

A question of culture

Anushka Virahsawmy



CHAPTER 1

Constitutional and legal rights

Articles 4-11



Women are making inroads in the legal sector. Gelani Zwane, Senate President of Swaziland.

Photo: Simon Shabangu

KEY POINTS

- Citizens rated Swaziland's performance at 47% against the targets on Constitutional and Legal rights to be achieved by 2015 placing the country at number 14 out of the 15 SADC countries.
- This may be because women still hold minority status in Swaziland.
- Women have the right to equal treatment with men and that right shall include equal opportunities in political, economic and social activities.
- A dual justice system is in place, which takes into account both customary laws and the Roman Dutch Law.
- Section 28(3) guarantees that a woman shall not be compelled to undergo or uphold any custom to which she is in conscience opposed though in practice women remain vulnerable under customary laws, particularly widows.
- The Sexual Offences and Domestic Violence Act 2005 criminalises certain harmful cultural practices but does not include marital rape or sexual harassment.

Table 1.1: SGDI and CSC scores on constitutional and legal rights

	SGDI	CSC
Score	N/A	47%
Rank	N/A	14

Table 1.1 shows that based on the citizen score of 47% Swaziland ranks low at number 14 out of the 15 countries in the SADC region in terms

of progress towards achieving targets related to Constitutional and legal rights contained in the SADC Protocol on Gender and Development.

Women were more critical rating the country 45% compared to men at 50%. This is probably due to women's minority status and dual existence of Roman Dutch Law and customary laws.

Constitutional and affirmative action provisions



The Protocol provides that by 2015, all countries shall endeavour to enshrine gender equality and equity in their Constitutions and ensure that these are not compromised by any provisions, laws or practices. State parties are to implement legislative and other measures that eliminate all practices which negatively affect the fundamental rights of women and men. They are also to introduce affirmative action measures.

A Constitution is the fundamental and supreme law of the land, from which all other laws and sector policies derive their legitimacy, and must comply with its basic principles. It is therefore critical that Constitutions are true reflections of generally accepted principles of equality and democracy. Gender equality should thus be a fundamental value of any Constitution.

Democratic societies therefore emphasise the principle that all people are equal; have equal opportunities and are not discriminated against on the basis of race, political affiliation, religious orientation, ethnic group, caste, gender or sexual preference or orientation. Individuals and groups have the right to have different

Swaziland adopted its Constitution in July 2005 and came into force in February 2006. The Constitution (Article 20) provides for non-discrimination based on gender and allows Parliament to pass laws that are "necessary for implementing policies and programmes aimed at redressing social, economic or educational or other imbalances in society". Table 1.2 provides an analysis of gender equality clauses.



Principal Magistrate Nondumiso Simelane; Swaziland.

Photo: Swazi Observer

Table 1.2: Analysis of gender equality clauses in the Constitution

Provides for non-discrimination generally	YES	Section 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.
Provides for non-discrimination based on sex specifically	YES	(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.
Provides for non-discrimination on the basis of sex and others e.g. marital status, pregnancy	NO	
Provides for the promotion of gender equality	YES	Section 28 (1) Women have the right to equal treatment with men and that right shall include equal opportunities in political, economic and social activities.
Has other provisions that relate to gender	YES	Section 28(3) A woman shall not be compelled to undergo or uphold any custom to which she is in conscience opposed.
Has claw back clause	YES	After the founding equality clause in Section 20, the rest do not specifically state equality on cultural grounds, yet it is one of the sources of discrimination e.g. Section 28(1).
Addresses contradictions between the Constitution, law and practices	YES	Section 2 (1) 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. Section 20 (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.
Provides for affirmative action	YES	Section 20 (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. Also section 86 on representation of women in parliament.

Source: 2005 Constitution of Swaziland.

Affirmative action¹



State parties are to implement legislative and other measures that eliminate all practices, which negatively affect the fundamental rights of women and men. They are also to introduce affirmative action measures.

