



# **SHADOW REPORT TO THE UNITED NATIONS COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN**

**Swaziland, 58<sup>th</sup> Session (30 June 2014 - 18 July 2014)**

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**Submitted by:**

**[Gender Consortium of NGO's within the Coordinating Assembly of NGO's (CANGO)]**

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**Executive Summary:**

This report summarizes key concerns related to the de facto status of women's human rights in Swaziland. It is structured to provide CSO input to questions posed by the Committee to the State party in key areas, namely on: A. Legal Status of the Convention, Constitutional and Policy Framework; B. National Machinery for the Advancement of Women; C. Access to Justice; D. Temporary Special Measures; E. Stereotypes and Harmful Practices; F. Mourning; G. Violence Against Women; H. Trafficking and Exploitation of Prostitution; I. Participation in Political and Public Office; J. Education; K. Employment; and L. Health.

While some advancement has been made on women's rights, an overarching challenge remains in that the CEDAW Convention has not been adequately domesticated into national legislation. This leaves Swazi women without adequate legal protection in a number of key areas. Several key pieces of legislation which would help to better protect women's rights, including the Marriage Bill, the Administration of Estates Bill, the Deeds Registry Bill, the Employment Bill, the Sexual Offences and Domestic Violence Bill, and the Draft Land Policy, all continue to await adoption without any clear timeline for doing so. CSO representatives in Swaziland consider as particularly urgent the issue of gender based violence throughout the country and the especially the protection of women under the Sexual Offences and Domestic Violence Bill, as well as women's participation in decision making/politics and women's land rights.

Police records, NGO case reports, as well as daily media coverage reveal extremely high rates of gender based 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. Intimate partner violence/domestic violence including marital rape, physical and psychological abuse are extremely high. Swazi women's problems in this regard are exacerbated by the duality of laws which enables the weakening of protection under one system to be negated by provisions of the other. Additionally both systems of law remain patriarchal emphatic on male dominance, condoning negative cultural practices, attitudes and norms, and promoting a pervasive culture of silence which legitimize an environment which is conducive for violence to occur.

Women's representation in politics is also a key issue. The total number of women elected and appointed into Parliament is 14 out of a total of 95 lending the country at 15% representation of women. There are no specific measures taken to ensure the representation of women in decision making bodies.

In relation to land (as well as other areas), there is a need to address the gap that exists in protections for women's rights due to the application of discriminatory customary laws and practices. The report highlights that there have been no attempts as yet by the State party to deal with customary authorities that make it impossible for women to enjoy their statutory rights, resulting in a range of violations for women and girls. On land, it is urgently required that the State put in place protections for women's land rights, particularly as relates to the allocation of Swazi National Land, including in relation to inheritance of land

## **Introduction:**

Swaziland is a State party to the Convention on Elimination of All Forms of Discrimination against Women, having acceded the Convention without reservations in 2004, thus assuming state obligation to uphold and promote women's rights as human rights, to respect fundamental freedoms and to ensure the equal participation of women in all social, economic, political and cultural realms.

By acceding to the Convention, Swaziland expressly indicated its commitment to eliminate all forms of discrimination against women, obliging the State to submit timely reports to the CEDAW Committee on progress made in the implementation of the Convention. Government as per norm tended the first and second State reports to the CEDAW committee in 2011. CSOs at that time participated in the consultations informing the State party reports, but missed on the opportunity to compile a CSO driven report to provide an alternative voice.

The CEDAW Committee has followed up on the 2 State party reports sent by Government by sending follow up questions to the Government, requesting that they respond to specific inquiries on the extent to which Convention protections are being implemented. The Government was required to submit its responses on the issues and questions raised by the committee by mid-January 2014 in preparation for the 58<sup>th</sup> session of the CEDAW Committee, to be held in Geneva from 30<sup>th</sup> June - 18<sup>th</sup> July 2014, during which time the Government will be presenting its report. This process has availed an opportunity for CSOs to also organise themselves and report on the same questions raised, bringing an alternative voice that presents a broader picture of the *de facto* situation of women in Swaziland. As a stakeholder in the process, the Gender Consortium under auspices of CANGO currently chaired by SYWON has mobilised CSOs to compile this report, which is to be represented to the CEDAW Committee. The report reflects the varied reach of these organisation's in working on women's situation and rights in Swaziland.

### **Acknowledgements:**

As the Gender Consortium of NGO's in Swaziland, we are indebted to the following partner organisations who supported us in compiling this report, bringing strategic support, guidance, expertise and even resources at different stages of the process: COSPE- Swaziland - Cooperation for Development of Emerging Countries, the International Commission of Jurists (ICJ), International Women's Rights Action Watch Asia Pacific (IWRAP) and the Global Initiative for Economic, Social and Cultural Rights. We greatly appreciate that the process of thorough consultation was led and driven by the Gender Consortium and it allowed us time to reflect on priority issues for advocacy.

The report was compiled through consultations with the Gender Consortium of NGOs within the Coordinating Assembly of Non-Governmental Organisations secretariat). The following is a list of the organisations within Civil Society that compose of the Gender Consortium:

1. CANGO            Coordinating Assembly of Non-Governmental Organisations
2. Compassionate – Swaziland
3. Council of Swaziland Churches
4. FHI 360           Family Health International
5. FLAS             Family Life Association of Swaziland
6. FODSWA         Federation of the Disabled in Swaziland
7. Gender Links – Swaziland
8. Gone Rural Bomake - Swaziland
9. Imbita Women's Trust
10. Lusweti Institute for Health Development Communication
11. NATICC          Nhlanguano Aids Training Information and Counselling Centre

12. PSI Population Services International- Swaziland
13. Save the Children Swaziland
14. SHAPE Schools' Health Population Education
15. Gender Links Swaziland
16. SWAGAA Swaziland Action Group against Abuse
17. SYWON Swaziland Young Women's Network
18. Umsimisi Community Projects
19. WLSA Women and Law in Southern Africa (Swaziland)
20. WFF Women Farmer Foundation
21. BSCRS Baphalali Swaziland Red Cross Society
22. World Vision International
23. LDS Lutheran Development Services
24. WUS World University Swaziland
25. WLSA Women & Law in Southern Africa
26. Conference of Swaziland Churches
27. FAWESWA Forum for African Women Education

## **Glossary of Terms:**

CEDAW	Convention on Elimination all forms of Discrimination against Women
DPMs	Deputy Prime Ministers'
EBC	Election Boundaries Commission
GFIU	Gender and Family Issues' Unit
HRC	Human Rights Commission
MOET	Ministry of Education and Training
MOH	Ministry of Health
M& E	Monitoring and Evaluation
NGP	National Gender Policy
NGOs	Non-Governmental Organisations
OVC	Orphaned and Vulnerable Children
SODA	Sexual Offences and Domestic Violence Act
SBIS	Swaziland Broadcasting and Information Service
UNDP	United Nations Development
VAW	Violence against Women

## Questions and Issues

## CSO Responses

### A. Legal Status of the Convention, Constitutional and Policy Framework

1.1 Please provide information on the steps that have been taken to review and change laws that are currently not aligned to CEDAW and other International Human Rights instruments including the Constitution of the Kingdom of Swaziland.

