will result in the removal of discriminatory provisions in the law and in the modification of behavior so as to recognize women's equal status in society.

1.6.2 Government is of the view that the existing definition of discrimination is broad enough to impact specific sectoral legislation. For instance, the Deeds Registry Act restricts the registration of TDL by women married in community of property because of their minority status. It is submitted that the principle of equality established by the Constitution will result in the removal of discrimination on women's legal status in general. In the case of marriage law, women will be recognised as legal majors with full legal capacity. Government has already embarked on the process of reforming these pieces of legislation: Marriage Bill, Administration of Estates Bill, Deeds Registry Bill. These have been identified and placed as priority before the newly-elected legislators.

1.6.3 Government recognizes that law reform on its own is insufficient to ensure the equality of women and respect for their rights. It will be important to support the law reform process by raising the awareness of this equality through women's rights and gender equality sensitization, education and training at all levels of society so that the populace, in particular women are aware of their rights and responsibilities in the various institutions in the country. Further, Government will also establish or strengthen mechanisms that enable women to access and benefit from available structures of justice delivery because in some instances, the challenges faced by women are not a question of discriminatory law but inability to enforce even those rights that do exist within the law. Government is committed to implementing these programmes and is confident that its efforts will be supported by development agencies and civil society organizations.

## Article 2

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

- (a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;
- (b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;
- (c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;

(d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;

(e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;

(f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;

(g) To repeal all national penal provisions which constitute discrimination against women.

## **2. Introduction**

2.1 The signature of and accession to important women's rights and gender commitments such as the Beijing Declaration and Platform for Action, SADC Gender and Development Declaration, ratification of CEDAW attests to Swaziland's condemnation of discrimination against women and Government's commitment to addressing it in all areas in which it exists.

## **2.2 Embodiment of the Principle of Equality Between Women and Men**

2.2.1 The principle of equality between women and men is now entrenched in the Constitution of the Kingdom of Swaziland Act of 2005 which is the supreme law of the country. Section 20 of the Constitution states that,

*(1) All persons are equal before and under the law in all spheres of political, economic, social and cultural life and in every other respect and shall enjoy equal protection of the law.*

*(2) For the avoidance of any doubt, a person shall not be discriminated against on the grounds of gender, race, colour, ethnic origin, tribe, birth, creed or religion, or social or economic standing, political opinion, age or disability."*

2.2.2 This general provision of equality for all regardless of the stated differentials is further strengthened in the case of the equality of women by the inclusion of section 28 which deals with the rights and freedoms of women as follows:

(1) Women have the right to equal treatment with men and that right shall include equal opportunities in political, economic and social activities.

*(2) Subject to the availability of resources, the Government shall provide facilities and opportunities necessary to enhance the welfare of women to enable them to realise their full potential and advancement.*

*(3) A woman shall not be compelled to undergo or uphold any custom to which she is in conscience opposed.*

2.2.3 The embodiment of this principle in the supreme law has the implication that all other laws, whether statutory or customary, should be in compliance with the Constitution if they are to remain valid.

2.2.4 The following constitutional provisions confirm the continued operation of the general and customary law but emphasize that this is subject to the provisions of the Constitution:

2.2.5. (1) *Subject to the provisions of this Constitution or any other written law, the principles and rules that formed, immediately before the 6<sup>th</sup> September, 1968*

*(Independence Day), the principles and rules of the Roman Dutch Common Law as applicable to Swaziland since 22<sup>nd</sup> February 1907 are confirmed and shall be applied and enforced as the common law of Swaziland except where and to the extent that those principles or rules are inconsistent with this Constitution or a statute.*

*(2) Subject to the provisions of this Constitution, the principles of Swazi customary law (Swazi law and custom) are hereby recognized and adopted and shall be applied and enforced as part of the law of Swaziland.*

*(3) The provisions of subsection (2) do not apply in respect of any custom that is, and to the extent that it is, inconsistent with a provision of this Constitution or a statute, or repugnant to natural justice or morality or general principles of humanity.*

2.2.6 Any law reform process is a lengthy endeavor and the constitution recognises this and makes provision for the situation where the Constitution may exist simultaneously with discriminatory laws. In this regard, it is submitted that section 268 on existing law, as follows, provides the necessary guidance:

*(1) The existing law, after the commencement of this Constitution, shall as far as possible be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring it into conformity with this Constitution.*

*(2) For the purposes of this section, the expression “existing law” means the written and unwritten law including customary law of Swaziland as existing immediately before the commencement of this Constitution, including any Act of Parliament or subordinate legislation enacted or made before that date which is to come into force on or after that date.*

### **2.3 Legislative and Other Measures Prohibiting Discrimination**

2.3.1 As stated above there is little legislation that specifically proscribes discrimination on the basis of sex and there are also proportionally very few provisions within the law that punish this nature of discrimination. It is only the Employment Act that contains provisions in this regard and in sections 29 and 30 of the Act discrimination is prohibited and its violation made a criminal offence attaching a sanction respectively. The legislation states as follows:

29. *No employer shall, in any contract of employment between himself and an employee discriminate against any person or between employees on grounds of race, colour, religion, marital status, sex, national origin, tribal or clan extraction, political affiliation or social status.*

30. *Any employer who —*

*(a) fails or refuses to provide an employee with a completed copy of the form in the Second Schedule as required by section 22;*

*(b) fails or refuses to notify the employee in writing of changes in his conditions of employment as required by section 26;*

*(c) fails or refuses to submit to the Labour Commissioner any document as required by section 26; or*

*(d) discriminates against any person contrary to section 29, shall be guilty of an offence and liable on conviction to a fine of not exceeding three thousand Emalangeni or imprisonment not exceeding one year or both.*

## 2.4 Establishment of Legal Protection of the Rights of Women

2.4.1 Equal legal protection for women is recognized and respected by Swaziland. According to section 20 of Swaziland's Constitution, all persons are equal before the law and are entitled to equal treatment by and protection of the law. The courts – both general and customary – are accessible to all Swazis. However, there are some practical difficulties that make it challenging for women to enforce their rights through the justice system. In terms of the general courts, they are sometimes inaccessible because of distance, the complex processes and procedures as well as costly legal fees.

2.4.2 In 2006, the Gender Coordination Unit hosted a seminar for judges in order to enable them to appreciate the issues pertaining to infusing gender-sensitivity into their interpretation of the Constitution and the law when cases come before them for determination.

2.4.3 There are also NGOs such as CSC, SCS, SWAPOL, SWAGAA, WLSA that have legal education programmes to improve legal literacy as well as legal advice and assistance services aimed at resolving legal disputes. These NGOs are also in collaboration to engage the Law Society of Swaziland in establishing collaborative mechanisms by which legal assistance can be provided to the indigent. Nonetheless, Government acknowledges that the importance of legal protection is central to women's enjoyment of their rights and is planning to undertake continued capacity-building of the structures and personnel of the justice delivery system to empower them to perform their duties in a manner that is devoid of discrimination against women and that promotes gender equality. The reality, however, is that in as much as government is committed to this, the availability of resources may limit the extent to which these aims can be fulfilled.

2.4.4 In so far as customary courts are concerned, they accord women a different status and therefore different rights. Women trying to access the intervention of the customary courts have had problems because it is expected that the male members of families will speak for or represent them particularly when this involves a woman's husband or in-laws against whom she has a grievance. The patrilocality of Swazi society and fact that that these matters are heard by the traditional authorities within the community where the in-law family lives may potentially make it difficult for a woman to get a fair hearing on her matter.

2.4.5 Government recognizes some of the potential challenges with upholding certain rights to legal protection within the customary court context and to this end is in the process of implementing, through the Office of the Judicial Commissioner within the Ministry of Justice and Constitutional Affairs, and with the assistance of the UNDP, a capacity-building programme for the Swazi National Court Presidents where they are trained in the human rights, the Constitution's provisions, and legal processes and procedures that comply with the elements of a fair hearing as well as interpretation of the law using these principles in order to arrive at their decisions.

2.4.6 Section 14(3) of the Constitution states that, '(3) A person of whatever gender, race, place of origin, political opinion, colour, religion, creed, age or disability shall be entitled to the fundamental rights and freedoms of the individual contained in the [bill of rights].' Additionally, section 14(2) provides that, '*The fundamental rights and freedoms enshrined in this Chapter shall be respected and upheld by the Executive, the Legislature and the Judiciary and other organs or agencies of Government and, where applicable to them, by all natural and legal persons in Swaziland, and shall be enforceable by the courts as provided in this Constitution.*' In order to ensure that these requirements are realized, Government plans to sustain the capacity-building of the various structures of justice delivery, including the establishment of appropriate induction and "refresher" courses for all levels of justice delivery officials.

## **2.5 Preventing Discrimination Against Women and Eliminating it by Persons, Institutions and Enterprises**

2.5.1 The policy of the Government of Swaziland on the need for the promotion of gender equality and the elimination of discrimination against women is embodied in the country being a party to a number of international and regional instruments. This policy is underscored at a national level with policies such as the NDS, PRASP, the draft Gender Policy and as well as the national Constitution. The Draft Policy is specifically aimed at guiding government in removing any discrimination between women and men and to promote gender equality.

2.5.2 Therefore inasmuch as discrimination against women is still contained in many laws and practices, Government does not condone this and is actively trying to remove it from all institutions – both public and private. Due to the complexity of this exercise and its requirement of increased resources, it may be protracted and take longer than anticipated. Nonetheless, in the interim, there exists mechanisms, such as the courts where any unfair discrimination against women whether by Government, by any person or institution may be addressed.

## **2.6 Taking all appropriate measures, including legislation, to modify or abolish existing discriminatory laws, regulations, customs and practices**

2.6.1 Dealing with changing areas of discrimination against women in the law, particularly customary law, is a complex and intricate process. It requires a change in the mindset of a people whose cultural identity is extremely patriarchal. It is therefore necessary, while changing the law to educate the general populace and the institutions of every sector on human rights, women's rights, gender equality and the Constitution's protection of these rights and hence the implication on citizens' lives and institutions' operations.

2.6.2 Government is currently implementing initiatives such as the review of legislation to determine its compliance with CEDAW and the Constitution and civic education on Swaziland's obligations to perform under the country's various human rights obligations. This work is being supplemented by the work of NGOs, in particular those that are part of the CANGO Gender Consortium and Skillshare International (Swaziland) as part of a USAID supported project on advocacy on CEDAW and the Constitution. Development partners such as the various UN agencies, the EC and USAID are extremely supportive in these programmes and Government envisages that additional support will be forthcoming as it continues to attain the standards envisaged by CEDAW.

## **2.7 Repeal all national penal provisions which constitute discrimination against women**

2.7.1 Swaziland's criminal law is a collective of common law, customary law and statute, namely, legislation such as the Crimes Act, No. 6 of 1889; Girls and Women's Protection Act, No. 39 of 1920; Obscene Publications Act, No. 20 of 1927; Counterfeit Currency Act, No. 34 of 1937; Sedition and Subversives Activities Act, No. 46 of 1938; Criminal Procedure and Evidence Act, No. 67 of 1938; Concealment of Birth Act, No. 5 of 1943; Lotteries Act, No. 40 of 1963; Official Secrets Act, No. 30 of 1968.

2.7.2 In general, Swaziland's penal laws are the same for women and men and the difference in treatment of women in the penal law, is mainly two-fold. In the first instance, in terms of being victims of crime, there are particular crimes that are recognised as only being applicable where females are concerned and the law is specific to women such as the Girls and Women's Protection Act. In the second instance are those areas that isolate crimes in which only females are regarded as perpetrators.

2.7.3 In terms of women as victims, the increase in the incidence of gender-based violence has raised awareness about the state of the country's laws as relates to their sufficiency and efficacy in terms of dealing with violence against women and children.

2.7.3.1 The definition of rape in terms of Swazi law is the intentional and unlawful "carnal connection with a woman without her consent" and accordingly, only males can commit this offence against females. In addition Section 185 (1) of the Act states, "*Any person charged with rape may be found guilty of assault with intent to commit rape; or of indecent assault; or of assault with intent to do grievous bodily harm; or of assault; or of the statutory offence of unlawful carnal knowledge of, or committing any immoral or indecent acts with, a girl of or under the specified age; or of the statutory offence of having or attempting to have unlawful carnal connection with a female idiot or imbecile under circumstances which do not amount to rape, or an attempt to commit rape, or of committing or attempting to commit any immoral or indecent act with such female, if such be the facts proved.*"

2.7.3.2 As the age of consent to sexual intercourse is 16 years for girls, the Girls and Women's Protection Act makes provision for statutory rape in the following manner:

*'Every male person who has unlawful carnal connection with a girl under the age of sixteen years or who commits with a girl under that age immoral or indecent acts or who solicits or entices a girl under such age to the commission of such acts shall be guilty of an offence and liable on conviction to imprisonment not exceeding six years with or without whipping not exceeding twenty-four lashes and with or without a fine not exceeding one thousand Emalangeni in addition to such imprisonment and lashes.'*

2.7.3.3 With respect to women with disabilities, section 4 of the Girls and Women's Protection Act refers to "Offences with female idiots and imbeciles." And provides, "4. Every person who —

- (a) *has or attempts to have carnal connection with any female idiot or imbecile under circumstances which do not amount to rape;*
- (b) *commits or attempts to commit immoral or indecent acts with such female; or*
- (c) *solicits or entices such female to the commission of immoral or indecent acts shall be guilty of an offence if it is proved that he knew that such female was an idiot or imbecile, and liable on conviction to the penalties [mentioned in the Act].*

2.7.4 In terms of women as perpetrators of crime, the crimes specifically applicable to women are related to their reproductive functions. These crimes include infanticide, concealment of birth and abortion.

2.7.4.1 The Concealment of Birth Act, no. 5 of 1943 defines this offence and makes provision for the sanctions attaching to it. In this regard, the Act states the following:

- (1) *Any person who disposes of the body of any child with intent to conceal the fact of its birth, whether such child died before, during or after birth, shall be guilty of an offence and liable on conviction to a fine not exceeding two hundred emalangeni or imprisonment not exceeding three years.*
- (2) *If a person disposes of the body of any such child which was recently born, otherwise than under a lawful burial order, he shall be deemed to have disposed of such body with intent to conceal the fact of such child's birth, unless it is proved that he had no such intent.*
- (3) *A person may be convicted under sub-section (1) although it has not been proved that the child in question died before its body was disposed of.*

2.7.4.2 Abortion is also a criminal offence although it may be allowed in certain circumstances as provided for in the Constitution and common law such as on medical or therapeutic grounds including where a doctor certifies that –

- (i) *‘continued pregnancy will endanger the life or constitute a serious threat to the physical health of the woman;*
- (ii) *continued pregnancy will constitute a serious threat to the mental health of the woman;*
- (iii) *there is serious risk that the child will suffer from physical or mental defect of such a nature that the child will be irreparably seriously handicapped;*
- (iv) *where the pregnancy resulted from rape, incest or unlawful sexual intercourse with a mentally retarded female; or*
- (v) *on such other grounds as Parliament may prescribe.’*

2.7.5 Government acknowledges that the criminal law, contains elements of discrimination against women and that, in certain aspects, it does not deal sufficiently with those areas that increase the risk of women’s vulnerability to gender-based violence including the fact of not containing sufficient provisions relating to the punishment of offenders. However, the situation stands to be improved, firstly during the process of the review and reform of all laws to bring them in compliance with the Constitution and secondly, there is a Draft Domestic Violence and Sexual Offences Bill in which most of these concerns are addressed.

## **2.8. Conclusion**

2.8.1 The current policy framework does acknowledge the problem of discrimination against women and does promote equality. However, the reality is that due to constraints in resources, Government has not been able to translate some of the provisions relating to equality into legislation and conformity with CEDAW provisions.

2.8.2 Further, laws relating to violence are antiquated and do not cater for the complexity of matters of violence nor do they deal with contemporary concerns such as the intentional transmission of HIV to sexual violence victims. The promulgation of the domestic violence and sexual offences legislation is amongst Government’s priorities in dealing with violence against women and children. It is envisaged that where resources permit, this law will also be progressively supported by the establishment of the appropriate support services to victims of violence.

## **Article 3**

States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

### **3.1 Introduction**

3.1.1 The accession to CEDAW by the Government of Swaziland in 2004 was amongst the various acts by the country demonstrating commitment to ensuring that women’s human rights are respected, discrimination is eliminated, gender equality is promoted so that women in Swaziland in all their diversity can advance and reach their full potential and development. Prior to acceding to CEDAW, Swaziland was already party to the 1995

Beijing Declaration and Platform for Action and the 1997 SADC Declaration on Gender and Development,

3.1.2 The national policy and legal framework also recognizes the need to promote women's advancement in various areas. The National Vision 2022 articulated in NDS spells out a number of strategies aimed at eliminating development and gender gaps. It also offers equal opportunity strategies to all citizens irrespective of their sex. The NDS also emphasizes the adoption of a gender balanced approach to development in all national development plans, policies and projects.

3.1.3 The supreme law of the country, the Constitution sets the standard in terms of entrenching the principle of equality between women and men and promoting its attainment. Equality before the law is firmly entrenched in section 20 as follows:

20. (1) *All persons are equal before and under the law in all spheres of political, economic, social and cultural life and in every other respect and shall enjoy equal protection of the law.*

(2) *For the avoidance of any doubt, a person shall not be discriminated against on the grounds of gender, race, colour, ethnic origin, tribe, birth, creed or religion, or social or economic standing, political opinion, age or disability.*

(3) *For the purposes of this section, "discriminate" means to give different treatment to different persons attributable only or mainly to their respective descriptions by gender, race, colour, ethnic origin, birth, tribe, creed or religion, or social or economic standing, political opinion, age or disability.*

(4) *Subject to the provisions of subsection (5) Parliament shall not be competent to enact a law that is discriminatory either of itself or in its effect.*

(5) *Nothing in this section shall prevent Parliament from enacting laws that are necessary for implementing policies and programmes aimed at redressing social, economic or educational or other imbalances in society.*

3.1.4 In recognition of the specific challenges faced by women and in order to ensure that the right of equality pronounced in section 20 is reinforced, section 28 provides for the rights and freedoms of women as follows:

28. (1) *Women have the right to equal treatment with men and that right shall include equal opportunities in political, economic and social activities.*

(2) *Subject to the availability of resources, the Government shall provide facilities and opportunities necessary to enhance the welfare of women to enable them to realise their full potential and advancement.*

(3) *A woman shall not be compelled to undergo or uphold any custom to which she is in conscience opposed.*

3.1.5 The above international and regional commitments as well as national policy and legal instruments lay a clear and firm foundation for the implementation of measures aimed at strengthening women's enjoyment of their human rights. In terms of specific gender initiatives, in 2006 the Gender Coordination Unit with the support of UN agencies and participation of stakeholders, developed a National Gender Programme. The Programme comprises various activities aimed at promoting gender equality in the social, economic, political and legal spheres of life. The Programme also makes provision for the participation of a variety of stakeholders from the private sector, to the church to NGOs and Parliament in order for gender equality to truly be a national pursuit where all sectors have a role to play. The Gender Coordination Unit has formulated a National Consultative Forum on Gender to ensure that all sectors are represented and participate in this regard.

3.1.6. The Draft National Gender Policy articulates its vision as *‘The attainment of a sustainable environment in which girls and boys, men and women will have equal opportunities to participate in and to benefit from all aspects of development and at all levels for the improvements of quality of life.’* It contains various policy objectives and strategies for achieving those strategies along the thematic lines of family and socialization; education and training; politics and decision-making ; poverty and economic empowerment, legal and human rights; health, and health care services, including those related to family planning,, HIV and AIDS; gender-based violence, environment and natural resources; information and communication and the institutional framework for the implementation of the national gender policy.

### 3.2 Measures in the Political Field

3.2.1 Generally, there are no laws prohibiting women from participating in politics. However, women in Swaziland are underrepresented at different levels of leadership and decision-making in all sectors, including politics.

3.2.2 Women are also confronted with the difficulty of having to balance multiple roles, as leaders but also as wives, mothers and daughters-in-law as expected by society. In fact, even a woman’s very entry into politics may be determined, by her husband and or in-laws who may require that she seeks consent to do so. The experience of a number of women who wanted to participate as candidates in the recent national parliamentary elections and who first had to clear this with their families and in-laws attests to the constraints on women’s ability to act independently. Another area that is also relevant in this regard is the degree of women’s access to and control of resources. While men can decide to use household resources to further their political ambitions, women cannot and yet contesting for political power does require resources and those without tend not to be successful in the pursuit of a political career.

3.2.3 However, there has been a gradual awareness of the need to promote women’s greater participation in politics and positions of leadership and decision-making. In addition to Sections 20 and 28 on equality and women’s rights and freedoms respectively, Section 84 of the Constitution provides for the right to representation, stating:

84. (1) *Subject to the provisions of this Constitution, the people of Swaziland have a right to be heard through and represented by their own freely chosen representatives in the government of the country.*

(2) *Without derogating from the generality of the foregoing subsection, the women of Swaziland and other marginalized groups have a right to equitable representation in Parliament and other public structures.*

3.2.4 Section 60(4) of the Constitution states that, *‘The State shall ensure gender balance and fair representation of marginalized groups in all constitutional and other bodies.’*

3.2.5 The National Gender Programme made provision for leadership training of women as well as the establishment of a network of current and former women members of parliament. These are complemented by the various awareness-raising and other advocacy and capacity-building campaigns conducted by NGOs, to promote women’s participation in politics. In the 2003 and 2008 national elections, the Gender Coordination Unit collaborated with civil society organizations to conduct the “Vote for a Woman” Campaign. The Campaign raised awareness about the importance of women’s participation leveling politics and contributed to a national debate about this participation. The 2008 election yielded 7 women candidates from the *iNkhundla* constituencies and 14 women appointees.

### 3.3 Measures in the Social Field

3.3.1 A number of initiatives have been undertaken in the areas of poverty reduction, education, health, family, social welfare and gender-based violence. As gender disaggregated data is critical to designing interventions that will achieve tangible improvements in women's lives, one of the strategies utilised by the NGP is the training of the Central Statistics Office (CSO). This training, conducted in November 2008 was on human rights and gender and was in line with the PRSAP goal of encouraging responsible and gender sensitive reporting. It will promote the institutionalization of data gathered by the CSO that it should always be gender and sex disaggregated and reflective, both quantitatively and qualitatively, of the country's gender situation. In order to contribute to the issue of addressing the poverty situation, the NGP has provided for the training of women parliamentarians on gender, MDGs and gender budgeting.