The Constitution (2005, Article 84) lays down the principle that the people of the Kingdom have the right to be heard and represented through freely chosen representatives, but says also "Without derogating from the generality of the foregoing subsection, the women of Swaziland and other marginalised groups have a right to equitable representation in Parliament and other public structures". In accordance with this, special measures are taken to ensure the representation of women in both houses of Parliament.

As far as the Senate is concerned, half the 10 members elected by the House of Assembly must be women, while at least eight of the 20 members appointed by the King must be women (Constitution 2005, Article 94). Thus, at least 50% of the indirectly elected Senators and 43% of all Senators must be women. The provisions for the House of Assembly are complex (Constitution 2005, Article 95). There are no quotas for the 55 members that are directly elected through the Tinkhundla system.²

Half of the 10 members nominated by the King must be women (Article 95(1) (b), (2) (a)). Should women form less than 30% of the members of Parliament then an additional four women, one each from each of country's regions, are indirectly elected by the House of Assembly from a list of between 12 and 20 candidates



Participants at the launch of the 50/50 campaign launch - Mbabane, October 2012.
Photo: Thandokuhle Dlamini

compiled by the Chair of the Elections and Boundaries Commission (Article 86, 95(1)(c), (3)).

Since political parties are not permitted in Swaziland (Political Parties, the advancement of women's representation through voluntary quotas has not been possible. In 2008, only seven women won seats in the House of Assembly, but with the four indirectly elected members, the number of the elected women in the House of Assembly would be 11 of 59 members, or 18.6%. However, by December 2009, more than a year after the 2008 elections, the regional elections for the four additional women members had still not been conducted (Magagula 2009).

Discriminatory legislation



The SADC Protocol provides that by 2015 SADC countries shall have reviewed, amended or repealed all discriminatory laws and specifically abolish the minority status of women.

The Ministry of Justice and Constitutional Affairs, with the support of the European Union (EU) and United Nations Development Agency (UNDP), carried out a review of all legislation to align it with the provisions of the Constitution and the Convention on Elimination

of All Forms of Discrimination Against Women (CEDAW). The final report is not yet available to the public and so far laws still need to be repealed or amended as a result of the review. Women still hold minority status.

¹ The Law and Legal Research in Swaziland, Dube B. and Magagula, A. June 2012.

² <http://www.eisa.org.za/WEP/swaquotas.htm>

Citizenship³

Citizenship is the state of belonging. Citizenship guarantees rights of nationality and all other rights flowing from being a national of a particular country. Amongst other inherent rights is the ability to pass on to natural and adopted children since they cannot obtain their independent citizenship at that stage. This chapter talks about acquisition and loss of acquisition. Citizenship in Swaziland can be by way of descent, operation of law or birth, marriage or by registration.

Laws pertaining to passing on of citizenship are generally discriminatory against women. Most notable is the fact that it is only the father who can confer citizenship on his children (section 43(1)). A Swazi mother cannot confer citizenship on her children unless a Swazi citizen (section 43(4)) fathers them.

As a result, women have problems regarding passing on of their citizenship to their children born in or out of marriage with foreign men. Swazi women and their children born in or outside marriage with foreign men experience much frustration in accessing certain state resources and rights, which are meant for all citizens. These include but are not limited to: access to travel documents and international passports, access to government scholarships for higher education and representing the country abroad. Swazi women are also unable to pass their citizenship to their foreign husbands who are given the same status as any other foreigner.

Despite Section 28(1) read together with section 14(f), which prohibits discrimination on the grounds of sex and gender in the political, economic, and social spheres and create legal equality for the first time between men and women, section 44 restricts the right to claim citizenship by birth to a child whose father is not a citizen of Swaziland. It makes no reference to the status



Demanding gender equality. Bonsile Ntuli doing cultural performance at the Gender Justice and Local Government Summit - Johannesburg, March 2011. Photo: Trevor Davies

of the mother, except in subsection four where her Swazi citizenship only becomes relevant to the child should the unmarried father fail to adopt or claim the child under Swazi law and custom.