Political will to align domestic laws with CEDAW, international human rights instruments, and the Constitution is wanting. To date there has been no Law Review Commission established to fully align statute with the national Constitution and CEDAW. Following the accession to CEDAW in 2004, there were attempts to review the Marriage, Deeds Registry and Administration of Estates Acts with the view to alignment. The process to which civil society was consulted to a stage was quite active until about 2006. **However, since then the process is moving at snail's pace especially regarding alignment with CEDAW and specific sections of the Constitution which would align domestic laws with the gender equality article in the constitution and others that would further rights of women**, such as Sections 28(3) on the right not be compelled to undergo customs that they are in conscience opposed to; 211 (2) on accessing of Swazi Nation Land; and 86 on representation.

The case of *Attorney General vs. Mary-Joyce Doo Aphane*.<sup>1</sup> the State argued in favour of retention of Section 16 (3) the Deeds Registry Act<sup>2</sup>, pending amendment which denied registration of land by women married in community of property. The relevant provision read as follows: "Immovable property, bonds and 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, bond or real rights are by law or by a condition of a request or donation excluded from the community." Consequently, the register of Deeds could not entertain transfer of land into the name of a married woman save for under the above conditions. That case saw Section 16 (3) declared unconstitutional.

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<sup>1</sup> See: Civil case No 383/2009. Appeal court judgement, see [Swazilii.org/sz/judgement/supreme-court/2010/32](http://Swazilii.org/sz/judgement/supreme-court/2010/32) Attorney General v. Aphane.

<sup>2</sup> No 37/1968.

The Deeds Registry (Amendment) Act<sup>3</sup> has replaced the former offending Section 16(3) with equitable legislation, allowing either party in a marriage by civil rites in community of property to be able to procure title to immovable property. It also caters for joint registration. The amendment is equitable, giving either spouse room for acquire property whilst also ensuring that assets of the joint estate are not disposed without the knowledge and consent of both parties. Section 4 underscores that at the end of it all, property regardless under whose name it is registered, belongs to both parties if they were married in community of property making provision that it should be ceded to the joint estate of the spouses pending liquidation in instances of death and also catering for cases of divorce.<sup>4</sup> **However, the Government is yet to disseminate this progressive amendment. As such many couples procuring property continue to register as though it did not exist. To strengthen the effect of the amendment there is need to link the Deeds Registry with the national registration roll, so that at a stroke of a button the Registrar's office can be aware of that it is dealing with property that has more than one interested party.**

The case of *Nombuyiselo Sihlongonyane v Mholi Joseph Sihlongonyane*<sup>5</sup> made significant inroads into making the Constitution and CEDAW a reality for women married by civil- rites in community of property through addressing marital power of a husband in litigation. The case declared: “per section 2 (1) of the Constitution: The common law concept of marital power insofar as and to the extent that it bars married women from suing and being sued without the assistance of their husbands is hereby declared to be inconsistent with sections 20 and 28 of our Constitution. This invalidity is with effect from 25 March 2013 from which date all married women subject to the marital power of their husbands shall have the right to sue and to be sued in their own names.”

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<sup>3</sup>No2/2012.

<sup>4</sup>Ibid 16(4)

<sup>5</sup>(470/2013A) [2013] SZHC 144 (18July 2013)

**The Sexual Offences and Domestic Violence Bill was not presented to . His Majesty's assent to become an Act after over eight years of the process after duly being debated and endorsed by both houses of Assembly and Senate in 2013.** Parliamentary procedure dictates that the Bill should be sent for deliberation by both houses as a new Parliament is in place since October,2013.The adoption and assent is eagerly awaited with optimism that structures for implementation will be catalysed in the shortest period after taking this long in the drawing board. People Smuggling Prohibition Act 2009 was passed.

Several laws need to be aligned with CEDAW and the National Constitution, These include: The Marriage Act<sup>6</sup>, Administration of Estates Act,<sup>7</sup> They are premised on women's inequality with men and do not fully embrace both customary marriages. The Companies Act<sup>8</sup> embraces marital power much against CEDAW , national constitution and national gender policy, The Citizen Empowerment Bill, Procurement Act are not engendered too..

There is a dearth of usage of CEDAW in interpreting law. Attorneys seem to self-censor based on the Convention not having been yet domesticated into law. It is categorical as per Section 238(4) of the national Constitution that only domesticated international treaties are binding. **There have been consultancies for various manuals and trainings including for the judiciary on CEDAW, but there is stagnation in bringing these trainings to fruition.** A case in point is the CEDAW Based Manual by the Gender and Family Issues Unit. The manual was produced but the training of the judiciary did not take place as envisaged for no apparent stated reasons.

**There are no attempts as yet to deal with customary authorities that make it impossible for women to enjoy their statutory rights.** The process of codification/re-statement of customary law has not been completed; it was part of an attempt to reconcile statutory and customary law. Instead the country continues to rely on statements by leadership such as by HMK at a Royal Traditional lobola

1.2 Please provide examples of court cases, if any, of instances in which domestic courts have used the Convention in interpreting the law in the State Party.

1.3 What measures have been taken to address the inconsistencies between Statutory and customary law and practices that discriminate against women?

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<sup>6</sup> No47/1964

<sup>7</sup> No28/1902

<sup>8</sup> No8/2010

ceremony, where he stated that there is no divorce according to custom. Consequently, the status quo is maintained, and women are left without adequate legal protection.<sup>9</sup>

2.1 Please explain why the definition of discrimination provides a closed list of prohibited grounds, which do not include the grounds of sex and marital status as provided by Article 1 of the Convention.

Section 211 of the Constitution provides for equal access to land for men and women, yet this right has not been incorporated into legislation. There are two types of land in Swaziland, Swazi Nation Land and Title Deed Land. Although Swazi Nation Land can be accessed with payment of a beast as homage through the traditional system from the chief of the area, women cannot independently do so without a male relative. **In matters related to land, women continue to be discriminated on the basis of their sex and marital status. Marital status is used against women in accessing Swazi Nation land.** For those who are single, the question becomes what they will do with land, and that their home would be a hive for men in the community, whilst for the married they are referred to their husbands' in-laws for land, notwithstanding problems they may be faced with in accessing land from them. Therefore, **it is urgently required that the State put in place protections for women's land rights, particularly as relates to the allocation of Swazi National Land.**

2.1 a) Please provide information on the sanctions imposed for discrimination against women, their nature and actual application.

There are generally no sanctions imposed for discrimination against women unless the matter is taken to court. Based on the court ruling the Government or a third party could be compelled to oblige. However, the expectation that sanctions can only follow after lengthy and costly court procedures compromises access to justice by women. Moreover, the court system relies on evidence gathered in a manner that many women may not be privy to, and thus approach courts with limited evidence. Systems need to be put in place to ensure protection of women's rights without necessarily having to go to court, just like their male counterparts are enjoying them mainly without the need for court intervention

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<sup>9</sup> Times of Swaziland 12 August, 2013 [www.times.co.sz/news/90312-no-divorce-in-swazi-marriages-King.html](http://www.times.co.sz/news/90312-no-divorce-in-swazi-marriages-King.html)

2.1 b) Please provide information on the remedies available to women whose rights have been violated on the ground of discrimination.

Legal remedies in such cases are extremely limited and inaccessible to the majority of women. These include the court route, which is very costly in a country without state legal aid except for in criminal matters attracting life sentence. Notionally, there is also the route of the Human Rights Commission whose location makes it very inaccessible, especially to women as it is centralised and forces certain cultural dress codes (i.e. length of skirt, dresses rather than pants, and above all excludes widows in mourning gowns). The Commission itself suffers lack of capacity to handle the volume of cases presented to it.