3.3.2 In terms of family protection Section 27(4) of the Constitution states, *'Motherhood and childhood are entitled to special care and assistance by society and the State.'* Further, Chapter V of the Constitution stipulates "Directive Principles of State Policy" contains social objectives which include that *'The State shall make reasonable provision for the welfare and maintenance of the aged and shall protect the family and recognise the significant role of the family in society.'* These provisions provide a good basis for improving social and other services which women and girls face discrimination and depending on the availability of resources, Government will implement the necessary programmes in this regard.

3.3.3 Other developments have been in the area of education. Not only has Government committed herself to the global Education For All (EFA) initiative, there have been significant increases in the budgetary allocations for education, in particular the provision of educational grants to assist orphaned and vulnerable children to go to school. In addition the Section 60 (8) of the Constitution states, *'Without compromising quality the State shall promote free and compulsory basic education for all'* and Section 29(6) stipulates that within 3 years of its coming into force, free education will be provided in public schools at least up to the end of primary school, beginning with the first grade. Further, Government, through the PRSAP recognises the critical role of education in promoting gender equality and provides for equal opportunity for children of all gender in the implementation of Universal Basic Education. Government is also in the process of reviewing education policy and legislation. Amongst the expected outcomes of this exercise is the strengthening of the law with respect to dealing with teacher-learner sexual abuse which is rife at all levels of education and which mainly affects girls and young women in turn disrupting their studies.

3.3.4 Healthcare is also another area of disparity between women and men which has been further challenged by the country's HIV and AIDS pandemic. Section 60(8) of the Constitution states, *'Without compromising quality the State shall...take all practical measures to ensure the provision of basic health care services to the population.'* Initiatives that have been undertaken in this area for the improvement of women's position include the proposals of the PRSAP on improving access to information on reproductive health and family planning; NGP's activities to ensure the monitoring of the issues pertaining to gender that are reflected in the National Population Framework; to conduct a training of trainers workshop for Regional Development Teams on Gender and HIV and AIDS and their impact to socio-economic development as well as training PLWHA and Churches on gender focused responses to HIV and AIDS. Interventions related to healthcare are also provided by NGOs such as FLAS, the Salvation Army and The AIDS Support Centre (TASC). In many of the civil society organizations, gender is mainstreamed into their programmes, ensuring that women are afforded the necessary attention in dealing with their specific issues.

3.3.5 In addressing impact mitigation, Government articulates its commitment to *'facilitating that existing laws are reviewed and amended and new laws passed to ensure that the law adequately addresses, amongst other things the public health and human rights issues related to HIV and AIDS as well as actions taken in regard to the legal framework be in compliance with the Constitution and the international conventions and declarations signed and ratified by the country.'*

3.3.6 The Draft National Gender Policy contains policy guidelines on Health, Reproductive Health and Rights, HIV and AIDS and proposes the following strategies to deal with the inequality in this sector between women and men:

- i. Social mobilization campaigns to sensitize communities on gender and health issues highlighting practices that impact negatively on reproductive health, and HIV and AIDS prevention interventions.
- ii. Mount awareness raising and training programs on Health, Reproductive Health and HIV and AIDS for youth, men and women, and the prevention of teenage pregnancy.
- iii. Empower women and men through education to care and protect themselves against HIV and AIDS and STIs.
- iv. Promote equitable access to treatment and care for HIV and AIDS by women, men, boys and girls.
- vi. Employ social marketing strategies to encourage behavior change by all including young people.
- vii. Awareness mobilization campaigns through media, mobile clinics, Rural Health Motivators (RHMs) and community meetings to encourage men to participate in maternal and reproductive health issues.
- viii. Formulate a gender responsive Policy on HIV/AIDS
- x. Improve health facilities and render them fully functional and accessible to all.

3.3.7 Taking cognisance of the need to deal with the escalating levels of violence, particularly against women and children, the Government through the GCU carried out a situational analysis in 2006 on gender-based violence in the country and a national gender violence campaign was formulated that reflected an integrated approach to dealing with gender-based violence. As part of the Campaign, a number of community-based GBV dialogues were held where community members had an opportunity to discuss the issues pertaining to GBV and make recommendations about how it can be dealt with. The National Gender Programme also made provision for the popularisation of the SADC Addendum on Violence Against Women and Children and submitted progress reports on the implementation of the Addendum.

The stakeholders in the country have also commemorated the 16 Days of Activism Against Gender-based Violence on an annual basis and during which there are a number of activities that ensure that awareness on GBV is scaled up. In 2007, as part of the 16 Days of Activism activities, a national plan of action – 365 Days of Activism Against Gender-based Violence – was launched to ensure that efforts to address GBV are sustained. Government has also established special units within the police service and public prosecutions department and is currently in the process of drafting a domestic violence and sexual offences law.

3.3.8 The PRSAP recognises the linkages between women's subordinate status and lack of empowerment to poverty and recommends that law against domestic violence should be improved and counseling provided for abuse people and that both men and women be

sensitized thereon. The Draft Gender Policy envisages the following activities as strategies to be implemented by Government and civil society partners to address the issue of violence:

- i. raising awareness on the social beliefs and attitudes of women and men that lead to violence;
- ii. establishment of counseling centers for survivors of violence;
- iii. building capacity of the justice system and the judiciary on issues of gender-based violence and how to deal with survivors;
- iv. Building capacity for members of the legal fraternity in dealing with matters relating to gender based violence.

### **3.4 Measures in the Economic Field**

3.4.1 Women in Swaziland are extremely enterprising and do participate in the economic arena, with about 59% of those in self-employment being women<sup>11</sup> and owning about 70% of small businesses in the country.<sup>12</sup> However, they face challenges in playing a more significant role in the economic sphere due to impediments that exist in the law that impede their access to and control of financial resources and land. The legal minority status of women limits the extent to which they can attain their potential economically. In terms of employment, women dominate in the low-paying jobs and in the informal sector and they are more visible in areas such as the textile industry and in hair salons, cross-border informal trade, waitressing and tailoring.

3.4.2 There are initiatives by the government of Swaziland, NGOs and CBOs to improve women's economic status. These activities are enhanced by a supportive policy framework which includes policies such as the National Policy on the Development of Small and Medium Enterprises which necessarily acknowledges and seeks to strengthen women's participation.

3.4.3 Amongst the economic and social objectives outlined in the Constitution are the following articulated in Section 59 and 60 respectively:

59. (1) *The State shall take all necessary action to ensure that the national economy is managed in such a manner as to maximize the rate of economic development and to secure the maximum welfare, freedom and happiness of every person in Swaziland and to provide adequate means of livelihood and suitable employment and public assistance to the needy.*

(2) *The State shall, in particular, take all necessary steps to establish a sound and healthy economy whose underlying principles shall include -*

*b) Affording ample opportunity for individual initiative and creativity in economic activities and fostering an enabling environment for a pronounced role of the private sector in the economy;*

(3) *The State shall afford equality of economic opportunity to all citizens and, in particular, the State shall take all necessary steps so as to ensure the full integration of women into the mainstream of economic development.*

3.4.4 The Constitution also states in Section 60(3) that, 'The State shall give the highest priority to the enactment of legislation for economic empowerment of citizens.' These

<sup>11</sup> UNDP, *Swaziland Human Development Report 2000: Economic Growth with Equity*, 2001

<sup>12</sup> Physicians for Human Rights, *Epidemic of Inequality: Women's Rights and HIV/ AIDS in Botswana and Swaziland*, 2007

provisions are reinforced by those of the NDS which is economic empowerment. Within these strategies are the proposed provisions of economic and financial services, the NDS states the following respectively:

- i) *'Economic Services: Commerce and Industry:*
  - *Design policies and corresponding measures to enhance the promotion of small and medium scale enterprises.*
  - *Design viable programmes for the economic empowerment of nationals.*
- ii). *Financial Services: Credit:*

*Viable means of satisfying the excess demand for credit, especially from indigenous entrepreneurs, should be found and implemented. The obstacle against women should be removed.*

3.4.5 In developing the PRSAP, Government has also taken into account women's lower economic status and gender issues are mainstreamed into the strategies and action plan for reducing poverty in the country. The PRSAP contains strategies for achieving gender equality which are both general and specific to women's economic situation. Amongst these are the following:

- i. empowering women and CHH [child headed households] on income generating activities and inform them of their constitutional rights to own and acquire property and assets;
- ii. review and repeal all discriminatory laws and remove the minority status of women in accordance with the Constitution;
- iii. support and develop the Micro Enterprise sector where most poor women are involved and ensure equal opportunities to employments and income generating activities.

3.4.6 The Draft Gender Policy takes cognizance of the disparity in women's economic situation as compared to that of men. It therefore proposes the following strategies to address this inequality:

- i. Promote self-employment opportunities and economic empowerment to limit dependence on white-collar jobs.
- ii. Build Capacity for women, in skills training in Small and Medium Enterprise (SME) development and management.
- iii. Build Institutional capacity for gender budgeting and gender analysis (targeting government planners, gender focal points and policy makers, NGOs and parliamentarians)
- iv. Build Capacity for a better understanding of global and regional economic processes and their impact on national development and women's empowerment.
- v. Advocate for the setting up of a sustainable social security scheme.
- vi. Mount civic education on how to access development funds to initiate income generating projects and SME's.

3.4.7. The law, as evidenced by a study that was conducted by *Umtapo waboMake* Women's Resource Centre, also contains inhibitions that limit women's effective participation in the economy. It is envisaged that this situation will be changed by, amongst other initiatives, the ongoing law reform process. The NGP envisages the commencement of a dialogue between private sector and women entrepreneurs to access credit facilities in Swaziland. Skillshare International (Swaziland Country Office) has also conducted an

assessment of financial institutions policies and procedures that prevent married women, because of their minority status accessing services such as finances. The assessment also makes recommendations on the role that the institutions can play in supporting the law reform.

3.4.8. Government has also invested in promoting women's enterprise through the Women in Development programme. A number of civil society organizations such as the traditional women's regiment *Lutsango Lwaka Ngwane*, community-based groupings, LDS, SWAPOL, *Umtapo waboMake* Women's Resource Centre, and World Vision have programmes that encourage and assist women in income generation projects. *Imbita* Women's Finance Trust is a savings and credit facility for women, and whose membership is comprised mainly of women's groups in the rural areas as well as individuals, which enables them to access assistance that would otherwise be unavailable to them.

### 3.5 Measures in the Cultural Field

3.5.1 Culture and tradition are the cornerstone of Swazi society and there continues to be a strong adherence to customary norms, values and practices. Government recognizes the need to address any aspects of culture that has a negative impact on women. In this regard the PRSAP proposes interventions for achieving gender equality and proposes a review of 'cultural practices which infringe on the rights of women' and repealing all discriminatory laws, in line with the Constitution.'

3.5.2 Strategies in the Draft Gender Policy to address the discrimination against women that emanates from socialization are the following:

- I. Promoting positive cultural practices that enhance gender equality.
- II. Developing programs to promote the self esteem of both women and men from adolescence stage to adulthood
- III. Develop mechanisms for the economic empowerment of both women and men to ensure economic independence
- IV. Advocating for the integration of human rights and gender awareness education into community belief systems, school curricula including those of training institutions.
- V. Promotion for the enforcement of the human rights of children as stipulated in the Convention on the Rights of the Child (CRC) in order to protect the rights of children.
- VI. Developing programs to focus on family life and human relations
- VII. Empowering parents with gender sensitive parenting skills to raise boys and girls as equal members of the family and to fulfill all gender roles.
- VIII. Mounting education campaigns on inheritance laws, and the importance of writing of wills in order to protect the interests of one's family members.
- IX. Popularizing, domesticating and implementation of CEDAW.
- X. Create programs to strengthen the extended family support units to promote socialization and address the emerging social challenges mainly with respect to ensuring the passing-on of best indigenous knowledge, skills, culture and traditions.
- XII. Develop entrepreneurial programmes for both women and men from family level to the work place
- XIII. Introduce same life skills for both women and men at family level to the work place.

3.5.3 Traditional authorities have been sensitized of these strategies as both the GCU and various NGOs recognize that these authorities are the ones that are responsible for enforcing culture and as such have a critical role to play in ensuring that its dynamism is developed to improve women's position in economic activities. Traditional leaders, due to their influence and authority over communities can also contribute to changing people's mindset about the position of women. The Chiefs consulted in the preparation of this report emphasized that insofar as they were concerned, Swazi culture has always valued women and sought to protect them. They were of the view that some of the current abuses that happen are not due to the culture per se but to its manipulation.

3.5.4 The meetings also revealed the need for traditional leaders to be educated on issues of women's rights and the country's international commitments on gender equality. It was clear that even the provisions of the Constitution on equality and the rights and freedoms of women are either not known or not fully understood by most Chiefs hence creating suspicion and anxiety regarding their full impact on Swazi society. It is important to deal with these issues because they affect the extent to which women, in particular at the rural the community level, can go in asserting their rights.

### **3.6 Conclusion**

3.6.1 As can be seen from the above, the measures that have been taken to remove discrimination against women in the political, social, and economic fields have been largely the formulation of Government policy in these areas. These policy commitments provide an enabling environment for the removal of discrimination against women in all spheres of life. There are still many barriers to women's advancement as attested to by the women focus group respondents that were interviewed in the preparation of the present report.

3.6.2 Government recognises the need to improve the existing policies so that the plight of women in development is addressed.

## **Article 4**

Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be defined as discrimination as defined by the present Convention, but shall in no way entail, as a consequence, the maintenance of unequal or separate standards; these measures shall be discontinued when the objective of equality of opportunity have been achieved.

Adoption by States Parties of special measures, including those contained in the present Convention, aimed at protecting maternity, shall not be considered discriminatory.

### **4.1 Introduction**

4.1 Inasmuch as the Swaziland government does not have a specific and comprehensive policy aimed at accelerating the equality of men and women, the various policy documents contain a recognition of the need to implement special programmes specifically targeting women so as to improve their situation as there is still widespread discrimination and inequality of opportunity for women in the social, economic, political and cultural spheres of life.

4.2 The National Development Strategy (NDS) notes the issue of gender inequality as a concern and proposes 'strategies that are aimed at eliminating the gaps and offers equal opportunities to all citizens irrespective of their sex [including] to 'Implement and review appropriate legislative reforms that will remove all forms of discrimination against women.'

4.3 The Poverty Reduction Strategy and Action Plan ‘puts emphasis on affording equal opportunity to all citizens regardless of sex or race to access social and economic services in order to enhance their development.’<sup>13</sup> In pursuance of its objectives, the PRSAP outlines a number of strategies and actions for reducing poverty. Amongst those are the strategies to create employment and business opportunities, one of which is to “ii. Remove inhibiting policies, laws and regulations”<sup>14</sup> and those strategies for achieving gender equality which include, the “review and repeal all discriminatory laws.

4.4 Relating to women’s representation in parliament, the Constitution makes provision for the addition of 4 additional women to be nominated and elected into the House of Assembly, after an election, should there be less than 30% women representation in parliament. In addition, of the 10 members that are appointed by the King, section 95(2) states that ‘*at least half of them [should be] female.*’ In addition section 94 of the Constitution stipulates that in terms of electing members of Senate,

(2) *Ten Senators, at least half of whom shall be female, shall be elected by the members of the House in such manner as may be prescribed by or under any law at their first meeting so as to represent a cross–section of the Swazi society.*

(3) *Twenty Senators, at least eight of whom shall be female, shall be appointed by the King acting in his discretion after consultation with such bodies as the King may deem appropriate.’*

4.5 In terms of the protection of maternity, the Constitution provides for the rights and protection of the family and states in section 27 (4) that ‘*Motherhood and childhood are entitled to special care and assistance by society and the State.*’ This is further supplemented by provisions relating to the rights of workers in which section 32(3) provides that “The employer of a female worker shall accord that worker protection before and after child birth in accordance with law.” The applicable law in this regard is the Employment Act which contains specific provisions on maternity rights, including the period of maternity leave to be afforded to female workers and the terms and conditions of this leave.

#### **4.6 Conclusion**

4.6.1 Government acknowledges that it is not sufficient to only have as a general policy the attainment of equality between women and men but that this will only be realized when specific laws are passed and programmes are put in place, such as acceleration programmes for women to attain this equality. It is envisaged that the Gender Coordination Unit, in collaboration with its partners will assist in building the capacity of Government to understand the requirements of the Convention in terms of implementing such programmes. For instance, it will be necessary for the various sectors within Government to appreciate what measures exist for accelerating women’s equality and how these measures can be practically implemented. This will require additional finance which is hoped will be forthcoming from various development partners who have supported gender equality initiatives in the country.

### **Article 5**

States Parties shall take all appropriate measures:

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<sup>13</sup> Ibid.

<sup>14</sup> I.

(a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either sexes or on stereotyped roles for men and women;

(b) To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases.

## 5.1 Introduction

5.1.1 The Kingdom of Swaziland as a traditional society has social structures that pay allegiance to the Monarch and to Chiefs as His Majesty's representatives at Chiefdom level. Historically, Swazi society is organized into age-related regiments, for men, women, boys and girls, which mobilize people for ceremonial functions such as the Reed Dance to play their traditional roles within the chiefdoms.

5.1.2 Age plays an important role in the family and the Swazi society in general as people look up to the elderly for advice and counseling. The cultural system is characterized by age and sex-specific regiments such as *Lutsango Lwaka Ngwane* (LLN) which works directly with the Queen Mother. Swazi families have a grandmother's house respected as an ancestral house and a social centre for the extended family. This is supposed to be a neutral structure that is used during conflict resolution where the grandmother assumes the role of mediator and arbitrator. She represents the link between the household head and his lineage.

## 5.2 Social Norms of Conduct and Stereotypes

5.2.1 Gender relations at family and community level are maintained to a very large extent, by cultural norms, beliefs and practices. Determination of roles and attitudes between the sexes can be observed from the time the girl is born, brought up and socialized, at puberty, marriage, adulthood and even death. The processes adopted include socialization and observance of customary and other rules passed on from generation to generation.

5.2.2 In Swazi families, there is generally jubilation when a boy is born as that ensures potential continuity of the lineage. If that child is the first born, he is immediately assumed to be the one to build upon, continue the father's name and is earmarked for inheritance at an early age. Even in the naming of the child, it is common to find names such as *Vusumuzi* (rebuilder of the home) and many others. However, this is not equally applicable to girl children who are seen to be on transit from her natal home. In some cases parents have expressed their disappointment in bearing girls by naming them *Jabhisile* (disappointment).

5.2.3 A boy-child is brought up to be accustomed to the public domain and is discouraged or verbally chastised if he likes to be around his mother or in the kitchen. He is socialized to be adventurous in order to make a place for himself in the public domain in the future. He is further socialized that crying and showing emotions is for girls. On the other hand, a girl is expected to help her mother with household chores in preparation for her destiny as someone's wife. A good wife in the Swazi culture is one who works hard to feed her in-laws and married family.

5.2.4 The perpetuation of stereotyped roles and unequal gender relations is partly a result of the role of songs, dance and drama in Swazi society. Songs that reflect sex roles and stereotyping are passed on from community to community and from one generation to the other through ceremonies, dance and mere entertainment. Such songs are not uncommon on radio and television stations.

5.2.5 Violence against women has become so much a part of Swazi life that no daily newspaper is without an article about a physically abused woman, children and to some extent men. Due to extensive awareness programs, reporting has improved and statistics on reported cases are now somewhat available compared to the late 90's.

5.2.6 Women, on the other hand have been socialised to silently accept male violence, through the promotion of values that expect women to "persevere" regardless of the problems she may experience in her marital situation. In addition, women consulted noted that more often than not they are blamed for having provoked the violence and fear negative repercussions of reporting such as further violence, the loss of a the household's breadwinner and sanction by in-laws. These collectively breed a culture of silence around issues of domestic violence and as a result women avoid reporting the matter as they do not want to be seen to have failed in their marriages.

### **5.3 Socio-Cultural Norms Regarding Workload**

5.3.1 In general, the multiple roles of Swazi women directly translate into heavier workloads than men. Whether or not she holds a fulltime job in the formal or informal sector, the role of wife, mother, homemaker, caretaker, comforter and food producer/provider remains the woman's job. Before arriving at work, the home front must have been taken care of and by evening, she is transformed into a cook, mother, nurse with a wide array of tasks to be performed before sleeping. The outbreak of the HIV and AIDS pandemic has worsened the position of women who have to care for the sick, bedridden, orphans and console other people in mourning as an extra burden.

However, the establishment of NERCHA and the implementation of the Multi-sectoral HIV/AIDS policy has established a very strong program (that receives extensive funding from the Government, Global Fund and other social partners) which provides palliative care materials and supplies through a decentralised system (*tiNkhundla (Constituencies)*, Health Centers, clinics, Rural Health Motivators, Caregivers). The program provides relief and assistance to affected households and the infected through RHM's, CBOs, FBOs, NGOs, UN partners, Bi-laterals, the private sector, parastatals, the Government and individuals.

5.3.2 In the rural areas, the situation is gradually changing and more women have had to take up male-related activities such as herding livestock, ploughing the fields because of high migration and mortality of male members of the family. The workload is more onerous because of lack of appropriate technology and inadequate access to essential basic services such as potable water and the drudgery of farm work. For women in towns and peri-urban areas, the task of keeping their families fed and clean forms their major focus, in addition to formal and informal employment, with men playing a minor role in housework or child nurturing before or after hours.

5.3.3 During the Committee's consultation with traditional leaders and focus group discussion with women, the committee heard and recorded testimonies that gave an indication that gender roles are changing. Some men now co-work with their wives on tasks that were traditionally for women such as cooking fetching water, collecting firewood in bulk using motorized or drought power. Out of men's concern for the well being and safety of their partners, these new practices are becoming common in peri-urban, urban and rural areas as a result of extensive environmental degradation, drought and poverty which put women's lives at risk. Women's workload is being addressed by the Government and her social partners by availing appropriate labor and time-saving technologies such as water harvesters, fuel efficient stoves, solar driers and agri-based devices such as jab planters and handheld maize shellers. It is now common in Swaziland in the rural, peri-urban and urban areas to find men selling wares in formal and informal markets and in the streets, an economic activity was only for women.

