



REPORT ON DESK TOP REVIEW OF AVAILABILTY OF DISAGGREGATED DATA ON MARGINALISED GROUPS ESPECIALLY WOMEN.

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List of Abbreviations and Acronyms

CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CBOS	Community Based Organisations
CSO	Central Statistics Office
FHH	Female Headed Households
FLAS	Family Life Association of Swaziland
GAD	Gender and Development
GBV	Gender Based Violence
GCU	Gender Coordinating Unit
GDP	Gross Domestic Product
HIV	Human Immunodeficiency Virus
MDGs	Millennium Development Goals
NDS	National Development Strategy
NGOs	Non- governmental Organizations
NGP	National Gender Policy
PHR	Physicians for Human Rights
PRSAP	Poverty Reduction Strategy and Action Programme
SAFAIDS	Southern Africa AIDS Organisation
SHIES	Swaziland Household Income and Expenditure Survey
SLC	Swazi Law and Custom
SMEs	Small and Medium Enterprises
SNC	Swaziland National Council
SNL	Swazi Nation Land
STI	Sexually Transmitted Infections

SWAGAA	Swaziland Action Group against Abuse
TDL	Title Deed Land
TORs	Terms of References
UN	United Nations
UNDP	United Nations Development Programme
UNFPA	United Nations Population Fund
UNICEF	United Nations Children's Fund
UNIFEM	United Nations Development Fund for Women
USA	United States of America
VCT	Voluntary Testing and Counseling
WID	Women in Development
WLSA	Women and Law in Southern Africa

1. INTRODUCTION

1.1 BACKGROUND INFORMATION

Gender gaps in Swaziland manifest themselves in all the spheres of life, socio-cultural, socio-economic and socio-political. The overriding factor is patriarchy where male interests override those of females in the different spheres of life. Gender inequalities that exist in social, economic, cultural and political spheres lead to a systematic process of unequal development between the sexes. This unequal development has meant that women are not equal partners, and hence the development process has excluded a large sector of the population.

In Swaziland, quite apart from the economic challenges that every citizen is subjected to, women suffer under an additional burden of repression that relegates them to the status of second class citizens both under civil and customary law. This dual legal system creates a complex maze of law, custom and practice that works to marginalise women and girls. For example, under customary law women remain under the guardianship of their father or other male relative until marriage. Once married, they fall under the marital power of the husband (under civil law) or both the husband and her in-laws (under customary law). Women thus lack autonomy to participate meaningfully, particularly in the civil and political sphere.

Swazi women therefore suffer from systematic and legalised discrimination. Ignorance of their rights by ordinary woman means that this discrimination can be and is perpetuated. The impact of this discrimination is exacerbated by lack of knowledge of their rights. Women lack access to legal support to enable them to enforce their rights due to both the prohibitive costs of litigation as well the lack of culture of human rights promotion in the legal fraternity. Unlike other countries in the region, Swaziland does not have a State supported Legal Aid System which would enable women and girls to access free legal assistance. This results in those who do not have money (especially women and girls and the poor) not having the capacity to access justice. Few constitutional challenges are brought by women in Swaziland, a factor of the lack of both the knowledge of their rights as well as the lack of capacity to pay for the cases.

Apart from lack of access to justice, discrimination in Swaziland manifests itself in the exclusion of women from meaningful participation in the politics and governance of the country, including the enactment of legislation that is discriminatory. Discussions on the future of Swaziland and democratisation efforts have been led by and reflect priorities of Swazi men. There is a real risk that any democratic transition will not result in any change for women and will only perpetuate women's marginalisation. It is therefore imperative that specific effort is made to provide safe spaces for women to discuss and strategise on how they can influence the national agenda regarding the place of women in Swaziland, their fundamental rights and how the country as it transitions can make women count. This will ensure women have a role in shaping household, community and national level decision making in socio-economic and political processes.

However, it is a fact that women are not a homogeneous group and therefore experience gender inequalities and discrimination differently. Older women, widows and women with disabilities report feeling "invisible" in the development context and largely absent from the development agenda. Even when gender considerations are incorporated into development projects, the specific perspectives and needs of older women, widows and women and girls with disabilities are seldom sought or incorporated. It is incumbent for Government to provide gender disaggregated information to cater for the different groups.

Issues relating to gender and equality have been the concern of the Swaziland Government in the 90s. This interest was due to mounting pressure around this time on issues of democracy and democratisation of the Swazi Kingdom. There have been a number of National processes that have recognised the need for incorporation of gender equality and women's issues in the development of the country. Government-driven processes have included: The National Development Strategy¹ (NDS) a long-term socio-economic development vision for the country, the poverty reduction strategy and action plan² (PRSAP), Food Security Policy³ (FSP), National Gender Policy⁴ (NGP) and

¹The National Development Strategy Vision 2022 launched on the 27th August 1999

² This programme places emphasis on affording equal opportunities to all citizens regardless of sex to access social and economic services in order to enhance their development. PRSAP identified the minority status of women as a challenge to poverty reduction in that it inhibits the full participation of women in deliberations at community level.

³It is National Policy to improve the impact of gender on food availability by special programmes. Strategies include: (a) Support and implement commitments made at the Fourth World Conference on Women, Beijing 1995, that a gender perspective is mainstreamed in all policies.(b) Promote women's full and equal participation in the economy, and for this purpose introduce and enforce gender-sensitive legislation providing women with secure and equal access to and control over productive resources including credit, land and water including irrigation and appropriate credit services and that job creation opportunities are focused on those most in need.

National Constitution of the Kingdom of Swaziland⁵ (2005). Activism from NGOs to pressurise the Swaziland government to address discrimination against women resulted in signing and ratification of Regional, continental and International Human Rights Instruments such as the SADC Declaration on Gender and Development, the Protocol on Gender and Development, the Women's Convention and many others.

All these efforts by Government, Civil society, regional and international bodies need to be recognized through organizational gender policies in order to take the advocacy on gender issues and gender mainstreaming to a higher level. Now that the Gender Policy has been adopted it is an opportune time to implement gender equality in development in a bid "to eliminate discrimination among men, women and youth and equip men, women and youth with knowledge and skills towards equal participation; whilst appreciating the social construct of an individual." (NGP: 2010).

1.2 OBJECTIVES

1.2.1 OVERALL PROJECT GOAL

The overall objective of the study is to conduct a Desk Top Review of the availability of disaggregated data on the status of older women, women with disabilities and widows, and the different forms of discrimination which they face.

1.2.2. SPECIFIC OBJECTIVES

In order to facilitate the achievement of the goal and purposes of the project, the specific objectives are as follows:

⁴This programme places emphasis on affording equal opportunities to all citizens regardless of sex to access social and economic services in order to enhance their development. PRSAP identified the minor status of women as a challenge to poverty reduction in that it inhibits the full participation of women in deliberations at community level.

⁵ Refer to footnote 1

- To document the availability of disaggregated data on the status of older women, women with disabilities and widows.
- To review the forms of discrimination faced by older women, widows and women living with disabilities.
- To highlight policies that have been enacted to protect old aged women, widows and women living with disabilities.
- To recommend the role that CSOs can take in ensuring the non- discrimination of widows, women living with disabilities and the old aged.

1.3 METHODOLOGY

In the preliminary conduct of this assignment, the consultant adopted the following methodology:

1.3 .1 DESK-TOP RESEARCH

This assessment was carried out by way of desk research of available information relating to disaggregated data of marginalized groups particularly women. This included women with disability, widowed and elderly women. The method included conducting a thorough search of the internet, newspapers, journals, government websites and a whole host of other sources. In surfing the net paid for sites and sources such as Amazon were used in addition to sites that were available free of charge.

Other documents that were reviewed included national documents such as the National Development Strategy (NDS), the Poverty Reduction Strategy and Action Plan and the Constitution of the Kingdom of Swaziland, the National Gender Policy of 2010 and other policies that address gender and gender mainstreaming. The review of these policy documents was aimed at addressing the objective on providing a policy framework promoting gender equality and equal participation of women in all sectors. Information was also solicited from the Gender Consortium strategic document for the purpose of recommending areas of advocacy for widows, the elderly and women with disabilities.

Donor/Government UN, UNAIDS, UNDP reports including progress reports on gender and human rights in particular the rights of women with disabilities, widows and elderly women were also reviewed including International Conventions on women and progress reports submitted by various stakeholders involved with women's issues.

1.3.2 DATA ANALYSIS

The data was analysed using capacity gap analysis to ascertain disaggregation of data for widows, women living with disabilities and old aged women. The advantage of using the capacity gap analysis (CGA) was that it gave us an understanding of the extent of the problems faced by women with disabilities, widows and elderly women.

1.3.3 Deliverables

- ✓ Inception report detailing how the work will be done.
- ✓ Position paper with analysis of availability of disaggregated data on women living with disability, old aged women and widows, forms of disability which they encounter in society as well as current existing policy framework ensuring that there is no discrimination of women either based on color, creed, age or disability.
- ✓ Recommendations and areas of advocacy for the Gender Consortium.
- ✓ Presentation of the findings of the study to the Gender Consortium.

1.4 TERMS OF REFERENCE

The terms of reference are as follows

1.4 Situational Analysis of Swaziland in terms of availability of disaggregated data for widows, women living with disabilities and old aged women and the types of discrimination they face.

1.4.1 Policy Framework existing promoting Gender Equality and equal participation of women in all sectors of the economy.

1.4.2 Areas of advocacy for the Gender Consortium.

1.4.3 Recommendations.

1.4.4 Areas of Advocacy

1.5. MAJOR QUESTIONS TO BE ADDRESSED

The position paper on availability of disaggregated data on women with disabilities, elderly women and widows will be focused on desk top review of relevant material. The major questions therefore include:

- 1.5.1 Is there any disaggregated information on women with disabilities, elderly women and widows in Swaziland?
- 1.5.2 If yes, what kind of information, coverage and the year of publication.
- 1.5.3 What kind of discrimination do elderly women, widows and women with disability face?
- 1.5.4 What is the policy framework for gender equality in Swaziland?
- 1.5.5 What are the advocacy issues to strengthen the CANGO secretariat and the Gender Consortium?

1.6. DELIVERABLES

- 1.6.1 Inception report detailing how the work will be done
- 1.6.2 Position paper with analysis of availability of disaggregated data on women living with disability, old aged women and widows, forms of disability which they encounter in society as well as current existing policy framework ensuring that there is no discrimination of women either based on color, creed, age or disability.

1.6.3 Recommendations and areas of advocacy for the Gender Consortium

1.6.4 Presentation of the findings of the study to the Gender Consortium.

2. Availability of Disaggregated Data on Disadvantaged Women

In searching for available data on women with disabilities, widows and elderly women in Swaziland was a very difficult task as at the end of the research very studies and reports on disaggregated data were identified for women with disabilities and the elderly women and no data was identified for widows. Some data was identified from certain qualitative reports on disability in general, the elderly people and widows. Countries are urged to collect sex disaggregated data and conduct a gender analysis of this data.

Sex-disaggregated data are data that are collected and analysed separately on males and females. This typically involves asking the “who” questions, for example, who provides labor, who makes the decisions, who owns and controls the land and other resources. Or it may involve asking men and women about their individual roles and responsibilities. Some people mistakenly believe that the goal of collecting sex-disaggregated data and conducting gender analysis is simply to understand the situation for women. But, both men and women are involved in production, so it is necessary to understand both of their roles and responsibilities and how these may change in the context of new policies, markets, and technologies.