2.2 Please provide an update on the progress made to adopt the following legislative and policy measures:

The biggest problem with all the Bills is the lack of corresponding timeframes for their adoption, leading to unending process for no apparent or explained reason.

- (a) The Marriage Bill: stakeholder consultations were held from as far back as 2005, yet it still remains in its Bill form.
- (b) The Administration of Estates Bill: is also one of the Bills that were supposedly being fast tracked from as far back as 2004. However, after several consultations and drafts, it is no longer clear why the adoption process is not moving forward.
- (c) Deeds Registry Bill: was amended based on the Aphone<sup>10</sup> court ruling. Deeds Registry (Amendment) No2/2012 (please see above for details).
- (d) The Employment Bill: although there are Government reports to the effect that this Bill is under review, the questions of gender equality and women-centred approach regarding issues of maternity remain concerns.
- (e) The Sexual Offences and Domestic Violence Bill: this one awaits Royal assent by His Majesty. Civil society eager awaits this assent in the first quarter of 2014.
- (f) National Gender Policy: was launched in 2010, and a National Gender Policy Action Plan with a Monitoring and Evaluation framework were developed. However, it is not clear the extent to which these are actually adhered to.

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<sup>10</sup>Supra

- (g) The Draft Land Policy: this policy has taken over fifteen years and remains a draft. It is important that the drafts be numbered and shared so that all actors in Swaziland are using the same draft. The Government must inform the public on why it has been such a lengthy process and commit itself to a timeframe for adoption.

## **B. National Machinery for the Advancement of Women**

3.1 a) Please provide information on the specific steps taken to improve the allocation of budgetary and human resources to the Gender Coordination Unit and to address the challenges presented by the Gender Focal Points.

The admission to the office's limitations due to inadequate resources compared to the task it faces should be seen as a stepping stone to solving the problem. However, remains imperative that the Government should be more committal to the process through giving time bound incremental implementation plan.

3.1 b) Please provide information to the extent to which gender has been mainstreamed in all government structures.

**There is no demonstration of a comprehensive strategy for gender mainstreaming.** There are piecemeal efforts which are more activity based than actual mainstreaming, such as once off trainings with no following capacity building on the how and where to start gender mainstreaming.

Some of the more consolidated work here includes the training of Agricultural Extension officers on gender issues which resulted in an Action plan that is being implemented. One of the outputs here is the implementation of registration of livestock in women's name going to lengths of allocating them dip numbers.

Gender analysis of the National Strategic Framework on HIV and AIDS 2011- 2014 resulting in a Gender check list which will inform the Review of the National Strategic Framework on HIV and AIDS.

3.1 c) Please provide information on the role of Civil Society Organisations in the advancement of Women's Rights in the State Party

Civil society especially through the Gender consortium plays a vibrant and concerted role in advancing women's rights through programmes that seek to create awareness, give legal advice, psychosocial support, challenge violations and prevent violations.

3.2 Please explain the extent to which the drafting of the National Gender Policy took into account the situation analysis conducted by the

Yes it did. However, there would be merit in engaging more with young women as girls are captured through the education system. **It is key for young women to be**

Gender Coordination Unit in 2006.

3.3 Please explain to what extent is the principle of equality as opposed to equity a main feature of the National Gender Policy

**consulted for suitable programs for them.**

The National Gender Policy is very shy on the principle of gender equality. It would enhance the effect of the policy if was committal on gender equality rather than alluding to it intermittently.

### **C. Access to Justice**

4.1 Please provide information on the concrete measures being taken to establish a legal aid system with a view to facilitating access to justice by women in the State Party.

Civil society was part of consultations of a process that would lead to the drafting a Legal Aid Policy by the Attorney General's office funded by the UNDP. A commendable step here is that it is a time bound process which should culminate in an establishment of a government legal aid service by 2015. In as much as the process of literature review and situation analysis had brought to the fore the vulnerability of women and therefore extra need for legal such service, it remains to be seen the extent to which the draft policy will take this into account and how amenable the process of finalising will be to detail that will improve the policy to be centred around serving women's needs.

4.2 What efforts are being made to improve the capacity and knowledge on gender equality and women's rights of the following – the judiciary, education sector, civil society and the general public?

Although there is a United Nations supported joint Gender Programme 2011-2015 which encompasses capacity building for Government, civil society and the public amongst other programmes, there is need to be specific about progress that has been made especially in training the judiciary whose access seems to be very difficult. There is also need to demonstrate how the Gender and Family Unit is working and resourcing civil society organisations to enable them to conduct civic education within their constituencies. It is also incumbent that men engage programs that are being launched and supported demonstrate what their niche towards advancing gender equality.

### **D. Temporary Special Measures**

5.1 Please provide information on what kind of temporary special measures are envisaged and when they will be introduced in order to complement those provided in the Constitution relating to women's

**As yet there is no movement towards coming up with special temporary measures in relation to women's representation in Parliament.** Instead there is

representation in Parliament?

evident demonstration of a strong grudge against the Constitutional provisions.<sup>11</sup>

Notwithstanding, its clarity and the fact that both the 2008 and 2013 National elections were held under the constitutional dispensation to-date this provision has not been invoked. Civil society inquiries about why the failure to implement the above provision always draw inadequate answers ranging from each authority either claiming that the matter is not their responsibility to that it is being attended by the powers that be. Lately, during the 2013 elections there were a number of authorities cited by media stating that they are currently unable to implement this constitutional provision because there is no enabling legislation. The chairman or offices of the Election Boundaries Commission (EBC), Speaker of the House of Assembly 9th Parliament and that of the Attorney General have not been able to give plausible answers to complacency in implementing this provision. There was a time during the 9th Parliament when the problem was said to be shortage of space in Parliament. Remarkably, there was no shortage of space when the Speaker of the 9th Parliament was elected from outside the house as per constitutional provision which did not exist in the Elections Order of 1992 under which previous elections were held. This failure to implement the above cited constitutional provisions is very flagrant especially in the 2013 election where only one woman won a seat to Parliament out of fifty five constituency seats. **Additionally, both in the 9th and current 10th Parliament His Majesty's appointment of women have fallen short of constitutional provisions;** The King appointed five women into the 10th Parliament in September, 2013 falling short of three to be in line with Section 94(3) of the constitution, and three into the House of Assembly a shortfall of two as per Section 95(2).

In both the 9th and 10th Parliament the House of Assembly lived up to constitutional

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<sup>11</sup> 86.(1) Where at the first meeting of the House after any general election it appears that female members of Parliament will not constitute at least thirty per centum of the total membership of Parliament, then, and only then, the provisions of this section shall apply.

dictates of Section 94(2) appointing five women and men into the House of Senate.

The section special measures itself seems to have some resentment. It is the only section which calls for the publicising of appointees in the media. It has a potential of demeaning and destroying some of the candidates' good standing yet they may not even make it to the august house.<sup>12</sup> The latest attempt in trying to address the anomaly of EBC and House of Assembly failure to implement Sections 86(1) 95(1) c 95(3) of the Constitution, on special election of women was a law suit by Ms. Juliet Dandane Mamba in November 2013 against Speaker of the House of Assembly and Clerk to Parliament purporting to stop the second sitting of parliament pending compliance with above sections. The applications was dismissed with costs.<sup>13</sup>

5.2 What measures are in place to promote the understanding of positive measures for the advancement of women and the implementation of temporary special measures in the State Party?