5.3.4 In Swazi society men are the link between women and land. The latter's access over this critical resource, is to a large extent, determined by their marital status. The rights to land are given to men on the assumption that they head families and will take care of their wives.

5.3.5 In customary marriage, at the death of the husband the in-laws would normally allow the widow to choose one of the younger brothers of the deceased to inherit her and bear children for the dead brother. This, it is alleged to be for procreation and not a permanent relationship as the brother should have been already married. However, this choice is not open-ended as it has a bearing on her and the children's right to the deceased estate and their inheritance.

5.3.6 Mourning rites dictate that the widow remains in seclusion until the partner is buried and a further one month following the burial. This is followed by wearing of mourning gowns for a period of two to three years depending on the status of her married family. From interviews with traditional leaders who were all male, a widower only observes seven days' seclusion and never wears mourning clothes. During this period, she has to assume a certain posture when walking, observe certain restrictions in the public and employment domains and undergo treatment that results in loss of her dignity and self-esteem.

5.3.7 Religion and adherence to religious rules and practices affect women differently from men. Custodians of religion inculcate that since woman was created from a man's rib, she is inferior to man and should humble herself and be submissive to her husband who is the head of the household. As a result women pastors were unheard of until quite recently. Currently less than 10% of the pastors nationally are women.

5.3.8 Some religious practices prohibit their membership from seeking medical healthcare from doctors, clinics and hospitals which extends to children's denial to access immunization services and supplementation.

5.3.9 The stereotypical portrayal of women in the media is a reflection of the fact that decision-making positions in the Swazi media are male-dominated with editing, managing, administrative and other senior positions held by men. The majority of women in the industry are in reporting and junior administrative positions. Male control results in an insensitive portrayal of women as objects for the pleasure of men, rather than individuals in both the electronic and print media. Recently, established 'women's columns' have also portrayed women as sex objects, helping to perpetuate the negative image of women. Additionally, women's access to the media is limited in rural (and peri-urban areas) yet the majority of women reside there. Thus their multiple roles are rarely appreciated by policy makers, planners and service providers. Women's professional status is often undermined by the media as the majority of voices reflected in the media are those of men even where women are competent or have expertise in the areas being reported on.

#### **5.4 Common Responsibility in the Upbringing and Development of Children**

5.4.1 Children are highly valued in Swazi society and in the past one of the measures of success of a man would be the size of his family. Dowry or *lobola* are paid by the groom and/ or his relatives which signifies and symbolizes that the woman has been transferred along with her productive and reproductive capacities. If she is perceived to be "barren," the woman's family gives a younger sister or cousin to the husband under customary law. As a result, silent pressure is mounted on the woman to bear children and her ability to provide an heir to her in-laws regardless of the number and spacing of children she would have liked. This position further negatively affects her power to negotiate any family planning method sometimes at the detriment of her health.

5.4.2 In the past children born out of wedlock in both customary and general law, belong to the mother's family and cannot inherit from the father. This has however been addressed

by the Constitution which prohibits the status of illegitimacy and allows all children to have equal share from their father's estate regardless of being born in or out of wedlock. A child born out wedlock can obtain the father's name, even if the parents are not married. However, the father can 'purchase' the child or children with cattle, one for a boy and two for a girl. These children then are regarded as having been accepted into and belonging to their father's family.

5.4.3 The provisions of the Constitution seek to promote equal responsibility for children on both parents. Section 29 (3) states, '*The child has the right to be properly cared for and brought up by parents or other lawful authority in place of parents.*' In addition, Section 29(7) states that '*Parliament shall enact laws necessary to ensure that -*

(a) *a child has the right to the same measure of special care, assistance and maintenance as is necessary for its development from its natural parents, except where those parents have effectively surrendered their rights and responsibilities in respect of the child in accordance with law;*

(b) *a child is entitled to reasonable provision out of the estate of its parents;*

(c) *parents undertake their natural right and obligation of care, maintenance and proper upbringing of their children.*

These provisions provide the potential for women to gain greater assistance from the fathers of children in the maintenance and upbringing of the children and change the current situation where women are disproportionately charged with this responsibility.

## **5.5 Measures and Programmes aimed at Addressing Socio-Cultural Issues Limiting Women's Protection and Enjoyment of Their Rights**

5.5.1 The Kingdom of Swaziland, through the public and private sector has certain policies, programmes and projects aimed at making improvements in the lives of the general populace and specifically women. The work of Government is complemented by NGOs, FBOs and other social partners who have done considerable development work including challenging practices which impact negatively on women. These programmes are also supported by national policy such as the NDS and national Constitution.

5.5.2 A number of NGOs and FBO's address gender issues such as will writing, inheritance rights, empowerment in decision making especially on marital issues and child maintenance which are problematic for women and other vulnerable groups.

5.5.3 The Committee discussed and observed that stereotyping of women has been removed in pre- and primary school textbooks that are produced by local and regional curriculum developers and Macmillan. Young people's clubs have been established in and out of school to create awareness and sensitize them through song, drama, play, debates and sporting activities performed at Chiefdoms, *tiNkhundla (constituencies)* and Youth Centers throughout the country.

5.5.4 Government, development partners and civil society organisations are also implementing programmes that avail health-related services aimed at women which include water and sanitation; immunization and supplementation; maternal health and family planning; malaria control and provision of mosquito nets; HIV/AIDS prevention, mitigation; care, treatment and support; micronutrient and supplementation for expectant women; elderly grants; grants for people with disabilities and vulnerable households; and educational radio and television programmes.

5.5.5 The Marriage Act of 1964 is being reviewed and this process will identify and address the gaps that were observed by the Committee including the age differential in marriageable age of boys versus girls and the marital power that currently rests wholly on

men. The issue of inheritance laws and women's access to land rights needs to be addressed as well and the Administration of Estates Bill will ensure that this is done. It was reported during interviews that following the wide dissemination of information by service providers such as Council of Churches, WLSA and others, more women married by customary rites are taking cases involving their husband's estates to the Master of the High Court for winding up.

5.5.6 An extensive and decentralised family planning program, network of facilities and services is now in place to provide free, diverse information and contraceptive services available in all public healthcare institutions, private sector and NGO facilities throughout the country including outreaches to the industry. However, it has been observed that the female condom is not so easily available in some facilities. Voluntary Counseling and Testing services are also available free of charge in public institutions and in some testing centres established by NGOs.

5.5.7 Reporting on persons including women victims of domestic violence is now more visible following a clearly mapped out strategy to address all forms of violence against women and children. The services aimed at strengthening the national response to gender-based violence include mobilisation of the populace; training of relevant professionals; provision of counseling, rehabilitation services for the abused and perpetrators; training workshops; reporting and information systems; hotlines provided by the Government and NGOs; temporary shelter and homes for survivors of violence; IEC materials to raise public conscience an awareness on this scourge; a decentralized Domestic Violence and Protection Unit within the police service; training of media practitioners on sensitive reporting and the police on confidentiality, and the establishment and training of community-based protectors called *Lihlombe Lekukhalela* (Shoulders to Cry on) which also forms part of the formal referral network system.

5.5.8 The National Constitution has provided for the prevention of society from '*compelling a woman to undergo or uphold any custom to which she is in conscience opposed*'. It can be inferred from this clause that even the wearing of mourning gowns can now be challenged with the strength of this general clause. In addition, according to subsection 23(1) of the National Constitution entitles 'all persons to a right to freedom of thought, conscience or religion' which can imply that even a woman regardless of their marital status can follow a religion of her own. Programmes in place include the formation of the Church Forum to co-ordinate all denominations and affiliates in order to deliver gender and HIV-related activities and services, youth camps which among other things address character education and molding; film shows and edutainment.

5.5.9 The Committee verified that recruitment and retention of women in previously male-dominated disciplines and professions is changing albeit slowly. However, the Committee also observed that the absence and or invisibility of a Media Regulation Board and relevant legislature perpetuates negative portrayal of women in the media and does not provide an opportunity for this to be corrected through an institutionalized complaints mechanism.

## Article 6

States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.

### 6. Definition of trafficking

6.1 For purposes of this section, the definition of trafficking used is that contained within the Optional Protocol to the United Nations Convention against Transnational Organized Crime: Protocol to Prevent, Suppress and Punish Trafficking in persons,

Especially Women and Children 2000.<sup>15</sup> According to Article 3 of the Protocol, “Trafficking in persons” shall mean:

(a) *“The recruitment, transportation, transfer, harbouring or receipt of persons, by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.”*

## **6.2 Incidence of Trafficking in Swaziland**

6.2.1 The recognition of the phenomenon of trafficking in persons is a relatively new development in Swaziland. Local newspapers, reports such as the U.S. State Department “Trafficking in Persons Report” for June 2008 and anecdotal evidence revealed the fact that human trafficking does occur in Swaziland. The occurrence of trafficking has also been confirmed by government officials in particular, in the Department of Immigration and the Ministry of Foreign affairs and International Cooperation. Nonetheless, there has been little research into trafficking, absence of specific legislation, and no adequate and reliable reporting on the issue. The exact nature and extent of trafficking in the country is not known with certainty.

## **6.3 External trafficking**

6.3.1 From the evidence of trafficking that does exist, Swaziland’s position in relation to human trafficking is three-pronged: it is a source, transit and destination point. In this regard, there have been reported cases of trafficking of women and children under the guise of employment, both within and outside the borders of the country. The Swaziland government has since been made aware of the incidences of trafficking at the international level involving Swazi women.

6.3.2 Children are also prone to being trafficked out of the country. This is due to laxity and loopholes within the country’s immigration laws. The inclusion of children in adults’ travel documents places them at risk of being trafficked as the children’s particulars are included without any other form of identification such as a photograph. This means that another child of a similar age as the one included in the travel document of the holder may depart and this anomaly will not be detected unless the immigration official’s suspicion is aroused. Also, on entry, the immigration officials cannot verify that a child returning with the travel document holder is the one who actually departed. This situation provides would-be traffickers with the opportunity to transport children in and out of the country with impunity.

## **6.4 Internal trafficking**

6.4.1 Poverty, the general deterioration in socio-economic conditions, the disintegration of the extended family and erosion of traditional social safety nets as well as the family deprivation problems that have intensified by the devastating effects of HIV and AIDS are amongst the main drivers of human trafficking in Swaziland. The situation is exacerbated by the dynamics of rural-urban migration which increases the risk of trafficking.

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<sup>15</sup> Swaziland has signed but not ratified the Convention and the Optional Protocol.

6.4.2 Available research on child trafficking indicate that children trafficked especially within the country's borders end up doing domestic work, agricultural work and commercial sex work during which they are exposed to dangerous and harsh conditions. The Rapid Assessment on Child Trafficking and other migration-related child labour in Swaziland found that the "major predisposing children to being trafficked is poverty."<sup>16</sup> In addition, HIV and AIDS, which has often led to the breakdown of the nuclear family through the death of one or both parents is a major factor exposing children to trafficking. In such a situation, the children may be taken by relatives or other persons under the pretext of providing for their welfare yet may end up doing domestic work for which they earn low income and in other instances they are not paid at all. In addition to this, the national strategy report on the Elimination of Worst Forms of Child Labour found that children in Swaziland are subjected to commercial sexual exploitation with the problem manifesting itself through prostituted children and children involved in transactional sexual relationships. The reports note that girls and young women are particularly vulnerable to these types of trafficking.

## 6.5 Applicable legislation

### 6.5.1 The Kingdom of Swaziland welcomes the adoption of the UN Global Plan of Action Against Trafficking in Persons adopted in July, 2010.

In 2009, the Government of the Kingdom of Swaziland adopted the **People Trafficking and People Smuggling (Prohibition) Act of 2009**. This piece of legislation contains a comprehensive definition of trafficking in persons in its various forms be it inside or outside the country, thus making it a criminal offence punishable by appropriate sanctions. In addition to this law, there are a number of other laws within which contain elements that may include certain aspects of trafficking. Amongst these are the following:

- i. **Criminal Procedure and Evidence Act 67 of 1938:** Section 55 Act deals with women detained for immoral purposes.
- ii. **Crimes Act 6 of 1889:** Section 42 deals with procurement for the purposes of prostitution.
- iii. **Girls and Women's Protection Act 39 of 1920** criminalizes and prohibits any form of sexual intercourse, immoral or indecent dealing by a male with girls who are under the age of 16 years, as they are considered not competent to consent to sexual intercourse.
- iv. **Child Care Services Order 30 of 1977** protects children from abuse and ill treatment. It provides for the creation of an office for Child Care and Protection, and authorizes the removal of children from people who may cause them harm and their placement in welfare institutions, foster homes, hospitals, schools or other suitable places. The relevance of this Order lies in provisions for the protection of children from abuse and ill treatment.
- v. **The Employment Act 5 of 1980:** Section 97 prohibits the employment of children in any industrial undertaking except where immediate family members are employed or if the employment is for educative purposes. The Act also prohibits the employment of children during school hours of between 0800 a.m. and 4 p.m. and between the hours of 6p.m and 7 a.m., for more than 6 hours in any day, for more than 33 hours in a week, and for more than 4hours continuously, there must me an hour of meal or rest in between.

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<sup>16</sup> Page 35

## 6.6 Prostitution

6.6.1 Prostitution in Swaziland is a crime as is living from the earnings of prostitution. Section 49 (1) (e) of the Crimes Act 6 of 1889 provides,

*“A person shall be guilty of an offence and liable on conviction to a fine not exceeding one hundred emalangeni or, in default of payment thereof imprisonment not exceeding six months, who —*

*(e) is found loitering at any time in any thoroughfare or public place or near any dwelling house, shop, store or any enclosed place or veld or bush for the purpose of prostitution or solicitation or to the annoyance of the public.”*

6.6.3 Regardless of the reasons for participating in the sex trade, commercial sex workers are vulnerable to and victims of different forms of violence. In a study commissioned by MOHSW<sup>17</sup> it emerged that sex workers have been forced into having sex. Other forms of violence take the form of physical, verbal, emotional and/ or financial abuse and may be caused by the sex worker insisting on condom use when the client is not inclined, a client’s refusal to pay and a variety of other factors. Because prostitution is illegal, this abuse is hardly reported and there are with few avenues for the protection of commercial sex workers.

6.6.4 The nature of commercial sex work and the abuse that is perpetrated therein contributes to sex workers’ vulnerability to acquiring HIV and/ or STIs, in particular because in many instances, higher payment for sexual services is dependent on non-condom use. The impact on sex workers is aggravated by the fact that the general negative societal attitude regarding commercial sex work and prostitution as immoral influences the response of service providers such as health workers, again resulting in reluctance to report and seek treatment for any health related ailment.

## 6.7 Challenges with addressing trafficking, prostitution and commercial sexual exploitation

6.7.1 There is a lack of cohesion or synergy between criminal, labour and immigration legislation which also pose a challenge to addressing the issues of human trafficking. External trafficking is worsened by the use of informal crossings that are not supervised by immigration officials. However, it is anticipated that the newly adopted legislation will address these areas of concern.

6.7.2 Prior to the adoption of the Human Trafficking Act, the absence or one-sided nature of the law available or dealing with trafficking, prostitution and commercial sexual exploitation resulted in some cases, in the victims themselves facing criminal charges. For instance, with prostitution, it is generally the commercial sex worker and not the client that is arrested and prosecuted. A similar situation arises for the victims of trafficking where they are of foreign origin. In this regard, because of the clandestine nature of trafficking, these victims have usually entered the country illegally and if they are found they are charged with contravening the country’s immigration laws. Again, the perpetrators escape through the loopholes in the law. These challenges are further worsened by the lack of provision of relevant support structures and other interventions that make it very difficult for victims to either report on this abuse or withdraw from the activities they are involved in for fear of recrimination.

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<sup>17</sup> “Situation Analysis on Commercial Sex Work in Swaziland” 2007, supported by UNFPA, NERCHA and UNAIDS

## 6.8 Initiatives being undertaken to address trafficking and the exploitation of trafficking

6.8.1 Pursuant to the growing awareness on trafficking and its recognition as a problem in the country, there have been developments towards addressing the challenges facing women and children in terms of their risk to trafficking and sexual exploitation. These initiatives have been taken both at the legal and programmatic levels.

### 6.8.1.1 Administrative Interventions

In July 2009, an Inter agency Task Force on People Smuggling and People Trafficking was set up and is situated within the office of the Prime Minister and chaired by the Principal Secretary in that office. The composition of the task force includes key government Ministries and Departments, Non-Governmental Organizations concerned with issues of human trafficking and Development Partners including UNICEF and UNDP. The core mandate of the Task Force is to coordinate and manage the national response to Human Trafficking guided by the 3 P's Principles i.e. Prevention (awareness creation and communication), Protection of survivors and witnesses and Prosecution of offenders.

At present, the Task Force is working with other international NGO's including International Organization on Migration (IOM), the US Embassy in Swaziland and United Nations Office on Drugs and Crime (UNODC) to strengthen its institutional capacity.

### 6.8.1.2 Legal Interventions

Apart from the **People Trafficking and People Smuggling (Prohibition) Act of 2009**, there are a number of policies and legislation that the Swaziland government is proposing to address the problem of human trafficking. These are as follows:

i. The Sexual Offences and Domestic Violence Bill which includes a section on trafficking that contains a comprehensive definition of trafficking in its various forms. The Bill envisages the establishment of support structures to cater for the needs of victims.

ii. The Transnational Crime Bill includes trafficking in so far as it is perpetrated across the country's borders. It is envisaged that it will also address issues of sex tourism which is currently not recognized at all as a criminal offence in the country.

iii. The National Children's Policy that includes guidance on child protection and the safe-guarding of children's welfare in all instances, including where the risk of trafficking is concerned.

iv. The Child Justice Bill proposes to deal with all matters involving the interaction of children with the criminal justice system whether as victims or perpetrators of crime.

v. The National Social Development Policy whose objective is to guide the Social Welfare Department and other stakeholders in the delivery of social welfare services. Regarding human trafficking the policy proposes that there be structures put in place to provide protection for children at risk of child trafficking, worst forms of child labour and put in place safety nets for children and other vulnerable groups, including a package of education and health which in turn may reduce the incidences of trafficking.

### 6.8.1.3 Programmatic Interventions

The following initiatives have been implemented within various government departments and organizations to address trafficking:

a. In partnership with the government of Swaziland, UNDP, SWAGAA and the European Union, initiated a national study on Human Trafficking in 2009. The study was

designed to determine the extent, trends, causes and proposals for interventions on matters relating to human trafficking in Swaziland.

b. In August 2009, the Red Light 2010 Campaign was launched by the Prime Minister of Swaziland, an “Action Against Trafficking in Women and Children for Sexual Exploitation”. The partners in this campaign include Women and Law in Southern Africa (WLSA) Swaziland, Swaziland Action Group Against Abuse (SWAGAA), World Vision, the Coordinating Assembly of NGO’s (CANGO), Save the Children and the 2010 visit Swaziland Campaign. The campaign is targeting the FIFA World Cup Tournament to be held in South Africa in 2010. It is anticipated that incidences of trafficking, especially of women and children, will significantly increase in number as the world converges in the Republic of South Africa. Other countries, particularly in the SADC region have also launched similar campaigns to ensure the safety of women and children in the region during this period.

c. In 2008, a National Children’s Coordinating Unit (NCCU) was established to oversee all issues pertaining to the welfare of children. Amongst the areas that the Unit is mandated to deal with is that of child labour. The National Social Development Policy proposes that the Department of Social Welfare work in close collaboration with the NCCU to “facilitate the development of minimum standards to ensure coordination of standardized social welfare.”

d. In 2007, a Sexual Offences Unit was established within the Directorate of Public Prosecutions Chambers under the Ministry of Justice and Constitutional Affairs. The Unit was created as a response to the growing incidence of sexual violence, particularly against women and children and has amongst its main objectives the development and enhancement of skills and professionalism to ensure efficiency, expediency in dealing with sexual offences.

e. A Domestic Violence, Sexual Offences and Child Protection Desk has been established within the Royal Swaziland Police Services. The purpose of this desk is to deal with issues pertaining to the issues of domestic violence, sexual offences and child protection, by law enforcers specially trained in these areas.

f. Government has provided for education grants for orphaned and vulnerable children. This initiative is aimed at keeping the children in school despite their economic challenge and it is envisaged that it will contribute to reducing the risk of trafficking and vulnerability to child labour.

g. The Deputy Prime Minister’s Office Social Welfare Department operates a halfway house for abused women that can potentially also be used for victims of trafficking.

h. The Gender Coordinating Unit together with other NGOs and other civil society organizations launched a 365 Days of Activism Against Gender Violence Action Plan in 2007, as part of the annually commemorated 16 Days of Activism Against Gender Violence Campaign. This Action Plan addresses human trafficking, and it is envisaged that through the Action Plan there will be additional research into and wider dissemination of information on human trafficking.

i. There are a number of programmes by various organizations such as Save the Children Swaziland, World Vision, UNICEF, and World University Services Swaziland to alleviate exploitation and provide support for children who are vulnerable. These include the concept of community child protectors (*Lihlombhe Lekukhalela* – “a shoulder to cry on”). The objectives of this programme are to protect children from all forms of abuse, educate communities to fulfill the rights of the children, especially those that are orphaned and vulnerable and to provide a mechanism for children to report abuse at community level.

j. A number of NGOs such as the Council of Swaziland Churches, Save the Children Swaziland, WLSA and SWAGAA offer services as sensitization and education of the public on issues of gender-based violence, counseling for survivors of gender based violence, and assistance on the legal aspects of this abuse.

k. The Family Life Association of Swaziland has implemented a project called “Corridors of Hope” whose aim was to rehabilitate sex workers and equip them with life skills. This project was challenged by the fact that although many sex workers have expressed their willingness to leave the sex work industry, they report difficulties in finding alternative sources of income.

l. The Immigration Department within the Ministry of Home Affairs is contemplating the introduction of an individual passport for children in order to curb the incidence of trafficking in children.

## Article 7

Political and Public Life States parties shall take all appropriate measures to eliminate discrimination against women in political and public life of the country and, in particular, shall ensure to women on equal terms with men, the right:

(a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;

(b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government;

(c) To participate in non-governmental organizations and associations concerned with the public and political life of the country.