The Deputy Prime Minister’s Office (DPMO) is responsible for people with disability and the elderly as they constitute vulnerable groups. But widowhood does not fall under the Office although widows and widowers are also classified as vulnerable groups. The consultant visited the DPMOs office with a view of collecting disaggregated data from the two units. The disability unit had a couple of documents that presented available data on people with disability and they included, the Swaziland National Disability Plan of Action (NDPA), the Swaziland National Disability Profile and Swaziland National Disability Policy. On the elderly data came mainly from the Old Age Impact Assessment report. Some of the Data for disability, old age and widowhood is available in qualitative studies such as those on widowhood, the national development documents such as the poverty reduction strategy and other national policy documents.

The Swaziland Disability Profile gives an outline of the figures of disabled persons in the country, types of disabilities, the most prevalent type of disability in Swaziland, the leading causes of disability. The report further looks at the levels of education of the population living with disability, marital status, employment opportunities as well as the incidence of disability within the general disabled population over time.⁶ According to the National Census of 2007, Swaziland has a total population of 1 018 449 and out of this figure, 171 347 are people with disabilities, representing 16.8% of the country's population. Disaggregated further by sex, there are more women (58%) living with disabilities than men (42%). The population is assumed to be normally distributed where the young constitute a bigger proportion, however from the profile it shows that much as there are more males living with disabilities from the ages 0 to 20 years, the situation begins to change after age 20 years. There is a higher incidence of disability from age 20 years and older for females than for males. The picture that is painted here clearly points to some issues causing this trend.

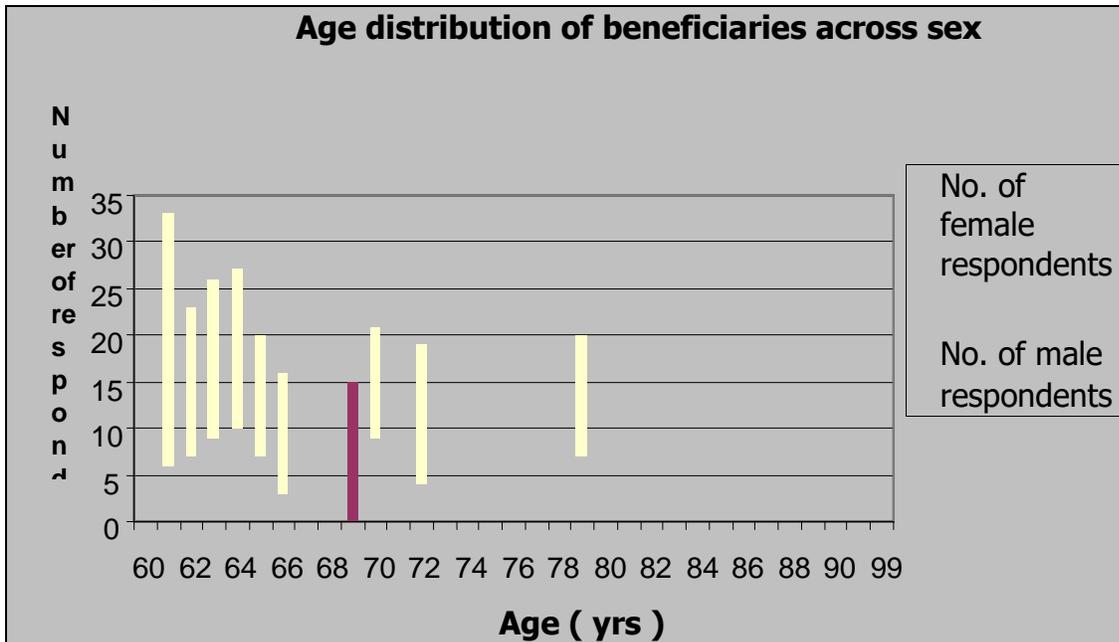
The majority of people with disability are found in the rural areas making up 82% of the total population of people with disabilities. It is expected that women would constitute the higher fraction since even the figures distributed by regions show that across the four administrative regions in Swaziland in Hhohho, Manzini, Shiselweni and Lubombo women constitute an average of 57.8%.

Of all the different types of disability, that is seeing disability, hearing disability speaking disability, walking/climbing disability, remembering/concentrating disability and other forms of disability, women dominate except only in the speaking disability where they are 44% and men are 56% of the portion that live with a speaking disability. In the segment that suffers a remembering/concentrating disability, there is a balanced representation, both within the urban setting or in the rural setting. Additionally if one looks at the different types of disabilities, comparing men and women, the spread of the different types is not shockingly different. On the basis of the aforementioned presentation, it is evident that there is some data around the health and general well-being of people with disabilities including disaggregation by region, type, age and sex. This provides a good starting point.

An attempt was made by the Federal Ministry for Economic Cooperation and Development and UKAID in 2010 to conduct a survey on the assessment of old age grant in Swaziland. The report provided gender and sex disaggregated data on the elderly as well as educational status, marital status, household size and status of headship. The availability and analysis of this data provided the needed sex disaggregated data on the elderly.

⁶ Swaziland Disability Profile, 2011

Figure 1 Age distribution of beneficiaries across sex



Source: Swaziland Old Age Grant Impact Report

Figure 1 shows the age distribution across male and female beneficiaries. The majority of beneficiary respondents (65%) were female, with the remaining 35% male

Figure 2 Educational status

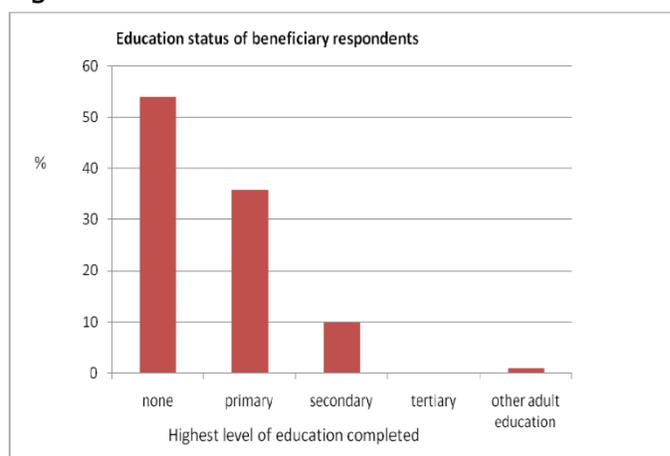


Figure 7:

Source: ibid

Figure 2 illustrates that the majority of beneficiaries (54%) had no schooling, followed by 35.8% who had primary schooling only.

The research failed to come across surveys conducted on widowhood. However, some of the studies conducted by WLSA: 2004/5 indicated that there are more widows than widowers. Figure 3 below illustrates that in comparison with other countries in the region Swaziland has the highest number of widows. It also illustrates that widowhood is feminised in the SADC region as in all the countries there are more widows than widowers.

Percentages of Widowhood in WLSA Member Countries

country	% of widows	% of widowers
Botswana	86.82	13.18
Lesotho	82.49	17.61
Malawi	N/A	N/A
Mozambique	N/A	N/A
Swaziland	90.52	9.48
Zambia	87.91	12.09
Zimbabwe	88.77	11.23

Source WLSA 2005

2.1 ANALYSIS OF DISAGGREGATED DATA ON DISADVANTAGED WOMEN

2.1.1 ANALYSIS OF DISAGGREGATED DATA ON WOMEN LIVING WITH DISABILITIES

Swaziland as a country has not had a good, robust data regarding disability statistics in the recent past. However, the situation is improving as in 2011 the DPM's office produced a Swaziland Disability Profile which gives an outline of the figures of disabled persons in the country, types of disabilities, the most prevalent type of disability in Swaziland, the leading causes of disability. The report further looks at the levels of education of the population living with disability, marital status, employment

opportunities as well as the incidence of disability within the general population over time.⁷

Although the report gives an extensive quantitative overview on people with disability in Swaziland, disaggregated data on women living with disability could still be enriched with qualitative data. The data lacks a gender analysis and therefore does not include the roles and responsibilities of women with disabilities and men with disabilities and their involvement in production.

According to the National Census of 2007, Swaziland has a total population of 1 018 449 and out of this figure, 171 347 are people with disabilities, representing 16.8% of the country's population. Disaggregated further by sex, there are more women (58%) living with disabilities than men (42%). The population is assumed to be normally distributed where the young constitute a bigger proportion, however from the profile it shows that much as there are more males living with disabilities from the ages 0 to 20years, the situation begins to change after age 20years. There is a higher incidence of disability from age 20years and older for females than for males. The picture that is painted here clearly points to some issues causing this trend.

The data is further disaggregated by geographical location. It revealed that the majority of people with disability are found in the rural areas making up 82% of the total population of people with disabilities. It is expected that women would constitute the higher fraction since even the figures distributed by regions show that across the four administrative regions in Swaziland in Hhohho, Manzini, Shiselweni and Lubombo women constitute an average of 57.8%.

Of all the different types of disability, that is seeing disability, hearing disability speaking disability, walking/climbing disability, remembering/concentrating disability and other forms of disability, women dominate except only in the speaking disability where they are 44% and men are 56% of the portion that live with a speaking disability. In the segment that suffers a remembering/concentrating disability, there is a balanced representation of both within the urban setting or in the rural setting. Additionally if one looks at the different types of disabilities, comparing men and women, the spread of the different types is not shockingly different.

Prevalence rates and living conditions of People with Disabilities in Swaziland has to date not been quantified. This therefore makes it very difficult for a scientific analysis to be made on this matter.

⁷ Swaziland Disability Profile, 2011

In the 2001 and other latest National Statistics Surveys, Swaziland did not make a concerted effort to include a meaningful and scientific study of disabilities in its efforts to conduct National Statistics Surveys. Therefore, the country does not have good, robust data regarding disability statistics, let alone data that is disaggregated by category of impairment, gender and so forth. A lot of work that is done by the disability sector and its allies is reliant on "intuition" or on small-scale pilot studies.

2.1.2 ANALYSIS OF DISAGGREGATED DATA ON ELDERLY WOMEN

There seems to be no disaggregated data on the elderly in general and women with elderly women in particular. The government of Swaziland which is responsible for national surveys has not yet commissioned a study on elderly women. The Gender Consortium is urged to encourage the Swaziland Government to support the collection, analysis and dissemination of sex and age disaggregated data for the elderly as well as a gender analysis of this data.

Lack of data on older women in Swaziland is a major challenge to assessing the extent to which their rights are being realised. Without the collection analysis and dissemination of data on the elderly women means that they are excluded from societal life in the social, Economic and political sphere.

Swaziland still lacks national data on the number of older women caring for vulnerable children or sick adults living with HIV and AIDS. Most of the surveillance data on HIV and AIDS excludes analysis of data for people over 49 years. This basically means that older women continue to be excluded from HIV and AIDS programmes as carers, as recipients of prevention and care information and as an at risk group of HIV infection. Lack of a gender analysis of this data means that there will be no guidelines for home based care service providers who are mainly the elderly on their specific needs as carers for OVCs. As indicated by the study on the assessment of the Old Age Grant of 2010, the elderly are not literate, have no energy, have no economic means to pay for medication, water, adequate food and shelter. As a result the urgent needs of older women carers arising from their caregiving roles physical, medical, financial and emotional have not been targeted by local, regional or national service providers.

In addition, there is lack of statistical data disaggregated by age and sex, including the incidence of poverty and violence against older women, and the need for improving older women's economic, physical, mental and social well-being as well as their participation in society. Given its concern for the situation of older women, in particular poor rural older women, it is of vital importance that there is available data on the elderly women. No data was available on the number of older women who live below the poverty line. This lack of data is a major barrier to ensuring that appropriate programmes are designed and sufficient funds allocated to addressing poverty and the health service and social protection needs of older women and their families.