**As yet there are no measures to promote the understanding of positive measures for the advancement of women and the implementation of temporary special measures.** Instead hostility is publicly demonstrated even by government officials such as members of the 9<sup>th</sup> Parliament who were passing derogatory remarks against affirmative action.

## E. Stereotypes and Harmful Practices

6.1 Please indicate if there exists any comprehensive strategy or initiative aimed at eliminating the stereotyped roles and unequal gender relations 'prevalent in society and the media.

**There is dearth of comprehensive strategy or initiative to address stereotyped roles and unequal gender relations that are prevalent in the media and society. Both print and electronic media continue to enjoy unabated free reign in as far as stereotypical reporting is concerned.** Even where concerns are raised by concerned civil society organisations or individuals they fall on deaf ears or simply

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<sup>12</sup> Section 95. (3) of following paragraphs;

- (a) at the instance of the Chairman of the Elections and Boundaries Commission, the elected members from each Region shall on their first meeting nominate not less than three and not more than five women from each Region qualified to be members of Parliament;
- (b) the list of nominated candidates shall be published in at least two local newspapers and the electronic media on at least three consecutive days; and
- (c) after ten days from the date of last publication the House shall meet to vote for one woman from each of the Regions, taking into consideration any relevant in-put in terms of paragraph (b). c structures.

<sup>13</sup> [www.times.co.sz](http://www.times.co.sz)

written down to freedom of speech when they are sexist stereo typical utterances. Moreover, there are no punitive measures taken against public officials for unfounded utterances that promote such. In 2010, the then Minister of Youth, Sports and Culture, Miss Hlobisile Ndlovu made a statement in parliament chambers, that when women say **no** they actually mean **yes**. She continued that when women say 'do not touch me' they actually meant 'touch me further.'

The Minister refused to retract her statement despite the call to do so by a lone woman voice in parliament, women's rights activists and civil society organisations. Yet, such statements fuel the hidden culture of rape and sexual abuse of women, perpetuating discriminatory stereotypes about women. The national radio Swaziland Broadcasting and Information Service (SBIS) hosts a notorious programme weekly *khalamdumbadumbane*, which serves to enforce and promote unequal power relations between women and men with stereotypical roles. This programme has after the appointment of its host into the C.E.O position of national television Swaziland Television Authority been extended to television screening.

6.2 What measures are being taken to eliminate stereotypes that promote girls as care givers and socialize them to accept and persevere domestic violence?

**There are very limited measures that seek to eliminate stereotypes that promote girls as caregivers and socialise them to accept and preserve gender based violence.** For such measures to be comprehensive they would have to adopt a multi-pronged and faceted strategy. Instead there is a tendency to blame the victims themselves, that is, women for failing to re-socialise their children. Yet the underlying issues are bigger than individuals, they lie in societal structures that require de-construction and reconceptualization. The Gender consortium every year leads the raising of awareness through mounting GBV campaigns at national level during the 16 days of activism against GBV. In 2007, Swaziland has developed an action plan up-scaling the 16days of activism to 365 days. The challenge though is the level to which the action plan is adhered to. **Another looming positive indicator is the adoption of the Sexual Offences and Domestic Violence Act by Parliament in 2013. However, the Bill never submitted for . Royal assent until the prescribed period lapsed. Since a new government is in place since**

**October, 2013 the Bill now has to go through the houses afresh.**

6.3 Please provide information on the role of traditional leaders and civil society organisations in the elimination of traditional stereotypes and harmful practices in the State Party?

It is a challenge for civil society organisations to have access to traditional leadership for engagement and training on CEDAW, human rights and the Constitution. Where the Gender and Family Issues Unit hosts such training, they are invitation to civil society organisations with very little room for facilitation by these organisations. The workshops are regional, piecemeal with no mechanism to monitor content and evaluate progress. **There are no attempts to reconcile the duality of laws, as chiefs simply hold on to their customary mandate and enforcing it.** This duality leads to difficulty even in enforcing some legal rulings on Swazi Nation land (as noted above). **Pertaining to inheritance of property situated on Swazi Nation land, widows face problems as most traditional authorities recognise the male heir *Inkhosana*, ownership or usufruct over property and burial rites.** It is difficult for civil society organisations to workshop and further engage chiefs on a simple issue such as problems posed by non-registration of some customary marriages. It should be noted that civil society organisations cannot on their own be able to convene chiefs, the protocol is quite involved. Where women's rights are violated by family or community members and lower rank leadership, they face difficulty of having audience with their chiefs as it is involved and a total no go area where women are still in mourning. **Discriminatory customary practices against the girl child such as *inhlanti* (the giving of a younger sister or paternal niece for marriage to a woman's husband, usually invoked where she cannot bear children of her own) and *kwenzisa* (an arranged marriage which can take place at very tender age), customary marriage of girls below the statutory marriage age are sanctioned by traditional authority both flagrantly and indirectly.** All these are discriminatory, humiliating and also pit women against each other. **Sexual minorities are also not protected, women in this category face additional burden of gender based violence.**

**F. Mourning**

7.1 Please explain the special measures taken to eliminate the cultural practice of mourning rites for widows, which is not applicable to men.

7.2 Please explain the extent to which the provision in the Constitution, which prevents society from 'compelling a woman to undergo or uphold any custom to which she is conscience opposed ' is invoked by women and complied with by traditional leaders.

There are no special measures in place to eliminate the cultural practice of mourning rites.

Despite this constitutional provision<sup>14</sup> there is neither legislative nor administrative systems in place to ensure that this is realised. Women are left to their own devices to operationalize non-compliance with this constitutional provision which is in line with the spirit of CEDAW. Problems facing women persist both within the public and private realm of their lives. For instance, in National schools, that is, those schools which are closely associated with Royalty and some Royal institutions such as Tibiyo, Tisuka taka Ngwane, and women are not allowed to continue working or be found in those premises for the duration of their mourning period. This practice is based on that culturally, royalty is not supposed to mix with dead bodies or people in mourning. Even in Parliament widows in mourning regalia, regardless of whether or not they work there are not allowed. Needless to state this compromises married women's perceived capacity to represent their constituencies as they can be widowed at any-time. The case of former Timphisini constituency member of Parliament is a case in point in this regard. Ms.Dupont following the death of her husband in April 2013 decided not to wear mourning weeds and actually confirmed her intention to stand for elections which were slated for August 2013. There were several statements allegedly made by the Chief of her area to the effect that she should not instigating residents not to vote for her as that was contrary to culture. **The wearing of mourning weeds at the death of one's husband continues to be forced on widows by their in laws, their own families despite the constitutional provision. Even the forceful *kuteka/* marriage of women continues albeit such a progressive constitutional provision.** Unlike with a civil rites- marriage there is no point in a customary marriage where the woman is asked by an autonomous person or body if she is consenting freely to the marriage. For men it is different because the marriage ceremony takes place at his parental residence usually at his request or at

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<sup>14</sup> Section 28(3) Constitution of the Kingdom of Swaziland Act 2005

least that of his people.

