

THE IMPACT OF THE MAPUTO PROTOCOL IN THE KINGDOM OF ESWATINI



*Simangele Mavundla**

1 Introduction

Since the last report on the impact of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) of 2016,¹ the Kingdom of Swaziland changed its name to the Kingdom of Eswatini.² According to the latest census, there are 1,093,238 people in the country, and women constitute 51 per cent of the population.³ However, according to the SADC Gender and Development Monitor of 2018, the total population mid-2018 was at 1,159,000, of which 56.2 per cent were women,

and 43.8 per cent were men.⁴ This puts the Population Annual Growth Rate from 2017 to mid-2018 at 0.7 per cent.⁵ The SADC Monitor projects that adult literacy in Eswatini in 2018 was at 88.54 per cent for women and 88.29 per cent among men.⁶ The 2019 Human Development Report reveals that the HIV prevalence rate among adults was at 27.2 per cent in the Kingdom of Eswatini, and women were the most affected by the virus.⁷

Even though Eswatini is categorised as a lower-middle-income country, there are prevailing problems in the development situation which are intertwined with development challenges. Some of the challenges the country faces include slow and non-inclusive economic growth, poverty, food and nutrition insecurity, weak social protection policy environment, inadequate social services, climate change-related shocks, and the

* LLB (UNESWA), LLM (HRDA) (UP), PhD Law (UKZN); Lecturer and Post-doctoral Researcher, UKZN.

1 D Dlamini & S Hlatshwayo 'The impact of the African Charter and the Maputo Protocol in Swaziland' in VO Ayeni (ed) *The impact of the African Charter and the Maputo Protocol in selected African states* (2016) 233-248.

2 On 19 April 2018, the King of Swaziland changed the name of the country from the Kingdom of Swaziland to Kingdom of Eswatini through Legal Notice 80 of 2018. The Notice stipulates in section 3 that 'reference in any written law or international agreement or legal document to Swaziland should be read and construed as reference to Eswatini'.

3 Central Statistical Office (CSO) 'The 2017 population and housing census preliminary results' (2017) 10.

4 SADC Gender and Development Monitor of 2018, 1.

5 As above.

6 As above.

7 United Nations Development Programme (UNDP) 'Human Development Report 2019 Beyond income, beyond averages, beyond today: Inequalities in human development in the 21st century' (2019) 38.

high burden of HIV and non-communicable diseases.⁸

Other challenges that the country faces include the steady increase of the unemployment rates, the rates being higher among females in comparison to their male counterparts at 24.8 per cent and at 21.2 per cent respectively in 2016.⁹

The country has been forced to grapple with new challenges such as the Coronavirus. With the advent of the Coronavirus aka COVID-19 restrictions and lockdown, women and children were the most affected. The COVID-19 situation which encompassed a new normal of social distancing and nationwide lockdown, showed how vulnerable women are to gender-based violence (GBV) as incidences spiked considerably during this period.

Women were to a larger extent left out at the decision-making table and as such women in informal enterprises such as street vending and cross-border hawking were cut off from economic activity without being consulted or informed prior. Healthwise, women and children who needed to access hospitals could not do so, as public transportation was brought to a standstill. Since the relaxation of the restrictions and lockdown levels women had to adjust and pick up their business interests in order to make ends meet.

The situation of women's rights in the country has been improving at a slow pace considering that the Kingdom of Eswatini adopted its Constitution in 2005 as the supreme law of the land.

Despite the Constitution being founded on principles of equality and non-discrimination, the process of reviewing, amending and repealing laws that are discriminatory to women is still ongoing.

There have been a number of court cases that have successfully challenged laws and practices that continue to undermine women's emancipation. Some of the cases were discussed in the Impact of the Maputo Protocol 2016 Report, hence this chapter discusses the latest case of *Sacolo v Sacolo* of 2019.¹⁰ This indicates that there is an urgent need to align existing laws with the Constitution and international and regional women's rights instruments. This further shows that, there is a great need for the country to adopt a national law reform committee or commission to systematically embark on the alignment of all laws with the provisions of the Constitution.