The majority of countries in Africa lack age- specific health or care policies, and reliable data on the overall burden of disease on older persons are rare. Access to primary health care for older persons is severely limited, in both physical and financial terms. Even when older persons are entitled to free health care, payment is often requested for service, or health care denied on the basis of advanced age. In general, public health policies still focus almost exclusively on children and mothers while health concerns of older persons are often ignored. As the first step in initiating necessary adjustments in health and social care policies, it is important to raise the awareness of policymakers of the growing number of older persons and their specific health care needs.

2.1.3 ANALYSIS OF DISAGGREGATED DATA ON WIDOWS

Data from qualitative studies and reports indicated that widowhood is feminised as there are more widows than widowers. The researcher did not identify any studies on widowhood. There was however, a lot of quantitative information that was used to deliberate on issues of discrimination against widows.

Although poverty among widows is associated with property grabbing, there is no statistics that have been gathered indicating the number of widows that have been impoverished because of property grabbing. The government may need such information in order to develop policies and enact laws to protect widows and to a lesser extent widowers.

2.2 FORMS OF DISCRIMINATION AGAINST DISADVANTAGED WOMEN

2.2.1 DEFINITION OF DISCRIMINATION

According to the Constitution of the Kingdom of Swaziland (2005) "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. The National Gender Policy of 2010 echoes this definition and defines discrimination as "any distinction, exclusion or restriction which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by any person, of human rights and fundamental freedoms in the political, economic, social, cultural and any other field. At the international level the women's Convention "in its preamble, explicitly acknowledges that "extensive discrimination against women continues to exist", and emphasizes that such discrimination "violates the principles of equality of rights and respect for human dignity". As defined in article 1, discrimination is understood as "any distinction, exclusion or restriction made on the basis of sex in the political, economic, social, cultural, civil or any other field".

2.2.2 FORMS OF DISCRIMINATION AGAINST WOMEN

Gender inequality and discrimination against women in general and disadvantaged women in particular still exists in Swaziland and manifested in all the spheres of life; socio-cultural, economic and political. In many societies, this is maintained by structural discrimination against women in the distribution of income, access to resources and participation in decision-making. 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, gender-based violence and lack of equal access to education (Swaziland Gender Protocol Barometer. 2013). Women thus lack autonomy to participate meaningfully, particularly in the civil and political sphere.

In the socio-cultural sphere, the reality is that women in our tradition are given a lower status and as a result even in adulthood they are considered as minors. As minors, women are denied access to resources in their own right except through fathers, husband, brothers, sons and other male relatives. For example, women cannot access even land in their own right on Swazi Nation Land, that is, land that is controlled by chiefs. Women can only access this land through their husbands and male children. Therefore, Swazi culture and customs give males absolute power of control over family and a woman is considered a minor and occupies a similar status to that of a child.

In Swaziland there are a number of practices that have been identified by researchers and human rights activists as discriminatory against women. Some of these practices are no longer common, but do exist. Section 19(1) of the Sexual Offences and Domestic Violence Bill of 2009 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; and
- g) Virginity testing.

Bride wealth (*emalobolo*), however, has not been criminalised although many gender activists argue that the practice discriminates against women. *Emalobolo* is when a man's family makes a payment in the form of cattle to the family of the woman 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 the couple will have and what type of work she should do. In this arrangement a wife 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.

Also, in Swaziland there are discriminatory legal provisions which impact negatively on women. In Swaziland and other parts of SADC there is a plurality of laws (legal pluralism) that govern behavior. According to WLSA, 2008, legal pluralism is a branch of feminist jurisprudence, and it recognizes that in most of the African societies more than one law regulates behaviour. It refers to other rule upholding and rule generating entities other than the judiciary and legislature. These other rule-generating forces are defined by Sally Falkmore as semi-autonomous social fields. It further recognizes that the formulation of the law and dispensation is not only by the state but is subject to other institutions like the church, family, traditional, etc. Regulatory systems could be found in the customary law, statutes, and common Law.

Studies conducted by legal experts in Swaziland indicated that both the Roman Dutch Law and the Swazi Law and Custom are discriminatory towards women (WLSA). The Poverty Reduction Strategy identified discriminatory and inequitable laws as the Marriage Act, the Wills Act, the Age of Majority Act, the Maintenance Act, the Administration of Estates Act and the Deeds Registry Act. (PRSAP, 2005). In the Marriage Act under civil law marriage discriminatory provisions include the minority status of women and the marital power. Some studies (Hlanze, 2001, WLSA, 1998) revealed that marriage in community of property was the most exclusionary because of the minority status of women. Marriage in community of property suspends some of the rights that women acquire at majority, for instance, the right to sue and be sued in civil matters and contractual capacity. They could be rendered homeless and have been by husbands acting in prejudice. Compensation owing to a woman married in community of property is taken as belonging to the joint estate and therefore, paid to her husband who may not use it for the benefit of the joint estate.

In terms of the Roman Dutch law as it exists in Swaziland, marriage in community of property automatically imports the marital power of the husband. In law, marital power refers to the power of the husband over the wife. This could be totally excluded by an ante-nuptial contract. The property that is accumulated by the spouses in this type of contract is merged into a joint estate, in equal and undivided shares. It is worth to note

that the Constitution of the Kingdom of Swaziland attempted to address this situation by outlawing the minority status of women. The High Court relied on the groundbreaking 2010 case of [The Attorney General v Mary Joyce Doo Aphane](#), which held that marital power unlawfully and arbitrarily subordinates the wife to the power of her husband and is an unfair discrimination based on sex or gender inasmuch as it adversely affects women who have contracted a civil marriage in community of property with no ante nuptial contract. The court further observed that, while it is accepted in common law that a married woman who is subject to marital power may approach the court for leave to sue without the aid of her husband, such a notion is discriminatory since it only applies to women and not to men. "A married man does not, under any circumstances, have to apply for such leave and therefore this common law requirement constitutes unfair discrimination," the court noted. (Swaziland Barometer, 2013).

Patriarchy and systematic discrimination against females contribute to causes of gender based violence (GBV). In a study conducted by Aphane and Thwala, a number of survivors of GBV interviewed referred to sustained incidences of GBV because of the power the perpetrators had over them as well as the powerful structures within the family which interfere in the way couples handle their relationships (Aphane and Thwala, June 2006) It is recognised that gender violence is a public health problem with serious consequences for women's health and for society; violating women's right to voluntary motherhood; exposing women to sexually transmitted diseases including HIV/AIDS; and subjecting women to psychological disorders. Gender violence is closely linked to the HIV and AIDS pandemic that is leading to many of the fragile gains made by women being reversed.

Poverty is increasingly seen as a violation of human rights and in Swaziland poverty affects more women than men (feminization of poverty). One of the strongest statements of the opening session was made by Maria de BolemRoseria, Portugal's Minister for Equality on behalf of the European Union. "when we speak of the feminisation of poverty, it is a human rights issue we are speaking of, a civil and political rights issue as well as an economic, social and cultural issue". The gendered approach of human poverty by contrast makes it possible to look within the household at the ways in which resources such as food, education or health services as well as productive are distributed among family members and capabilities are provided or denied and through its structures.

The labour market in Swaziland is still largely a preserve of males. Issues pertaining to employment in the Kingdom are governed by statute, namely the Employment Act 5 of 1980 and the Industrial relations Act of 2000. The former '[consolidates] the law in relation to employment and [introduces] new provisions designed to improve the status of employees in Swaziland,'⁸ while the latter, '[provides] for the collective negotiation of terms and conditions of employment and for the provision of dispute resolution mechanisms and for matters incidental thereto.'⁹

Certain discriminatory provisions against women exist in the Employment Act. Women are discriminated against in the economic sphere as well. The provisions in section 101 which essentially prohibit the employment of women during certain hours and underground in the mines are tantamount to job reservation for men in that they explicitly/overtly preclude women from certain forms of employment. Provisions such as these indicate the pervasiveness of the stereotypical attitudes and views that certain of professions are "unsuitable" for women and that their ability to perform certain tasks is hampered simply by virtue of their femininity. Section 103 (2) gives an employee the "option" of not taking advantage of the minimum statutorily provided twelve weeks maternity leave (unless this is also a condition stipulated in her employment contract).

This provision is somewhat naïve in the context of the prevailing socio-economic context of the country: in reality, many women are employed in the industrial/manufacturing sector in firms where their unskilled labour is easily dispensable and they have no assurance of job security. It is the reality that these women cannot afford to sustain themselves for the remainder of the statutory twelve week leave on the minimum two week obligatory pay, and are afraid that they may be replaced should they stay away from work for the full twelve weeks. Consequently, many women in this predicament return to work as soon as possible after delivery, not having fully recovered from the physical taxation exerted by the physical trauma of childbirth. Further, the advantage of nursing breaks every day for 3 months after child birth is little more than a pipedream as many of the women live far from their places of residence, thus reducing the practicality of utilising this section to mere wishful thinking, unless facilities are provided.

⁸ The Employment Act 5 of 1980

⁹ The Industrial Relations Act 1 of 2000

The political arena in Swaziland is also predominantly a male preserve. Women's representation in both the local government and national government is below the 30% affirmative action measure stipulated by the Constitution of the Kingdom of Swaziland. However, the last decades have witnessed a shift in the numbers of women in decision making position. For example. In 2013 Swaziland had its first woman MD in the private sector and a few women CEOs.

Although nowadays there are women in various positions of power or decision-making, albeit in insignificant numbers, these seem to have been more of an ad-hoc rather than systematic development. Furthermore, the paucity (Small numbers) of their numbers in those positions diminishes their true value or value of their contribution and hence the impact they could make for the betterment of their lot and the citizenry in general. Tradition and the different forms of socialisation (cultural, religious, family roles, responsibilities or expectations) may inadvertently further discriminate, marginalise and compromise women's effectiveness once in these positions such that they are not taken seriously by their male counterparts or colleagues.

2.2.3 FORMS OF DISCRIMINATION AGAINST WIDOWS

Widowhood in Swaziland and other SADC countries in the sense of loss of a spouse is a problem which mostly impacts on women more than men. WLSA studies on inheritance (1994) found that widowhood is a reality experienced differently by women and men. For women it is a more dramatic change with stronger implications in the social, economic and political spheres.

2.2.3.1 Socio-Cultural Practices

WLSA research showed that widows experienced different pressures to succumb to oppressive and restrictive mourning rituals, which were in some situations both degrading and harmful to their mental and physical well-being. It showed that widows are expected to undergo certain cultural practices which in most instances strip them of

their dignity and undermine their rights. These cultural practices include death rituals such as mourning rituals (*kuzila*), and levirate (*kungena*).

I. Mourning (*Kuzila*)

In Swaziland when a man dies, his wife is expected to go into mourning for a period of at least two years. This comes with wearing black mourning clothes. During this time of mourning a woman is not expected to appear in public or participate in public life. This means that the courts and other areas that are deemed “public” are out of her reach. If assuming she has inheritance problems, she cannot approach the chiefs’ court because that is a public place. If the woman has a human rights issue, she cannot approach the Human Rights Commission which is located at the Royal Palace as that is deemed a public place. During the mourning period her whole movement is constrained and this is a contradiction because at this time she is expected to do everything as a mother and father of the children. She has to take a certain posture when walking and she has to be at the backside of everyone else, she should not mix with other people particularly men and she should not pass in between cattle because it is believed that pregnant cows would abort.

The distinctive mourning attire which a widow wears for the duration of mourning, ensures everybody who comes in contact with her is aware of her status. This is further reinforced by the long period for which the clothes are worn. (WLSA). In a study conducted by Women and Law in Southern Africa (2003) widows had different stories to tell about their mourning. Some had been sacked from their jobs because they were in mourning whilst others had been transferred and made to leave their homes to far-away places.