Thus, the application of this potentially protective constitutional provision rests on a very shaky foundation, highly dependent on the perspective and whims of those in authority and family patriarchs. Therefore, what is supposed to be a right has been reduced to being a privilege depending on the benevolence of the community and or family leadership. Attempts by various NGOs to raise awareness on this constitutional provisions have been watered down by realities on the ground which dictate that women conform to custom despite their personal stance in that regard. The Gender and Family Affairs Unit has also made its stride in creating awareness on this provision. The Government of Swaziland embarked on gender audit of all laws, which seemingly identified gaps and recommend enactment of necessary laws. However, the project has to date not been taken to its logical conclusion which would have been enactment of appropriate laws.

For as long as there is no legislation that forces everyone to desist from compelling women to undergo customs that they are in conscience opposed to it shall continue. Moreover, there is no punishment for acting contrary to this constitutional provision, leading to women's rights in this regard remaining an elusive mirage.

## **G. Violence Against Women**

8.1 Please provide information on the magnitude of the problem of violence against women, including domestic violence.

### **Magnitude of the Problem**

A survey conducted by UNICEF in 2007 provided population based estimates on the prevalence of GBV and CSA in Swaziland. According to the survey, approximately 1 in 3 females have experienced some form of sexual violence as a child; However, help was sought by females only in less than 1 in 7 incidences.

**Police records, NGO case reports, as well as daily 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. Intimate partner violence/domestic**

**violence including marital rape, physical and psychological abuse are extremely high.** National statistics according to the National Surveillance Network report that 4129 cases of GBV were reported during the period January to October 2013, 63% of these cases occurred within the home. Unfortunately the surveillance reports are severely lacking in terms of presenting gender disaggregated data that properly reflects violence against women and girls. NGOs such as SWAGAA have recorded high levels of violence against women particularly violence occurring in the home setting. It is critical to note that although these figures are high, there is a possibility that cases of VAW especially domestic violence are still under reported. **Swazi women's problems in this regard are exacerbated by the duality of laws which enables the weakening of protection under one system to be negated by provisions of the other. Additionally both systems of law remain patriarchal emphatic on male dominance, condoning negative cultural practices, attitudes and norms, and promoting a pervasive culture of silence which legitimize an environment which is conducive for violence to occur.**

This is further worsened by widespread perceptions that domestic violence is a 'private issue' and should be dealt with within the family setting. A setting which is increasingly becoming unsafe for women and girls as evidence is showing that this is where most violence occurs, yet it is touted as their "safe haven." Despite Government efforts - to some degree- to establish specialized police units for response to GBV, it is still common for survivors of domestic violence/ intimate partner violence to be turned away by untrained officers in sub stations where these units are not available and told to 'handle the matter within the home as it is a private matter.'

8.2 Please provide information on the number of:

#### **Shelters**

**There is only one shelter available in the country for women and girls who have experienced gender based violence. Moreover it is privately owned.** There is an acute shortage of well resourced, well equipped and shelters in the country especially

for survivors of VAW, particularly adult women. Shelters and places of safety are most of the time established and run by private individuals or faith based institutions with limited supervision and coordination by the Government. Part of the broader services provided by NGOs include provision of psychosocial support to survivors. Recently, the Government has developed and launched National Standards for Alternative Care centres however the focus is mainly on facilities accommodating children and a system for rolling out the guidelines is unclear. Such protection urgently needs to be extended to encompass women survivors as well.

### **Protection Orders**

For survivors who attempt to have their violation addressed to a point of accessing legal redress including Protection Orders, these are accessible through the Courts. In the process they are caught in the maze of dealing with a non-receptive convoluted justice system, resulting in withdrawals and protracted processes, and limited understanding of the process involved. Attempts by civil society organisations in this area are compromised by their inability to have national reach due to resource constraints, including not having community radio stations for expedient dissemination of contextual information.

### **Hotline**

There are some hotlines established; SWAGAA, Royal Swaziland Police, Ministry of Education and Human and Trafficking Unit in the office of the Prime Minister.

8.3 Are these services coordinated and available 24 hours a day? If yes, by whom?

The services are supposed to be available twenty four hours a day except for the one by the Ministry of Education. However, what needs to be looked into is the actual availability of the services and quality thereof

8.4 Do the service providers regularly receive training on gender based violence?

### **Training for service providers**

**The State's training for service providers is limited. Training curricula has only been developed for the police and health workers. However, even in these**

**instances, there are significant gaps in relation to use of the curricula and manuals in training, implementation and establishment of monitoring and evaluation systems for officers providing services to survivors.** However, NGOs do conduct capacity building workshops and seminars for police, health workers, prosecutors, magistrates and other government service providers. NGOs require additional resources to keep up with training needs and guarantee continued in-service training.

To address the poor coordination and increase access to comprehensive services by survivors, the Government established, in October 2013, the country's first One Stop Centre. This multi-sectoral facility aims to ensure access to a continuum of care provided by a range of service providers within a single setting to minimize secondary trauma for survivors. The coordination and operation of the facility is through Directorate of Public Prosecutions Department. The placement of the facility within this Ministry is understood to enhance proper evidence collection, prosecution, increase convictions and facilitate access to justice for survivors. A major challenge of the one stop centre is that it is centralised, only located in the capital city, thus limiting accessibility to women in outlying areas. The actual location of the facility is marred by its close proximity to a magistrate court, a very public and busy area which can be intimidating for survivors contemplating reporting violence at the facility. Beyond the one stop centre coordination of services for survivors in this regard, whether by the Gender Unit under the Deputy Prime Minister's Office, The Directorate of Public Prosecutions, or the Department of Social Welfare is unclear.

8.5 What measures are being taken to criminalize marital rape?

#### **Criminalization of Marital Rape**

**The Sexual Offences and Domestic Violence Bill which was passed by both houses of Parliament is thus far the only hope for criminalisation of marital rape in Swaziland. However, it remains a hope as it is yet to receive His Majesty's Royal assent.** Section 151 of the Bill provides; '151. A marital or other relationship, previous or existing, shall not provide a defence to any offence under

this Act.'

8.6 What measures are being taken to address the serious problem of rape of children and incest?

Violence Against Children and Incest for discussion at meeting- engender this part

- Early marriage of girls
- Reparations- tinhlawulo

The State has begun to establish commendable mechanisms for addressing rape of children and incest; including the National Children's Coordination Unit, Child Friendly Courts, the enactment of the Child Protection and Welfare Act 2012 and collaboration with NGOs in national networks such as the Child Protection Network, establishment of a toll free line within the Ministry of Education for reporting of violence occurring within the school setting, to name a few. **However, these mechanisms are centralized and poorly disseminated resulting in poor accessibility by children in rural settings.** The main challenges related to the rape of children and incest are the low reporting due to the culture of silence, not believing the child or attempts to address the issue within the family. The mechanism that are in place for facilitating reporting of violence against children rely heavily on the willingness of a parent or guardian of the child to report the matter and seek redress. The Child Protection and Welfare Act attempts to address this by criminalizing non-reporting of violence against children. Presently, NGOs are implementing nationwide child protection interventions at community level to facilitate provision of psychosocial support to children and identification of cases of violence. **There is an urgent need for Government to invest in the dissemination of multi-sectoral Child Protection Structures and ensure widespread education at local community levels.**

8.7 What measures have been taken to establish monitoring institutions for sexual and domestic violence?

The State, through support from UNICEF, has established a National Surveillance Network which consists of service providers including the police, Ministry of Education, Public Prosecution, and Ministry of Health, NGOs (SWAGAA and Save the Children). Using a standardized database, each institution is able to record

statistics of reported cases of GBV, collate the data and collectively assess the trends of violence on a monthly basis, though sex disaggregation of data, analysis and limitation to reported cases remain a challenge.

