SWAZILAND

Sections 20 and 28 of the Constitution of Swaziland, adopted in February 2006, grant the same legal rights to men and women. Swaziland ratified the Convention on the Elimination of All Forms of Discrimination against Women in 2004 without reservation\(^1\) but has yet to sign or ratify the Option Protocol.\(^2\) The county signed the Southern African Development Community Gender Protocol in 2008, ratifying in 2012.\(^3\)

1. Discriminatory family code

Both customary law and Roman-Dutch common law govern marriage and family law in Swaziland, at times resulting in contradictory provisions.\(^4\) Women hold minority status and widows are particularly vulnerable under customary laws.\(^5\) According to the 2005 Swaziland constitution, customary practices are permitted unless they conflict with constitution clauses.\(^6\) In addition, Section 28(3) provides that women shall not be compelled to undergo or uphold a custom to which she is in conscience opposed. In practice, however, many women are unaware of this legislation and remain subject to customary laws.\(^7\)

Two types of marriage exist in Swaziland: marriage in accordance with customary rites and those in accordance with civil rites.\(^8\) The latter is governed by the Marriage Act of 1964, which places minimum age of marriage at 21 for both males and females. In addition, the Constitution (Section 27) provides that marriage may be entered into only with the free and full consent of the intending spouses.\(^9\) However, with parental consent (or that of a legal guardian), a female can marry at the age of 16 and a male at the age of 18.\(^10\) The recent Children’s Protection and Welfare Act of 2012 bans sexual activity with underage females and penalizes parents who arrange early marriages with prison sentences of up to 20 years.\(^11\)

A draft version of the Sexual Offences and Domestic Violence Act also criminalises early and arranged marriages. While the bill was recently enacted into law in late 2013, the text of the latter is not available and as such details of the enacted Bill’s provisions are not accessible. Early drafts of the Bill also criminalize levirate (kungenwa) and

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\(^1\) CEDAW (2012), p.3
\(^2\) UN Treaty Collection (2014)
\(^3\) Gender Links (2012), p.5
\(^4\) CEDAW (2012), p.90; Gender Links (2012), p.6
\(^5\) Gender Links (2012), p.6
\(^6\) CEDAW (2012), p.11; Gender Links (2012), p.19
\(^7\) Idem
\(^8\) CEDAW (2012), p.86
\(^9\) Idem, p.90
\(^10\) Idem, p.90
\(^11\) Idem, p.19
sororate (kuhlanta) unions, as well as virginity testing, but again, the text of the newly enacted Bill is not currently available. The payment of lobolo (also known as bride wealth or dowry) has not, however, been criminalized, and generally women are considered the property of her husband and in-laws. Lobolo is customarily paid by the groom or father of the groom (traditionally in the form of cattle and other valuables) to the father of the bride, and is viewed not so much as the purchase of the woman per se, but rather for the promise of future children and to compensate the family of the bride for the loss of their daughter.

While the Birth, Marriage, and Death Act (1983) provides for the registration of both civil and customary marriages, there is no provision enforcing the registration of the latter. Customary marriages can also be entered into without the full consent of the partners. For example, in some communities it is deemed consent to marriage if a woman visits her boyfriend three times. Husbands have broad powers in marriage, and control much of women’s everyday lives, from whether they may work outside the home, to what they can wear. In customary law in particular, the wife is functionally equivalent to a minor.

It is reported that there is no minimum marriageable age for customary marriages where males and females are considered ready to marry upon reaching puberty. Early marriage in Swaziland is not, however, as common compared to other African countries. According 2007 UN data, 6.9% of girls between 15 and 19 years of age were married, divorced or widowed, compared to 1.8% of boys in the same age range. The 2010 Multiple Indicator Cluster Survey (MICS4) reports that among women ages 15-49, 2.3% were married before the age 15 and 10.9% before the age of 18. At the time of the survey, 4.3% of women age 15-19 were currently married or in a union. According to the 2006-2007 DHS, the adolescent fertility rate was 111 births per 1,000 girls age 15-19. The 2010 MICS4 reports a slightly slower adolescent fertility rate of 89.

The constitution (Section 29 (3)) states that “The child has the right to be properly cared for and brought up by parents or other lawful authority in place of parents.” In practice, however, fathers and mothers in Swaziland do not enjoy equal parental authority. Guardianship is primarily vested in the father of the child. Where the marriage has ended in divorce the mother is often granted custody only, with guardianship remaining with the father.