The standard period of mourning for widows in Swaziland is for two planting seasons which amounts to two or three years. A widow’s interaction with other people particularly males is restricted as there is a belief that she is surrounded by ill-luck for the duration of the mourning period. Termination of the mourning period for the widow is decided upon by the family of the deceased husband who may delay it as a way of punishing the widow.

A widow is supposed to suppress her sexuality for the entire mourning period which can take as long as three years. Any form of sexuality during the mourning period is associated with bad luck. However, this does not apply to men in the same position. Widowed men are in fact encouraged to get a replacement as soon as possible to take care of the children. In some instances he is even given a substitute (inhlanti) by his in-laws as soon as possible or immediately after the funeral.

II. Levirate (*Kungenwa*)

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. Levirate is a cultural practice whereby after the death of a husband a ghost marriage is conducted with the brother of the late husband and this is known as levirate, and in the local language it is called 'kungenwa'. This is usually decided after the cleansing period. It is the family council which sits and decide who should 'ngena' the widow and the woman herself is not consulted in most cases. The woman is in a way forced to accept that, and she is not given any choice. As Mcfadden argued,

'This is the most extreme expression of the absence of a concept of respect for the personhood of the female in our societies'.

III. Heir (*Inkhosana*)

Customary law excludes widows from inheritance of their husband's property, but can only access indirectly through the heir, her son. Accordingly, if she does not have a son, she might have a problem of getting this indirect access. According to WLSA study (1995), childlessness particularly having no son has a bearing on a widow's access and control over resources. "Because of the uncompromisingly patrilineal nature of most Southern African countries, it is through a son that a widow would expect to access the deceased's estate". (WLSA, 1995:20).

According to Swazi law and custom an heir *inkhosana* usually the first born son succeeds as the general administrator and head of the family and *lusendvo*. The widows, elderly women and women with disabilities then become dependent on their inheriting sons and usually become landless if they have daughters only. Customarily, the oldest son in the family becomes in charge of his father's estate and holds it in trust for the family. Women with disabilities, widows and elderly women may not access Swazi Nation Land (SNL) because in order to access this land they need a male to assist them. For the reason that women with disabilities may never marry or be independent from their family may never access SNL.

iv Legal Provisions

Also, there are certain legal provisions that discriminate against widows. Under civil law a woman who is married in community of property inherits a child's share of the matrimonial property. However, this condition was addressed by the Constitution of the Kingdom of Swaziland (2005) in Section 34 which says,

"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."

Recently, the former Minister of Justice attempted to uphold the constitution and passed a policy indicating that widows are entitled 50% share of the matrimonial property. This was overruled by the Prime Minister and Parliament did not endorse it. As of now the fate of widows and widowers is still ruled by a law where they inherit a child's share.

Widows in polygenous marriages are in practice discriminated against in the appointment as executrixes of their deceased husbands' estates. This function is usually given to a neutral person to represent the interests of the widows.

The Deeds Registry Act denies women who are married in community of property the right to register property including in their names. Section 16 of the Deeds Registry Act clearly specifies that,

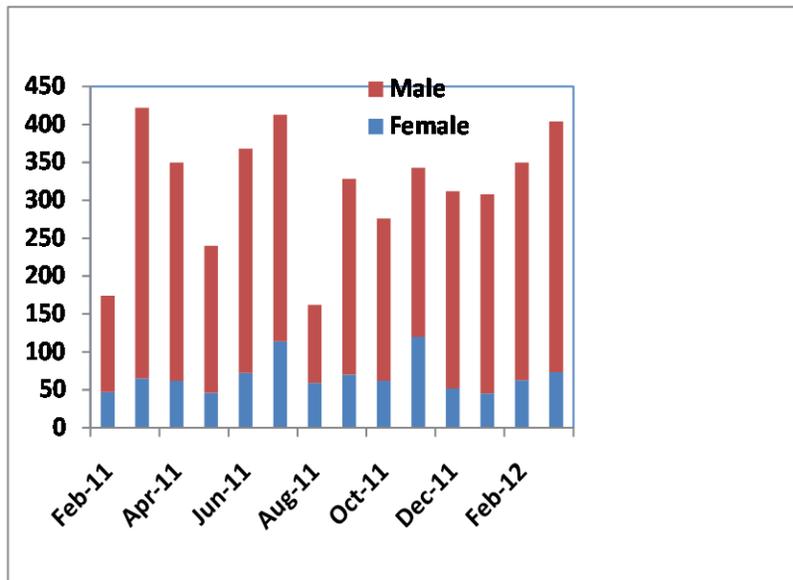
Immovable property bonds, or other real rights shall not be transferred or ceded to, or registered in the name of a woman married in community of property, save where such property, bonds or real rights are by law or by condition excluded from the community.

This exclusion impacts negatively on widows who were married by civil rites in community of property because they have to incur double expenses in registration of fixed property. First the property is registered when it is acquired with the joint estate responsible for payment for such registration, half of the amount paid is from the woman's portion of the estate, though the whole estate is registered in the husband's name. When the joint estate is dissolved the married woman, then, a widow, incurs registration expenses of the same portion again. This disadvantages women married by civil rites economically at a time when they most need financial resources to cope with running a household without the deceased's participation.

v. Gender Based Violence

In a study conducted by Women and Law in Southern Africa (WLSA, 2000) violence against women was on the increase as women were found to be victims or survivors of violence and men were perpetrators. This was confirmed by a latter study by SWAGAA (2011) as seen in figure 3.

Figure 3 Perpetrators of Abuse by Sex



Source: SWAGAA, 2011/12

Among **widows** violence manifests itself in property grabbing from widows by the extended family which might escalate at the death of male spouses. This is as a result of the policy that gives the extended family the prerogative to appoint a successor should the deceased have departed without having stipulated, especially in writing who his successor should be.

Cleansing rituals for **widows** leaves them unprotected from all forms of violence and discrimination, especially emotional and economic violence. Widows are by custom required to be in seclusion from the moment the husband dies to a month after burial when the first cleansing ceremony is held.¹⁰Widows can be inherited by their deceased husband's brother and must abide by these laws or risk being ostracised and left without income and assets at a time of trauma and bereavement.

For **older widows**, discrimination compounds the effects of a lifetime of poverty and gender discrimination. This can result in extreme impoverishment and isolation, both for the widows themselves and any dependents they care for. Their situation is worsened by a lack of knowledge of their legal rights, of how to access appropriate information and where to seek impartial advice and guidance.

2.2.3.2 Economic

Under customary law **widows** suffer discrimination that impacts on their employment and continued employment. There is a statutory provision to the effect that a woman in formal employment should be given 28days leave following her husband's burial. This means that she is confined and secluded from work colleagues and the rest of community with whom she may do business. The provision however, does not guarantee payment of the widow's salary during this period.

¹⁰ This is the ceremony where most members of the family would remove their weeds(*tincotfo*) but for the mother, mother in law and widow(s) of the deceased.

The customary practice of *kuzila* (mourning) whereby a bereaved wife is required to wear *inzilo*¹¹ for two to three years and observe the numerous ancillary rules, have negative repercussions on a woman's employment. A widow is required by custom to remain in confinement for a period of one month. Thereafter she must comply with the attendant rules which include not being permitted to enter public places, address public gatherings, These rules result in the perpetuation of discrimination of widows, including in the workplace as such stringent rules are not applied to men – they have the discretion to decide whether or not to observe any mourning rituals, and if they do, these are done in ways much less onerous to their freedom of movement or ability to participate in public life or perform certain tasks.

Whilst mourning the death of her husband a widow cannot participate in economic activities at her homestead In**widowhood** she cannot plough her fields and provide for her children. Restrictions on her movement prevent her from acquiring services such as health related and nutrition.

I. Poverty

The poverty reduction Strategy (2006) identified widows as one of the vulnerable groups in Swazi society. Most **widows** regardless of age are poorer than their married counterparts. This is especially true where the husbands were the breadwinners. SHIES 1995 found that poverty prevalence was 73% among widows compared to 66.9% among married women and 51.3% among unmarried women. The 1997 Human Development Report showed that there was a link between gender inequality and overall human poverty.

For **older widows**, discrimination compounds the effects of a lifetime of poverty and gender discrimination. This can result in extreme impoverishment and isolation, both for the widows themselves and any dependents they care for. Their situation is worsened by a lack of knowledge of their legal rights, of how to access appropriate information and where to seek impartial advice and guidance.

¹¹ black mourning garments

2.2.3.3 Political Sphere

In accordance with societal norms and practices, **widows** in mourning (for periods that can vary from one to three years) are prevented from appearing in certain public places and in close proximity to the king. As a result, widows are effectively excluded from voting or running for office. Widows in mourning are not allowed to enter public structures, such as *inkhundla* and *umphakatsi*, and so have not, therefore been able to vote. Moreover, the electoral law stipulates that secondary elections should be held at the *Inkhundla* centre, which comprises of several chiefdoms and can cover large distances.

"The discrimination [against] women by preventing them from participating in politics is a consequence of deeply-rooted notions of male dominance and the subordination of women," *Dlamini* told IPS. He was reacting to a recent warning issued by the chief of *Ludzibini*, Prince *Magudvulela*, who told his subjects that they should not vote for women in mourning during the country's August. 20, 2013 primary election.

It was clear during the meeting that *Magudvulela* was referring to former Member of Parliament and a contender for the *Timphisini* constituency, Jennifer Du Pont. She lost her husband, *BhekiShiba*, in May and mourned him for a month instead of the normal two-year period. She was running for a second term of office. During an Aug. 17 meeting at the *Ludzibini* Royal Kraal in northern Swaziland, *Magudvulela* told his followers that according to customary practice, women in mourning should not be allowed inside parliament, royal residences and near the king. *Magudvulela* said that electing women in mourning to parliament would be an embarrassment to the chiefdom. (Swaziland Barometer, 2013).

2.2.4 FORMS OF DISCRIMINATION AGAINST ELDERLY WOMEN

In Swaziland, the ageing process is a gendered concept and it affects men and women differently. On one hand ageing for men is always a process to come even when they are seventy years old. They continuously rejuvenate themselves by marrying younger women some twenty or more years older than their youngest wives or even younger than their own children. Ageing for women on the other hand is characterised by shame and because of traditional values that only recognise women's reproductive capacity, as soon as she stops reproduction she ceases to exist.

2.2.4.1 Socio-cultural Practices

Culture and tradition discriminates against the elderly particularly old women. This is in spite of the fact that there is great respect for the mother of the head of the homestead. When a homestead is built there is usually a grandmother's hut (*Indluyakagogo*) which is usually known as an ancestral hut. It is a communal hut where all the members are free to go and can also get luck when there are problems. Even if the biological mother of the head is dead, a symbolic hut is built for her. The grandmother's hut is a common feature in most Swazi homesteads. Even where a modern house is built a thatched one for grandmother is built side by side as a communal place for important meetings and certain ceremonies, 'it is a sacred place'. However, the respect for the mother of the head of the homestead in our society, is to reinforce the patriarchal values and to legitimise them. As Booth pointed out,

"The importance of the mother in all homestead affairs as in national politics, is central. She represents the link between the head-of -homestead and his lineage, which gives him standing".

i. Health Care

Health care and its associated costs (both in terms of getting to clinics/hospitals and affording medication) typically form a major component of household outgoings among the poor, especially among the elderly. It is not surprising, therefore, that 71% of beneficiary respondents in the Swaziland Old Age Grant Impact Assessment report (2010) confirmed that there have been times in the past year where they could not afford the health care that they needed.