8.8 Does the Sexual Offences and Domestic Violence Bill address issues of sexual harassment?

**Yes, the Bill addresses sexual harassment in Section 48<sup>15</sup> above also outlining forms of sexual harassment which are criminalised. However, the same Bill also carries a drawback clause which was adopted by the House of Assembly stating that certain violations such as stalking would not be prosecutable if conducted as a 'cultural practice'. This clause severely undermines the purpose and objective of enacting comprehensive legislation for the protection of women from gender based violence.**

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<sup>151)</sup> A person who sexually harasses another commits an offence and shall, on conviction, be liable to a sentence of imprisonment not exceeding five years or to a fine not exceeding E12,000. Part (2) of the Section proceeds to outline the forms of sexual harassment which are criminalized.

## H. Trafficking and Exploitation of Prostitution

### Trafficking

9.1 Please provide information on the extent of the problem of trafficking in human beings, as the State Party is reportedly the source, destination and transit country for trafficking in human beings.

Extent of trafficking in persons is tracked by the Government working in collaboration with civil society players. Since the passing of the People Smuggling Prohibition Act 2009, thirty six people have been reported to have been smuggled. The Government is hard at work in improving implementation mechanism and capacity to identify and track cases. **It is recommended that the Government extends comprehensive training on trafficking to a broader base of civil society organisations especially those under the Gender Consortium and engender its work identifying and tracking cases.**

9.2 Please state the measures that are being taken to collect data and statistics and development of programs to combat trafficking in human beings, particularly women and girls to establish structures such as referral mechanisms for victims of trafficking.

There are quite handful commendable developments in this regards; The National Strategic Framework and Action Plan for People Trafficking and People Smuggling 2013-2015 which mainstreams evidence based approach in planning and programming. It puts use of evidence collected nationally at the centre of informing programming. To enhance coordination the Government established a Secretariat and Task Force for Prevention of People Trafficking and People Smuggling. There is also a Government established emergency response team comprising hospitals, police and an NGO, SWAGAA.

9.3 What measures have been taken to stop charging victims of trafficking with crimes related to violations of immigration laws?

There is commitment towards harmonising laws that impact on trafficking which include immigration, security and justice system. This is contained in The National Strategic Framework and Action Plan for People Trafficking and People Smuggling 2013-2015. **For protection of women and girls it is key to ensure that they are not trafficked under the guise of marriage, particularly customary marriage which tends to be controlled by men's families.**

9.4 Please provide an update on measures taken to draft amendments to the 2010 Anti-Trafficking Law to allow permanent residency of foreign trafficking victims?

There has been no amendment. However, there is stated intention of granting temporary and where appropriate permanent residence to victims.

9.5 What measures are in place to address trafficking human beings, in particular women and girls for domestic servitude within the State Party?

### **Prostitution**

10.1 Please provide information on specific measures being taken to protect women engaged in prostitution from violence?

10.2 What measures are being taken to remove appearance of a woman engaged as an unacceptable ground for defence in a rape case in accordance with the Girls and Women Protection Act?

There are no particular measures to address this possibility. The Government relies on reporting of cases.

There are no measures taken to protect women in prostitution as it remains illegal and a criminal offence. **Consequently, women in sex work have challenges in reporting violence perpetrated against them in fear of being arrested in the process of seeking justice.**

**There are no measures taken to remove the appearance of a woman engaged in prostitution as an acceptable ground for defence in a rape case.** There is hardly any awareness creation by the State on rights of women in this regard. Instead even the media is left to its own devices in inconsiderate reporting in such cases.

## **I. Participation in Political and Public Office**

### **Representation in Politics**

11.1 Please provide information on the number of women elected and appointed to Parliament during the last elections held in September 2013.

11.2 Please explain how the Tinkhundla electoral system of elections which bars Political Parties affects the election of women to political office.

The 2013 elections fared as follows for women:

One woman was elected in the fifty five constituencies. His Majesty appointed three women falling short of two to meet constitutional stipulation in Section 95 2(a). The House of Assembly appointed five women into Senate in compliance with Section 94(2) of the constitution. His Majesty appointed five women into Senate, falling short of three to meet the dictates of Section 94(3). The tenth Parliament has ten women missing, four from failure by Parliament to comply with Section 95(3) at its first seating, six are a shortfall on His Majesty's appointments. The total number of women elected and appointed into Parliament is 14 out of a total of 95 lending the country at 15% representation of women.

The Tinkhundla system of governance does provide for women's political participation in theory but falls short of a comprehensive strategy or legal framework

to guarantee women equal participation and representation. As such politics in Swaziland are generally a male-dominated affair; since Independence in 1968, Parliaments have had minimal representation of women. This imbalance in representation stems from cultural norms in Swaziland where women have been systematically excluded from participating in political affair. This is evident in the recent 2013 elections outcome already cited above. To address the question of gender inequalities in the decision making fora and assist achieve not only the 30% self- target enshrined in the country's constitution but also move towards the 50 percent target for women's representation in all areas of decision-making, enshrined in the Southern African Development Community (SADC) Protocol on Gender and Development adopted in South Africa in 2008 where Swaziland is also a state party, it is essential for Swaziland to move towards the zebra format of proportional representation. Currently, the first past the post practiced under the Tinkhundla system does not prove to have the spirit of affirmative action.

11.3 Please provide information on the specific measures being taken to ensure the representation of women in decision –making bodies in both public and private spheres of life, particularly in the civil service, international organisations, local government, judiciary and private corporations.

**There are no specific measures taken to ensure the representation of women in decision making bodies.** Yes, women do get appointed but it is not based on a system. A lot of haphazardness is seen in this area than incremental gains towards 50% starting with a sustained 30%. In the 8th Parliament for instance, there was a woman Deputy Prime Minister, which was neither sustained nor improved on in the 9th and 10th Parliament. The number of women Ministers of the 9th Parliament of 2008 has been retained in the 10th Parliament of 2013. Female Swazi judges have been increased to two; the first woman was appointed Regional Administrator in 2013 but is that a course for celebration as it is not public what the benchmark for women is. With media reports of the retirement in December, 2013 of the Deputy Governor of the Central Bank of Swaziland a woman, should we expect that another woman will fill her position as the main position of Governor was recently filled by a man in 2013?

## Nationality

12.1 Please provide information on the measures being taken to revise There are no publicly known attempts that attempt to remedy this anomaly which is

the Constitution and the Citizenship Act with view to amending the discriminatory provisions, which restrict the transmission of citizen by Swazi women if their fathers are foreigners.

12.2 What measures are being taken to introduce legislation governing the acquisition of citizenship by foreign men married to Swazi women so that Swazi women can enjoy their rights on an equal basis with Swazi men married to foreign women who automatically acquire citizenship on marriage?

12.3 Please provide information on measures taken to reduce the risk of statelessness that these children face when they are not claimed by their fathers.

an inconsistent with the provisions of Article 9, of CEDAW and the general spirit of the Constitution coupled with specific sections such as 20, and 28 including 20(4) which provides; "Parliament shall not be competent to enact a law that is discriminatory either of itself or in its effect." Added to this is that both the equality clause and the citizenship provisions are in the constitution and are hence on par in terms of being part of the country's "supreme law." Compounding issues around passing on of citizenship by Swazi women was a plus two years suspension from March, 2010 of the citizenship board by the then Minister of Justice and Constitutional Affairs until 2013, where a new board was sworn in.