When it comes to decision-making, women primarily decide how to use their cash earnings (65.1%) as well as make choices concerning the purchase of daily household needs (56.5%). Decisions over major household

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12 Gender Links (2012), p.14  
13 Idem, p.14  
14 Impower (2013)  
15 Idem, p.6  
16 Idem, p.17  
17 Foster (2013), p.1174  
18 Gender Links (2012), p.6  
20 MICS4 (2010), p.165  
23 CEDAW (2012), p.38  
24 Gender Links (2012) p.17  
25 DHS (2006-2007) p.245  
26 Idem, p.248
purchases are commonly made either jointly by the husband and wife (42.2%) or by the husband alone (35.4%).

Concerning Inheritance, section 34 of the Constitution provides that a surviving spouse is entitled to a reasonable provision out of the estate of the other spouse independent of whether the spouse died having made a valid will or not and whether the spouses married by civil or customary rites. 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% of widows had their property unlawfully seized by in-laws. 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 any rights to their husband’s immovable property. The United Nations Swaziland office reports that girls cannot inherit property from their parents.

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Women and men may equally initiate divorce under Roman-Dutch common law on the grounds one of two “fault” principles: adultery or desertion. Common law does not provide for divorce based on neglect, cruelty or violence, making it difficult to obtain a divorce from an abusive spouse who wishes to stay married. Under customary law divorce is difficult, if not impossible for women to obtain and even informal methods of divorce are rare. Whether the marriage is civil or customary, upon divorce women tend to lose most, if not all, of the property she contributed during marriage, and under customary law, the woman’s family is required to return the bride wealth. In addition, under customary law, women own only clothing, household items and the like, but never homes, land or other valuable property. Husbands also have the unilateral right to dispose of property, and may choose to do so before a divorce such that there is nothing left to distribute. There is no separate court for family law issues, nor any information with regards to plans to establish such a court.

Polygamy is not recognised under civil law in Swaziland, however customary law allows men to take an unlimited number of wives and the King himself has 15 wives. Data from the 2006-07 Demographic Health Survey indicates that 15.7% of currently married women are in a marriage with one or more co-wives, while the 2010 MICS4 reports that 13.1% of women 15-49 are in a polygamous union. Based on the data, polygamy is more common in rural areas compared to urban areas.

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27 Idem
28 CEDAW (2012) p.91; Gender Links (2012) p.18
29 Gender Links (2012) p.20
30 Gender Links (2012) p.18
31 United Nations Swaziland (n.d.); Gender Links (2012) p.18
32 CEDAW (2012) p.91; Foster (2013) p.1174
33 Foster (2013) p.1174
34 Idem, p.1174
35 Idem, pp.1174-1175
36 Idem, p.1174
37 Gender Links (2012) p.16
38 Foster (2013) p.1174
40 MICS4 (2010) p.165
2. Restricted physical integrity

The Swaziland Crimes Act currently prohibits rape, incest, indecent assault, abduction, kidnapping, public indecency and assault. As mentioned above, the Sexual Offences and Domestic Violence Act was passed by Parliament in June 2013, and as of last report, was awaiting royal assent to be granted by the King, for full enactment into law.\(^{42}\) The text of the Bill is, however, currently not available; as such details of its provisions are not presented here. The Act reportedly stipulates the creation of a register of sex offenders that can be used by employers working with vulnerable populations and stricter penalties for perpetrators of rape.\(^{43}\) Specific information on details of the Act, if any, as they regard sexual harassment, domestic violence, and rape, or definitions any of the former, is not, however, available.

**Domestic violence** is also reported to be common in Swaziland, and if charged as assault, is illegal.\(^{44}\) The recently passed Bill addresses domestic violence, but again, details are not available. Urban women are more likely than rural women to charge their husbands with assault – and this only in extreme cases where help from family members was insufficient – but courts often gave relatively light sentences to perpetrators convicted of assault.\(^{45}\) Rural women were even less likely to seek the help of courts, as traditional courts were often unsympathetic to what are viewed as ‘unruly’ or ‘disobedient’ women and were reticent to convict men of spousal abuse. In addition, women are often blamed for having provoked the violence, and are kept quiet by their fears of repercussions for reporting any abuse, such as the loss of the household’s breadwinner and sanction by in-laws.\(^{46}\) Recent data on the prevalence of domestic violence is not available, although according to a survey conducted in 2008 by the government’s Central Statistics Office, 18% of females between 13 and 44 years old had contemplated suicide, primarily as a result of domestic violence.\(^{47}\) A key factor contributing to the high prevalence of violence against women is the persistence of attitudes that excuse and normalise violence. According to the 2010 DHS, 28% of women agreed her husband was justified in beating her for at least one of the proposed reasons.\(^{48}\) The 2010 MICS4 reports a similar percentage of 39.1%.