Section 53 provides for the establishment of the citizenship board, whose chairperson interestingly announced the Board's stance towards foreign spouses upon his assumption of office. Only women can in terms of the Constitution and the Citizenship Act benefit from marriage to Swazi nationals as regards citizenship. In terms of section, 44 of the Constitution such a woman must lodge a declaration with the minister responsible for citizenship accepting Swaziland citizenship, and shall become a citizen as from the date of lodgement.

Section 53(1) (a) and (b) confer exclusive authority on the Board to grant or cancel citizenship by registration, and investigate, and where appropriate revoke the citizenship of any person under section 49. While the person concerned has the right to be heard and to be represented at the hearing of their case by the board, there is no provision for review of the decision taken by a higher or independent tribunal or court. This safe guard should be included to protect against possible abuse of the boards powers.

Practices that discriminate against women

Section 19(1) of the Sexual Offences and Domestic Violence Act 2005 criminalises the following cultural practices without consent:

- a) kungenwa - levirate union.
- b) kwendziswa - arranged marriage.
- c) kutekwa - marriage in accordance with Swazi Law and custom.
- d) kuzila -wearing of mourning weeds.
- e) kuhlanta - the marrying of a girl to her sister's or aunt's husband. Where children are born in such a union they are regarded as sisters or aunts.
 - f) kulamuta - a man having sexual relations with a younger sister or paternal niece of his wife.
 - g) virginity testing.
 - h) female genital mutilation.

Bride wealth (*emalobolo*), however has not been criminalised although many gender activists argue that the practice discriminates against women. *Emalobolo* is where the man's family makes a payment in the form of cattle to the family of the woman who he wishes to marry. Once the man pays *emalobolo*, the woman's decision-making power is transferred to the husband's family in all matters including how many children his wife should have and about the work she should do. She is considered the property of her husband and in-laws. A woman could even be expected to hand over her pay cheque to her husband.

³ The Law and Legal Research in Swaziland, Dube B. and Magagula, A. June 2012.

Table 1.3: Remaining discriminatory legislations

Discriminatory legislations	Action being taken	Comments
Section 16 of the Deeds Registry Act precludes women married in community of property from being able to register title deeds for land use.	Deeds Registry Act Bill/2006.	To date the Bill has not been enacted into law; women married by civil rights in community of property still cannot register title deeds to use land. However in the case of Mary-Joyce Doo Aphane v The Registrar of Deeds, Minister of Justice and Constitutional Affairs and Attorney General, Parliament was given up to the 28th May 2011 to remove this discriminatory provision. Parliament has not yet complied with the court order with some Parliamentarians stating that they are yet to consult people in their respective constituencies on the proposed changes. Again this reflects little political will on the part of Parliament to improve the position of women in Swaziland. The Times of Swaziland 14th June, 2011 reported that the Minister Princess Tsandzile suggested that the Deeds Registry (Amendment) Bill 2011 be amended urgently to comply with the Constitution. The Attorney General is also quoted to have said that it was important to have this law quickly amended particularly in compliance with the court ruling.
Marriage Act No47/1964	Marriage Act Bill 2006. It seeks to remove marital power of the husband to enable women to contract and sue and be sued without their husband's assistance.	The Bill was taken to stakeholders in 2006 for comments but has not been tabled before Parliament.
Passing of citizenship to children is still the prerogative of Swazi males. When women do so, it is exceptional cases and only when children are born outside of marriage.	No action has been taken yet.	Travel documents are undergoing a change to a new format which is aligned with the national identity register and is exposing the problems with this constitutional provision. Women who are married to foreign men and those whose children are fathered by foreign men have problems accessing their rights, such as scholarships.

Table 1.3 shows there has been little progress since 2011 and that laws still exist that discriminate against women. Women are particularly vulnerable under customary laws.