**There is no Bill or process of drafting one or other measures being taken to introduce legislation governing the acquisition of Swazi citizenship by foreign men married to Swazi women. The passing of citizenship by married women is thus far out of contemplation by the Constitution, Citizenship Act and current on-going processes.** It would be important though to make sure that the Citizenship Board uses published guidelines in making their decisions lest the discrimination is transferred from one front to another.

**There are no measures in place to reduce the risk of statelessness by children not claimed by their fathers.**

Contrary, to the spirit of the Constitution and specific provision of gender equality, unmarried women are treated differently and with humiliation. As part of the process of attempting to acquire citizenship for their children they are compelled to divulge personal and sometimes humiliating information relating to conception and birth of their children to the Citizenship Board. This is demeaning to their dignity and of course has no guarantee that their children will be awarded Swazi citizenship. Moreover, the process is intricate as it involves the woman's family and significant other players in an attempt to convince the Board that the said child is "stranded" of citizenship from the father's side and therefore, should acquire the Swazi one. Consequently, many Swazi women are frustrated together with their children due to

failure to pass their citizenship since they cannot access resources that flow from citizenship such as passports, travel documents, scholarships right to acquire property and limitation in political activity. Some NGOs have toiled around bringing a constitutional case on this issue but there seems to be reluctance by the potential litigant women for fear of victimisation by the State.

## J. Education

13.1 Please explain the measures being taken to improve the number of women taking science subjects?

There are no measures taken to specifically increase the number of women taking Science subjects. Instead the measures in place are generic such as curriculum by Ministry of Education and Training (MOET) which makes Math and Science compulsory at Primary. **There is no focus on women and girls.**

13.2 Please do explain the impact that these educational choices eventually have on women in employment particularly with regard to occupational segregation.

Very little results will be yielded by this generic move in Math and Science. There is need to focus on problems of women and girls regarding Science and Math through holistic measures they will yield the desired results.

13.3 What measures are being taken to improve representation of women in administrative positions in the education sector?

Similar to other line Ministries, the MOE is regulated through government policy in this regard. There are no special measures in place for improving representation of women in administrative positions in education. Government's policy basis of merit and competency do not hold water because women and men are not equally positioned. **Women's positioning in society prohibits them from landing into senior administrative positions.**

13.4 To what extent does the State Party sought to address gender stereotypes and gender based violence in educational setting?

MOE officials are part of the target of the Gender Programme 2011 to 2015 supported by the United Nations.

## K. Employment

### Remuneration and benefits

14.1 Please provide information on the full range of measures taken to close the gender wage gap and to address occupational segregation between men and women in employment.<sup>i</sup>

**Although the law protects wage discrimination and occupational segregation, there are no mechanisms in place to deal with historic gender gaps.** Further, there are no mechanisms for protecting entry into employment which is where

women fall through the legal protection. Labour inspections conducted by the relevant governmental department fall short of auditing gender discrimination in promotions and placements which may lead to occupational segregation.

14.2 What measures are being taken to increase women's employment in non-traditional and better-paid areas of employment?

**There are no clear measures in place to increase women's employment in non-traditional and better-paid areas of employment.** This would entail a multi-pronged and multi-disciplinary strategy which would amongst other things address role modelling, choice of subjects by girls from an early age, address gender ratios of male and female teachers at a pre-school and primary levels so that boys too can aspire to occupy positions such as pre-school teaching currently dominated by women and vice versa.

14.3 Please state measures taken to address barriers to women's access to employment benefits such as requirements to provide marriage certificates as proof of matrimony

**There are no time bound mechanisms to address barriers to women's employment access to employment benefits.** Section 152 of the Employment Act, for instance supports the discrimination of married women on housing benefit. The issue is always ignored as being addressed through the process of amendment of the Employment Act. There have been several amendments but it is still pending with no time frame for addressing it. The payment of a late husbands' benefit to widows who were married by customary rites proves to be an ordeal where there was no marriage certificate in place. The problem is caused by the Registration of Birth, Marriage, Death Act 1973 as amended, which does not make it mandatory for customary marriages to be registered. This gives an upper hand to husbands' families who decide which wife to recognise and which one to deny post death.

Moreover, registration of customary marriages gives a an equal power to the spouses as in addition to themselves there has to be the woman who smeared the bride with *libovu*/ red ochre and the chief's runner. Both the chief's runner and the woman responsible for the smearing are always from the man's side of the family. **It is recommended that Section 26 (3) A chief or his *induna* or *umgijimi* or the person solemnizing the marriage, as the case may be, who fails to transmit the original and duplicate copy of the marriage information form in terms of**

**subsection (1) shall be guilty of an offence and liable on conviction to a fine not exceeding fifty *Emalangen* be implemented and the fine increased.**

14.4 Please state the measures taken to address the deprivation of employment benefits by relatives upon death of a husband.

**Despite the untold suffering that has been brought to Government's attention through various court cases, research, advocacy, there are no special measures to address deprivation of benefits by women on the death of their husbands.** In as much as the Government has made an effort to decentralise the office of the Master of the High Court (responsible for all estates in Swaziland) to regions it continues to be inundated with cases demonstrating a strong hold of custom over people's estates an difficulty in enforcing protective laws relating to accessing benefits.

Moreover, some of the problems are so intertwined that even where the letter of the law is applied women walk out as losers. For instance in cases where a Swazi homestead keeps their cattle in one kraal with one dip number, it becomes difficult for widows to prove that their late husbands owned that livestock. This is the case despite that some of the widows would have funded the purchase of the livestock. The same is much applicable to property built on communal land, Swazi Nation land belonging to the husbands' families or clan. Whilst the court route is potentially available to all women who find themselves being deprived, *de facto* very few are able to "access" these courts due to a myriad problems ranging from financial constraints, socialisation and unawareness of how to institute such. Whilst several members of the gender consortium and other civil society organisations disseminate basic information on the administration of estates and writing of wills, their efforts are compromised by limited funding and challenges in getting access to some communities for civic education purposes.

### **Application of the Act**

15.1 Please provide information on the measures being taken to enforce the application of labour laws; particularly with respect to maternity leave to ensure that women employed in the public and private sector

**There are no specific measures in place to enforce application of labour laws especially in relation to maternity leave.** Although Government, Labour Unions and Private sector are engaged in consultations on revision of the Employment Act,

enjoy maternity benefits on an equal basis.

this is not a time bound process and does not necessarily lean towards gender mainstreaming generally and addressing the maternity leave issue. The question of maternity leave has been pending since 1992 twenty seven labour demands,<sup>16</sup> which became a rallying call for workers' rights including calling for a compulsory month's full pay for maternity leave.

Notwithstanding that Section 102 of the Employment Act provides for a fourteen day compulsory full pay, it makes this leave conditional on completion of twelve months in employment. Yet, women require maternity leave when they are about to and have delivered regardless of their length in employment. Although Section 108 seeks to protect workers in the domestic arena, there is no evidence of follow up to ensure their protection. Young women working in industry also seem to fall through the substantive protection that is envisaged by CEDAW regarding maternity leave and retention of their jobs. It is simply next to impossible for them to manage having a child and returning to work within the sort space of two weeks and having to nurse their new-borns.