2 Ratification of the Maputo Protocol

The Maputo Protocol was ratified by Eswatini on 5 October 2012 without any reservations. The Deputy Prime Minister's Office houses the Department on gender issues as well as all other issues affecting vulnerable groups in the country (such as women, children, persons with disability) and therefore was instrumental in the lobbying of Parliament to domesticate the Maputo protocol once the country ratified it. No official records were found in the course of this research suggesting how the process of ratification was carried out by parliament. However, the interview with Mr

8 See the Kingdom of Eswatini's country progress report on the implementation of the Beijing Declaration and Platform for Action of May (2019) 16.

9 Integrated Labour force surveys 2007-2016.

10 *Makhosazane Eunice Sacolo (nee Dlamini) and Women and Law – Eswatini v Jukhi Justice Sacolo and Others* Unreported: (1403/16) 2019 SZHC (166).

Masuku at the Deputy Prime Minister's Office revealed that his office works hand in hand with civil society organisations (CSOs) in the country and abroad, hence, it can be said that CSOs are part and parcel of actors in the mandate of ensuring gender equality.

It must be noted that the Ministry of Justice and Constitutional Affairs in collaboration with the Deputy Prime Minister's Office are the two organs of state responsible for the implementation of the Maputo Protocol, with the Ministry of Justice responsible for promulgating laws that domesticate the Protocol, while the Deputy Prime Minister's Office is responsible for policy implementation aspects of the Maputo Protocol. The two are conversant with the provisions of the Maputo Protocol, having written a state report on the implementation of the African Charter on Human and Peoples' Rights (African Charter) and the Maputo Protocol in 2019-2020. Also, the Government focal person who liaises with the African Commission on Human and Peoples' Rights (African Commission) through the Swazi Embassy in Ethiopia is located at the Ministry of Justice, and Constitutional Affairs.

3 Domestication

There are two schools of thought when it comes to the reception of treaties into national law, the monist school and the dualist school.¹¹ The exponents of the monist school, Hans Kelsen, Vedross and Scelle, maintain that international and domestic law must be regarded as a single conception of law, and conse-

quently, that municipal courts are obliged to apply rules of international law directly without the need for any act of adoption by the courts of transformation into national legislation.¹² Dualists, on the other hand, see international law and municipal law as entirely different systems of law, and as such, international law can only be applied by domestic courts if adopted or transformed into domestic law through legislation.¹³

The Constitution of the Kingdom of Eswatini is the supreme law and is the primary determinant of human rights reception into municipal law in the Kingdom.¹⁴ For an international convention such as the Maputo Protocol to apply as part of the domestic law of Eswatini, that convention must be ratified and domesticated. Section 238 of the Constitution establishes the primary procedure for the incorporation of international law into domestic law. Section 238(2) provides

An international agreement executed by or under the authority of the Government shall be subject to ratification and become binding on the government by (a) an Act of Parliament; or (b) a resolution of at least two-thirds of the members at a joint sitting of the two Chambers of Parliament.

The provisions of sub-section 2 do not apply where the agreement is of a technical, administrative, or executive nature or is an agreement which does

11 This debate is covered in JG Starke 'Monism and dualism in the theory of international law' (1936) 12 *BYIL* 66 and C Roodt 'National law and treaties' (1987-8) *SAYIL* 72.

12 See Spaak, Torben, Kelsen 'Monism and dualism' in M Novakovic (ed) *Basic concepts of public international law: Monism & dualism* (2013) at 322-343, available at SSRN: <https://ssrn.com/abstract=2231530>

13 See H Lauterpacht 'International law and municipal law' in E Lauterpacht (ed) *International law: Being the collected papers of Hersch Lauterpacht* (1970) 27.

14 This is confirmed in section 2(1) of the Constitution which states that 'This Constitution is the supreme law of Swaziland and if any other law is inconsistent with this Constitution that other law shall, to the extent of the inconsistency be void'.

not require ratification or accession. Sub-section 4 provides that ‘Unless it is self-executing, an international agreement becomes law in Swaziland only when enacted into law by Parliament.’

This means that parliament must pass a law (an Act of Parliament) incorporating the international convention. The international convention will then become part of national law. In this case, it is presumed that the Maputo Protocol is domesticated by the Constitution of Eswatini of 2005 as well as, by the Sexual Offences and Domestic Violence (SODV) Act of 2018, including the Gender policy of 2010.