### 7.1 Introduction

7.1.1 Participation in political and public life in Swaziland includes nomination, election or appointment into the various structures of national and public leadership and decision-making. Amongst the institutions governing political and public life are national and local government, Parliament, the judiciary, various commissions and governing boards as well as a number of advisory bodies to the King and Queen Mother. Different qualifications are required for nomination, election or appointment into these structures dependent on the nature of the structure and the law or practice relating to it. For instance, in the case of government, and Commissions, statutory guidance is provided while in the case of traditional structures, Swazi law and custom is the determining factor. With respect to other civil society organizations or associations such as NGOs, trade unions, and private sector bodies, participation is often voluntary and is regulated by legislation.

### 7.2 Qualifications for Eligibility to Participate in National Elections

7.2.1 According to the country’s national electoral legislation - collectively contained in the National Constitution, Establishment of Parliament Order, Elections Order and Voter Registration Order – every person, regardless of sex or gender, has the right to vote for a candidate of choice by secret ballot<sup>18</sup> and to stand for public office as long as they meet the criteria for eligibility as provided by the law.

<sup>18</sup> K.O-I-C 7/ 1992

7.2.2 Section 88 of the Constitution stipulates that the qualifications for registration to participate in national elections as a voter are that the person has “attained the age of eighteen years and is a citizen of or is ordinarily resident in Swaziland.” Section 89 provides that a person will be disqualified from such may be disqualified from registration where that person is,

“(a) *certified to be insane or otherwise adjudged to be of unsound mind under any law for the time being in force in Swaziland;*

*(b) for an act which is a criminal offence under the law of Swaziland, under sentence of death or life imprisonment imposed on that person by a court in any country; or*

*(c) is disqualified for registration as a voter under any law for the time being in force in Swaziland relating to offences connected with elections.”*

7.2.3 The qualifications for nomination, election and appointment of Members of Parliament as well as *bucopho* are that a person,

“(a) is a citizen of Swaziland;

(b) has attained the age of eighteen years and is a registered voter;

(c) has paid all taxes or made arrangements satisfactory to the Commissioner of Taxes; an

(d) is registered as a voter in the inkhundla (constituency) in which that person is a candidate (in the case of elected members).”

7.2.4 Women are therefore eligible to vote, stand for and be voted for, or appointed to any public office in Swaziland.<sup>19</sup> In terms of the applicable law, women, are afforded an opportunity during elections, on an equal basis to campaign<sup>20</sup>, that is, to address their constituency meeting on developmental and issues in line with national policy.

7.2.5 However, it is important to note that in as much as the law itself is not discriminatory, there are a number of non-legal factors that affect women’s participation at this level. These include economic considerations such as unequal access to and control of resources by women because this also affects their ability to participate effectively in the electoral process and may discourage potential women candidates from even considering participation. Other factors include social norms that may require a woman to request consent for participation from her husband and in-laws; low self-esteem and lack of confidence in standing for public office due to legal and religious principles as well as gender stereotypes that place women in a position of minority and submissiveness and promote leadership as a male domain. Observance of the mourning period for a woman will also keep her out of the running for political or public office. Women have also reported being fearful on engaging in politics because of threats, intimidation and the risk of physical harm from competitors.

### **7.3 Women’s Participation in National Elections**

7.3.1 The level and extent of women’s participation in the national elections varies depending on the stage at which the electoral process is. Reports of previous national elections reveal that women are usually the majority of those who register for elections. For instance, in 2003, out of 229 673 of those who registered for the election, 119 970 persons - more than half of the total number - were women. Despite their large numbers at this initial

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<sup>19</sup> The Constitution of the Kingdom of Swaziland, section 85.

<sup>20</sup> K.O-I-C 12 (4)/ 1992

stage of the process and in voting, this has not led to a proportionate presence when candidates are ultimately elected. The following tables<sup>21</sup>, which reflect the statistics pertaining to nomination as well primary and secondary are telling in terms of the progressive reduction of women's visibility as the election process unfolds:

#### 7.3.1.1 Nomination Statistics

<i>Region</i>		<i>Mps</i>	<i>Tindvuna</i>	<i>Total</i>
Hhohho	Females	94	69	163
	Males	272	275	547
Lubombo	Females	53	52	105
	Males	244	214	458
Manzini	Females	126	92	218
	Males	357	354	711
Shiselweni	Females	91	81	172
	Males	348	296	644

#### 7.3.1.2 Primary Election Results: 2003

	<i>Members of parliament</i>	<i>Tindvuna tetinkundla</i>	<i>Total</i>
Females	26	32	58
Males	299	293	592
Total	325	325	650

#### 7.3.1.3 Secondary Election Results: 2003

	<i>Members of parliament</i>	<i>Tindvuna tetinkundla</i>	<i>Total</i>
Females	5	4	9
Males	49	50	95
Total	54	54	108

### 7.4 Representation of Women in Parliament and Constituency Leadership

7.4.1 Successive elections have seen the growth of the number of women in parliament both as elected candidates and as appointees from 9.5% to 20% from 1988 to 2008 as shown by the following table:

<sup>21</sup> Government of Swaziland, National Elections Office, Report on the Kingdom of Swaziland National Election, 2003

Category	Total		Women		Men		% Of Women	
	1998-2003	2003-2008	1998-2003	2003-2008	1998-2003	2003-2008	1998-2003	2003-2008
Prime Minister	1	1	0	0	1	1	0	0
DPM	1	1	0	1	1	0	0	100
Ministers	15	15	2	3	13	12	13	20
Deputy Minister	0	1	0	1	0	0	0	100
Parliament	95	95	9	19	86	76	9	20
Constituency Heads	55	55	1	4	54	51	2	7
Constituency Councilors	333	333	8	47	325	286	2	14
Total	500	501	20	75	480	426	4	15

7.4.2 A continued increase in women's representation is expected due to the gradual realization by government of the importance of promoting women's rights and gender equality throughout all sectors and at all levels in Swazi society. This enabling environment is further entrenched by the Constitution whose provisions governed the 2008 national election.

## 7.5 Women Representation in Commissions and Advisory Bodies

7.5.1 According to the Social Objectives enumerated in Section 60(4) of the Constitution, "The State shall ensure gender balance and fair representation of marginalized groups in all constitutional and other bodies." However, while there is an amount of women's participation in National Commissions and Advisory Bodies, this remains, with only a few exceptions, at very low percentages as is shown below:

### 7.5.1 Women in Commissions

Commission	Total	Women	Men	% of Women
Anti-Corruption Commission	3	2	1	67
Civil Service Commission	5	3	2	60
Elections and Boundaries Commission	6	3	3	50
Judicial Service Commission	6	1	5	17
Swaziland National Trust Commission	6	2	4	33
Teaching Service Commission	5	1	4	20

## 7.5.2.1 Women in King's Advisory Bodies

<i>Advisory Body</i>	<i>Total</i>	<i>Women</i>	<i>Men</i>	<i>% Of Women</i>
Royal Libandla	13	2	11	15
Border Adjustment Committee	10	2	8	20
Swazi National Council	22	3	19	14

## 7.6 Participation in Local Government

7.6.1 The Regional Administrators in all four regions of the country are all men. During the 2007 local government elections, 77 Councillors were elected and 19 of them were women, which is about 25% of the total. Out of the 12 mayors and Town Council Chairpersons, 3 are women (25%), out of 12 executives for local government 5 are women and 20% of urban Councillors represent women.

## 7.7 Representation in Civil Service, Civil Society and Statutory Positions

7.7.1 Men also dominate participation in top civil service positions as well as in the leadership of NGOs and other civil society positions. Only 34% of top executives of the civil service are women. Out of these 22% are principal secretaries or technical heads of ministerial departments while 30% of under secretaries are women, and 12% are chief executive officers. In the judiciary, 33% of magistrates are women and 25% are judges.

7.7.2 In the NGO sector, women represent about 27% of the leadership while trade unions and workers organizations have men dominating the top leadership positions. In the latter case, almost all workers' organizations in Swaziland have "women's wings," that purportedly cater for the women membership and which are directly women led but remain subordinate to the overall leadership of men who are the decision-makers of the organization's as a whole.

7.7.2 The following table illustrates the position of women in leadership

<i>Position</i>	<i>Total</i>	<i>Women</i>	<i>Men</i>	<i>% of Women</i>
Head of Civil Service	1	0	1	0
Principal Secretary	18	4	14	22
Under Secretary	22	7	15	32
Directors and Heads of Departments	88	19	69	22
Board of Directors	213	53	151	25
Chairpersons of Boards	25	2	23	8
Chief Executive Officers	25	3	22	12
Non-Governmental Organisations	73	20	53	27
Clerk to Parliament	1	1	0	100
President of Senate	1	1	0	100
Deputy Speaker	1	1	0	100

## 7.8 Participation in Government Policy Formulation and Implementation

7.8.1 The principle that guides governance in Swaziland is that of consultation with the people where any major national policy is being formulated or taken under review. Examples of this include the 1992 *Tinkhundla (Constituency) Review Commission*, the

1995 Economic Review Commission (ERC), the 1996 Constitutional Review Commission (CRC), the 1997 National Development Strategy (NDS) - Vision 2022; and the 2002 Constitutional Drafting Committee (CDC).

7.8.2 This principle is further entrenched by the Constitutional recognition of *Sibaya* (the Swazi National Council), constituted by *Bantfwabenkhosi*, the *tikhulu* of the realm and all adult citizens gathered at the official residence of the *iNdllovukazi* under the chairmanship of *iNgwenyama* which is the highest policy and advisory council (*Libandla*) of the nation and functions as the annual general meeting of the nation but may be convened at anytime to present the views of the nation on pressing and controversial national issues.<sup>22</sup>

7.8.3 Notwithstanding the principle of consultation through participatory approaches, individual women are nonetheless not able to participate effectively in public policy formulation and implementation. This is due to a number of reasons, including the fact that participation in policy formulation is initiated at high government levels including opinion leaders such as cabinet ministers, legislators, and chiefs where men dominate and women representation is at a minority. This obviously means that women's views may not be adequately reflected in the final product of the policy and programmes. In addition, the methodology of the consultative processes may cause the limited participation of women as well as the multiple roles that women play within the community and within families.

7.8.4 On the other hand, the participation of women's organizations has increasingly been visible in a number of policy formulation processes, notably in the development of the NDS, the PRSAP and the national Constitution. Organizations dealing with women's rights and gender equality are also often consulted by various Government ministries and departments when formulating policy that has an impact on these organizations' mandates. Nonetheless, there is a need to improve this as it often occurs on an adhoc basis and hence no guarantee that women will be given the opportunity and space to participate. Having realized this, government, through the Public Policy Coordination Unit (PPCU) is attempting to implement a consistent approach to formulating public policy.

### **7.8.5 Initiatives Aimed at Increasing Women's Participation in Political and Public Life**

7.8.5.1 In addition to the Constitutional stipulations regarding the numbers of women in parliament, as well as the need to have a gender balance in Constitutional bodies, there are a number of initiatives that have been implemented over time that deal with the promotion of women's participation in decision-making as a whole. These initiatives include sensitization, awareness-raising and education of women in decision-making, public advocacy campaigns on the importance of women's participation at this level and lobbying policy and decision-makers to include women when making appointments into public structures. Training and capacity-building programmes for women in political leadership have also been implemented. In the past elected women members of parliament were sensitized on gender and development and further trained in advocacy, lobbying, communication, and assertiveness skills to enable them to effectively participate in parliamentary processes.

7.9.5.2 The Gender Coordination Unit and CANGO's Gender Consortium have all been involved in this regard. The most notable of these initiatives have been the "Vote for a Woman" Campaigns supported by the UNDP and European Union to increase women's participation as voters and candidates in the 2003 and 2008 elections which have each seen a relative increase in women in parliament. However, there continue to be challenges caused by limited resources. Nonetheless, the partners that have been collaborating with the

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<sup>22</sup> Constitution of the Kingdom of Swaziland, Section 232

Gender Coordination Unit are committed to continuing this work with a view to ultimately achieve gender parity at this level as has been adopted by the African Union and SADC.

## Article 8

State parties shall take all appropriate measures to ensure to equal terms between women and men and no discrimination, create the opportunity to represent their Governments at the international level and to participate in the work of international organizations.

### 8. Introduction

8.1 There are currently a total of 13 Swaziland Embassies/Missions spread across the world and one Consulate distributed in the following way:

Africa - Mozambique, Republic of South Africa (Consulate), Ethiopia

Asia - Malaysia, Taiwan, Kuwait, United Arab Emirates, Qatar

Europe - United Kingdom, Belgium, Switzerland; and

United States - Washington, New York.

8.1.2 Foreign Service in Swaziland is regulated by the national Constitution and Chapter E of the Government of the Kingdom of Swaziland General Orders of 1968 (as amended). This Chapter governs the nature of positions, the qualifications necessary for candidates as well as the manner of appointment of the incumbents.

### 8.2 Women in International Organizations

8.2.1 The following table shows the distribution of Swazi women positioned at different levels in different international and regional organizations:

<i>Organisation</i>	<i>Number of women</i>	<i>Position occupied</i>
United Nations (UN) Secretariat – New York	1	Human Resources Officers (mid-level management)
	1	United Nations Conference on Trade and Development (mid – level Management)
United Nations (UN) Office – Vienna	1	Secretary
African Union (AU)	1	Nurse (entry level)
Southern African Development Community (SADC)	2	Senior Programmes Officer (mid-level management)
	1	Senior Programmes Manager (senior level position)
	1	Advisor
Southern African Customs Union (SACU)	3	Policy analyst (mid-level position)

<i>Organisation</i>	<i>Number of women</i>	<i>Position occupied</i>
Common Market for Eastern and Southern Africa (COMESA)	1	Head of Conferences (senior-level position)

8.3 The qualifications for representing Swaziland at the foreign level are not based on sex. Eligibility for appointment for all serving officers is based on qualification, which is normally a university degree in the first instance and relevant experience for the most senior positions.

#### **8.4 Initiatives to increase Women's Participation in International Representation and Participation**

8.6.1 The Government of Swaziland has acknowledged the importance of promoting gender equality in all areas of life in Swaziland in line with her international and regional obligations as well as per its equality commitments entrenched in the National Constitution. As a result, while there are no specific measures that have been taken to date, there is firm foundation and support for the implementation of a variety of programmes that will make equality a reality for women in the country. In this regard, the Gender Coordination Unit, with the collaboration of NGOs, civil society and development partners is implementing a number of programmes aimed at improving the situation of women in the country generally, including the 3-year programme for the implementation of CEDAW. Therefore, while there is no specific programme targeting the international arena, the opportunity does exist and will be used to ensure that this is an area that does receive appropriate attention.

### **Article 9**

1. States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.

2. States Parties shall grant women equal rights with men with respect to the nationality of their children.

#### **9. Introduction**

9.1 Matters related to the acquisition, change, loss and deprivation of citizenship are regulated by the 2005 National Constitution and the Citizenship Act of 1992. These pieces of legislation are essentially consistent with one another in all material respects, including in their approach to women's rights to enjoy and exercise their citizenship rights. In their articulation of issues of citizenship and women's rights therein, these laws are also consistent with principles of Swazi Law and Custom.

#### **9.2 Acquisition of Citizenship**

9.2.1 The Constitution, provide that citizenship may be acquired in the following ways:

- i. *by descent* – where a person is a descendant of a Swazi citizen;
- ii. *by operation of law* – where a person is generally regarded as a Swazi citizen by descent and has been declared by law to have this status;

iii. *by birth* - where the father of the child is Swazi and in certain exceptional circumstances where the mother is a Swazi citizen;

iv. *by marriage* – where a non-Swazi woman marries a Swazi man and lodges the appropriate declaration for acquiring citizenship accordingly; and

v. *by registration* – where a person fulfills stipulated criteria relating to residence in the country, character, contribution to the development of the country or the support of a Chief and three other reputable citizens.

### 9.3. Loss of Citizenship

9.3.1 According to the Constitution, loss of citizenship may occur in two ways. Firstly, where a person is a citizen by registration, section 49 of the Constitution states that the Citizenship Board may issue an order of deprivation of citizenship on the occurrence of a number of issues, including:

i. *'pursuant to a court order declaring that the person acquired a citizenship Certificate through fraudulent means or misrepresentation;*

ii. *where the person takes any voluntary action (except marriage) to acquire another citizenship;*

iii. *where, if the person is a non-Swazi woman who acquired citizenship through marriage, it is shown that the marriage was concluded solely for the purpose of acquiring Swazi citizenship,*

iv. *where a person was required to renounce the citizenship of another country and has not done so; and*

v. *where it is not in the public good that a person remains Swazi citizen.'*

9.3.2 Swazi citizenship may also be lost where a Swazi citizen above the age of majority gets married to a non-Swazi, and lodges a declaration of their desire to renounce Swazi citizenship with the Board.

### 9.4 Women's Exercise of the Right to Citizenship

9.4.1 The requirements for acquiring, retaining and losing Swazi citizenship and its attendant benefits are generally not discriminatory in that the same rules apply to both women and men (with the exception that a Swazi man who intends to get married does not have to lodge any declaration with the Citizenship Board).

9.4.2 However, both the Constitution and the Citizenship Act contain provisions that are discriminatory in one key respect, that of treating women differently from men with regards the passing of their citizenship to their children and husbands.

9.4.3 In terms of the passing on of citizenship to children by virtue of birth, the Section 43 of the Constitution<sup>23</sup> states the following:

(1) *A person born in Swaziland after the commencement of this Constitution is a citizen of Swaziland by birth if at the time of birth the father of that person was a citizen of Swaziland in terms of this Constitution.*

<sup>23</sup> Section 7(1) and 7(2), of the Citizenship Act are essentially the same as Section 43(1) and 43(2) of the Constitution

(2) *A person born outside Swaziland after the commencement of this Constitution is a citizen of Swaziland if at the time of birth the father of that person was a citizen of Swaziland in terms of this Constitution.*'

9.4.4 The consequence of this is that children who are fathered by non-Swazi men are not automatically citizens even though their mothers are. Swazi women are hence prevented from passing on citizenship to their children by non-Swazi men, whether born in or out of wedlock. However, for those children born out of wedlock, the constitution makes the following proviso:

*'Section 43(4). Where a child born outside of marriage is not adopted by its father or claimed by that father in accordance with Swazi law and custom and the mother of that child is a citizen of Swaziland, the child shall be a citizen of Swaziland by birth.'*

9.4.5 Children in these circumstances face the risk of statelessness where they are denied or not claimed by their fathers and cannot be registered as citizens of Swaziland until evidence is obtained that their father has not claimed them in accordance with Swazi Law and Custom. The practical implication is that women have to appear before the Citizenship Board to formally apply for Swaziland citizenship in respect of their children. Women have stated that this is degrading as women have to declare the details of the circumstances surrounding the pregnancy and the subsequent denial of paternity or non-claiming of the child in accordance with Swazi law and custom by the father. While the negative impact may directly be to the child, this disadvantage arises because of the mother's incomplete citizenship rights on an equal basis with her Swazi male counterpart whose children are automatically Swazi citizens regardless of the nationality of their mother and who has no exceptional circumstances to prove or impediments to overcome regarding this right.

9.4.6 The second dimension of the passing- on of citizenship is by virtue of marriage. In these circumstances passing on of Swazi citizenship by virtue of marriage to their non-Swazi husbands. In terms of acquisition of citizenship by marriage, both the Constitution and the Citizenship Act do not cater for the situation where the non-Swazi husband of a Swazi wife wishes to acquire Swazi citizenship by virtue of the marriage.

9.4.7 Swazi society is also patrilocal, with the attendant implication that on marriage a woman leaves her natal home and becomes a member of her husband's family. This is also the common law consequence of marriage as in this instance women follow the domicile of their husbands. In the case where a Swazi woman then marries a non-Swazi, the expected consequence is that she assumes the identity of that family as opposed to a Swazi man who may marry a non-Swazi where the expectation is that the wife embraces the identity of her husband and is regarded through the marriage as now "belonging" to her new home. The law in this regard only envisages the acquisition of citizenship by a non-Swazi woman married to a Swazi man and address this issue in the following manner:

*Section 44.(1)A woman who is not a citizen of Swaziland at the date of her marriage to a person who is a citizen (otherwise than by registration) shall become a citizen by lodging a declaration in the prescribed manner with the Minister responsible for citizenship or with any Diplomatic Mission or Consular Office of Swaziland or at any other prescribed office, either before or at any time during the marriage, accepting Swaziland citizenship.*

(2) *A woman who lodges a declaration in terms of subsection (1) shall be a citizen from the date of her marriage, where the declaration is lodged before the marriage, or where the declaration is lodged after marriage, from date of lodgement.*<sup>24</sup>

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<sup>24</sup> Section 8 of the Citizenship Act, 1992

9.4.8 There is no avenue for non-Swazi husbands of Swazi women to acquire citizenship by virtue of their marriage, again demonstrating the different treatment given to women and men. Even though there are other avenues for acquiring citizenship such as registration, the fact is that there are additional and different requirements in this regard which are more onerous.

9.4.9 These provisions have an adverse impact on women's ability to enjoy their full human rights and the reality on the ground is that many women are facing difficulties with respect to their inability to pass on their citizenship either to their spouses or to their children. These difficulties include:

9.4.10 The inability to obtain travel documents in respect of children born of foreign men as this is a right attached to citizenship arises from the fact that when one registers a travel document in respect of a child, there is a requirement that one produces the child's birth certificate. In order to record the details of the child's father, there is a requirement for the father to be present and to supply his details himself. This is also an indication of the acceptance of the child's paternity by the father. In the event that the woman registers the child's birth certificate alone, the details of the father do not appear. In such cases, the surname of the child then reflects whether the child is a citizen of Swaziland or not. Where the child does not have a Swazi surname, the travel document cannot be issued. The practical implication is that the children cannot leave the country for any reason including going to the country of their father.

9.4.11 The failure to obtain residents permits in respect of husbands in cases where they reside in Swaziland. As a consequence, such husbands have difficulty securing employment and being able to conclude a variety of transactions.