**Rape** is prohibited by law in Swaziland and is defined as the intentional and unlawful “carnal connection with a woman without her consent’ with a maximum sentence of 15 years; the definition does not specifically include marital rape.\(^{49}\) Despite rape being prohibited by law, a lack of enforcement by authorities and the reluctance of women to report rape prevent perpetrators being held to account.\(^{50}\) In addition, many men see rape as a minor offence, despite its illegality and sentences are generally lenient. According to the Swaziland annual police report, 546 cases of rape were reported in 2011, but no data on the number of prosecutions, convictions or punishment measures taken is available.\(^{51}\) While not specific to rape, the 2007 UNICEF National Study on Violence Against Children and Young women reveals that 2 in 3 females in Swaziland have experienced some form of sexual violence in their lifetime. Gender-based violence has also been linked to the increased

\(^{42}\) Times of Swaziland (2013)  
\(^{43}\) Idem  
\(^{44}\) US Department of State (2012)  
\(^{45}\) Idem  
\(^{46}\) CEDAW (2012) p.36  
\(^{47}\) US Department of State (2010)  
\(^{49}\) CEDAW (2012) p.24  
\(^{50}\) US Department of State (2012)  
\(^{51}\) Idem
vulnerability of women to HIV infection.\textsuperscript{52}

At present, therefore, there is no specific law that addresses \textit{sexual harassment}, nor is the latter addressed in other legislation.\textsuperscript{53} Section 37 of the 1980 Employment Act, however, does protect workers who resign on the grounds that the employer’s conduct toward the employee was such that they could no longer reasonably be expected to continue their employment.\textsuperscript{54} The United States Department of State reports that no cases of sexual harassment have ever been brought to court, although cases of inappropriate sexual conduct with students on the part of teachers is supposedly common.\textsuperscript{55}

In addition, the 2006-2007 Demographic and Health Survey (DHS) reports that 9.2\% of women believed their husband is justified in beating them if they go out without telling him, this rises to 12.8\% in the 2010 Multiple Indicator Cluster Survey (MICS4).\textsuperscript{56}

\textbf{Female genital mutilation} is reportedly not practiced in Swaziland.\textsuperscript{57} Access to reproductive health services is a challenge, as healthcare facilities and personnel are concentrated in urban areas, although 70\% of the population resides in rural areas.\textsuperscript{58} To this regard, 24\% of married women reported an unmet need with respect to family planning (13.2\% among all women age 15-49).\textsuperscript{59} Decisions concerning women’s health care are often made by women themselves (36.2\%), but almost as equally frequently such decisions are made jointly by the couple (31.8\%) or by primarily by the husband (28.5\%).\textsuperscript{60} Average age at first birth for women age 20-49 is 19.4.\textsuperscript{61}

Limitations on women’s \textbf{reproductive rights} also infringes upon women’s physical integrity in Swaziland.

\textbf{Abortion} is permitted in Swaziland to save a woman’s life or health or due to foetal impairment. It is not permitted in the event of rape or incest, on request or on social or economic grounds.\textsuperscript{62}

The 2006-2007 Demographic and Health Survey found that overall 51\% of married women use contraception and 48\% use modern methods of \textbf{contraception} (36.6\% among all women age 15-49).\textsuperscript{63} The 2010 MICS4 reports that 13\% of women age 15-49 married or in a union have an unmet need for contraception.\textsuperscript{64} The DHS survey also reveals negative attitudes amongst men in Swaziland towards family planning with more than 6 out of 10 men believing that a woman who uses contraception may become promiscuous.\textsuperscript{65}