Access to justice



The Protocol provides for:

- *Equality in the treatment of women in judicial and quasi-judicial proceedings, or similar proceedings, including customary and traditional courts and national reconciliation processes.*
- *Equal legal status and capacity in civil and customary law.*
- *The encouragement of all public and private institutions to enable women to exercise their legal capacity.*
- *Positive and practical measures to ensure equality for women in complainants in the criminal justice system.*
- *The provision of educational programmes to address gender bias and stereotypes and promote equality for women in the legal systems.*
- *Equal representation by women on and in the courts, including traditional courts, alternative dispute resolution mechanisms and local community courts.*
- *Accessible and affordable legal services for women.*

Access to justice means that when people's rights are violated and they need help, there are effective solutions available. All people have a right to go about their lives in peace, free to make the most of their opportunities. They can only

do so if institutions of justice as law and order protect them in their daily lives. Justice systems, which are remote, unaffordable, delayed, and incomprehensible to ordinary people effectively, deny them legal protection.

Women and children's access to justice remains a challenge in Swaziland. The country has a children's

court that deals with child protection cases; however, the researchers did not have access to the children's court budget. There is no separate court for family law issues, such as divorce, and no information about any plans to establish one. On analysis of the 2011 national budget there is no specific budget for gender training of the judiciary apart from an allocation for professional and special services.

Swaziland Action Group Against Abuse contribute to women's access to justice

Government does not provide a lot of resources to ensure that women have access to justice. NGOs such as Swaziland Action Group Against Abuse supplement government's efforts to provide legal aid. SWAGAA's Access to Justice Department provides basic legal advice to survivors of abuse unaware of their rights or how to approach the legal system in Swaziland.

This is because the court procedure for applying for a peace binding order or an interdict is of-ten difficult for clients to understand because of legal jargon. Court processes can often be tedious and another reason why survivors may be hesitant to seek justice. Lawyers within NGOs are not currently permitted by Legislation to represent clients in court and unfortunately private

lawyers are not accessible to clients as they are expensive to engage. As such, it is extremely difficult for many women to obtain civil protection against domestic violence.⁴

The Access to Justice Department provides within their reach for clients unable to pay for a lawyer. Each year SWAGAA selects a limited number of cases that are assessed as a top priority and provides these clients with financial assistance to take their cases to court, obtain restraining orders and/or other legal assistance. Unfortunately the demand for this service is extremely high and due to a lack of funding so the organisation is unable to provide financial support to every client.

Table 1.4 provides citizen's rating of women's access to justice based on their perceptions during a reference group meeting.

Table 1.4: Access to justice		
Access to justice provision	On a scale of 1-10 with 1 very low and 10 very high how would you score your country	Explanation
Equality of treatment of women in judicial and quasi judicial proceedings	4	The government has put in place mechanisms to ensure equal treatment of women and men in judicial proceedings.
Equal contractual rights	3	Women are generally treated as minors, hence are not capable of entering into contacts without the consent of their husbands, especially those who are married in community of property.
The right to acquire and hold rights to property	4	The type of marriage determines access and control of property for those that are married. Control and access to SNL is largely dependent on the benevolence of male relatives.
Encouraging women to exercise their legal capacity	4	There have been no awareness campaigns to educate women about their legal proceedings.
Ensuring equality of women complainants in the criminal justice system	4	Women remain largely ignorant of the structures in place. Sometimes the authorities reflect the patriarchal attitudes of society which makes it harder for women to take up their complaints.
Equal representation in the courts, including traditional courts	2	Traditional leadership continues to be the domain of men, women are not represented in traditional courts.
Accessible and affordable legal services for women	1	Legal experts' services are expensive. Mechanisms to ensure accessible legal service to women have not been put in place.

⁴ http://www.swagaa.org.sz/?page_id=28

Marriage and family laws; widows and widowers; the girl and boy child



The Protocol requires that State Parties enact and adopt appropriate legislative, administrative and other measures to ensure that women and men enjoy equal rights in marriage and are regarded as equal partners in marriage. Existing legislation on marriage shall therefore ensure:

- No person under the age of 18 shall marry;
- Every marriage takes place with free and full consent of both parties;
- Every marriage to be registered;
- Reciprocal rights and duties towards the children of the family with the best interests of the children always being paramount; and
- An equitable share of property acquired during their relationship.