## **9.5. Changes to the Citizenship Law**

9.5.1 From the views expressed by the Chiefs who were consulted as part of compiling the report Citizenship is an issue of extreme importance to Swazis in terms of defining identity and belonging, the allegiance to all things Swazi and the continuation and eternity of the Swazi nation. Consequently, according to the Chiefs, Swazis guard citizenship jealously and cannot risk its abuse because this will ultimately weaken the nation therefore as men are charged with continuing lineage and women join their marital families – whether Swazis or non-Swazis, it would be inappropriate for women to automatically pass on their citizenship. Therefore, it is envisaged that the issue of citizenship will take greater advocacy efforts in order for the law to be changed.

## **Article 10**

States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and particular to ensure, on a basis of equality of men and women:

- (a) The same conditions for career and vocational guidance, for access to studies and for the achievement of diplomas in educational establishments of all categories in rural as well as in urban areas; this equality shall be ensured in pre-school, general, technical, professional and higher technical education, as well as in all types of vocational training;
- (b) Access to the same curricula, the same examinations, teaching staff with qualifications of the same standard and school premises and equipment of the same quality;
- (c) The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of

education which will help to achieve this aim and, in particular, by the revision of textbooks and school programmes and the adaptation of teaching methods;

- (d) The same opportunities to benefit from scholarships and other study grants;
- (e) The same opportunities for access to programmes of continuing education, including adult and functional literacy programmes, particularly those aimed at reducing, at the earliest possible time, any gap in education that might exist between men and women;
- (f) The reduction of female student drop-out rates and the organization of programmes for girls and women who have left school prematurely;
- (g) The same Opportunities to participate actively in sports and physical education;
- (h) Access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning.

## **10. Introduction**

10.1 The National Constitution states 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 (Section 29 (6)). The constitution further provides that subject to the availability of resources, the government shall provide facilities and opportunities necessary to enhance the welfare of women and enable them to realize their full potential and advancement (Section 28 (2)).

10.2 The policy environment in Swaziland also supports the right to education for all sexes as noted in the National Development Strategy (NDS) that states that Government should ‘promote education as a basic human right and ensure that males and females receive equal treatment and benefits at all levels and in all areas of the educational system.’ The National Population Policy Framework for Swaziland, 2002 also stipulates that the government should expand opportunities for women to complete high school education and access higher levels of education and that government should increase education opportunities for girls who get pregnant while still in school’

10.3 The national gender policy also stipulates that the government shall provide equal opportunities for quality education for all children, boys and girls to complete the education system and ensure that men and women have equal access to training opportunities.

## **10.4 The Education budget**

10.4.1 Swaziland has defined basic education for all as ten years of quality education for all of its children, covering primary and lower-secondary education. The goal calls for the achievement of a 100% completion rate at both levels by 2015. The government has been allocating a notable amount of funds in the national budget to cater for the education in general, however, there is no specific programme targeting women in education in the country. The national budget reflects that there have been a nominal increases in the budget allocations to education over the three year period as shown in table 1 below. An increase of about 250 million Emalangenani per year in education is observed and noted as a positive step.

**Table.1. Swaziland Government Education Budget 2006/07-2008/09**

	2006/07	2007/08	2008/09
Recurrent Budget(Education)	1429.2	1675.9	1871.3
Total Recurrent Budget	4681.3	5967.6	7341.3
Education as a Percentage of Recurrent Total	30.5%	28.1%	25.5%
Capital Budget(Education)	42.6	82.2	115.9
Capital	1450.0	2208.3	2233.1%
Education as a Percentage of Capital Total	2.9%	3.7%	5.2%
Inflation	5.3	5.6	9.5

*Source: Ministry of Finance*

10.4.2 However, an analysis of the national budget carried out by civil society in 2008 on education points out that there was a decline in the percentage share of education and training budget as a proportion of the total budget from 24.1% in 2006/07 to 20.8% in 2008/09 which could represent a shift in government priorities. The analysis used the nominal allocation/price deflator in relation to actual budget figures.

10.5 Education in Swaziland is compulsory and there is no discrimination on the basis of gender in so far as school enrollment is concerned. In line with the national budget, in 2003, government introduced a fund to cater for Orphaned and Vulnerable Children's grant that also benefit all girls who are orphaned. The initial grant was E16 Million and has increased to E130 million in 2009 thus reflecting government's commitment to education particularly for vulnerable groups although there is no disaggregated data or official statistics on the allocation of the grants by gender. Also, About 22 percent of the Ministry's budget is spent on scholarship grants at tertiary level and the subvention to UNISWA (OVC Commission Report 2008).

## **10.6 School Enrollment: Primary and High School**

10.6.1 Swaziland has taken great strides in improving access to primary school education. After experiencing a long term decline which reached the lowest point in 2003, primary school enrolments have picked up. Total enrolments had decreased from 213986 in 2000 to 208652 in 2003; but have risen by 8.8% to 226 914 in 2006, from the 2003 level. The Net Enrolment Rate has increased from 77.5% in 2000 to 81.9% in 2005.

10.6.2. The Net Enrolment Rates (NERs) reveal that, in general, there are more boys who are out of age than girls in the system. It has also been observed that girls tend to complete school earlier than boys, progressing through the system more quickly. This is reflected in a higher completion rate for girls than boys at 86.3% and 81.4%, respectively, in 2005.

**Table 3: Gross Enrolment and Net Enrolment Rates by Gender**

<i>Year</i>	<i>Indicator</i>	<i>Total</i>	<i>Male</i>	<i>Female</i>
2000	GER	102.4	105.7	99.0
	NER	77.5	77.4	77.6
2001	GER	100.4	103.2	97.6
	NER	76.7	76.3	77.0
2002	GER	85.5	86.2	84.7
	NER	72.9	71.5	74.3
2003	GER	87.7	90.2	87.7
	NER	75.1	75.3	74.8
2004	GER	93.2	96.4	90.1
	NER	78.4	78.5	78.2
2005	GER	111.0	115.0	107.0
	NER	81.9	81.5	82.3

*Source: Ministry of Education-Swaziland, UPE Draft Indicators Manual*

10.6.3 According to the 1997 Population Census, the literacy rate was at 91.3%, with the females having a slightly higher rate at 92.4% than males (90.2%). Although these rates were relatively high, the UNDP Swaziland Human Development Report for 2004 estimates the literacy rate at 91.2% for 2002, reflecting a slight drop in this indicator.

10.6.4 Data from the Ministry of Education and Training for the year 2005 indicate that a total of 35,382 girls enrolled for secondary and high school in both rural and urban schools and a total of 35,742 boys thus showing a difference of 360 girls and indicating that of the total enrollment for secondary and high school, 49% enrollment for girls and 51% for boys. (Education Statistics, 2005)

## 10.7 Tertiary Education and women studying abroad

10.7.1 The University of Swaziland is the highest educational institution of the Kingdom of Swaziland supplemented by a few colleges and technical institutions (Swaziland College of Technology, William Pitcher, Ngwane College, Nazarene Teacher and Nursing College). The government has made notable progress in improving tertiary education for all in the country by availing scholarships to qualifying students to study locally and abroad.

### **Enrollment of students at the University of Swaziland 2001 - 2008 – by gender and by subject - excludes distance education**

<i>Year</i>	<i>Agriculture</i>		<i>Education</i>		<i>Humanities</i>		<i>Sciences</i>		<i>Social Sciences</i>		<i>Commerce</i>		<i>Health Sciences</i>		<i>Post grad</i>	
	<i>M</i>	<i>F</i>	<i>M</i>	<i>F</i>	<i>M</i>	<i>F</i>	<i>M</i>	<i>F</i>	<i>M</i>	<i>F</i>	<i>M</i>	<i>F</i>	<i>M</i>	<i>F</i>	<i>M</i>	<i>F</i>
00/01	121	102	155	146	65	115	35	82	106	95	125	105			27	11
01/02	144	90	136	202	72	95	79	46	101	77	90	78	47	98	6	12
02/03	152	105	123	141	58	83	76	44	112	85	148	130	57	104	15	18
03/04	157	139	104	154	78	120	79	29	104	101	121	122	60	120	17	18
04/05	157	139	104	154	78	120	79	29	104	101	121	122	60	120	17	18
05/06	196	119	149	153	68	81	70	42	83	63	130	131	65	89	26	11
06/07	212	148	129	173	55	65	64	29	76	90	118	99	67	89	24	16

Year	Agriculture		Education		Humanities		Sciences		Social Sciences		Commerce		Health Sciences		Post grad	
	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F
07/08	128	98	143	146	46	54	70	18	82	67	88	71	53	68	23	14
08/09	153	147	59	62	65	56	37	68	57	85	87	96	99	60	27	26
Total																

*Source: University of Swaziland Student Info System – 2000-2008*

10.7.2 Further analysis of data from the other colleges and technical institutions reveal that enrollment for 2004/2005, of a total of 2,369 students countrywide, there are 1221 females and 1148 males. The data show that there are more women in the training institutions than men.

## 10.8 Adult Literacy and women

10.8.1 Adult literacy in Swaziland is administered by the SEBENTA National Institute. A majority of the graduates are female.

## 10.9 Women with disabilities and Education

10.9.1 Government does not have a special programme targeting education or special education for women with disabilities. All education facilities have no notable infrastructure to cater for special needs. However, the University of Swaziland library made considerable provision for people with disabilities by including a special ramp to access all parts of the library. Also, the University has made certain infrastructural provisions for people with disabilities to maneuver.

10.9.2 Children living with disabilities are usually excluded in the government mainstream schools except for those with physical disability, however children with other types of disability are in special schools and these mainly cater for the deaf, slow learners and the blind. The available facilities for children with disabilities (School for the Deaf- primary and high schools, St Joseph's primary and High School, Ekwetsembeni primary for slow learners) receive government support and subvention. It is notable that the Government is currently working on developing a national policy on inclusive education and this policy caters for children with disabilities and proposes to integrate children with disabilities into the regular schools/streams as well as in the tertiary institutions.

10.9.3 In 2008 the Government of Swaziland in partnership with UNICEF has initiated a special programme for girls living with disability to sensitize them on HIV/AIDS, abuse and exploitation. The government has also established a senior inspector post for special education and two positions at the teacher training colleges to integrate special education at pre-service training. This move will have an added advantage for children living with disabilities and combined with the Government/UNICEF programme, special attention will be paid to girls living with disability.

## 10.10. Girl Child abuse within the education system

10.10.1 According to the October 2006 United Nations Secretary General World Report on Violence Against Children, sexual violence is a major health problem and is a growing concern in sub-Saharan Africa. Swaziland is no exception. Media headlines detail the physical and sexual abuse of women and children almost daily, and stakeholder reports indicate widespread prevalence of violence against children. A study conducted by the Ministry of Education (2006) found that 1632 abuse cases of children were reported to the

police by end of November 2006. Of these, 65% were cases of sexual abuse of children. The Hotline (managed by the Ministry of Education) tallied 1,177 reported cases of abuse in 2005. 77.4% of the reports related to cases of abuse. Follow up investigations of the calls showed that most abuse cases occurred in schools, homes and community settings. Teachers and head teachers accounted for 45% of the abuse cases, followed by fathers (4.1%). Current statistics provided by the Ministry of Education Hotline show that a total of 3710 cases have been reported since the hotline was established in 2004 and these figures cover 2004 to May 2007. Disaggregated data show that in 2004 alone, 1579 cases were reported to the hotline, 1177 cases in 2005, 745 in 2006 and between January and May 2007, 209 cases were reported.

10.10.2. A recent study conducted by the Centers for Diseases Control and Prevention and UNICEF Swaziland (2007) confirms the argument that violence against children and women in the education system is significant. The study revealed that sexual violence also occurs in significant numbers in public areas on the way to or from school, and in school buildings or on school grounds. Among incidents of sexual violence that occurred prior to age 18, 32.9% occurred in females' own home, 22.8% occurred in the house of a friend, relative, or neighbor, 19.1% occurred in a public area or open field, 10.0% occurred in a school building or on school grounds, and 9.5% occurred on the way to or from school. Government has noted the increase in violence against women and children in particular and has made considerable strides to address the situation.

#### **10.11. Educational Curriculum and Women**

10.11.1. An assessment conducted by the Committee on Gender and Women's Affairs in 1996 revealed that secondary school subject choices differ from boys with a marked avoidance by girls of maths and science other than biology. The assessment further argues that research shows that girls are not incompetent as science scholars but that they receive no encouragement. The situation has not improved.

10.11.1 At tertiary level evidence by the Vice Chancellor's Report 2007/8 indicates that in the Science faculty out of the 342 students enrolled only 93 are female. In addition the female academic staff compliment of the Science Faculty, 17%, are the lowest in all out of the 8 Academic faculties.

#### **10.12 Educators**

10.12.1 According to the Teaching Service Commission Development Plan 2007-2011, there is currently a gender imbalance in administrative positions especially at primary level where the workforce is predominately female (76%) only 25% hold administrative positions. However the commission aims to improve the proportion of women in administrative positions by 2009 from 26% to 31%.

10.12.2 Information from the Management Information Systems office of the Ministry of Education is that in 2008 the percentage of women holding administrative positions is 20% nationally, 27% at primary level and 24% at high school level. Therefore the percentage of women administrators has increased by 2% at primary level, in as many years.

### **Article 11**

States Parties take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure on a basis of equality of men and women, the same rights;

- (a) The right to work as an inalienable right of all human beings;

(b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;

(c) The right to free choice of profession and employment, the right to promotion, job security, and all benefit and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;

(d) The right to equal remuneration, including benefits and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work

(e) The right to social security particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;

(f) The right to protective of health and to safety in working conditions, including the safe-guarding of the function of reproduction.

2. In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective rights to work, State Parties shall take appropriate measures:

a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;

b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;

c) To encourage the provision of the necessary supporting social services to enable parents to combine family obligation with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities;

d) To provide special protection to women during pregnancy in type of work proved to be harmful to them.

3. Protective legislation relating to matters covered in this article shall be reviewed periodically in the light of scientific and technological knowledge and shall be revised, repealed or extended as necessary

## 11. Introduction

11.1 The Swaziland economy consist of a traditional subsistence sector and a modern highly capital intensive sector. The major sectors of the economy are agriculture and forestry, manufacturing and the public sector. The economy is closely linked to the South African economy due to its size and proximity to South Africa.

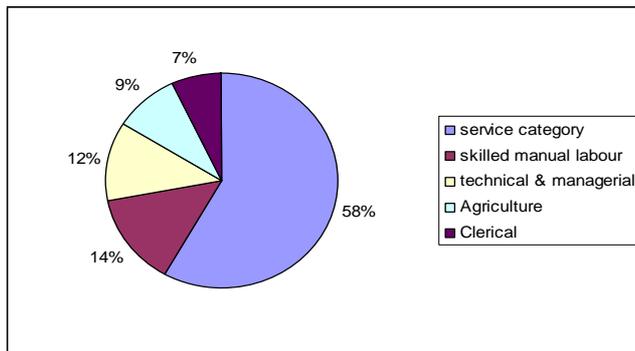
11.2 According to the PRSAP (2006) the national employment rate in Swaziland is 71% whilst the unemployment rate stands at 29%. Women constitute 40% of the current employment rate. The rural areas remain the worst affected compared to urban areas with the 40% of the extremely poor unemployed. (World Bank estimates: 2000).

11.3 Men are more likely to be employed than women (29% and 20%, respectively). For both women and men, employment decreases with age. While in general urban residents are more likely to be employed than rural residents, the difference for men is much more significant than women. For men, the proportion working is 72% in urban areas and 20% in rural areas. For women, these proportions are 38% and 18%, respectively. For both men

and women over 50 years old, the level of employment increases with an improvement in the level of education.

**11.4 Employment by Occupation**

11.4.1 Women’s occupations vary with their background characteristics. There are six occupational categories under which those currently employed are classified. These are: professional, technical and managerial, clerical, sales and services, skilled-manual, unskilled manual and agriculture. In general, professional, technical and managerial jobs attract women with the highest education and in the highest wealth quintile, and work in sale and services attracts younger women and women with lower than tertiary education. Women predominate in the sales and services category at 56%, followed by skilled manual labour at 14%, professional, technical and managerial at 12%, Agriculture 9% and Clerical at 7%.

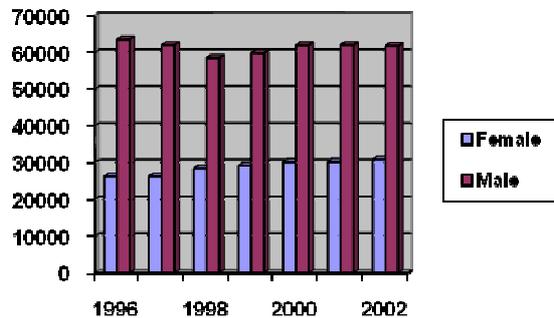


CSO, Women’s occupation (SOS 2006 Demographic and Health Survey)

**11.5 Wage Earnings by Gender**

11.5.1 The 2002 Employment Statistics Report conducted by the Ministry of Enterprise & Employment is the latest available Employment Statistics Report. The report shows gender disparities in wage earnings between men and women e.g. in 1996 total wage earnings for men were E63, 540, 000 whilst that for women was E26, 324, 000. In 2002 even though women’s wage earnings increased to 30878, 000. It is still far less than the wage earnings for men which stood at E61, 776, 000.

**Graph 1**



**CSO, Wage earnings by Gender (Employment Statistics Report 2002)**

11.5.2 The Ministry of Public Service (Civil Service Commission) is the Ministry responsible for employment, transfers and promotion of civil servants. The Civil Service Commission comprises 12 members, 4 women and 8 men. Recruitment is done through a transparent process whereby posts are declared vacant by the different line ministries to the Ministry of Public Service which in turn advertises the posts through the local newspapers. Seniority and performance is the criteria used to effect promotions of civil servants. Training of civil servants is done through the Ministry of Public Service. Civil servants are eligible for training after their probation period which is two years. Line ministries submit annual training plans to the Ministry of Public Service which selects and funds the training of civil servants to further their studies.

**11.6 Employment by Industry, Level of Skill and Gender in 2002**

11.6.1 Women are underrepresented in agriculture, mining and quarrying, and in the construction industry. In mining under the professional and technical category, men consist of 2.85% whilst women are 1.45%. This is also true for the administration and managerial category which has 6.24% men and 1.27% females. For the skilled category, there are 10.5% males and 4.1% females.

11.6.2 A comparative study across the main sectors of the formal economy indicates that mining and construction sector remain male dominated sectors. It appears that women are concentrated in industries and level of skills associated with social services, semi skilled and unskilled.

**Table 1: Employment by Industry, Level of Skill and Gender In 2002**

	<i>No. of Estabs</i>	<i>Prof. &amp; Technical</i>		<i>Admin. &amp; Managerial</i>		<i>Clerical</i>		<i>Skilled</i>		<i>Semi-skilled</i>		<i>Unskilled</i>		<i>Total</i>	
		<i>Male</i>	<i>Female</i>	<i>Male</i>	<i>Female</i>	<i>Male</i>	<i>Female</i>	<i>Male</i>	<i>Female</i>	<i>Male</i>	<i>Female</i>	<i>Male</i>	<i>Female</i>	<i>Male</i>	<i>Female</i>
Agriculture & Forestry	91	27	12	132	11	449	252	313	4	2618	18	11344	3026	14883	3473
Mining & Quarrying	6	1	0	11	0	44	7	104	0	297	6	463	20	920	33
Construction	42	24	3	95	6	98	45	410	4	807	17	1924	79	3358	154
Distribution	458	84	52	656	243	1247	1469	356	12	1299	614	2415	2006	6057	4396
Transport & storage	44	18	15	36	11	81	68	55	0	405	23	274	45	869	162
Finance etc.	165	137	111	341	146	737	933	131	7	371	38	3235	359	4952	1594
900 Social Services	164	402	475	166	116	369	656	368	13	490	139	1173	649	2968	2048
<b>Total</b>	<b>1097</b>	<b>948</b>	<b>854</b>	<b>2117</b>	<b>644</b>	<b>4239</b>	<b>4232</b>	<b>2973</b>	<b>97</b>	<b>9611</b>	<b>4752</b>	<b>26155</b>	<b>8595</b>	<b>46043</b>	<b>19174</b>

## 11.7 Constitutional, Legislative and International Commitments

11.7.1 The Constitution of Swaziland (2006), the Employment Act of 1980 and the Industrial Relations Act, 2000 (amended 2000, and 2005), Wages Act No. 16 of 1964, Workmen's Compensation Act No.7 of 1983 are the legal instruments in Swaziland. Other important instruments pertaining to the rights of women include the Conventions of International Labour Organizations (ILO), Beijing Platform for Action (BFA), declaration on the Right of all countries to Development, 1995 Declaration of the World Summit for Social Development.

11.7.2 Article 20(1) of the Constitution provides for equality before the law in the political, economic, and social spheres of life and provides that women and men shall enjoy equal protection of the law. The Constitution also makes specific provision in Article 20 (3) prohibiting discrimination on the grounds of gender amongst other things. With regards to issues of employment, the Swaziland Constitution, Article 32 has identified a number of provisions that seek to promote the rights of workers in particular those of women; these are:

(i) Section 32(1) a person has the right to practice a profession and to carry on any lawful occupation, trade or business.

(ii) Section 32(3) the employer of a female worker shall accord that worker protection before and after child birth in accordance with the law.

(iii) Section 32(4b) calls upon Parliament to enact laws to ensure equal payment for equal work without discrimination

(iv) Section 32(4d) calls upon Parliament to enact laws to protect employees from victimization and unfair dismissal or treatment

(v) The Constitution has economic objectives that are gender neutral and do not bring to the fore the existing economic differences between women and men.

(vi) Section 59(2)(b) calls upon affording ample opportunity for individual initiatives and creativity in economic activities and fostering an enabling environment for a pronounced role of the private sector in the economy.

(vii) Section 59(5) The State shall afford equality of economic opportunity to all citizens and, in particular, the State shall take all necessary steps so as to ensure the full integration of women into mainstream of economic development.

11.7.3 The Employment Act provides the basic legal framework for employer/employee relationship. It contains 15 separate parts each of which deals with a different aspect, for instance, contract of employment, termination of contract etc. These sections seek to address issues of women in employment; non-discrimination, remuneration; employment conditions in particular maternity leave and protection. It also highlights special promotion for domestic employees.