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\textsuperscript{52} CEDAW (2012) p.15 \\
\textsuperscript{53} CEDAW (2012) p.67 \\
\textsuperscript{54} Idem \\
\textsuperscript{55} US Department of State (2012) \\
\textsuperscript{56} MICS4 (2010) p.175 \\
\textsuperscript{57} Inter-Parliamentary Union (n.d.) \\
\textsuperscript{58} CEDAW (2012) p.14 \\
\textsuperscript{59} DHS (2006-2007), p.100 \\
\textsuperscript{60} Idem, p.248 \\
\textsuperscript{61} Idem, p.56 \\
\textsuperscript{62} CEDAW (2012) p.25 \\
\textsuperscript{63} DHS (2006-2007) p.65 \\
\textsuperscript{64} MICS4 (2010) p.114 \\
\textsuperscript{65} Idem, p.81
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3. Son bias

The Central Intelligence Agency reports that Swaziland has a male/female sex ratio for the working age population (15-64) of 1.0 and 1.03 at birth in 2013. There is no evidence to suggest that Swaziland is a country of concern in relation to missing women.

More

Gender disaggregated data on rates of infant mortality and early childhood nutrition show that girls and boys fair relatively the same in Swaziland, with boys at a slight disadvantage.

With respect to access to education, UNICEF data shows that gender parity has been achieved in primary school enrolments indicating that there is little preferential treatment of sons with respect to primary education. However, the United Nations Swaziland office reports that a gender gap emerges in progression to secondary and tertiary education, with gender inequalities in access to education starting at the age of 16. This data indicates the possibility of preferential treatment of men with access to higher education, possibly due to high pregnancy rates and early marriages among women. According to the educational policy, a female pupil is suspended from school if she becomes pregnant. Girls and young women also increasingly bearing the responsibility for care in the context of HIV/AIDS in Swaziland, suggesting increasing time poverty amongst girls and young women, compared to their male counterparts.

In addition, among Swazi families boys are prized as ensuring the continuity of the lineage, and among sons it is common to find names such as ‘rebuilder of the home’ (Vusumuzi). Girl children, on the other hand, are expected to leave the natal home and are occasionally named ‘disappointment’ (Jabhisile) by their parents.

4. Restricted resources and assets

Section 211 of the Constitution provides for equal access to land for men and women. However, this right has not been enshrined in legislation. There are two types of land, Swazi Nation Land (SNL) and Title Deed Land. Although Swazi Nation Land can be accessed free of charge through the traditional kukhonta system from the chief of the area, women must do so through a male relative. However, United Nations Swaziland reports anecdotal evidence of an emerging practice where some chiefs circumvent the traditional rules and allocate land to women if a male figure is not available, especially in the context of the HIV/AIDS epidemic and the increase in female-headed households.

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66 Central Intelligence Agency (2013)
68 UNICEF (n.d.)
69 United Nations Swaziland (n.d.); Gender Links (2012) p.31
70 CEDAW (2012) p.15; Gender Links (2012) p.6
71 Gender Links (2012) p.18
72 CEDAW (2012) p.15; Gender Links (2012) p.6
73 CEDAW (2012) p.35
74 CEDAW (2012) p.6
75 United Nations Swaziland (n.d.)
76 CEDAW (2012) p.5
77 United Nations Swaziland (n.d.); CEDAW (2012) pp.5-6
78 United Nations Swaziland (n.d.)
79 CEDAW (2012) p.6
Access to Title Deed Land is also a challenge for women. While there is no specifically articulated discrimination against women and the sole requirement is money to purchase the land, most Swazi women do not have sufficient funds and securing bank credit is difficult. This is exacerbated by the legal minority status of some married women, who require their husband’s consent to apply for credit to purchase land. Even where a woman is ultimately able to secure her husband’s consent and purchase land, until recently, if she was married in community of property (as are the majority of women in civil rite marriages), she had no legal ownership or control of the property as the land can only be registered under her husband’s name. More specifically, section 16 of the Deeds Registry Act previously precluded women married in community of property from registering title to land. However, in early 2010, Swaziland’s High Court ruled that some married women should legally be entitled to register property in their own name. This was, however, reversed three months later by the Supreme Court.

Regarding access to non-land assets, in 2012, the government issued a legal instrument amending the Deeds Registry Act, allowing women married in community of property to register and administer property (including land) in their own names.