State Parties must also put in place laws and other measures to ensure that parents fulfil their duties of care towards their children, and enforce maintenance orders. Married women and men should have the right to choose whether to retain their nationality or acquire their spouse's nationality through legal provisions. However, there is no period within which these measures should be achieved.

The most significant area for legal reform are the current contradictions between formal and customary laws that occur across the SADC region; as marriages are governed by parallel legal systems of statutory, customary and in some cases religious law. Women suffer discrimination due to non-uniform marriage and divorce laws, the

application of customary property laws that still favour men's ownership of land, discriminatory and harmful cultural practices, violence against women and lack of equal access to education. Table 1.5 summarises marriage and family laws in Swaziland.

Table 1.5: Marriage and family laws in Swaziland

Provision	Yes/No	Explanation
Marriage		
No person under the age of 18 shall marry.	No	Marriageable age for non-customary marriages is still 16 years for females, with parental or guardian consent if she is under 21 years. There is no minimum marriageable age for customary marriages. Marriageable age is associated with puberty.
Every marriage takes place with the full consent of both parties.	No	Whilst civil rites marriages occur with the consent of both parties, customary marriages do not. Studies, media and various public forums have reported forced customary marriages as a result of girls or women visiting their boyfriends' overnight. According to custom, if a girl/woman visits her boyfriend three times, the assumption is that she has consented to marriage.
Every marriage including civil, religious, traditional or customary is registered.	No	Although the Birth, Marriages and Death Act No5/1983 Act provides for registration of both civil and customary marriages, there is no provision enforcing the registration of customary marriages. In-laws have disinherited some women following the death of their husbands, claiming they were never married.
Parties have reciprocal rights and duties towards their children including when spouses separate, divorce or have marriages annulled.	No	Married women and men do not have the same rights and duties towards their children. Guardianship primarily is with the child's father. Even when the marriage has ended in divorce, the mother may be granted custody but guardianship remains with the father. Children assume their father's (not mother's) or joint last names.
Maintenance orders are enforced.	Yes	Maintenance orders are more successfully enforced when the party asking for maintenance ensures direct payment from her husband's employer.