11.7.4.1 With respect to those areas that are specifically key to women's advancement in employment, the Act contains the following provisions:

11.7.4.2 Section 29 forbids discrimination in a contract of employment on the basis of race, colour, religion, marital status, sex, national origin, tribal or clan extraction, political affiliation or social status.

11.7.4.3 Section 96 calls for non discrimination in regards to wages being paid to women and men doing equal work. Government deploys labour inspectors in all the four regions to enforce compliance with this provision. In cases of non compliance, employers are made to compensate their employees from the time the anomaly started.

11.7.4.4 Section 101 generally prohibits the employment of women in any industrial undertaking between the hours of 10pm and 6am other than employment covered by a certificate issued by the Labour Commissioner. Before he/she issues a certificate, the Labour Commissioner must satisfy her/himself that the employer has provided reasonable restrooms and refreshment facilities and that the employee is given adequate rests and meal breaks between periods of employment. He/she must also ensure that adequate transport is available to and from work for female employees who are required to start and finish work between the hours of 10pm and 6am.

11.7.4.5 Section 102 relating to maternity leave and maternity benefits states that every female employee whether married or unmarried who has been continuously employed by the same employer for twelve months is entitled to maternity leave of twelve weeks, two weeks of which are fully paid and it also entitles female employees to a one hour nursing break with pay per day, three months after maternity leave, as provided by section 103 of the same Act. In addition, section 105 of the Act provides protection to an employee from termination of employment because she is pregnant and protects her status at her place of employment whilst she is on maternity leave. Section 106 provides that when an employee has been on maternity leave, she is entitled to resume her previous employment with the same seniority and on terms and conditions no less advantageous than those which she enjoyed prior to her maternity leave. Section 107 states that apart from any obligations imposed by a wages regulation order, or a collective agreement or contained in an individual contract of employment there is nothing in the Act which requires an employer to pay for maternity leave.

11.7.4.6 However, sections 129 and 130 of the Act entitle an employee to paid sick leave under certain circumstances and it is considered that maternity leave could count as sick leave should the employee so wish. Lastly, section 108 sets out minimum conditions of employment with regards to hours of work, overtime payments and rest period for domestic employees. However, these minimum conditions have been overtaken by the domestic employees' wages regulation order which not only covers all the matters mentioned in section 108, but other aspects of domestic employment as well. It should be noted that where a wage regulation order contains provisions more advantageous to an employee than those contained in a principal Act, for example, The Employment Act, the provisions of the order would be applied. Conversely where the conditions in an order are less advantageous than those in an Act, the provisions of the Act would apply.

11.7.4.7 Even though the Employment Act 1980 stipulates a legal requirement of twelve weeks for maternity, the challenge is that government (as an Employer) and the private sector implement the provision differently. Government gives its employees; three months paid maternity leave whilst the private sector, gives its employee's two weeks full pay and the rest is left to the discretion of the employer. This creates problems for the employees who usually return to work before they fully recover due to economic hardships, especially industrial workers. This has deleterious effects not only on the mother's health but also her ability to breastfeed the infant. Even though nursing breaks for breastfeeding mothers are provided for in the Employment Act, in practice, women do not take advantage of them due to the fact that they are not made aware of such a provision and the approval of the breaks is much of a process. Swaziland's compliance with the ILO Conventions pertaining to women worker rights has been in good standing so much so that in the Employment Bill in Parliament we have proposed to move a step further to ensure that the female employee on maternity leave enjoys full pay for the 12 weeks by proposing the establishment of the Unemployment Insurance Benefit Fund where the employee on maternity leave will receive full payment.

**11.8 Paternity Leave**

11.8.1 The Employment Act makes no provision for paternity leave, and very few businesses or NGOs voluntarily offer their employees the option of paternity leave at present.

**11.9 Protection of women during pregnancy:**

11.9.1 The National Constitution, Employment Act, Industrial Relations Act and the Wages Act, all do not provide for the protection of pregnant women in the workplace. All these pieces of legislation needed to be amended because they are not only detrimental to women's lives but to the entire country as it affects the reproduction of human resources for the country.

**11.10. Childcare facilities and other support services**

11.10.1 Women traditionally are child-bearers and rearers, food providers; home makers; health care givers as well as water and fuel suppliers. Their reproductive and productive roles overburden women and affect their performance in the workplace. Unfortunately, very few employers offer child care facilities at the workplace. Women then opt for private day care centres, which are costly. Other options are the hiring of individual women and using the services of extended family members. In all these arrangements, women are not afforded the opportunities to be close to their children during working hours which negatively affects their performance in the workplace and also robs the child the opportunity to breastfeed during lunch hours. There is need to address this challenge as an incentive to the employees.

**11.11 Protection from Violence in the Workplace**

11.11.1 The ILO Code of Practice; workplace violence in the services sectors and measures to combat this phenomenon adopted in 2003 defines workplace violence as 'Any action, incident or behaviour that departs from reasonable conduct in which a person is assaulted, threatened, harmed, injured in the course of, or as a direct result of, his or her work. Sexual harassment includes such unwelcome sexually determined behaviour as physical contact and advances, sexual advances or remarks, showing pornography and sexual demands, whether by words or actions.

11.11.2 The Employment Act does not have any provision for protection from violence in the workplace including sexual harassment. However, section 37 of the Employment Act, 1980 protects a worker who resigns from employment on the ground that the conduct of the employer towards that employee is such that the employee can no longer reasonably be expected to continue in his/her employment. In terms of that section, that resignation is regarded as unfair dismissal and the employee enjoys all what unfairly dismissed employees enjoy. If the employer makes sexual advances to an employee who is not interested in that, then that conduct of the employer could result to that employer being punished in terms of section 37 of the Act.

11.11.3 In consultation with the Conciliation, Mediation and Arbitration body (CMAC) and the department of labour, there are neither reports nor any researches commissioned on sexual harassment in the country. However, there are media reports that suggest that sexual harassment does occur in the workplace. Even though such reports have exposed the existence of sexual harassment, there is concern on the negative reporting by the media particularly on women's issues. There may be reluctance from those violated to bring such cases to the fore because the burden of proof lies with the victim. In addition, the country does not have a policy nor legislative measures that deal with sexual harassment. The increase in the media of reported cases of sexual harassment warrants an

increased attention and commitment by Swaziland in dealing with such issues through legislative reform.

#### **11.12 The situation of women with disabilities**

11.12.1 Women with disability compete on an equal footing with able bodied women in the job market. There is no disability policy that seeks to redress this situation. The problem starts from birth whereby disabled children are usually not appreciated by families thus deprived of educational opportunities. In addition, the educational institutions from primary to university are not very friendly to people with disabilities. The lack of education then militates against them when seeking job opportunities.

#### **11.13 Impact of HIV and AIDS on Women**

11.13.1 According to the 2006 DHS the population age 15-49, women and men who are employed have higher infection rates than their counterparts who are not employed (38 percent compared with 26 percent among women and 28 percent compared with 10 percent for men). Similarly, among adults, employed women and men have higher infection rates than their unemployed counterparts.

11.13.2 Due to increase level of infection among women, their health requirements with regards to medical care tend to be high as well which invariable means that they need to request time off to seek medical treatment.

#### **11.14 Industrial Relations Act, 2000**

11.14.1 The Industrial Relations Act which complements the Employment Act is primarily dealing with the relations between employers and employees. The Act provides the legal framework for the establishment of employers' and employees' organizations; sets out the arrangements for the collective determination of wages and conditions of employment, and procedures for the settlement of disputes and grievances. The Industrial Relations Act is a gender neutral document that has not taken into consideration the gender dynamics that affect women and men differently at the work place.

11.14.2 In consultation with Trade Unions in the Country, most revealed that Women's wings are set up as part of the union structures. However, there have been no substantial programmes set and implemented to date. Further, women do not form the majority of the leadership in trade unions; their participation is limited to membership and not decision-making level to influence progress.

#### **11.15. The Workmen's Compensation Act No. 7 of 1983**

11.15.1 The Workmen's Compensation Act of 1983 is gender neutral, and does not cover domestic employees and other vulnerable groups. In addition, it still uses non gender sensitive language and still refers to employees as workmen.

#### **11.15.2 Government of Swaziland General Orders**

11.15.2.1 The Government General Orders regulate the working relationship between government as an employer and the public servants as employees. It has a number of provisions that specifically regulates the employment of female public servants.

11.15.2.2 The Government General Orders are in line with the Employment Act with regards to non-discrimination of female employees (A29) and maternity leave(A30). However, as discussed above Government goes a step further to provide full pay for its female employees than what is stipulated in the Employment Act. Also Government provides for compassionate leave of 28 days with full pay to female officers whose

husbands have died. In addition General Order A 130 provides for employment of pregnant female officers on probation and pensionable terms unless the relevant commission feels that a delay in filling the vacancy would adversely affect the public interest, the offer will be withdrawn and other arrangements made to fill the post. Government is progressive when comparing with private sector with regards to paid maternity leave and paid compassionate leave.

### 11.16 Small Medium Enterprise Policy

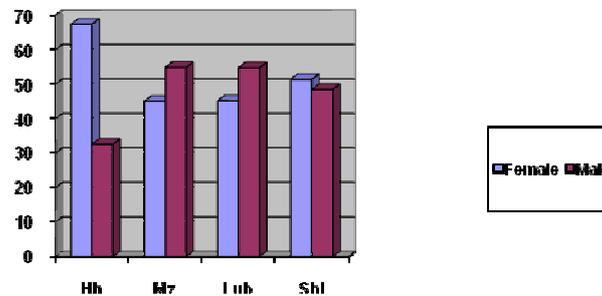
11.16.1 In line with many other countries in the developing world, the Government of Swaziland has identified the SME sector to be a significant contributor to the national economy and has as such resolved to pay particular attention to its development and growth.

11.16.2 There are over 70000 SME businesses in the country employing about 140 000 people; which is about 60% of the economically active population. About 93% of SMEs are owned by Swazi citizens. Over 56% of SMEs are owned by men and 44% by women. Most SME businesses are mainly sole traders. Most SME business proprietors are also engaged in full time employment elsewhere implying that most of them ventured into business to supplement the family income.

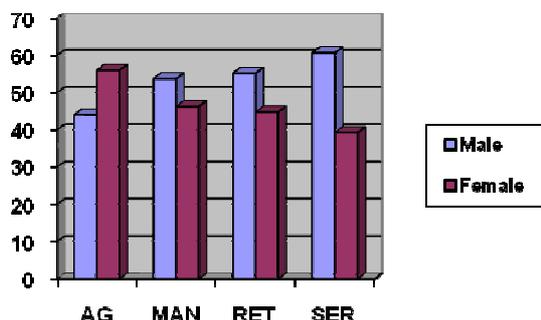
11.16.3 There is an almost an even distribution of SME owners when grouped by age; 33% of the owners are between the ages of 22 – 35 years, 29% between the ages 36 – 40; and 30% of the owners are above 46 years. Whilst the majority of businesses are managed by their owners and/or family members 21% of the businesses are run by managers. About 77% of SME owners have had secondary education.

#### Percentage distribution of SME ownership by gender and region

Graph 2.



### Percentage distribution of SME ownership by gender and economic sector



#### 11.17 Swaziland National Provident Fund

11.17.1 The purpose of the Fund is to provide benefits for wage earners when due to age, injury, or ill-health they are unable to work regularly any more. Additionally, the scheme administers survivor's benefits for the next of kin of deceased workers, and provides a member leaving the Kingdom permanently with an emigration benefit.

11.17.2 All regularly employed persons who are citizens of Swaziland unless in the excepted employment listed in the Second schedule to the Swaziland National Provident Fund Order, 1974 – are required to become members of the Fund. There are no exceptions, and employees who are currently members of an employer's private pension or Provident Fund Scheme are not on that account exempt from participation. Similarly, all employers of labour are required to become contributing employers to the Fund in respect of staff eligible for membership. Again, no employer can be exempt from registering with the Fund merely because he is operating an employee-benefit scheme similar in type and/or purpose to the National Provident Fund.

11.17.3 The Swaziland National Provident Fund was established in 1974 as a savings scheme, the main purpose of which is to provide benefits for employed persons when they retire from regular employment, in old age or in the event of becoming incapacitated. All employers of labour in Swaziland are required by the law to become contributing members of the Fund, and must pay a contribution for every eligible employee. The employee's share (one half of the stipulated amount) is deducted from wages. The Fund is administered by an independent Board appointed by the Minister of Finance to represent the employers, workers and Government departments.

11.17.4 An employer is required to contribute 10% of an employee's gross monthly pay subject to a maximum wage. Of this amount an employer may deduct half from the employee's wage. For the 2008/09 financial year, the maximum wage, on which contributions was based, was E600.00 per month making the maximum statutory contribution E60.00 per month per member. In addition, there is provision for supplementary contributions over and above the statutory amount. Such contributions are on a voluntary basis, wither by the employee himself or by his employer or both parties.

11.17.5 The applicable benefits under the Act are as follows:

- Retirement - Payable at or after the age of 45 years when the member has retired from regular employment
- Age Payable on attaining the age of 50 whether the Member has retired or not.

- Invalidity - Payable to member, irrespective of age, who is subject to mental or physical disability amounting to a total or partial incapacity of a permanent nature and becomes permanently unemployable as a result of the disability.

- Emigration - Payable to a member, irrespective of age, who leaves Swaziland (emigrates)

- Survivor's Benefit - Payable according to the regulations to a single or several dependents of the deceased member.

11.17.6. Benefits are paid on application and can be paid in one amount, in installments at the discretion of the Fund's Chief Executive Officer or may be converted into annuity

### **11.18 Beijing Platform For Action 1995**

11.18.1 The Beijing Platform for Action adopted by the 1995 Fourth World Conference on Women in Beijing called upon governments, the international community and civil society to take action on 12 critical areas of concern, including "eliminating occupational segregation and all forms of employment discrimination" also calls upon governments, employers, employees, trade unions and women's organizations to "implement and enforce laws and regulations and encourage voluntary codes of conduct that ensure that international labour standards, such as International Labour Organization Convention No. 100 on equal pay and workers' rights, apply equally to female and male workers". "The Employment Act and the Industrial Relations Act sets out a number of provisions that seek to provide equal employment opportunities for both women and men in all sectors of employment.

### **11.19 Declaration Of The World Summit For Social Development 1995**

11.19.1 The Copenhagen declaration seeks to promote occupational safety and health for women workers specifically through developing and implementing policies designed to promote improved working conditions, including health and safety conditions" and "improving health policies that eliminate environmental health hazards and provide for occupational health and safety, and providing informal sector enterprises an all workers with accessible information and guidance on how to enhance occupational safety and reduce health risks".

### **11.20 ILO Conventions**

11.20.1 Swaziland has also ratified the two ILO Conventions that are considered fundamental with regards to elimination of discrimination in the workplace and gender is one of the variables stated in the Conventions. These conventions are the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), and the Equal Remuneration Convention 1951 (No. 100). Swaziland being signatory to these conventions is therefore obliged not to discriminate in the workplace on the basis of gender.

### **11.21 SADC Declaration on Gender and Development and SADC Protocol on Gender and Development**

11.21.1 The Government of Swaziland is a Member State of SADC and a signatory to the SADC Gender and Development Declaration of 1997 and the SADC Protocol on Gender and Development which commits all member states to strive for gender equality and equity in all areas of development.

### **11.22. Draft National Gender Policy**

12.22.1 The Draft National Gender Policy notes that “women generally lack equal access and control of means of production such as land, cattle, credit, capital and education. They also have limited wage employment opportunities, the majority occupying low paying elementary occupations, and are often involved in informal economic activities”. The above have a direct impact on the quality of life endured by women and their families. One of the policy objectives is:

- To ensure that women and girls have equal opportunities, access to, control and benefit over productive and reproductive resources including wage employment, credit, land and information services.

As the leading public sector employer, the public service has a clear responsibility to work towards the attainment of these objectives.

## **Article 12**

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.

2. Notwithstanding the provisions of paragraph 1 of this article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.

## **12. Introduction**

12.1 The country’s health care system consists of the formal and informal sectors. The latter sector consists of traditional health practitioners and other unregulated service providers. In the rural areas traditional healers tend to be the first point of call for health-related problems, and this is generally underpinned by the use of herbs in the treatment of physical and mental ailments. There is insufficient data about the nature and quality of the services provided as well as on traditional health practitioners. The Swaziland Government acknowledges the operation of this sector and its centrality in the lives of Swazis and has initiated a process of ensuring that the sector’s contribution to healthcare provision be recognized and acknowledged such that it works to complement the “modern” medicine. The need for collaboration between the sectors has been further underscored by the challenge of HIV and AIDS faced by the country. In this regard, Government, through the Ministry of Health is currently coordinating a forum in which the sectors meet periodically to discuss issues and strategies towards greater effectiveness of the whole health sector.

12.1.2 The health service that is based on western medicine is considered to be formal and consists of public and private health services. It is based on the concepts of primary health care. Its infrastructure is made up of 4 government hospitals, 2 mission hospitals and 1 industry-supported hospital. There are also, 8 public health units, 12 health centers, 76 clinics and 187 outreach sites. In addition, there are 73 mission health facilities (health centers, clinic and outreach sites), 62 private clinics and 22 industry-supported health centers and clinics. The sector is serviced by a workforce of 184 doctors, 3070 staff nurses, 275 nurse assistants, 46% pharmacists and a number of allied health professionals and support staff, whose work is supplemented by approximately 4000 rural health motivators (RHMs), home-based carers and community birth attendants.

12.1.3 The health sector is faced by a number of challenges and constraints that affect the ability to deliver quality health services to the populace and in turn to women. Intricate

human resource issues, which are also characteristic of health systems in many other African countries, are such that there is an insufficient supply of health personnel compared to real demand for services. According to a WHO situational analysis of the health workforce in Swaziland (2004) the ratio of doctors and nurses to the population was 1:5 953 and 1:356, respectively. Generally, health professionals across all cadres are still in short supply. As a result the country competes for health professionals in the international market. The imbalance of staff between public and private practice and between rural and urban areas has inevitably led to shortages of staff in the public sector and difficulty in filling vacant posts. In 2005, all public health facilities with the exception of one reported vacant posts across several cadres. Almost 12% of nursing posts and 33% of all medical professional posts were vacant. The involvement of multiple players in the health sector calls for a strong coordination and partnership mechanism to address these human resources imbalances and shortages.

12.1.4 The increase in patient loads, combined with complexity of many cases associated to HIV/AIDS, has reduced the quality of health care. Long queues, extensive waiting times and shortened consultation times with physicians are among a combination of factors affecting the quality care. According to the most recent health statistics report there are 1619 hospitals and health center beds in the country. Projected bed needs as a consequence of HIV and AIDS already exceed this current bed capacity.

## 12.2 Equal Access to Healthcare

12.2.1 Section 60(5) of the Swaziland Constitution states, '*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.*' The healthcare sector itself is regulated by a number of policies and laws, namely,

- i. The National Health Policy, whose overall objective is to reduce morbidity, disability and mortality due to diseases and social conditions, promote effective allocation and management of health and social welfare sector resources and to reduce the risk and vulnerability of the country's population to social welfare problems and impact thereof.
- ii. The National Population Policy, which aims to improve the health and welfare status of the population, curb the further spread of HIV/AIDS, reduce the social and economic impact of HIV/AIDS and promote family planning.
- iii. Reproductive Health Commodity Security Strategic Plan 2008-2015.
- iv. Post-exposure Prophylaxis Policy- deals with the management of the provision of post-exposure prophylaxis medication.
- v. National Guidelines for Ante-Retroviral Treatment and Post-Exposure Prophylaxis; the guideline provide assistance in the management of treatment, care, and support services to the people living with HIV and AIDS.
- vi. National Decentralization Policy, whose objective is to decentralize amongst other things the services and institutions of governments to be accessible to all citizens.
- vii. The National Multi-Sectoral HIV and AIDS Policy
- viii. Nutrition Council Act 11 of 1945-establishes the National Nutrition Council and whose function is to investigate all matters pertaining to nutrition in Swaziland.
- ix. Public Health Act 5 of 1969-

12.2.2 The provision of quality healthcare services has been a priority for Swaziland and generally the government has accomplished a great deal to improve health facilities since independence. Currently, up to 85% of the population lives within a radius of 8 kilometers

from a health facility. However, in as much as this is the case, the quality and availability of health services is affected by the distribution of resources. Most of the better-resourced health centers are found in cities, in particular, within the Mbabane – Manzini corridor. Most rural clinics do not have adequate facilities or even an ambulance to convey critical patients to hospitals. This poses challenges for those living in the rural and peri-urban areas, the majority of whom are women. The fact that women have to travel long distances to access quality healthcare compromises their equal access because there are issues of cost of travel and the cost of the healthcare itself as well as the fact that the travel will involve time away from the home where women are central to performing a wide range of domestic chores and duties.

12.2.3 In addition to the general challenges faced by women in accessing healthcare, women with disability face additional obstacles. The situation of persons with disability in the country is generally of a low standard – educational facilities and opportunities are limited, as are those relating to employment. Women with disability lack sufficient access to health facilities and communications remains a challenge between the health workers and people with disabilities. For instance, communication with the deaf is compromised as health workers do not know sign language nor are there any sufficient sign language interpreters. In addition, women with disability do not have the financial resources to access specialised services. More needs to be done on attitudes of health care workers towards people living with disabilities.

### **12.3 Access to Contraception and Family Planning Services**

12.3.1 According to the 2007 Demographic Health Survey (DHS) current use of family services stand at 48% for married women currently using a modern method of family planning. Another 3% are using a traditional method. The use of injectables and male condoms is at 17% and 12% respectively. The DHS also notes that unmarried, sexually active women are most likely to use family planning and contraceptive services.

12.3.2 According to the VAC annual assessment of 2007 which did not only focus its efforts on understanding contraceptive use among its study population, but also commissioned a parallel study to assess the capacity of health facilities in the country to provide the necessary Family Planning services to prevent unwanted or unplanned pregnancies amongst other things. Non-use of contraceptive appears to be high in Swaziland which is consistent with the findings of the Community Health survey (2002) which suggested that about 40% of all women were found not to be using any contraceptive methods. Injection method appeared to be the most popular method of contraception, with Lubombo recording the highest use of this method.