In matters of health including reproductive health, there is not much that is being done for the aged particularly old women to address their specific health problems. These are mainly related to reproduction. The most basic question is what happens to the womb after the hard work in reproduction? What about the menopause period, do these women need any attention after their menstrual cycle stops?. These are some of the questions that we need to be asking our government. As Mcfadden pointed out,

" the high moral ground shifts with time, guided by the ticking away of the reproductive clock, and just as women's sexuality is conflated into their reproductive functions and capacities as young women, as older women, the concept of 'good woman' is determined by a-sexuality. And an older woman who exhibit a sexuality is publicly called an auntie (someone who pretends to be young) and an older woman who shows 'decorum' in her behaviour is addressed as 'mbhuya' which means grand Mother."

ii. HIV and AIDS

The advent of home based care as a response to HIV and AIDS pandemic has placed responsibility of the sick and dying squarely in the hands of women. Due to the deaths of the younger population the elderly particularly women are responsible for caring. However, older women continue to be excluded from HIV and AIDS programmes both as carers, as recipients of prevention and care information and as an at risk group of HIV infection,

His Majesty pointed out that,

'One outcome of the HIV/AIDS pandemic is the effect on our elderly. HIV/AIDS continues to kill a lot of our young people who leave behind orphans and uncared for elderly parents. Some of these elderly people sometimes go without basic support and yet they are expected to also care for the orphans. The nation recognised this problem at Sibaya meetings, and requested government to address the challenge. We are happy that Her Majesty the Indlovukazi (The Queen Mother) has already taken the lead, through PhilaniMaswati, to show us all that we must care

for the elderly people and to ensure their last days are full of happiness and fulfilment. It is in the light of such difficulties, in which our elderly people live, that government has decided to increase the annual allocation to the social security fund to E30 million for the benefit of our elderly poor citizens.'

(HMK, *Mswati* III, 2005, Speech from the Throne)

The NSF (2009-2014) indicated that the impact of HIV and AIDS on the elderly has been two-pronged. First, the elderly have suffered loss of care through the death or incapacitation of their own children who previously provided care and support to them. As they lose their bread winners they experience deepening poverty and inability to meet basic needs. On the other hand the elderly are increasingly assuming the role of caregivers for their own children who are sick, or grandchildren whose parents have died. Many elderly persons no longer have the ability to work and neither do they have income to support the OVC. External support is limited, ad hoc and short term. In most cases the support is provided on the basis of the presence of OVC they support and not to meet their own needs

iii. Education

There is lack of information among older women as they are very unlikely to have received any education. Only 46% of beneficiary respondents in the Swaziland old age assessment report of 2008. Also, very few women had completed primary and/or secondary school, reflecting the fact that these people would have been at school-attending ages earlier in the twentieth century when educational availability was poorer.

2.2.4.2 Economic

Elderly women are excluded from the formal economic sphere as they are already retired. Most of them are at home in the rural areas (*ekhaya*) where they usually reside after retirement. According to the National Development Policy (2010) **aging** is said to be "a component of the life cycle that brings disengagement from the labor market." It further indicates that, "an older person in Swaziland is an individual who is 60 years or

older. For the majority of the Swazi people old age brings income insecurity, food insecurity, increased vulnerability to abuse and psychosocial challenges.

Poverty

SHIES (1995) found that poverty prevalence among the elderly (both men and women) was the highest compared to all other age groups. Poverty prevalence among elderly women was 81.3% in 1995 compared to 51.5% among young women age 15-30 years. It was 76.9% among elderly men compared to 51.3% among young men aged 15-30 during the same year.

Although Swaziland places a lot of value on age, it is not a welfare state and there is evidence that the **aged** have a lot of problems including unemployment. It is generally believed that as an old person your children will take care of you. However, with the problems such as unemployment, retrenchments and low wages of the able bodied, how could they take care of anybody when they cannot even take care of themselves? Elderly women, that is, above sixty are already in forced retirement. They are excluded from formal employment particularly in the public service. It is believed that young people should be given the opportunity to work. This does not take into consideration that at this age some women and men have a lot to contribute in the wage employment sector.

2.2.4.3 Political

The political system in Swaziland is characterised by **age regiments** for both men and women. However, the women's regiments are usually not functional except for the young regiments who are expected to participate in the annual reed dance and also *LutsangoLwakaNgwane* which is composed of relatively older women mostly in the rural areas who are expected to work with the Queen mother. The leader of the regiment is usually a very old woman who understands culture and the Swazi traditions. *LutsangoLwakaNgwane* regiment is not a political body and hence does not play any role for its membership in politics including election into parliamentary positions. This is a missed opportunity for elderly women to participate in the political arena.

In Swaziland elderly women are not visible in the political sphere and this means that their voices are silent and therefore their issues and concerns not recognised. Although the data from the Elections and Boundaries is not disaggregated according to age, elderly women are often seen casting their vote. Some aspiring members of parliament are known to soften the hearts of elderly voters by building or improving their housing or giving them food and other basic needs.

2.2.5 FORMS OF DISCRIMINATION AGAINST WOMEN WITH DISABILITIES

According to the United Nations, women with disabilities are more likely than men with disabilities or women without disabilities to be unemployed and are poorer. They also are more vulnerable to abuse, have limited access to healthcare, and are normally denied inheritance. Social and cultural traditions are often responsible for discrimination against women resulting in son preference, girl child marriage, dowry, and violence against women. All in all, women with disabilities are denied equal rights as human beings.

In Swaziland discrimination on the basis of disability is often linked to class and gender dissonance. Most of the disabled people are poor which may indicate that disablement may be due to poverty. Research has indicated that the consequences of disablement are particularly serious for women. Women with disabilities are discriminated against on more than one ground: gender and disability, and often they have less access to essential services such as health care, education and vocational rehabilitation.

2.2.5.1 Socio-cultural Practices

In traditional Swazi society cultural beliefs and tradition are deeply entrenched. Biased attitudes and unjustified perceptions towards people with disabilities are largely strengthened by widespread ignorance and a belief in stereotypes, which ultimately

lead to such persons being unfairly discriminated against in society at large and in employment in particular.¹²

Swazi culture and tradition often views disability as a victimizing experience itself and a biological injustice, whereas its social aspect caused by social injustice and discrimination is ignored. Consequently, changes are all attributed to the individual, while the institutional, physical and attitudinal context remains unchallenged (Fine and Asch, 1988). Therefore, people with disabilities are “marginalized, discriminated against and socially excluded from mainstream activities [with] limited access to opportunities available to non-disabled persons such as education, health, employment, public facilities and transport” (UNISWA, 2002).

According to Lang, (2008) living with a disability in traditional Swaziland presents significant challenges. “There is a general belief that those who have a disability are bewitched or inflicted by bad spirits. Many believe that being around people with disabilities can bring bad luck. As a result, many people with disabilities are hidden in their homesteads and are not given an opportunity to participate and contribute to society. In Swazi mythology persons with disabilities cannot be in the presence of the King. Therefore this remains a contradiction to the efforts of some sectors of the Kingdom to recognise the rights and the roles that PWDs can play in the development of the country.

In most instances in Swaziland women and girls with disabilities are not encouraged to marry as a way of ‘protecting’ them from the unpleasant consequences of marriage where a married Swazi woman is expected to relocate to the marital family and take care of their needs, including “fetching water from the river (with Swaziland having the majority of the population residing in rural areas); it includes being able to fetch firewood and preparing fire to cook, cleaning the yard, etc.” (Lang (2008) which a woman with a disability may not be able to do.

Legal

The Swaziland Parliament has not yet passed into law legislation that prohibit discrimination against persons with disabilities in employment, or to provide access to

¹²Perry, 2004 www.ilo.org

health care or other state services. This means that there are no laws yet that mandate accessibility for persons with disabilities to buildings, transportation, or government services, although government buildings that are under construction of late include some improvements for those with disabilities, including accessibility ramps.

Lang, (2008) indicated that the Government of Swaziland has consulted the disability sector in the processes to develop disability policies and/or disability inclusive policies. It is however, disappointing that “for many years this consultation has been on an ad hoc basis and has been done in a very haphazard manner. Subsequently until recently these policies have been of no substance nor of significant effect on the lives of persons with disabilities in the Kingdom. (Lang, 2008). Swaziland has not had many policies that have been developed that are disability inclusive.

Gender Based Violence

Women and girls with **disabilities** face dual discrimination and are often worse off than men. They are particularly vulnerable to sexual violence and there have been reported cases of forced sterilization.

Women with **disabilities** are faced with problems of sexual exploitation and abuse, which was perceived to be higher among disabled women than their nondisabled peers. In a situational assessment of children and young persons with disability (2010) survey participants indicated that sexual abuse was high among women with disabilities (11%) possibly because of “the myth that some men still maintain that by “sleeping” with a disabled woman; particularly a disabled child they will be cured of the positive HIV status.” The study on disability audit research also indicated that disabled women were perceived to be ‘free’ from the HIV virus by non-disabled men.

2.2.5.2 Economic

Poverty

Poverty is characterized by a lack of participation in decision-making and in civil, social and cultural life. Women and particularly women with disabilities bear a disproportionate burden of poverty, and children growing up in poverty are often permanently disadvantaged and in some instances responsible for disablement. Furthermore, poverty in its various forms represents a barrier to communication and access to services, as well as a major health risk, and people with disabilities living in poverty are particularly vulnerable to the consequences of disasters and conflicts. Absolute poverty is a condition characterized by severe deprivation of basic human needs, including food, safe drinking water, sanitation facilities, health, shelter, education and information. It depends not only on income but also on access to social services. For women with disabilities addressing poverty is critical.

Poverty has various manifestations. For women with disabilities the following manifestations resonate: the lack of income and productive resources sufficient to ensure sustainable livelihoods; hunger and malnutrition; ill health; limited or lack of access to education and other basic services; increased morbidity and mortality from illness; homelessness and inadequate housing; unsafe environments; and social discrimination and exclusion.

Disability causes poverty in that many of the disabled people especially women are considered unproductive and in most instances are left to survive on hand outs and charity. Even women with disability have internalised this socialisation and they live mostly on hand outs and they are found to be the most destitute. Whilst there are those who cannot perform any tasks there are those who can engage in some kind of gainful work. The Swaziland Disability profile indicated that 39.5% of people living with a disability were working in a family/farm business. It is common that work on a family business is not paid and hence the high poverty situation among people with disabilities recoded in the profile.

Lack of education and skills for women with disabilities is also a big challenge and it contributes to poverty and unemployment outside family business. Studies have indicated that most of the women with disabilities do not have any skill because when compared to able-bodied girl-children they are worse off. It is important to point out that women with disabilities should not be discriminated against because they are part and parcel of society.

Employment

According to Lang, (2008) three quarters of people with disabilities aged 12 or older are not economically active, while only 17% are employed in waged employment. And those who work generally get “menial and poorly remunerated jobs”. This can be explained by the widespread belief that people with disabilities are unemployable. (ibid).

Persons with **disabilities** have not only experienced unfair discrimination in the past, but they continue to be at the receiving end of 'unjustified' perceptions by employers, which leads to their continued discrimination and marginalisation in the labour market¹³. It has been argued that 'the marginalization of persons with disabilities still arises in large part from biased attitudes and a lack of awareness and knowledge rather than from a lack of economic resources alone, yet persons with disabilities remain among the most vulnerable and marginalized'.¹⁴ Such perceptions act as an effective bar to persons with disabilities to meaningfully participate in and contribute to the economy, thereby making it difficult for them to be provided with fair opportunities to realise their full potential.