Provision	Yes/No	Explanation
Marriage		
Married women and men have the right to decide whether to retain their nationality or acquire spouses' nationality.	Yes	Marriage does not result in loss of citizenship. However, Section 50 of the Constitution has introduced a provision which undermines the security of a Swazi women's marriage citizenship by including renunciation of citizenship on the grounds of marriage. It states that: "If a citizen of Swaziland who has attained the age of majority, or being a woman is or is about to be married, is or is about to become a citizen of another country and for that reason desires to renounce his or her citizenship of Swaziland, that citizen may do so by lodging with the Board a declaration of renunciation of that citizenship and, upon lodgement of the declaration or, if not then a citizen of that other country, upon becoming that citizen, he or she shall cease to be a citizen of Swaziland". This provision is in place despite the fact that Swaziland is signatory to the Convention on Nationality of Married Women.
Widows and widowers		
Widows are not subjected to inhuman, humiliating or degrading treatment.	No	Widows continue to be subjected to inhuman, degrading treatment. This is the case notwithstanding Section 28(3) of the Constitution - 'A woman shall not be compelled to undergo or uphold any custom to which she is in conscience opposed'. Widows in mourning, that is 'in their weeds' cannot access certain national areas such as national schools and stadiums, chief's kraals and are subjected to certain treatment in public.
A widow automatically becomes guardian or custodian of her children, unless otherwise determined by a court of law.	No	Widows who were married by customary rites do not necessarily become the custodian or guardians of their children.
A widow shall have the right to live in the matrimonial house after her husband's death.	No	The matrimonial house forms part of the husband's estate where the marriage was out of community of property. Where the marriage was in community of property, the surviving widow and her children are entitled to the property. Some are forced to sell to pay out the other heirs whether testate or intestate.
A widow shall have access to employment and other opportunities.	Yes	The Employment Act provides for equality in employment opportunities. However, widows often suffer either covert or overt discrimination while wearing mourning clothes. Even widows in the informal sector can be shunned by the public, who they depend on for their livelihood.
Widows shall have the right to an equitable share in the inheritance of their husbands' property.	No	This depends on whether a will existed. Currently, the Wills Act No12/1955 gives unfettered freedom of testation to property owners. If the deceased died intestate, the widow receives an equitable share of the inheritance if the estate is reported to the office of the Master of the High Court. The type of assets involved also determines the level of automatic protection by the law, with immovable property on title deed land more amenable to protection by the law than movables, especially livestock. Section 34 (1) of the Constitution says that a surviving spouse is entitled to a reasonable provision out of the estate of the other spouse whether the other spouse died having made a valid will or not and whether the spouses were married by civil or customary rites.
Widows shall have the right to remarry any person of their choice.	No	A widow who married under customary laws has no right to remarry a man of her choice. A customary marriage is said to be a union beyond the life of the contracting parties. Rather, the in laws may provide an (umngeni) levirate husband. If a widow insists on choosing a new partner, she could lose custody and guardianship of her children and the matrimonial assets.
Widows shall be protected from all forms of violence and discrimination.	No	Widows are not protected from all forms of violence and discrimination, especially emotional and economic kinds.
Girl and boy child		
Eliminating all forms of discrimination against the girl child.	No	Education rules say that pregnant girls must be suspended from school. It is not clear if the girl can return to the same school after giving birth. Typically girls go to another school after delivery.

Provision	Yes/No	Explanation
Girls have the same rights as boys and are protected from harmful cultural attitudes.	No	Girls continue to be forced into marriage. Marriageable age is still lower for girls than boys. Girls are left to fend for themselves in ensuring that cultural practices, such as being <i>inhlanti</i> (surrogate wife), are not practiced on them.
Girls are protected from all forms of economic exploitation, trafficking, violence and sexual abuse.	No	Swaziland has legislation against trafficking, but not comprehensive legislation against gender violence and sexual abuse.
Girl children have access to information, education, services and facilities on sexual and reproductive health and rights.	Yes	Pupils' access reproduction education through health clubs run by an NGO called Schools HIV and AIDS Program (SHAPE).

Source: Gender Links 2012.

Table 1.5 shows that customary laws in particular can discriminate against girls and women. Widows are particularly vulnerable.

Child marriages banned, Children's Protection and Welfare Act of 2012



Banning of child marriages will go a long way in protecting the rights of the girl child. Photo: UNDP

Lawmakers in Swaziland recently declared illegal the practice of men marrying underage girls - which has been an accepted social norm for centuries. This has however been linked to the spread of HIV in recent years.

Known in SiSwati as 'kwendizisa', the marriage of an adult man to an underage girl, society considered this a legal "grey area" prior to the promulgation of the Children's Protection and Welfare Act of 2012. According to the 2005 Swaziland constitution, some customary practices are allowed unless they conflict with constitutional clauses.

"Swazi men marrying girls once the girls enter puberty is not a customary law. It is not mandatory. It is tolerated

because it has always been done. But times are changing, and Swaziland has the highest HIV prevalence rate in the world. This practice has added to the spread of HIV. It is a great victory for public health and for the rights of girl children that this outmoded practice must now end," AIDS activist Sandra Kunene told IRIN/PlusNews.

Married adolescents are at greater risk of HIV infection because many of them are in polygamous unions, face sexual violence or are unable to negotiate safe sex. The girls also tend to have little contact with their peers, restricted social mobility, low levels of education and limited access to media and health messages.

Enforcing the new law

Early September 2012, the Deputy Prime Minister Themba Masuku announced the government's intention to enforce the Child Protection and Welfare Act by prosecuting men who marry underage girls.