12.3.3 The 2006-07 SDHS reveals that 24 percent of married women have an unmet need for family planning -7 percent for child spacing and 17 percent for limiting conception. Unmet need for contraception is experienced differently by different sectors of women and is highest in rural areas and among the least educated and poorest women.

12.3.5 While contraception and family planning services are relatively easily available and accessible, women's ability to use them is influenced by social and at times, religious norms and values that are manifested in unequal power dynamics between women and men in the decision-making that accompanies family planning. The women interviewed stated that in particular for married women, there is an expectation to bear descendents for her matrimonial home so as to carry on the family lineage. Socially, the more children a family has the more it is regarded as fortunate. Hence a woman's husband and in-laws may, both overtly as well as through subtle means, exert pressure on a wife limiting her independent decision-making in terms of the number of children she would like to have as well as their spacing.

12.3.6 Families are particularly concerned about the presence of boy-children as they are the ones who will carry forward the family name, provide family leadership, maintain and sustain the family and homestead as girls are regarded as transient since they are expected to get married and become part of their marital families.

#### **12.4 Pregnancy and the Welfare of Women**

12.4.1 Although women are affected by many of the same health conditions as men, they experience them differently. The estimate of maternal mortality rate is 482 deaths per 100,000 live births, which is high by international standards. (DHS 2007) MOHSW records indicate that every year more than 3000 mothers develop long-lasting disabilities after labour and delivery, most of which are preventable and curable if patients had access to a health center or were educated on health matters. Economic status also plays a role since rural and peri-urban areas are characterized by poverty, which affects a high percentage of women who cannot obtain access to clinics and hospitals without money.

12.4.2 SRH services are offered free within the Public health facilities and they are highly subsidized in private, mission or NGO's health facilities but still some offer them free of charge. SRH Primary health care services include Adolescent SRH, family planning, antenatal care, PMTCT and postnatal care. Postnatal care is not as active as prenatal care due to confinement after childbirth, and the lack of information dissemination on the importance of postnatal care.

#### **12.5 Maternal Mortality**

12.5.1 The 2006-07 maternal mortality rate for Swaziland is 482 (there were only 482 per 100,000 maternal deaths of women of all ages) Almost 97% Swazi women receive some antenatal care from a medical professional, most commonly from a nurse/midwife (76%). The 2007 DHS indicates that only 26 percent of women, however, had an antenatal care visit by their fourth month of pregnancy, as recommended. Although almost all Swazi women receive some antenatal care, they may not be receiving all the recommended components of care. The 2006-07 SDHS revealed that only 54 % of women were informed of the signs of pregnancy complications during antenatal care, and only 78% were physically examined.

12.5.2 There are further challenges of maternal health which include the inadequate number of skilled personnel and limited knowledge base in Swaziland, especially pertaining to essential and emergency obstetric care; inadequate referral and communication services which delays timely management of complications; Increasing HIV prevalence among women of reproductive age; limited or no access to ARV treatment for pregnant women who have undergone voluntary counseling and testing; high poverty rates in some parts of the country and high unemployment rate.

12.5.3 There has been an attempt by the MOH (SRH unit) to address the challenge of limited male involvement in reproductive health needs by introducing a male involvement programme in family planning including Prevention of Mother to Child Transmission (PMTCT). Primary targets in maternal health in Swaziland are women. The MOH also has numerous service guidelines and protocols that ensures that services offered to our primary targets are of quality and of international standard, guidelines includes; PMTCT guidelines, Family planning Guidelines, HIV testing Guidelines.

#### **12.6 Infant and Child Mortality**

12.6.1 According to the 2007 Swaziland Demographic and Health Survey, childhood mortality is increasing most probably due to HIV/AIDS epidemic. Currently one in eight children in the country dies before his or her fifth birthday. The infant mortality rate for the

five years before the survey (2001-2006) is 85 deaths per 1000 live births and the under five-mortality rate is 120 deaths per 1000 live births. For the period from 1997-2001, infant mortality was 67 and under-five mortality was 90. Urban and rural rates are almost identical, and the under five mortality rate ranges very slightly, from 96 in Hhohho to 115 in Lubombo.

12.6.2 The average of birth interval is 38 months. Infants born less than 2 years after a previous birth have particularly high infant mortality rates (90 deaths per 1000 live births compared to only 57 deaths per 1000 live births for infants born 3 years after the previous birth). One in six infants in Swaziland is born less than 2 years after a previous birth. The increase in child mortality in the last decade is mainly due to the increased mother-to-child HIV infections, and the continued prevalence of water-borne and other infectious childhood diseases.

12.6.3 The advent of HIV/AIDS and its high prevalence accounts for a significant proportion of the increase in infant and child mortality. However there are intervention programmes, which seek to redress the challenges brought about by HIV/AIDS such as PMTCT, which integrates paediatric HIV care with already running child health programmes. The priorities include in this intervention finalizing the scaling up and expansion of PMTCT to all government health facilities and most private institutions; orientation of health care providers; supervision and mentoring on the revised guidelines and monitoring tools; and implementation of pre-service PMTCT and Integrated Management of Newborn and Childhood Illnesses (IMNCI) training in nursing colleges. There has also been established the Baylor Children's Clinic with the assistance of Bristol Myers Squibb, which provides clinical care for children living with HIV and it provides support to mothers of the children living with HIV. There is also male involvement in this intervention to encourage fathers to be involved in PMTCT and care of children living with HIV/AIDS UNICEF Annual Report 2006.

12.6.4 Childhood diseases such as diarrhea, waterborne disease, malnutrition and other infections also contribute to high child mortality. Other challenges are inadequate skills to deal with major causes of morbidity and mortality among infants and the need to promote universal access to reproductive health care. Lastly the lack of safe water and sanitation for the rural majority is another situation that creates an unsafe environment that can expose children to disease.

## **12.7 Nutrition**

12.7.1 The current challenges related to poverty, drought, and lack of food security have had an adverse impact on the general nutritional status of the Swaziland population. Women, in particular, those who are pregnant, are amongst those disproportionately affected by this situation, as the prevalence of chronic diseases and malnutrition leave many women unable to cope with the demand of pregnancy. However, there are some interventions being implemented by government through the MOH to address this issue. The Nutrition Act establishes the National Nutrition Council whose objective is to investigate and report on the nutrition status of the Swazi nation.

12.7.2 The Swaziland National Nutrition Council in collaboration with development partners such as WFP has a programme under which nutritional support is given to pregnant and lactating mothers. There is also a "Baby Friendly Hospital Initiative" which is being implemented together with SINAN whose aim is to promote, protect and support breastfeeding and assist HIV+ mothers on feeding infants. Through this project 250 health workers in six (6) major hospitals have been trained. There is also a plan to extend this service to every health center including private health centers. Health workers have been trained in breast-feeding skills, HIV counseling and complimentary feeding. There are support groups established for mothers to support each other in breastfeeding. Assessment

is done to ensure that there is compliance of the mothers in these support groups. Nonetheless, not all women are able to benefit from these initiatives as they tend to be limited by the availability of resources and hence restricted in terms of the numbers of women reached.

12.7.3 The Vulnerability Assessment & Analysis 2007 Report (on some measures to determine approximately the micronutrient supplementation coverage in rural and peri-urban areas in the country) indicate that around 78% of the women had received at least one tetanus toxoid injection during their last pregnancy while about half the women had received a high dose vitamin A supplement after the birth of their last child. About 80% of the pregnant women were taking iron supplements but only half in Manzini. In general the majority of the women in the country (89%) are receiving antenatal care services during pregnancy. These findings are summarized by region in the table below:

#### **Antenatal Health and services**

<i>Region</i>	<i>Antenatal health and services</i>				
	Pregnancy	ANC	Iron Folate	Tetanus toxoid	Vitamin A
Hhohho	5%	100%	78%	73%	74%
Manzini	9%	64%	50%	83%	55%
Shiselweni	6%	100%	100%	90%	90%
Lubombo	10%	92%	91%	87%	94%
National average	8%	89%	80%	83%	78%

## **12.8 HIV and AIDS and Sexually Transmitted Infections**

12.8.1 The population based survey of HIV and AIDS from the 2007 Swaziland Demographic and Health Survey (DHS) indicates a national HIV prevalence rate of 26% among persons aged 15-49 years in the study where HIV positive as compared to only 20% in men. The peaks by age and sex were 49% for women 25-29 years of age and 45% for men 35-39% years old. Urban dwellers were much more likely to be infected with 32% HIV prevalence rate compared to 24% for rural dwellers. By region, Hhohho had the highest prevalence rate (29%), followed by Lubombo (26%), Manzini (25%) and Shiselweni (23%).

12.8.2 Data relating to HIV prevalence rates is mainly indicated by levels of HIV infection among pregnant women attending antenatal services. Antenatal survey data indicated that in 2004 around 43% of pregnant women were infected with HIV. Trends in the antenatal surveys suggest that the Swaziland epidemic has not yet reached a plateau. Numbers of new infection remain very high, even in the 15-19 year age group. Note that ANC surveillance monitors the rate of HIV infection among pregnant women, all whom are sexually active and have recently engaged in unprotected sex while national population surveys include people who are not sexually active.

12.8.3 To enhance and improve the sexual reproductive health for women the Ministry has established mothers programme and male involvement programmes aimed at targeting HIV positive mothers to further counsel and support each other while Health service providers and Male Peer educators target general male population to educate and empower them on SRH and their roles in supporting their spouses on issues of SRH. The Ministry and NGOs also assist HIV positive women to form support groups. All these efforts are aimed at improving linkages between the communities, in particular women and health facilities.

12.8.4 The State has various programmes designed for adolescent /young people SRH. The Adolescent SRH programmes are evident through the presence of Ministry of Culture

Sports and Youth Affairs, the Adolescent SRH programme in the MOH, Swaziland National Youth Council, Family Life Association of Swaziland, Schools HIV/AIDS Population Education (SHAPE). All these programmes provide certain SRH services to Adolescent/Young people. A Young People Peer Education Programme has also been established through a collaboration of the foresaid Adolescent/young people programmes. To improve SRH service provision to Adolescents there are youth friendly corners in a number of health facilities countrywide and there are also countrywide stand-alone youth centers where young women and girls can receive some SRH services.

## 12.9 Conclusion

12.9.1 Swaziland's health system faces a number of challenges, and this is complicated by the burden of disease due to HIV and AIDS, poverty and migration of skilled health workers. The lack of comprehensive data and multiplicity of disciplines involved in the provision of health and social services is a key issue hindering the formulation of strategic approaches towards addressing quality service delivery by sector.

12.9.2 There is therefore a need for quality assurance programmes to ensure quality health service delivery, as well as monitoring and evaluation system that can track progress in service provision. The country's health management system, including financial management and budget systems, are centralized, inefficient and unresponsive to new needs. Since health services are managed at central, regional and facility levels, there is need to strengthen the coordination capacity across these levels in order to improve efficiency.

## Article 13

States Parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights, in particular:

- (a) The right to family benefits;
- (b) The right to bank loans, mortgages and other forms of financial credit;
- (c) The right to participate in recreational activities, sports and all aspects of cultural life.

## 13.1 Introduction

13.1.1 The Government of Swaziland recognizes the importance of securing women's equal rights in the economic and social spheres of life. To this end the country has entrenched this objective in several of its legal and policy provisions. Section 20 of the Constitution entrenches equality before the law, equal protection of the law and non-discrimination in economic, social, cultural, political and in every aspect of life and Section 28 recognizes and entrenches the rights and freedoms of women, commits Government, subject to the availability of resources, to enhance women's welfare and advancement opportunities. Further, section 27 of the Constitution states that, '*The family is the natural and fundamental unit of society and is entitled to protection by the state*' and that '*Society and the state have the duty to preserve and sustain the harmonious development, cohesion and respect for the family and family values.*'

## 13.2 Right to Family Benefits

13.2.1 Family benefits include family allowances, insurance provision, housing subsidies, child care and financial or tax credits.<sup>25</sup> Swaziland does not have a generalized and comprehensive nationally applicable or institutionalized system of providing for family benefits as envisaged by this definition. The country's legislation specifically relating to the family, are namely, the Validation of Marriages Act 26 of 1902, Administration of Estates Act 28 of 1902, Maintenance Orders Act 7 of 1921, Adoption of Children Act 64 of 1952, Wills Act 2 of 1955, Marriage Act 47 of 1964, Maintenance Act 35 of 1970 does not include any rights to family benefits.

13.2.2 The National Provident Fund Order 23 of 1974 establishes a statutory contributory benefit scheme to which employers and employees contribute regardless of sex or marital status. Section 24 of the Order stipulates the type of benefits to be obtained, namely, age benefit; invalidity benefit; emigration benefit and survivor's benefit. With respect to the survivor's benefit, the member is entitled to nominate the person or persons to whom the benefits should be paid. This benefit does not form part of the member's estate but may be claimed directly from the Fund. Section 28 (3) provides that 'The marriage of a member shall be deemed to revoke any prior nomination made by such member. Section 28(5) states, *'If, on the death of a member, there exists or remains no effective nomination under subsection (2) or (3), the executive officer shall, after such inquiry and upon such evidence as he may think fit —*

(a) *pay the benefit to the surviving spouse of such member:*

*Provided that if there is more than one surviving spouse the executive officer shall divide such benefit amongst them in such proportions as he may, after consultation with the Minister, deem fair and just; or*

(b) *if the member dies without leaving a surviving spouse, pay the benefit in such proportions as he may think fit to any persons who were dependants of the member:*

*Provided that if any such dependant is a minor child, payment shall be made to his guardian for use on his behalf on such conditions, including the provision of adequate security, as the executive officer may require.'*

13.2.3 The potential for women to benefit from this Order is both as members, if they are employed by a registered employer as well as beneficiaries where a husband or other relation has nominated them accordingly. However, in real terms the degree to which women benefit is limited. In relation to employment, the majority of women are either self-employed, employed in small businesses and/ or in the informal sector where many labour-related rights are not enforced. As beneficiaries, women often face difficulties in accessing benefits because of not fulfilling certain requirements such as for instance, the provision of marriage certificates as proof of matrimony for women married under Swazi law and custom. While this can be overcome where in-laws are cooperative, in some instances, there are disputes within the family on the death of a husband and a widow may be deprived by the very in-laws who may be intending to access the benefits for themselves. In addition, the provision relating to more than one spouse clearly affects women who may, again because of disputes, not access the benefits equitably.

13.2.4 The Public Pensions Order 13 of 1993 establishes a pension fund for all pensionable employees – regardless of sex or marital status in the public sector to which Government

<sup>25</sup> United Nations, Division for the Advancement of Women, *Assessing the Status of Women: A Guide to Reporting Under the Convention for the Elimination of All forms of Discrimination Against Women*, 2000

and eligible civil servants contribute. These benefits include those that may be accessed on retirement (including early retirement), on the abolition of the particular office occupied by a member of the fund, disability and death. In terms of the latter, a death benefit, a surviving spouse's pension and children's pensions are payable. Specifically in relation to women, Section 23 of the Act protects their benefits by providing

- that, 'A pension or gratuity granted under these Regulations may not be attached, ceded or transferred except for the purpose of satisfying an order of any court for the payment of periodical sums of money towards the maintenance of the wife or former wife or minor child of the person to whom the pension or gratuity has been granted.' Again, benefit is acquired by being employed by Government or being a dependent of someone so employed.

13.2.5 The Workmen's Compensation Act provides for the security of employees from accidents, injury or death resulting from the performance of their duties. In order to effect this, the Act obliges the employer to insure themselves against any such eventuality. The Act provides for the employer's liability to provide compensation for death or injury resulting from employment accident; compensation in case of death, compensation in case of incapacity and in case of temporary or permanent disablement. The Act also provides for payment of the following types of medical expenses:

- (a) general practitioner and specialist in-patient and out-patient care, including domiciliary visiting;
- (b) dental care;
- (c) nursing care at home or in a hospital or other medical institution;
- (d) maintenance in a hospital or other medical institution;
- (e) dental, pharmaceutical and other medical or surgical supplies, including eye glasses;
- (f) emergency and first-aid treatment;
- (g) transportation to and from a place for the purpose of treatment certified as necessary by the medical practitioner in charge;
- (h) the supply, maintenance, repair and renewal of artificial limbs and apparatus necessitated by the accident.

13.2.6 The Department of Social Welfare is designated to provide welfare to the destitute, disabled, children and elderly. Through the Department the qualifying people are entitled to receive support and this has mainly been through the provision of a basic allowance to the elderly and the persons with disabilities. With respect to security related to employment the Department of Labour under the Ministry of Labour and Social Security provided for some security related to employment through the Workmen's Compensation Act.

### **13.3 Right to Bank Loans, Mortgages and Other Forms of Financial Credit**

13.3.3 In so far as the right to access bank loans, mortgages and other forms of financial credit is concerned, women have been constrained by their legal minority status. This is mainly applicable to women affected by marital power, namely those married by civil rites in community of property as well as those married out of community of property with marital power. Another inhibition that affects all women, regardless of marital status, is economic status which is important in accessing credit. This affects women in so far as women, due to their lower economic status which is reflected in their being the majority of the poor and unemployed and dominating in lower-paying jobs. They generally do not

have the same financial strength to access credit as required by banks and financial institutions in their terms.

13.3.4 Swaziland has no laws specifically governing access to credit for women but there have been numerous initiatives undertaken towards that including establishment of FINCORP, Imbita Women's Finance Trust, savings and credit co-operatives, micro-lenders and banks like the Swaziland Building Society, Swaziland development bank that have provided the opportunity for women to access credit. Some NGOs and the private sector are supporting initiatives towards access to credit by women. The public sector has a government guarantee scheme through which employees enjoy subsidized loan rates.

#### **13.4 Right to Participate in Recreational Activities, Sports and All Aspects of Cultural Life**

13.4.1 There are a wide range of recreational, sports and cultural activities that are available in Swaziland and which members of the populace – including women – are at liberty to participate in. The Constitution seeks to provide an environment in which there can be greater participation in these by all sectors of society. Section 60(7) of the Constitution which sets out the social objectives of state policy, states that, *'The State shall promote recreation and shall ensure that adequate facilities for sports are provided throughout the country and that sports are provided as a means of fostering national integration, health and self-discipline as well as international friendship and understanding.'*

13.4.2 Swaziland and her people are well known for the maintenance of culture and tradition. The structure of Swazi society is also meant to promote traditional values and principles. Section 60 (10) of the Constitution provides, *'The State shall take steps to encourage the integration of appropriate customary values into the fabric of national life through formal and informal education and shall ensure that appropriate customary and cultural values are adapted and developed as an integral part of the growing needs of the society as a whole.'*

13.4.3 There are a range of programmes through which women participate in recreational activities, sports and cultural life. These are supported by Ministry of Sports Culture and Youth Affairs Programmes and they include participation in drama groups, the music industry, and in the production of arts and crafts. As previously stated, Swazi society is arranged according to age regiments and each of the regiments have cultural events that are celebrated at the national level such as umhlanga (reed dance) umhlanga waboMake (the Lutsango Lwaka Ngwane regiment's reed dance); lusekwane and incwala. Women also participate in communal cultural activities such as undertaking ummemo (community work at the chief's kraal).

13.5 In terms of this Article the most visible disparity currently occurs in the area of equal provision of sporting facilities or opportunities available to women. Even though the Swaziland National Sport Council oversees and supports a wide range of sport, at a national level, soccer is given much of the support and prominence in terms of investment and development. Women's soccer on the other hand is not given the same amount of support. The difference in whether the sport is played by women or men is also reflected in the support given to it. For example, traditionally women dominated sports such as netball, are not as well supported.

#### **Article 14**

1. States Parties shall take into account the particular problems faced by rural women and the significant roles which rural women play in the economic survival of their families, including their work in the non-monetized sectors of the economy, and shall take all

appropriate measures to ensure the application of the provisions of the present Convention to women in rural areas.

2. States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women that they participate in and benefit from rural development and, in particular, shall ensure to such women the right:

(a) To participate in the elaboration and implementation of development planning at all levels;

(b) To have access to adequate health care facilities, including information, counselling and services in family planning;

(c) To benefit directly from social security programmes;

(d) To obtain all types of training and education, formal and non-formal, including that relating to functional literacy, as well as, inter alia, the benefit of all community and extension services, in order to increase their technical proficiency;

(e) To organize self-help groups and co-operatives in order to obtain equal access to economic opportunities through employment or self employment;

(f) To participate in all community activities;

(g) To have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes;

(h) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.

#### **14.1 Introduction**

14.1.1 The majority of the Swazi populace resides in the rural areas as discussed above, and the majority of women also reside in the rural areas and hence Government recognizes that special measures should be taken to improve women's situation in the rural areas. Amongst the existing challenges that exist and cause women in rural areas to be additionally disadvantaged is the fact that development has been skewed in favour of the urban areas and hence rural residents do not access the same quality of services as those available in urban areas and must then travel long distances, using scarce resources to access certain services. Women focus group respondents attested to the negative impact of these differences between rural and urban areas on their lives.

14.1.2 Government has recognized the need to address the disparities between the rural and urban areas and has committed through Section 59(2) (d) of the Constitution to, *'undertaking even and balanced development of all regions and in particular improving the conditions of life in the rural areas, and generally, redressing any imbalance in development between the rural and urban areas'* and through the Decentralisation Policy adopted in 2005 will ensure that development and services are provided at all levels. It is envisaged that in the implementation of these provisions, the situation of women in the rural areas will gradually improve.

#### **14.2 Participation in Development Programmes**

14.2.1 In designing and implementing development programmes in all areas, including those in rural locations, Government has strived to be as consultative as possible and a number of consultative exercises have been conducted at the level of chiefdoms and tiNkhundla. The Government, notably through the Ministry of Tinkhundla Administration

Development has also allocated resources for rural development through the Community Empowerment, Regional Development and Community Poverty Funds.

14.2.2 Nonetheless, the participation by and benefit to women has been constrained by social norms that limit women's participation in community meetings where decisions on development needs are made and by the inability to access the allocated funding for women's development initiatives. In terms of policy development, it is difficult for women in general to contribute to these processes as they tend to be centralized and take place at higher levels of governmental institutions. The challenge is even greater for women in rural areas as these processes are not accessible to them and there is no institutionalized mechanism of collecting their concerns for articulation as policy guidelines. However, the Decentralization Policy envisages a different approach to development to ensure that needs emanate from the "bottom up" and Government is in the process of ensuring that local and regional development committees comprised of community members are established and supported.