2.2.5.3 Political

Regarding the visibility of participation by people with **disabilities** in public life, there is a complete absence of women with disabilities. No woman with a disability has ever been recorded in the political history of Swaziland as elected in *Bucopho*, *IndvunaYenkhundlaor* Member of Parliament (MP). Even in the local government women with disabilities have never featured as counselors or mayor. Men with disabilities are also not adequately represented although we have had instances of men

¹³South African Government-Department of Labour (date unknown)

¹⁴UN Secretary General 2007 www.un.org

representation like in the 2008 parliament. A man with visual impairment by the name of Tom Mndzebele was a parliamentarian during this time. The 2013 elections failed to bring any person with a disability, and no woman with a disability participated in the elections either in nomination or primary elections. People with disability seem to only participate as voters although there is no statistics that is disaggregated according to disability in this arena.

3. CURRENT EXISTING POLICY FRAMEWORK ENSURING THAT THERE IS NO DISCRIMINATION OF WOMEN EITHER BASED ON COLOUR, CREED, AGE OR DISABILITY

A lot of effort has gone into enhancing gender equality and empowerment of women in Swaziland at national, regional and international levels. At the national level, there have been a number of processes that have recognised the need for incorporation of Gender Equality and women's issues in the development of the country. In recognising the need to mainstream gender issues through all sectors of government and developmental policies, the government established the Department of Gender and Family Issues in the Ministry of Home Affairs and currently under the Deputy Prime Ministers Office to coordinate the gender programme in the country. National processes which address gender issues include the National Development Strategy¹⁵ (NDS), the poverty reduction strategy and action plan¹⁶ (PRSAP), Food Security Policy¹⁷ (FSP), National Gender Policy¹⁸ (NGP) and National Constitution of the Kingdom of Swaziland¹⁹ (2005),

Within the region there have been inroads made at the SADC level with the states committing themselves to gender equality that targets and improves the lives of women. This came about with the historic signing of the Gender and Development Declaration²⁰ in September 1997. Most recently i.e. 17th August 2008, the SADC Heads of States adopted the SADC Protocol on Gender and Development in order to underline their commitment to the advancement of gender equality in their respective countries.

¹⁵ The National Development Strategy Vision 2022 launched on the 27th August 1999

¹⁶ This programme places emphasis on affording equal opportunities to all citizens regardless of sex to access social and economic services in order to enhance their development. PRSAP identified the minority status of women as a challenge to poverty reduction in that it inhibits the full participation of women in deliberations at community level.

¹⁷ It is National Policy to improve the impact of gender on food availability by special programmes. Strategies include: (a) Support and implement commitments made at the Fourth World Conference on Women, Beijing 1995, that a gender perspective is mainstreamed in all policies. (b) Promote women's full and equal participation in the economy, and for this purpose introduce and enforce gender-sensitive legislation providing women with secure and equal access to and control over productive resources including credit, land and water including irrigation and appropriate credit services and that job creation opportunities are focused on those most in need.

¹⁸ This programme places emphasis on affording equal opportunities to all citizens regardless of sex to access social and economic services in order to enhance their development. PRSAP identified the minor status of women as a challenge to poverty reduction in that it inhibits the full participation of women in deliberations at community level.

¹⁹ Refer to footnote 1

²⁰ The countries committed themselves to "repealing and reforming all laws, amending constitutions and changing social practices which still subject women to discrimination, and enacting empowering gender-sensitive laws".

At the international level activism around gender issues has been more visible than ever. The Convention on the Elimination of all forms of Discrimination against Women (CEDAW) also known as the Women's Convention, challenges every form of discrimination against women. The decade 1990 to 2000 has seen the promulgation of several commitments to ensuring the improvement on women's status. The 1995 United Nations Women's World Conference (Beijing Platform for Action) held in Beijing, which developed twelve critical areas of concern for women and committed governments and the international community to addressing them, is one such example. The Beijing plus Five Conference held in 2000 as a follow up to the Beijing Platform for Action, focussed on the achievements made since the Beijing conference and reaffirmed its commitment to the critical areas of concern²¹. Swaziland participated in these initiatives, joining other governments in committing itself to the Beijing Declaration.

All these efforts by Government, Civil society, regional and international bodies need to be recognized through organizational gender policies in order to take the advocacy on gender issues and gender mainstreaming to a higher level. Now that the Gender Policy has been adopted it is an opportune time to implement gender equality in development in a bid "to eliminate discrimination among men, women and youth and equip men, women and youth with knowledge and skills towards equal participation; whilst appreciating the social construct of an individual." (NGP: 2010).

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²¹The Beijing Declaration and Platform for Action calls on governments, the international community and civil society, including non-governmental organizations and the private sector, to take action in the following areas: the persistent and increasing burden of poverty on women; inequalities and inadequacies in, and unequal access to, education and training; inequalities and inadequacies in, and unequal access to health care and related services; violence against women; the effects of armed or other kinds of conflict on women, including those living under foreign occupation; inequality in economic structures and policies, in all forms of productive activities and access to resources; inequality between men and women in the sharing of power and decision-making at all levels; insufficient mechanisms at all levels to promote the advancement of women; lack of respect for and inadequate promotion and protection of the human rights of women; stereotyping of women and inequality in women's access to and participation in all communication systems, especially in the media; gender inequalities in the management of natural resources and in the safeguarding of the environment; and persistent discrimination against and violation of the rights of the girl-child.

²² The National Development Strategy Vision 2022 launched on the 27th August 1999

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3.1 EXISTING NATIONAL INITIATIVES

3.1.1 The National Development Strategy

Swaziland made her first commitment to achieve the goal of gender equality in 1994 during the formulation of the National Development Strategy (NDS). The NDS is a twenty five year development plan for the country. From there on, a number of policies and strategies all recognize that discrimination against women and girls occurs in almost all the sectors and that there is need to address it in order to have a better life for women and the girl-child. According to the revised gender advocacy strategy for Swaziland (2010) "the National Vision 2022 articulated in NDS spells out a number of strategies aimed at eliminating development and gender gaps. It also offers equal opportunity strategies to all citizens irrespective of their sex. The NDS also emphasises the adoption of a gender balanced approach to development in all national development plans, policies and projects."

The National Development Strategy includes a section on people with disabilities. The strategy "recommends" measures to improve the situation of people with disabilities: the enactment of legislation to ensure equal opportunities for people with disabilities and to protect them from discrimination; ensuring the built environment and public transport are accessible; the integration of programmes for people with disabilities into mainstream education; the creation of institutional mechanisms to rehabilitate and integrate people with disabilities into society; ensuring adequate and accessible sanitation facilities; the introduction of social security payments to disadvantaged groups; the promotion of cooperatives for women, youth and people with disabilities. The strategy calls for "special attention to members of society with disabilities" in human resources development.

The National Development Strategy made the following recommendations with regard to persons with disabilities:-

- a) **Integration and Awareness:** Integrate persons with disabilities into economic and social activities: Ensure the integration of programmes for persons with disabilities into mainstream education: Provide infrastructure for rehabilitation for those who can not be integrated. Institutions catering for disabled people (e.g. schools for the visually and hearing impaired, and vocational training) must be expanded to cater for the existing and expected demand: Create institutional and policy mechanisms through which persons with disabilities can be rehabilitated and integrated effectively with the rest of society: Raise awareness on how to prevent various forms of disabilities.
- b) **Equity:** Enact legislation to protect the disadvantaged groups from abuse and discrimination: Ensure that all infrastructural designs are inclusive of the needs of persons with disabilities: Introduce measures that will support the operations of NGOs to help specific groups: Enact legislation to ensure equal opportunities for persons with disabilities.

3.1.2 The Constitution of the Kingdom of Swaziland

The Constitution of the Kingdom of Swaziland incorporates a bill of rights and guarantees gender equality. This is articulated in Section 20(1) which provides that, 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. Section 20(2) further reads thus, "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".

Section 20(3) then clarifies the issue of discrimination as it states, for the purposes of this section, "discriminate" means to give different treatment to different persons attributable only or mainly to their respective descriptions by gender, race, colour, ethnic origin, tribe, birth, creed or religion, or social or economic standing, political opinion, age or disability. This section lays down the facts on equality of men and women before the law and that none of the two shall get preferential treatment in as far as law enforcement is concerned. However, the Constitution recognised the need for affirmative action as in the same breath Section 28(2) states that, "subject to the availability of resources, the Government shall provide facilities and opportunities necessary to enhance the welfare of women to enable them to realise their full potential and advancement."

With regards to the Protection of the "Rights and Freedoms of Women," Section 28 states:

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

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

A woman shall not be compelled to undergo or uphold a custom to which she is in conscience, opposed

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On people with disability the it is stated in the country's constitution on the rights of people with disabilities , Article 30 that:

(1) People with disabilities have a right to respect and human dignity and the Government and society shall take appropriate measures to ensure that those persons realise their full mental and physical capacity.

(2) Parliament shall enact laws for the protection of persons with disabilities so as to enable those persons to enjoy productive and fulfilling lives.

3.1.3 The Poverty Reduction Strategy

The PRSAP acknowledges the strong correlation between poverty and gender.²⁹ This programme places emphasis on affording equal opportunities to all citizens regardless of sex to access social and economic services in order to enhance their development. PRSAP identified the minority status of women as a challenge to poverty reduction in that it inhibits the full participation of women in deliberations at community level and is a governance issue. The minority status of women (who form more than 53% of the total population) limits the potential of more than half the population to participate fully in development and poverty alleviation. The PRSAP acknowledges the need to change the attitudes of both men and women to conform to the equal rights and status bestowed on every citizen by the country's constitution. The constitution has made various provisions which enhance the attainment of gender equality but its effectiveness is compromised by the absence of supportive legislation.

The goal of PRSAP is to ensure gender equality and afford women increased opportunity to utilize factors of production and gain equal access to social and economic services.

The strategies put forward by the PRSAP for achieving gender equality are to;

- create and compile a comprehensive database on Female Headed Households (FHH), empower women on income generating activities and inform them of their constitutional rights to own and acquire property and assets,

²⁹ 63% of female headed households are poor and lack productive assets

- review, improve and educate both men and women on marriage and inheritance laws,
- review cultural practices which infringe on the rights of women,
- encourage responsible and gender sensitive reporting,
- develop innovative ways of reducing the burden of household chores on women and girls,
- review and repeal all discriminatory laws including Swazi law and Custom and remove the minority status of women in accordance with the constitution,
- improve and enforce laws against domestic violence, sensitize both men and women and provide counselling services for abused people,
- provide information on the rights, privileges and practices that will empower women and encourage them to be leaders,
- support and develop the Micro Enterprise sector where most poor women are involved and ensure equal opportunity to employment and income generation activities,
- ensure equal opportunity for children of all gender in the implementation of Universal Basic Education, improve access to information on reproductive health and family planning,
- encourage abstinence amongst adolescent children especially girls, and
- conduct research on the relationship between gender and other economic, social and political factors.³⁰

Strategies for people with disabilities include:

- Build capacity and empower people with disabilities to generate income
- Ensure that all public infrastructure including roads and traffic lights are fitted with guard rails and sound system to facilitate the movement of people with disabilities

³⁰ PRSAP I and II, 2008

Strategies for the elderly include:

- Establish an up to date database for the elderly
- Set up community based care organisations to look out for the needs of the elderly and encourage income generating projects within communities to cater for the needs of the elderly

Strategies for widows include:

- Promulgate in line with the Constitution, legislation that will prohibit the enforcement of cultural practices that may impact negatively on women's economic productivity such as the compulsory wearing of mourning gowns;
- Update all discriminatory laws in line with the Constitution

3.1.3 Policy Documents

3.1.3.1 The National Gender Policy

Swaziland has a National Gender Policy which was launched in 2010. The National Gender Policy addresses ten thematic areas; culture, family and socialisation, poverty and economic empowerment, education and training, politics and decision-making, legal and human rights, health, reproductive rights and HIV/AIDS, gender based violence, environment and natural resources, information, communication and arts and people with disabilities. The thematic objectives for each thematic area aims at ensuring a conducive environment for gender equality and that women and men, boys and girls enjoy their human rights, and develop their full potential/capacity as well as an enhanced conducive environment for promotion of gender responsive culture. The National Implementation Plan of the National Gender policy has been designed to operationalise the policy through strategic interventions and outputs to facilitate the achievement of gender equality and women empowerment by 2013. The plan provides

a strategy for gender mainstreaming in line with national instruments that promote gender equality such as the Constitution of Swaziland, the National Development Strategy (NDS), Global and International gender equality instruments as well as targets set in the Millennium Development Goals.