Although the constitution provides for gender equality that should theoretically apply to access to credit, in practice women are still denied access to credit: banks that require the husband’s permission and a lack of collateral due to their lower economic position and the registration of property under their husband’s names undermine women’s access to credit. The 2006 Marriage Bill addresses difficulties women face when trying to access credit, but has not yet been passed through Parliament. Despite these challenges, 59% of women are self-employed and 70% are of small businesses are owned by women. Various initiatives on the part of the government and NGOs have also provided the opportunity to access credit.

5. Restricted civil liberties

Although the Constitution (Section 26) guarantees women’s freedom of movement, discriminatory practices continue to hinder women’s access to public space. For example, it is reported that Immigration offices continue to require permission from a married woman’s husband to issue passports and travel documents. Further, widows in mourning remain in seclusion until the spouse is buried and a further month following the burial. This is followed by a period of two to three years of the wearing of mourning clothes, assuming a certain posture when walking, and observing restrictions in appearing in certain public and employment domains. Husbands also primarily make decisions regarding women’s visits to her family and relatives (44.9%), although many
couples also make such decisions jointly (31.1%). Male members of the family also determine issues of residence and domicile.

The constitution provides for both freedom of assembly and association, but in practice the government restricts these rights. Police consent and a permit is required for all political meetings, marches and demonstrations held in public spaces and authorities often prevented the latter by withholding such consent, or dispersing participants by force. In addition, the constitution does not address the formation or role of political parties and there is no legal mechanism for the latter to register or contest elections. Opposition and labour union members have been harassed and detained by the government. Increasingly, women’s organisations have been active in fighting biased laws and practices, but there are reports of discriminatory action against them. For example in late 2012, the Swaziland Young Women’s Network announced its launch through a march in the streets of the capital, in order to protest the prevalence of sexual harassment. Police blocked the demonstration on the grounds that some of the women were wearing miniskirts, in violation of a 19th century public indecency law.

There are no laws prohibiting women’s participation in politics and, regarding quotas, the constitution provides that 5 out of the 10 members of the House of Assembly appointed by the King should be women. The constitution also provides for an additional 4 women to be nominated and elected into the House of Assembly if, following an election, there is less than 30% representation of women in parliament, although this has not always been respected. In 2013, women held only 6.2% of the seats in the national parliament. The structures of the customary system of male dominated, and women do not have significant leadership and decision-making roles. It is only recently that women have been appointed into the King’s advisory council and allowed to attend and speak at the Swazi National Council meeting (Sibaya). Husband and in-laws may also determine women’s entry into politics, requiring that she seeks consent to do so. In addition, women’s access to the resources need to further their political ambitions is often limited. There are no quotas at the sub-national level.

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The majority of decision-making position in the Swazi media are filled by men, and women are often portrayed negatively in both electronic and print media (e.g. as objects for the pleasure of men); their professional status is often undermined by a majority of male voices, even where women are competent or experts in the area being reported on. The proportion of women sources in the news in Swaziland increased slightly from 17% in the 2003 Gender and Media Baseline Study (GMBS) to 19% in the 2010 Gender and Media Progress Study (GMPS), and women’s voices are more likely to be hear on issues regarding children, gender violence, and health, as opposed

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92 CEDAW (2012) p.89
93 US Department of State (2012)
94 Idem
95 All Africa (2013)
96 CEDAW (2012) pp.9, 34
97 Idem
99 Idem, p.10
100 Idem, p.27
101 http://www.quotaproject.org/uid/countryview.cfm?country=211
102 Gender Links (2012) p.69
to topics such as land, agriculture, and mining. Women’s access to media is also limited in rural areas, where the majority of women live.  

Concerning **workplace rights**, women’s equal right to work and right to equal pay (Section 96) is set out in the Employment Act 1980 and Section 29 specifically prohibits discrimination on the basis of sex. The Employment Act also provides for a **maternity leave** for women who have been employed continuously with the same employer for no less than twelve months 12 weeks, two of which are to be fully paid by the employer. Pregnant women may not be fired and are guaranteed their previous employment at the same level of seniority upon their return from maternity leave. An Employment Bill has recently been proposed in Parliament that would increase fully paid maternity to 12 weeks.

Finally, women cannot pass on their **citizenship** to children fathered by non-Swazi men, independent of whether the latter are born in or out of wedlock (Section 43(1)).

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103 Idem, p.75  
104 CEDAW (2012) p.37  
105 Idem, pp.19, 65  
106 Idem, p.66  
107 Idem  
108 CEDAW (2012) p.54
Sources