### **14.3 Access to Healthcare**

14.3.1 According to the Swaziland Human Development Report (2000), 'A strong urban bias is evident in the distribution of health services and facilities. The gains in health personnel and infrastructure achieved over the years have been inequitably distributed, with the rural poor [the majority of which are women] being the least served.' The Report also notes that over 90% of inpatient beds are located in urban health centres even though only 30% of the population is in the urban areas. In terms of healthcare, most women use public health facilities whether government hospitals, health units or clinics.

14.3.2 There is also a difference in the use of private healthcare between women in urban areas, where 15% use private healthcare providers as opposed to the 6% of rural women who do so. This is also evidenced by the difference in locations in which women deliver children. According to the 2006/ 2007 DHS, a third of rural women deliver children at home while one tenth of urban women do so. In addition, 75% of women and this comprises 77% of rural women as opposed to 67% of urban women. In the data collected by the DHS, women reported a number of problems in accessing healthcare. 1.6% cited having to obtain permission for getting treatment, 28.8% cited money for treatment; 30.8% cited distance to a health facility; 23.1% percent cited having to get transport to the facility; 12.8% cited not wanting to go alone; 8.6% cited no female provider being available; 42.3% cited no provider being available at all; and 72% cited the unavailability of drugs. With the exception of the issue of obtaining permission, the percentages of rural women experiencing these problems are vastly greater than those in urban areas. In terms of health insurance, while the DHS found that women in general were less likely to have health insurance than men, this affects 98.1% of women in the rural areas as opposed to 88.4% of urban women.

### **14.4 Access to Social Welfare**

14.4.1 Currently Government deals with issues of social welfare within the Department of Social Welfare in the Deputy Prime Minister's Office which is responsible for providing for the needs of inter alia, the destitute, elderly, and disabled through provision of grants. However, this is insufficient as the social welfare system is weakened by not having sufficient resources to carry out its mandate. For instance, there is a shortage of personnel in the Department. Additional support is received from United Nations and other development agencies and a variety of civil society organizations such as NGOs, religious and charity organizations, the private sector and individual philanthropy.

#### **14.5 Access to Education**

14.5.1 There is also a disparity in the levels of education of the rural population as opposed to the urban population. According to the 2001, SHIES literacy amongst adults in urban areas was 90% compared with the 78.3% in rural areas. While there are a number of programmes that seek to increase educational levels through the provision of educational grants for children by Government, development partners, Tibiyo Taka Ngwane and NGOs such as Save the Children Swaziland and World Vision, it is also important to invest in non-formal education that places an emphasis on skills and vocational training.

14.5.2 In this regard, Government, through the Sebenta National Institute has initiated a curriculum that goes beyond emphasizing basic numeracy and literacy to incorporating life-skills. The new curriculum – Non-formal Upper Primary Education (NUPE) – provides for training in skills in business marketing, gardening, brick-laying and other vocational skills.<sup>26</sup> The Department of Adult Education and Training also seeks to improve its programmes and curricula to meet the practical needs of its target group. Government is also seeking to strengthen the Education Rural Development Centres to ensure that they become more effective. These programmes do not necessarily target rural women but with sensitization and additional resources, the constraints of rural women could be taken into account so that they too benefit from these initiatives. Without specific targeting, these services may be inaccessible to the larger majority of rural women.

#### **14.6 Equitable Access to Economic Opportunities**

14.6.1 According to the 2006/2007 DHS, women in the rural areas are less likely to be employed than women in the urban areas. Even when employed, in the rural areas women's participation is mainly in the agricultural and service sectors. The employment of women in the rural areas is also largely influenced by the fact that they are generally less educated than their urban counterparts. Another challenge for women working in the agricultural sector in rural areas is the fact that many of them are unpaid family workers which then affects their ability to gain income from their work.

#### **14.7 Participation in Community Activities**

14.7.1 Within rural communities, the division of labour generally reflects the various gender roles that have been constructed by society and social norms, with women mainly being responsible for domestic and reproductive functions. Women's participation in communal income generation schemes has also increased as has their communal cultivation of crops for the care of orphaned and vulnerable children for whose feeding, care and protection they are also primarily responsible.

#### **14.8. Access to Agricultural Credit and Loans**

14.8.1 Women in the rural areas are mainly involved in agricultural production, whether for basic household sustenance or for small scale income generation. However, challenges exist for women in this regard with respect to being able to afford the necessary inputs that are required to improve and enhance their productivity.

14.8.2 Government recognizes the importance of promoting the participation of women and men on an equal basis in agriculture and is currently implementing a number of initiatives through the Ministry of Agriculture. In this regard, the Constitution provides for the improvement of this situation by entrenching women's equal rights and committing Government to develop the rural areas. Specifically in relation to land, Section 211(2)

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<sup>26</sup> Government of Swaziland, *Poverty Reduction Strategy and Action Programme*, 2006

states, 'Save as may be required by the exigencies of any particular situation, a citizen of Swaziland, without regard to gender, shall have equal access to land for normal domestic purposes.' In addition, the PRSAP proposes amongst its strategies to reduce poverty, the approval and implementation of the Draft land Policy which is progressive in terms of promoting and protecting gender equality across all land tenure regimes. In particular, Government, through the PRSAP commits itself to 'legislate and clearly define land rights as enshrined in the Constitution in order to promote commercial and sustainable farming.'

#### 14.9 Adequate Living Conditions

14.9.1 The main provider of sanitation facilities and safe water are the Swaziland Water Services Corporation for urban areas. In the rural areas the main provider is Government through the Environmental Health Department of the Ministry of Health and the Rural Water Supply Branch of the Ministry of natural Resources and Energy whose efforts are supported by organisations such as the Council of Swaziland Churches and Emanti Esive.

14.9.2 In terms of ensuring the availability of sanitation facilities Government, through the Ministry of Health, is implementing a number of interventions to improve the situation. Amongst these are the Participatory Hygiene and Sanitation Transformation (PHAST); a training programme which trains and provides building materials for pit latrines. Sensitization and awareness on proper sanitation is being implemented in rural schools in the Lubombo and Shiselweni regions.<sup>27</sup> Government's goal in respect of water and sanitation is 'to to half (sic) the population without access to safe water by 2010 to ensure that everyone has access to safe water, proper sanitation by 2010 and proper waste disposal by 2015.' It is envisaged that with this goal and the scaling up of present programmes aimed at rural development, the situation of the population in the rural areas, the majority of which is women, will improve.

#### 14.10 Conclusion

14.10.1 The reality is that Swazi women in the rural areas bear the brunt of the social and economic inequalities that exist. Not only are they kept from benefiting from mainstream development because of the development bias that has tended towards the urban areas, they are also amongst the majority of the poor, disadvantaged, uneducated, unemployed unable to access social and legal services. They are also the least empowered in terms of the amount and quality of programmes that seek to improve their situation. Nonetheless, Government's policy and programmatic efforts in regards to rural women will be greatly enhanced by the developments that have occurred in terms of the adoption of the Constitution and the Decentralization Policy as well as the ratification of CEDAW which places a special emphasis on these issues. Notwithstanding this however, the ability of Government to deliver development and equity as expeditiously as desired to rural women may be constrained by the availability of resources.

### Article 15

1. States Parties shall accord to women equality with men before the law.
2. States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals.

<sup>27</sup> Government of Swaziland, *Poverty Reduction Strategy and Action Programme*, 2006

3. States Parties agree that all contracts and all other private instruments of any kind with a legal effect which is directed at restricting the legal capacity of women shall be deemed null and void.

4. States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and places of domicile.

## **15. Equality before the Law**

15.1 The applicable laws determining legal capacity and the equal treatment by and protection of the law are statute, common law and Swazi law and custom.

15.1.1 In terms of the Age of Majority Act No.11 of 1953 every person reaches majority at 21 years of age, regardless of sex or gender. A person who has reached the age of 21 years and is of sound mind has the legal capacity to make decisions in all legal issues which concern him or her. He /she can enter into any binding agreement of any nature as permitted in law. The Age of Majority Act therefore accords to women equality with men before the law.

15.1.2 While both women and men attain majority and hence full legal capacity at the age of 21, the type of marital property regime and its attendant consequences that a woman enters into can potentially have the effect of her return to minority status in exercising her legal capacity. There are two types of marriages in Swaziland: the marriage in accordance with customary rites as well as civil rites marriage. The latter, which is governed by the Marriage Act 47 of 1964, has three further categories, namely, marriage in community of property (which automatically includes marital power as a consequence), marriage out of community of property with marital power and marriage out of community of property without marital power.

15.1.3 A couple may also solemnize a dual marriage, in which parties undertake the requirements of both the customary and civil rites marriages and which means that the consequences of the marriage will comprise those stipulated by both types of laws. Another variation on marriage in terms of civil rites is as a consequence of sections 24 and 25 of the Marriage Act which state:

*24. The consequences flowing from a marriage in terms of this Act shall be in accordance with the common law as varied from time to time by any law, unless both parties to the marriage are Africans in which case, subject to the terms of section 25, the marital power of the husband and the proprietary rights of the spouses shall be governed by Swazi law and custom.*

*25. (1) If both parties to a marriage are Africans, the consequences flowing from the marriage shall be governed by the law and custom applicable to them unless prior to the solemnization of the marriage the parties that the consequences following from the marriage shall be governed by the common law.*

The implication of this section is that elements of Swazi law and custom are automatically imported into a civil rites marriage where the parties do not indicate otherwise before entering into the marriage.

## **15.2 Equal Exercise of Legal Capacity**

15.2.1 As stated above, in terms of general law, women's legal capacity may potentially be affected on marriage. A civil marriage out of community of property without marital power does not affect a woman's legal capacity and the attendant authority to exercise it. However, where the marriage incorporates the marital power as a consequence, a husband becomes the automatic administrator of the joint estate and over his wife's separate estate

in a marriage out of community of property where marital power has not been excluded. This gives the husband the authority to represent and transact on behalf of the estate without the knowledge or consent of his wife.

15.2.2 In contrast the woman in this type of marriage:

i. cannot conclude contracts (except for basic household necessities) independently and needs her husband's assistance in doing so;

ii. loses her *locus standi* and cannot represent herself in civil suits (unless the suit is against her husband for maintenance or divorce);

iii. cannot register immovable property in her name. In this regard section 16 of the Deeds Registry act contains "special provisions relating to women" and states in 16(3) that '*Immovable property, bonds or other real rights shall not be transferred or ceded to, or registered in the name of, a woman married in community of property, (save where such property, bonds or real rights are by law or by a condition of a bequest or donation excluded from the community).*' This affects her ability to acquire, own, control or dispose of immovable property.

15.2.3 These provisions limit women's exercise of their full legal capacity and are therefore clearly discriminatory against women. At a practical level, women wishing to access credit and loans for a variety of pursuits whether with respect to establishing businesses, purchasing real estate and other property or paying for children's school fees experience difficulties with the requirement of being "assisted" by their husbands either because he is unwilling or absent which ultimately works to the detriment of the woman and her family's development.

15.2.4 A customary marriage is regarded as being out of community of property with marital power. Women married under this type of marital property regime are able to contract unassisted and to register title deed land in their own names. Notwithstanding this, however, the extensiveness of the marital power which is part of the marriage, poses practical problems for these women who may require permission from their husbands before acting hence rendering it difficult for some to do so "unassisted."

### **15.3 Administration of Property**

15.3.1 As stated above women's ability to administer property is dependent on the marital property regime which she has concluded and its incorporation of marital power.

### **15.4 Equal protection by the law**

15.4.1 Civil litigation can only be brought by and against a person who has full legal capacity that is a person who is 21 years of age, of sound mind and who has contractual capacity. While the Constitution does provide for equality before the law and equal protection of the law, the state of existing marriage law is such that women married under a regime in which marital power is a consequence, are legal minors and hence do not have this capacity to sue or to be sued in civil matters without the assistance of their husbands.

### **15.5 Equal Treatment at all Stages of Legal Process**

15.5.1 In regard to treatment at all stages of the legal process, the standard is set by section 20 of the national Constitution which provides for equality before the law and equal protection by the law and section 21 which provides for the right to a fair hearing and states, '*(1) In the determination of civil rights and obligations or any criminal charge a person shall be given a fair and speedy public hearing within a reasonable time by an independent and impartial court or adjudicating authority established by law.*'

15.5.2 In addition, the Constitution states that the rights contained within it ‘*shall be respected and upheld by the Executive, the Legislature and the Judiciary and other organs or agencies of Government and, where applicable to them, by all natural and legal persons in Swaziland, and shall be enforceable by the courts as provided in this Constitution.*’ It is evident therefore that in terms of the law, there is a requirement that women and men be treated equally before the law.

15.5.3 The rules of legal process and court procedure are generally sex and gender-neutral. However, there are a number of instances where women are treated differently. Firstly in terms of dress code, women are not allowed to wear trousers in court and are expected to cover their heads at all times while in the courtroom.<sup>28</sup> Further, women, as discussed above are subject to being represented by their husbands in civil matters hence accorded a different status in a legal matter where the woman may be reduced to being a witness in the matter rather than the principal complainant. There is no evidence showing a difference in the nature of compensatory or damages awards given to women and men but it is necessary to undertake research into this area.

15.5.4 In terms of criminal law, and specifically gender-based violence, there is no recognition of marital rape and the application of the cautionary rule which is an evidentiary rule invoked in sexual offences such as rape requiring that the presiding officer should caution him/herself against convicting the accused where there is no corroborating evidence to that of the complainant. This means that the prosecution must bring additional evidence than that presented by the complainant. This rule is problematic because it is based on the stereotypical assumption that women are prone to lie about sexual offences. This places an unfair burden on the complainant to have to provide additional evidence because the nature of such crime makes it difficult to get evidence.

15.5.5 In terms of access to justice, the law provides that all persons have the right to equal representation. However, the reality is that justice is generally inaccessible to women. This is mainly because legal representation is very costly and apart from *pro deo* services afforded to a person accused of a capital crime, there is no national legal aid system whereby poor persons can be assisted with legal representation either at minimal or at no cost. The work of NGOs such as Council of Swaziland Churches and Women and Law in Southern Africa who offer legal advice, counseling and assistance services to the public reveals that a majority of women cannot afford legal representation. The additional challenge for women who may be assisted by these organizations is that due to existing legislation pertaining to legal practice, the lawyers in these organizations are not able to represent their clients in court. Hence where a matter cannot be resolved outside of court, the clients must be referred to private legal practitioners, which may signal the end of the matter as a woman will be unlikely to afford the required legal representation.

## **15.6 Equal Freedom of Movement**

15.6.1 According to the Section 26 of the national Constitution, ‘*(1)A person shall not be deprived of the freedom of movement, that is to say, the right to move freely throughout Swaziland, the right to reside in any part of Swaziland, the right to enter Swaziland, the right to leave Swaziland and immunity from expulsion from Swaziland.*’ While the articulation of this right is not sex or gender-specific and hence appears to accord similar rights to both women and men, its practical enjoyment by women may be affected by various socio-economic considerations, such as marriage, for instance, where the man will determine the movements of the family. Women have reported that such instance of

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<sup>28</sup> This requirement does not apply to women legal practitioners in the course of their work at court.

decision-making on a woman's movement will extend to withholding consent for travel or study outside the country.

### **15.7 Equal Freedom to choose residence and domicile**

15.7.1 Swaziland is a patri-local as well as patriarchal society and issues of residence and domicile are therefore determined by the male members of the family. Therefore, one of the consequences of marriage - whether by custom or by civil rites – as well as what obtains as the practical experience of women is that a woman follows the domicile of her husband.

### **15.8 Conclusion: Initiatives to change The Situation**

15.8.1 The Swaziland government is committed to promoting the equality of women before the law and to their equal protection by the law regardless of marital status as envisaged by CEDAW, other instruments to which government has committed and as entrenched by the National Constitution. In this regard, government is currently undertaking, with the assistance of development partners such as UNDP and the Commonwealth, a law reform exercise that will address the current inequalities.

15.8.2 In terms of changes to Swazi law and custom, positive developments have been observed from Chiefs and traditional leaders who have instituted progressive changes at the community level in terms of the position of women. For instance, in some areas, individual women have been allocated land, either for domestic and residential purposes or in others; women's associations have been able to acquire land in order to establish business ventures.

15.8.4 NGOs have also played a critical role in terms of continued sensitization of the general populace on the equality clauses in the Constitution and in advocacy campaigns on the need to remove discriminatory legislation from the statute books and align existing law and practice with the provisions of the Constitution. NGOs have worked in collaboration with government sectors that deal with women, in particular the Ministry of Justice and Constitutional Affairs (in terms of issues of rights, law and making the judicial system accessible to women), Ministry of Health (pertaining to issues of HIV and AIDS), The Deputy Prime Minister's Office on women with disability and the girl child, Ministry of Agriculture in the area of crop production and nutrition, Ministry of Commerce, Industry and Trade in the area of women in business and entrepreneurship, and the Ministry of Home Affairs for the registration of births, marriages and deaths.

15.8.5 The Gender Coordination Unit has been and is playing the pivotal role of coordinating women and gender issues within government ministries NGOs and civil society, traditional leaders, rural and urban women, parliament (in particular through the Parliamentary Women's Caucus), the UN Agencies and other development partners.

## **Article 16**

1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:

- (a) The same right to enter into marriage;
- (b) The same right to freely choose a spouse and to enter into marriage only with their free and full consent;
- (c) The same rights and responsibilities during marriage and at its dissolution;

(d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;

(e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;

(f) The same rights and responsibilities with regard to guardianship, stewardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;

(g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;

(h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.

2. The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

## **16.1 Introduction**

16.1.1 Marriage and family law is governed by statute, common law and Swazi law and custom. Religious marriages are not recognized and while a couple may perform the necessary religious rituals, they are still required to register the marriage in accordance with statute for it to be legally recognized. The co-existence and simultaneous operation of general and customary law sometimes results in contradictory provisions. However, in terms of family law and the position of women within the family and their resultant rights and duties, there is relative concordance amongst these laws.

## **16.2 Equal Right to Enter into Marriage and Consent Thereto**

16.2.1 Section 27 of the national Constitution provides for the Rights and protection of the family and provides,

27 (1) *Men and women of marriageable age have a right to marry and found a family.*

(2) *Marriage shall be entered into only with the free and full consent of the intending spouses.*

16.2.2 Civil rites marriages are concluded in terms of the Marriage Act 47 of 1964 and common law, according to which any person above the age of majority, that is, 21 years, may marry of his or her own free will, including that of having freely choosing their spouse. However, the Act also provides for minors of certain ages – 16 years, if female and 18 years if male – to marry. In these cases, the Act states, '(2) *Minors below the age of twenty-one years but above the ages specified in sub-section (1) may marry with the consent of their legal guardian, but persons who have previously been married, whether in accordance with Swazi law and custom or civil rites, shall not be regarded as minors.*'

16.2.3 Where any or both of the minors involved have no legal guardian(s), or where the consent of the legal guardian cannot be obtained for a reason other than the unwillingness of the legal guardian to give the consent, or where the consent is manifestly unreasonably withheld, the Act provides for the consent to the marriage to be given by the '*district commissioner of the district in which the minor resides, or, if the minor resides outside Swaziland, the Minister may, give a written authorization for the marriage of that minor.*'

16.2.4 In terms of customary marriages, free and full consent to marry may be given by the intending spouses but this is not a strict requirement. In some instances, consent may be given by the parents of the person to be married and although it is reported that this aspect affects both women and men, at a practical level, women are more negatively affected.

### **16.3 Equal Rights and Responsibilities during Marriage and at its Dissolution**

16.3.1 Civil rites marriages are monogamous and may either be in community of property, out of community of property with marital power and out of community of property without marital power. In terms of this type of marriage a woman follows her husband's domicile. Other consequences flowing from the marriage are determined by the type of marital property regime concluded by the couple.

16.3.2 In terms of marriage out of community of property with the husband's marital power, the couple retains their two separate estates. However, similarly to a woman married in community of property this type of marriage lacks capacity to contract, therefore her estate is administered on her behalf by her husband.

16.3.3 In terms of marriage out of community of property without the husband's marital power, the couple maintains their separate estates and each one administers her or his own estate. The wife retains her majority status as though she were not married. She therefore continues to enjoy her full capacity to contract, *locus standi* and ability to register property in her name.

16.4 Civil marriages are dissolved by death or divorce. In the case of death, the estate of the deceased is the one that is dealt with and equal rules apply to both women and men in terms of benefiting from the estate of the deceased spouse. With respect to divorce, two grounds of divorce are recognised by the law, namely adultery and desertion. Swazi law recognises the "fault" principle, which identifies the person "at fault" in the breakdown of the marriage and may potentially have an effect on how the estate property is distributed on divorce. For instance, in the case of a joint estate, on dissolution of the marriage, it would be anticipated that the spouse would receive equal shares of the property yet where a spouse is found to be at "fault", they may not receive an equal share and the court may award a greater share to the other spouse.

16.5 The consequences of customary marriages include the fact that the marriage is potentially polygynous, and that as the wife becomes part of her husband's family, she follows his domicile. Other consequences are that she is under the marital power of both her husband and his family.

### **16.6 Equal Rights and Responsibilities Pertaining to Children.**

16.6.1 The rights and responsibilities of women and men as regards children are, in addition to social rules and norms, governed by status, the common law and customary law. The standard is set by the national Constitution, whose section 29 provides for the rights of the child and states,

(3) *The child has the right to be properly cared for and brought up by parents or other lawful authority in place of parents.*

(4) *Children whether born in or out of wedlock shall enjoy the same protection and rights.*

(5) *Children have the duty to respect their parents at all times and to maintain those parents in case of need.*

16.7 In addition, the Constitution abolishes the status of illegitimacy and provides in Section 31, that, '*For the avoidance of doubt, the (common law) status of illegitimacy of*

*persons born out of wedlock is abolished.* This provision lays the basis for ensuring that children born out of wedlock whose status was such that they were precluded of certain benefits such as inheritance from their fathers, will now be able to access those benefits.

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