Sexual activity with underage girls was previously prosecuted as statutory rape - but only if it occurred outside the bounds of marriage. Girls aged 15 and older were legally permitted to marry in accordance with the 1920 Girl's Protection Act, and underage sexual activity within marriage was considered acceptable.

Today, perpetrators face statutory rape charges, and they are additionally fined R20,000 (\$2,400) by the child welfare law. The new law also penalises parents and guardians who collude with adult men to orchestrate a child marriage. Offenders face prison terms of up to 20 years.

At a press conference, Masuku described the marriage of girls under the age of consent as "child abuse" and said the fine should be raised to R100,000 (\$12,000). "This would send a message," Masuku said.

Traditions linked to epidemic

Other sexual practices that have been permitted because they are rooted in traditional Swazi life have also been linked to the country's high HIV rates.

"One of these is the practice of having the widow, after the funeral of her husband, be 'claimed' by her husband's brother. She must go to his home and be his wife because polygamy is also permitted in Swaziland," said Agnes Simelane, a child welfare officer and counsellor of abused children.

"If the husband died of AIDS and he infected his wife with HIV, the virus could be passed on to the new household. Or if the husband's brother is HIV-positive, he could infect the widow. Either way, by custom the woman has no say in the matter," she said.

"Traditionally, marriages were arranged between families," said Thomas Graham, a local historian. "When the Swazi population numbered in the tens of thousands

in the 19th century and life expectancy was 35 years old for a Swazi, it made sense to marry young and have multiple wives... to keep the family and Swazi nation existent."

The new prohibition against child marriage, he said, "throws Swazi custom on its ear, and it is a landmark step in the tug of war between traditional and modern life".

Nthando Dlamini, an HIV testing and counselling officer in Manzini, welcomed the announcement. "Many men still believe that if they have sex with a virgin this will cure them of AIDS and rid them of HIV. Since AIDS has become widespread in Swaziland, we fear that one motivation for marrying underage girls was that some men desired such 'protection'. That way has now been shut off for them," he told IRIN/PlusNews.

Source: Article from by IRIN Plus News Service
<http://www.irinnews.org/Report/96347/SWAZILAND-Child-marriages-banned>

Widow and widower rights



The Protocol requires that Member States enforce legislation to protect widows from being subjected to inhuman, humiliating or degrading treatment. A widow will also automatically become the guardian and custodian of her children after the death of her husband; she will also continue living in the matrimonial home. She will exercise her rights to access employment and other opportunities to enable her make meaningful contribution to society.

A widow will also be protected against all forms of violence and discrimination based on her status while having the right to an equitable share in the inheritance of the property of her late husband. She will also have the right to remarry a person of her choice. States will also put in place legislative measures that will ensure that widowers enjoy the same rights as widows.

Section 34 of the Constitution provides that a surviving spouse is entitled to a reasonable provision out of the estate of the other spouse whether the spouse died having made a valid will or not and whether the spouses were married by civil or customary rites.⁵ Despite this legal protection, the Centre for Housing Rights and Evictions reports that 'property grabbing' from widows is common, citing a study that found that 41 percent

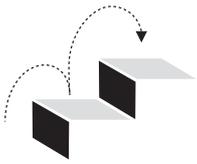
of widows had their property unlawfully seized by in-laws.⁶ Further, widows are often forced to marry another male in their deceased husband's family, which results in the loss of the guardianship of their children and right to their husband's immovable property.⁷

Girls cannot inherit property from their parents.

⁵ Aphane, D. (2009) p.28

⁶ Centre on Housing Rights and Evictions (2004) p.133

⁷ Aphane, D. (2009) p.29



Next steps

- Step up advocacy efforts to unify formal and customary laws.
- Discriminatory laws need to be amended such as those governing citizenship.
- Engaging traditional leaders in ending all forms of harmful traditional practices.
- Finalise costing of implementation of laws, policies and programmes that advance gender equality and equity.



Swazi children - the country's future.

Photo: Trevor Davies