15.2 Please provide an update on whether the Unemployment Insurance Benefit Fund proposed under the Employment Bill, which seeks to guarantee the full payment of benefits during maternity during maternity leave has been established.

The Unemployment Insurance Benefit proposed under the Employment Bill seeks to guarantee full payment of maternity benefits. Maternity leave would be a much welcome development. However, for it to have the desired impact there is need to broaden the categories of women who would be entitled to benefit under it. **It is important to ensure that this Bill captures all women, starting with those that are most in need. These are the women who are hardly earning a living wage even when they are in employment. This also has to be looked into in relation to how employment is defined. The definition should be inclusive, failing which many women will be pushed to the margins of this Bill and thus fall outside its protection.**

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<sup>16</sup> Submitted to Government by the then Swaziland Federation of Trade Unions (SFTU).

## L. Health

### Maternal and Infant Mortality

16.1 Please provide information on the strategies and programmes in place to deal with high levels of maternal and infant mortality.

Maternal death audits by Ministry of Health (MOH) are performed on a quarterly basis to establish the cause of maternal deaths in hospitals in an effort to implement corrective measures. However, this good practice is limited to the major health facilities at the moment. **There is need to expand this to all health centres and clinics so as to increase the coverage of women and infants protected. There is also need to ensure that recommendations of the investigations and recommendations thereof followed up.** Currently, there is no evidence that the recommendations are implemented considering the continued maternal death rates.

16.2 Please explain the specific interventions that have been designed to address the problem of limited antenatal care following the study in 2006-2007 which estimated that only 54% of women with signs of pregnancy complications were informed of the complications and only about 78% of them were physically examined.

Government has launched several initiatives on comprehensive sexual reproductive health such as The Accelerated Reduction of Maternal Mortality in Swaziland (CARMMS) in 2009 whose pillars address in totality quality care for mothers pre and post natal. Under this initiative several activities were to be conducted to address amongst other issues extending of antenatal care. **However, there is no results based evidence that demonstrates improvement following the launch.**

16.3 Please state the measures in place to address the lack of skilled personnel, which is partly attributable to the emigration.

Despite challenges of skilled personnel due to emigration there does not seem to be a strategy to recruit qualified staff that keep up to the rate of attrition.

### HIV Treatment and Contraceptive Usage

17.1 Please provide information on the measures taken to address the 'increasing HIV Prevalence among women of reproductive age' and the limited access of anti-retroviral treatment for pregnant women.

The Government has put in place multiple programmes to address the increasing HIV prevalence among women of reproductive age ranging from primary prevention of acquiring infection to family planning and integration of family planning into ART, labour and delivery. The biggest challenge remains that of interweaving behaviour change into all these programmes and implementing of gender mainstreaming, in all areas; Prevention, Treatment, care and support, Impact mitigation, Response management. **All these smart efforts by Government are undermined by continued infections some of which are caused by the inequality between**

17.2 Please indicate the measures taken in place to address the non-use of contraceptives by women due to prevailing social and religious norms, as well as to address the root causes of vulnerability to infection such as stigma and discrimination.

**women and men even in intimate relationships.** Some of the indicators used for success by Government in these programmes need to be reviewed as they are not aligned to desired results.

Attempts of addressing this include drawing of Family Planning Guidelines (2008) and disseminating them to all facilities within Government and civil society. **However, the key challenge is that the choice of contraceptives available to women and girls is limited at public health facilities.** Long term methods are mainly available at private institutions where costs are higher and the majority of cannot afford. There is need to implement a program that will allow the easy distribution of family planning commodities – community based distribution.

## Conclusions and Recommendations

In as much as CEDAW was acceded to by Swaziland in 2004, the protective protections therein remain a dream in the pipeline for Swazi women. It is only a process of domestication into law that will bring these protections closer to Swazi women. Moreover, the domestication should ensure that the laws put in place have adequate implementation structures that can be monitored and evaluated. Civil society organisations especially under the gender consortium will continue to be meticulous in delivering on their mandate as best as their resources can allow and above all playing that advocacy and lobbying role until these rights become real for Swazi women as envisaged by the Convention on Elimination of All Forms of Discrimination against Women. These rights will be real for Swazi women when there is substantive equality, that is, equality both in law and practice as envisaged by the convention.

**In light of the above information, we respectfully suggest that the CEDAW Committee urge the State party to take the following measures:**

- 1. Take immediate action to ensure alignment of domestic law with CEDAW and specific sections of the Constitution, including Sections 28(3) on the right not be compelled to undergo customs that they are in conscience opposed to; 211 (2) on accessing of Swazi Nation Land; and 86 on representation. In particular the Government should be urged to complete with stakeholder participation, adopt and implement the Marriage Bill, the Administration of Estates Bill, the Deeds Registry Bill, the Employment Bill, the Sexual Offences and Domestic Violence Bill, and the Draft Land Policy. The Sexual Offences and Domestic Violence Bill should be amended to ensure that stalking is prosecutable as a crime.**

2. Take steps to effectively disseminate and raise awareness regarding the Deeds Registry (Amendment) Act. To strengthen the effect of the amendment there is need to link the Deeds Registry with the national registration roll; so that the Registrar's office can be aware of that it is dealing with property that has more than one interested party.
3. Develop advocacy and awareness campaigns to combat discrimination through informing and educating the populace of changes in law, policy and custom. Such campaigns should have the highest endorsement of all leaders including traditional ones.
4. Engender code of conduct for Members of Parliament.
5. Organize capacity building seminars and trainings for the judiciary (including lawyers and judges) on the application of CEDAW and the enforcement of rights guaranteed therein.
6. Put in place effective protections for women's land rights, particularly as relates to the allocation of Swazi National Land, and ensure that women are not discriminated against either on the basis of gender or marital status.
7. Introduce measures to address negative customs and traditional practices, especially in rural areas, which affect full enjoyment of the right to property by women, and ensure abolition of harmful traditional practices, including *inhlanti*, *kwendzisa*, mourning rites, and forceful *kuteka*/ marriage of women and girls.
8. Respect, implement, upscale special temporary measures to ensure women's equal representation in Parliament and other political and decision making bodies, taking into account women's diversity such as disability, age, HIV and AIDS. b) Employ innovative measures to promote a conducive environment of equal participation by women and men in all political processes starting with nominations at primary level. c) Consider the zebra model of proportional representation to enhance women's political representation in decision-making bodies.
9. Use innovative measures to strengthen understanding of the equality of women and men including working with the media to enhance a positive and non-stereotypical portrayal of women.
10. Introduce family courts to provide a conducive environment for addressing family law matters.
11. Extend comprehensive training on trafficking to a broader base of civil society organisations especially those under the Gender Consortium and engender its work identifying and tracking cases. For protection of women and girls it is key to ensure that they are not trafficked under the guise of marriage, particularly customary marriage which tends to be controlled by men's families.

- 12. Strengthen the establishment and implementation of extradition treaty agreements with neighbouring countries**
  - 13. Initiate a process to introduce legislation governing the passing of citizenship by Swazi women to their children regardless of their birth circumstances and acquisition of Swazi citizenship by foreign men married to Swazi women.**
  - 14. Enforce application of labour laws especially in relation to equality in pay inclusive of benefits, housing and maternity leave.**
  - 15. Expand maternal death audits to all health centres and clinics so as to increase the coverage of women and infants protected.**
-