3.1.3.2 The Draft Land Policy

The Draft National Land Policy addresses land related legal impediments to gender equity and specifies that these should be removed. Addressing the issue of gender bias in land allocation the draft National Land policy states, "existing gender biases in both social and legal contexts are firstly inequitable, and secondly inhibiting to national development. Land allocations should be based upon achieving tenure security encouraging the highest and best sustainable use of land, irrespective of the gender of the allocated person."

This Policy also addresses the contentious issue of land allocation on Swazi Nation Land (SNL), that "it is National Policy that all citizens responsible for raising a family can *khonta* (be allocated land on SNL). This provision came about because, "under Swazi law and custom, the purpose of allocating land has been to provide a means of raising a family. There is a presumption that a husband and wife intend to raise a family, and their entitlement to *khonta* is based upon that presumption. However, not all of the future generations have the benefit of both parents being present, yet they must still be cared for.

Consequently, any parent who can establish to the satisfaction of the competent authority that he or she is the sole caregiver for a child or children can *khonta*. The policy also stated that, it is National Policy that land held through *khonta* be considered as joint tenure for households. This consideration is in respect to the fact that, "as the purpose of land allocation is to raise a family, the allocated property rights should be regarded as the joint property of both parents or potential parents, as neither would have been allocated the rights without the other's presence."

3.1.3.3 The Food Security Policy

Another policy that addresses issues of gender is the National Food Security. This policy has a number of principles to address gender equity and they include;

The fundamental right of everyone to be free from hunger will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

The distribution of food supplies will be carried out equitably.

The right to food security is an integral part of universal, inter-dependent, indivisible and inter-related human rights.

The food insecure have the right to take part in the conduct of public affairs, right to freedom of expression and the right to seek, receive and impart information, including in relation to decision making about policies on realizing the right to adequate food.

Women, poor and disadvantaged segments of society are to have full and equal right to own land and other property, including the right to inherit.

3.1.3.4. Swaziland National Disability Policy (2013) Draft

The Kingdom of Swaziland recognized the need to develop a National Disability Policy after the country had undertaken a Disability Policy Audit in 2008. The Disability Policy Audit provided a rational impetus and groundwork for the development of a policy framework because it provided an analysis of what was existing at the time as it relates to people with disabilities. Consequently, the Swaziland government developed the National Disability Policy on human rights and fundamental freedoms by all Persons with Disabilities in the country.

Strategies on discrimination against women with disabilities include :

- ✓ Facilitate the implementation of the gender policies and programmes to achieve a culturally supportive society in respect of the rights and status of women.
- ✓ Women and girls with disabilities will be protected against exploitation and all forms of abuse from the public and next of kin.
- ✓ Government will encourage participation in Parliament of women with disabilities
- ✓ Government will ensure appropriate measures to eliminate discrimination against women with disabilities in the family, workplace and everywhere in the society.

3.1.3.5 The National Social Development Policy (2010)

The policy document identified areas of discrimination against elderly women and indicates that old age brings “increased vulnerability to abuse and psychosocial challenges”. The report also indicates that due to deaths caused mainly by HIV and AIDS which targets the younger population, it is the responsibility of the elderly to care for the next generation (grandchildren).

The policy statement reads,

“It is national policy to protect the rights of older persons. And to provide the poor among them with the means to support themselves and any children in their care.”

Strategies include:

- ✓ Support the development and enactment of laws and policies that protect the rights of older persons.
- ✓ Provide universal old age pensions to older persons in a timely and transparent manner
- ✓ Promote and protect the rights of older persons, particularly in relation to their own representation, protection of their interests and access to productive resources.

3. 2 THE REGIONAL AND CONTINENTAL HUMAN RIGHTS PROVISIONS

3.2.1 The SADC Protocol on Gender and Development

The SADC Protocol on Gender and Development was adopted on the 17th August 2008. It “advances gender equality by ensuring accountability by all SADC member states as well as providing a forum for the sharing of best practices, peer support and review.” (SADC: 2008).

The main provisions of the protocol include:

That the Constitutions in the region should enshrine gender equality and to give such provisions primacy over customary laws that are discriminatory to women are to be repealed. Also, the provision for equality in accessing justice, marriage and family rights and the rights of widows, elderly women, the girl-child, women with disabilities and other socially excluded groups

Equal representation of women in all areas of decision-making both public and private to be achieved through constitutional and other legislative provisions including affirmative action. Also that that these should ensure that women participate effectively in electoral processes and decision-making.

Equality in education and training for women and men, as well as their retention at all levels of education. Also, provides for challenging of stereotypes in education and eradication of gender based violence in educational institutions.

Equal participation of women in economic policy formulation and implementation. Also, provisions and targets on entrepreneurship, access to credit and public procurement

contracts, as well as stipulations in trade policies, equal access to property, resources and employment.

The implementation of a variety of strategies, including enacting, reviewing, reforming and enforcing laws, aimed at eliminating all forms of gender based violence and trafficking.

Adoption and implementation of policies and programmes that address the physical, mental, emotional and social wellbeing of women with specific targets for reducing the maternal mortality ratio and ensuring access to quality sexual and reproductive health services.

Prevention, treatment care and support in relation to HIV and AIDS.

Gender to be mainstreamed in all information, communication and media policies and laws.

The SADC Protocol on persons with disabilities outlines that States Parties shall, in accordance with the SADC Protocol on Health and other regional and international instruments relating to the protection and welfare of people with disabilities to which Member States are party, adopt legislation and related measures to protect persons with disabilities that take into account their particular vulnerabilities.

At the Continental level the, Plan of Action for the African Decade for People with Disabilities suggests measures to improve accessibility and equality of opportunity; promote participation and inclusion; and increase respect for the autonomy and dignity of persons with disabilities. The Goal of the Plan of Action is to ensure that people with Disabilities enjoy the full participation, equality, inclusion and empowerment of people with disabilities in Africa.

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 to 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.

3. 3 INTERNATIONAL HUMAN RIGHTS TREATIES

International Human Rights instruments are made from agreements between nation states regarding the recognition, respect and protection of the human rights of their citizens. These instruments take the form of conventions, treaties and protocols promulgated and are adopted by various organisations of states at international, continental and regional levels. In this regard Swaziland, as a member of the international community, participates at - amongst others - the United Nations (UN), the African Union (AU) and the Southern African Development Community (SADC), and is party to many of these instruments.

On entering such agreements, countries are expected to incorporate the provisions of these instruments into their local laws. However, in the case of Swaziland, despite having signed or assented to several such instruments, there has been no implementation of many of the protections afforded by these instruments. Thus, there has been no actual benefit to the people of Swaziland. Swaziland is in the habit of ratifying but not domesticating the international instruments. This has deprived women the enjoyment of their human rights identified at international level.

3.3.1 The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

CEDAW, which was ratified by the Swazi Government on the 26th March 2004, addresses the issue of non-discrimination against women. Despite the provisions in the Constitution referred to below, CEDAW has not been fully domesticated and therefore cannot be directly used for litigation. This means that discrimination against women still continues as it cannot be addressed by the courts using this Convention.

Article 1 of CEDAW defines discrimination against women as opposed to discrimination on the basis of sex as, "distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on the basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

Article 2 addresses the issue of formulating policy to condemn discrimination against women and also implement various measures to eliminate it. These measures include;

- ✓ Embodying the principle of the equality of men and women in their constitutions or the appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realisation of this principle
- ✓ Adopting legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women
- ✓ Establishing legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institution the effective protection of women against any act of discrimination.
- ✓ Refraining from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation
- ✓ Taking all appropriate measures to eliminate discrimination against women by any person, organisation or enterprise
- ✓ Taking all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women
- ✓ Repealing all national penal provisions which constitute discrimination against women

Article 3 calls upon governments to:

Take appropriate measures in all fields, in particular in the political, social, economic and cultural fields to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on the basis of equality with men

Article 4

This article clarifies that affirmative action shall not be considered discrimination as CEDAW allows for temporary special measures to accelerate equality for women. Also, take into consideration are women's special needs relating to their sex (maternity leave, etc.). States Parties are called upon to ensure:

- ✓ Adoption of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity have been achieved
- ✓ Adoption by States Parties of measures, including those measures contained in the present Convention, aimed at protecting maternity shall not be considered discriminatory

Article 7 considers that women's participation in political and public life is a human right that should be protected by States Parties who will ensure that women, on equal terms with men:

- ✓ Vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;
- ✓ Participate in formulation of government policy and implementation thereof and to hold public functions at all levels of government
- ✓ To participate in non-governmental organisations and associations concerned with the public and political life of the country

Article 10 and 11 address issues of equality between women and men in the fields of education and employment opportunities in that:

- ✓ Discrimination shall be eliminated against women at all levels and this includes both access and quality.
- ✓ Women are to be ensured of equal rights with men in employment as the right to work is an inalienable right of all human beings.

Article 12(e) of CEDAW The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;

Women's health is a contentious issue and Article 12 of the Women's Convention addresses issues of women's reproductive choice, information and advice on family planning and nutrition.

Article 13 addresses elimination of discrimination against women in other areas of economic and social life so as for men and women to enjoy the same rights, in particular:

- ✓ The right to family benefits
- ✓ The right to bank loans, mortgages and other forms of financial credit
- ✓ The right to participate in recreational activities, sports and all aspects of cultural life

Article 14 and 15 addresses two critical issues for women in Swaziland, that of women residing in the rural areas and legality. These are the most important articles because they talk directly to the objective of reducing poverty in a rural setting where women have particular needs, both practical and strategic needs. Legality also comes into effect in the sense that in all developmental activities need to conform to the legal provisions especially those enshrined in the National Constitution (see Section 3).

Article 14: States Parties shall:

- ✓ Take into account the particular problems faced by rural women and the significant roles which women play in the economic survival of their families,

including their work in the non-monetised sectors of the economy, and shall take all appropriate measures to ensure the application of the provisions of this Convention to women in rural areas.

- ✓ Take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right:
- ✓ To participate in the elaboration and implementation of development planning at all levels
- ✓ To have access to adequate health care facilities, including information, counselling and services in family planning
- ✓ To benefit directly from social security programmes
- ✓ To obtain all types of training and education, formal and non-formal, including that relating to functional literacy, as well as, inter alia, the benefit of all community and extension services, in order to increase their technical proficiency
- ✓ To organise self-help groups and co-operatives in order to obtain equal access to economic opportunities through employment or self-employment
- ✓ To participate in all community activities
- ✓ To have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian-reform as well as in land resettlement schemes
- ✓ To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.

Article 15

The Women's convention calls for equality between women and men before the law as follows:\

- ✓ States Parties shall accord to women equality with men before the law

- ✓ States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all states of procedure in courts and tribunals
- ✓ States Parties agree that all contracts and other private instruments of any kind with a legal effect which is directed at restricting the legal capacity of women shall be deemed null and void
- ✓ States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile.

3.3.2 Dublin Principles and Agenda 21

Principle No. 3 states that, “women play a central part in the provision, management and safeguarding of water

This pivotal role of women as providers and users of water and guardians of the living environment has seldom been reflected in institutional arrangements for the development and management of water resources. Acceptance and implementation of this principle requires positive policies to address women’s specific needs and to equip and empower women to participate at all levels in water resources programmes, including decision-making and implementation, in ways defined by them.

3.3.4 The Millennium Development Goals³¹

“In September 2000, Swaziland was among the 191 United Nations (UN) Member States to adopt the UN Millennium Development Goals (MDGs), an unprecedented international commitment to accelerate sustainable human development.

³¹Quotes from the Food Security and Agricultural Development Horizon 2015 Policy Document begin here, and are identified as those being in parentheses but not otherwise attributed.

MDG 3 calls upon member states to promote gender equality and empower women. To reach the MDGs, Swaziland introduced the SPEED programme to step up efforts towards poverty and hunger reduction. In pursuing the MDGs, SPEED should ultimately seek the elimination of hunger, poverty, and maternal and child malnutrition.

Table 3: Swaziland's Progress towards Achieving Millennium Development Goals

Millennium Development Goals	Will the Goal/Target Be Met?	State of Supportive Environment
1. Eradicate extreme poverty and hunger	Unlikely	Fair
2. Achieve universal primary education	Unlikely	Weak but Improving
3. Promote gender equality and empower women	Potentially	Weak but Improving
4. Reduce child mortality	Unlikely	Weak but Improving
5. Improve maternal health	Unlikely	Weak but Improving
6. Combat HIV/AIDS, malaria and other diseases	Unlikely	Fair
7. Ensure environmental sustainability	Unlikely	Weak but Improving
8. Develop a global partnership for development	Unlikely	Weak but Improving"

Source: Millennium Development Goals Country Report, December 2003

From the table above, MDG 3 has a potential to be met probably because of the commitment of government, NGOs and the international community to end gender based discrimination.

3.3.5 Convention on the Rights of Persons with Disability (CRPD)

The most important international instrument to guide national action to address disability and the situation of persons with disabilities is the UN Convention on the Rights of Persons with Disabilities (CRPD), adopted by the UN General Assembly in

2006 and ratified by an increasing number of countries including the majority of AU Member States. The purpose of the CRPD is to “promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity” (Article 1). The CRPD identifies persons with disabilities as including “those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others” (Article 1).

How does the CRPD address women and girls with disabilities?

- Given the size of the population of women and girls with disabilities, and given the multiple types of discrimination typically faced by women and girls with disabilities, the CRPD drafters felt it vital to include an article expressly dedicated to this important group. Article 6 is included with other articles of general application, meaning that its provisions should be taken into account in the interpretation and implementation of all other substantive obligations in the CRPD.
- Article 6 is relatively short in length, and adopts a principled approach, calling on States Parties to, for example, “take all appropriate measures to ensure the full development, advancement and empowerment of women.”
- In addition to Article 6, issues of particular relevance to women and girls with disabilities are addressed throughout various articles of the CRPD. For example, gender-based concerns are referenced in Article 3 (General principles), Article 16 (Freedom from exploitation, violence and abuse), Article 25 (Health), and Article 28 (Adequate standard of living and social protection).

Article 6 – Women with disabilities

1. States Parties recognize that women and girls with disabilities are subject to multiple discrimination, and in this regard shall take measures to ensure the full and equal enjoyment by them of all human rights and fundamental freedoms.
2. States Parties shall take all appropriate measures to ensure the full development, advancement and empowerment of women, for the purpose of guaranteeing them the exercise and enjoyment of the human rights and fundamental freedoms set out in the present Convention

3.3.6 Protocol on the African Charter on Human and Peoples Rights

On Elderly Women the 2003 Protocol on the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, Article 22 of which commits States to protecting older women from violence and abuse, whereby States Parties undertake to ensure the right of elderly women to freedom from violence, including sexual abuse, discrimination based on age and the right to be treated with dignity.

3.3.7 The Madrid Plan of Action

The Plan identifies research activities and national data collection and analysis for policy planning, monitoring and evaluation as one of the crucial elements of the national implementation process. At the international level, the exchange of researchers and research findings and data collection to support policy and programme development is listed in the Plan as one of the priorities for international cooperation on ageing.

Protecting rights

According to this Plan;

Combating discrimination based on age and promoting the dignity of older persons are fundamental to ensuring the respect that older persons deserve. Promoting and protecting all human rights and fundamental freedoms are important in order to achieve a society for all ages

.

Discrimination on the basis of age, which prevents full societal participation by older people, is a long - standing issue in virtually all societies. Older people are discriminated against in key development arenas, such as health, education, employment and access to other services. Older people's voices are too rarely heard in shaping policies and processes, including those that immediately affect them. Vulnerable older people could suffer unduly from neglect and abuse, particularly older women, whose right to inherit land and property are often threatened.

Widows are especially vulnerable and prone to violence, receiving few or none of the entitlements obtained by men, and in some instances, even lacking comparable status in the community and the family.

Facilitating participation

The Plan states that:

- ✓ Participation of older persons in different spheres of society is a crucial aspect in realizing their rights and an essential tool of their empowerment. A multi - faceted notion of older persons' participation includes, inter alia, their active involvement in implementation of policies that directly affect their wellbeing, sharing their knowledge and skills with younger generations and forming movements or associations that could help articulate their concerns and claim their rights. However, for many older persons around the world this goal has not been universally achieved.
- ✓ Greater involvement of the elderly in government and civil society initiatives in decision making such as the mobilization of older persons' groups to monitor the implementation of government policies and the governments to meet the objectives of the Madrid Plan of Action programmes on ageing, and the partnering of non - governmental organizations with governments to meet the objectives of the Madrid Plan of Action.

4. RECOMMENDATIONS AND AREAS OF ADVOCACY FOR THE GENDER CONSORTIUM

4.1 Recommendations:

4.1.1 The Elderly Women

This report made the following recommendations:

- Elimination of social and economic inequalities based on age, gender or any other ground, including linguistic barriers, to ensure that older persons have universal and equal access to healthcare.
- The provision of adequate information, training in caregiving skills, treatment, medical care and social support to older persons living with HIV/AIDS and their caregivers
- Support the collection, analysis and dissemination of HIV and AIDS surveillance data for people over 49 and disaggregate this data by age and sex.
- Recognition for older people's rights by calling for legislation and policies that reduce age discrimination and protect the rights of older women and men.
- Combating discrimination based on age and promoting the dignity of older persons are fundamental to ensuring the respect that older persons deserve. Promoting and protecting all human rights and fundamental freedoms are important in order to achieve a society for all ages.

- Dispel a number of myths in this area, given that these may undermine reform efforts and the adoption of age- friendly practices. For example, despite some statements that working capacity systematically deteriorates with age, many studies of employers and older workers vividly demonstrated that older and younger workers each have relative strengths and weaknesses and that they can contribute to the workforce. Likewise, there is little evidence to support the assertion that work intensification in existing jobs is exerting pressure to retire early, or that older workers are just “too tired” to carry on working. In fact, many older workers are fully capable and willing to carry on working if given more flexible working - time options.
- Sensitise the media and the business community on positive impact of a changing age structure and discourage media alarmist reports about the potentially negative impact of a changing age structures and growing number of older persons. Stories describing positive and active ageing, be it in the workplace or the community are lacking.
- Protect the rights of older persons is the core element of any policy related to ageing and the most important prerequisite of empowerment of older persons. There is a need to ensure that older persons are recognized and appreciated as valued and welcome members of society. The empowerment of older persons and the promotion of their full participation are declared the essential elements for active ageing.

4.1.2 Widows

- Review discriminatory practices including legislation on property rights for widows.
- Amend the intestate succession laws and creating one uniform inheritance law that applies equally to all Swazi instead of the existing discriminatory multi-law system.

- Criminalise the unlawful seizure of property by family members after the death of a spouse.

4.1.3 People with Disabilities

- Develop a gender responsive human resource development plan to influence affirmative action in employment and inclusion of people with disabilities in positions of power and decisions.
- Lobbying Government to enact laws protective of the rights of people with disabilities
- We must strive to ensure that women with disabilities have access to rehabilitation and other independent living services and assistive technology to enable them to maximize their well-being, independence and full participation in society.
- There is also an urgent need to educate society about the rights of women with disabilities as well as educate women with disabilities about their rights, because, knowledge is power. The rights contained in the Constitution run the risk of being toothless tigers - unless women are empowered to claim them and seek the appropriate redress in the event that rights have been violated.
- Ensure the right to development is critical for women with disabilities. It is important for both the individual as well as the collective. As a collective, women with disabilities must continue to fly the flag of equality until all women disabled or not enjoy their Human Rights, and can contribute to the development a culture of human rights premised on human dignity and respect.

- Promote the debate on political rights, social inclusion and citizenship and make an effort of finding effective ways to ensure that people with disabilities can participate in and contribute to society in all spheres of life.
- Encourage the use of sign language for full participation of people with disabilities in current affairs including the country's vision for 2022 and beyond

4.2 Advocacy Strategies

4.2.1 Developing a Lobbying Tool

Develop a lobbying tool for amendment of laws affecting women that is yet to be tested. Use of a model legislation in each area where change is required. It is therefore, recommended that model legislation be drafted in all critical areas of concern and used as a lobbying tool.

4.2.2 Mass Media Campaigns

Conduct mass media campaigns to disseminate the UN standard rules and Conventions (radio TV, newspapers, IEC materials etc) to fight against discrimination of widows, women with disabilities and the elderly women

1. Greater Involvement in the Development Agenda

We must insist that development cannot happen without us all. We need to ensure that the voices of disabled women, elderly women and widows are part of decision making. We must therefore engage with women's groups and form strategic alliances. A rights based approach to development requires a high level of participation. This participation must be active and independent. The slogan - "Nothing about us without us" rings in my mind.

4.2.3 Lobbying for Sign Language

Lobby MOE that sign language in schools should be compulsory, in early primary so that we can all be able to communicate. And for implementation of Inclusive education, relevant educational material and accessibility.

4.2.4 Facilitating Participation of Disadvantaged Women

Facilitate participation of older persons, widows and women with disability in different spheres of society as a crucial aspect in realizing their rights and an essential tool of their empowerment. A multi - faceted notion of older persons, widows and women with disability participation includes, inter alia, their active involvement in implementation of policies that directly affect their wellbeing, sharing their knowledge and skills with younger generations and forming movements or associations that could help articulate their concerns and claim their rights.

4.2.5 Proving Safe Spaces to Disadvantaged Women

It is therefore imperative that specific effort is made to provide safe spaces for women to discuss and strategise on how they can influence the national agenda regarding the place of women in Swaziland, their fundamental rights and how the country as it transitions can make women count. This will ensure women have a role in shaping household, community and national level decision making in socio-economic and political processes.

4.2.6 Adopting a Rights Based Approach

The rights-based approach to disability is founded on the premise that all persons are equal before the law and state parties signatories to international human rights instruments are obligated to respond to the basic and specific rights of individuals. The approach has many positive functional components such as full and equal participation by women with disabilities, widows and the elderly women; equality

and non-discrimination, and legal and administrative mechanism to enforce their rights. It is holistic, goes beyond other linear and piece-meal approaches that focus on input and output; rather the rights based approach recognizes societal and structural causes and focuses on processes and outcomes. Changes brought about by this approach will be sustainable and will promote other positive changes in norms and standards including new and innovative interventions.

4.2.7 Giving a Voice to the Voiceless

The Gender Consortium to ensure that women have the voice to begin to articulate their priorities and concerns. In this regard, the programme will again target women as primary beneficiaries by engaging them in facilitated discussions on different issues affecting their lives. These discussions will capture women's views which could be incorporated into the final document, possibly a Women's Charter.

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