4 Legislative and policy reform

One of the most significant law reforms that the country has carried out since the last report of 2016 has been the enactment of the SODV Act of 2018, which aims to protect ‘women from *all forms of sexual violence and domestic violence*’.¹⁵ The SODV Act 2018 is relatively new and as such a recently enacted law which deals with Violence against women (VAW) in Eswatini head-on. It criminalises all forms of violence, such as domestic, Intimate partner violence (IPV), and sexual violence.

The notable feature of this Act is that it reviews, and reforms legislation passed before it, by providing a normative framework that is aimed at curbing domestic violence and sexual offences holistically. The Act came about as a response to public outcry over the prevalence of domestic and sexual violence offences against women and children which was viewed as a contributing factor into the high prevalence of HIV

among adolescent girls and young women in the Kingdom.¹⁶

The SODV Act expands the definition of violence in line with international norms and defines it as any act that physically, sexually, emotionally, economically, verbally or psychologically abuses another person, including acts of intimidation, harassment, unlawful stalking or damage to property and controlling abusive behaviour.¹⁷ The Act is revolutionary by nature in that it criminalises sexual harassment, stalking (acts which predominately lead to VAW) and by striking down the defence available to married men in a charge of marital rape. It is the first law to make provisions for protection orders in cases of domestic violence,¹⁸ and the establishment of domestic violence courts at the magistrate’s court level.¹⁹ It removes the common law defence of irrevocable sexual consent by the wife to conjugal rights once married, despite not criminalising marital rape. The Act provides as follows: ‘A marital or other relationship, previous or existing, shall not provide a defence to any offence under this Act’.²⁰

The judicial interpretation of the Act will determine the extent to which VAW is tackled in Eswatini, thus providing access to justice to victims of violence. The SODV Act of 2018 places an obligation on police and prosecutors to ensure that victims of violence are referred to support services and given information about access to post-exposure prophylaxis (PEP) intervention as

15 Emphasis added.

16 E Hlanze et al *Customary practices, the laws, and risky behaviours – a concern for the increased prevalence and vulnerability to HIV and AIDS among women and the girl child: a rights-based approach* (2008) 155.

17 Sec 77(1) of the SODV Act of 2018.

18 Secs 78-103 of the SODV Act of 2018.

19 Sec 126 of the SODV Act of 2018.

20 Sec 151 of the SODV Act of 2018.

part of post-rape care services.²¹ It also provides for protection orders as remedial measures in cases where a person experiences domestic violence.²²

The progressive SODV Act²³ is a positive step towards combating violence against HIV-positive women provided that it is fully implemented. The Act provides for criminal prosecution of offenders as well as civil protection orders. It provides for the 'protection'²⁴ of women, regardless of HIV status, from violence, and sexual offences, offering the hope of some protection against the perpetuation of violence by intimate partners and families.

Another significant legislative reform that the country adopted in 2018, is the promulgation of the Persons with Disability Act (PDA) 2018. It provides that persons with disability have a right to access to health, assistance, public facilities, amenities and services and buildings, education, transport facilities, employment, recreation, etc. on an equal basis with others. There is a Disability Policy that has been adopted that seeks to guide the implementation of government programmes in relation to disability in the country. For instance, National Disability Action Plan, 2018–2022 ensures that national policies and development programmes mainstream disability in all stages of planning, implementation, and monitoring of the programmes. Also, it aims at promoting and protecting the fundamental rights of persons with disabilities as well as ensuring that they are empowered to exercise those rights and enjoy equal participation in the life of the

community in which they live, without discrimination of any kind based on their disability.²⁵

Gauging whether a study was undertaken before the Maputo Protocol was ratified, interviews with officials at the Ministry of Justice and Constitutional Affairs as well as at the Deputy Prime Minister's Office indicated that none of them were aware of the study,²⁶ whereas when it comes to resources allocation, the Gender Coordinating and Family Issues Department, reported that there had not been any changes to the allocation of their resources.²⁷

5 Court judgments

In the meanwhile, some women brought cases that aimed at protecting women from violence and gender inequality, including the recent case of *Sacolo v Sacolo*,²⁸ in which the Eswatini High Court found the principle of marital power of husband to be 'discriminatory against married women and offending their constitutional right to equality before the law'.²⁹ In this case, the applicant's heads of arguments refer to international treaties and conventions. The heads of arguments explicitly referred to the Maputo Protocol and is captured as follows: '... the Protocol on the Rights of Women guarantee[s] the right of women in Swaziland to equality in

21 Sec 72 of the SODV Act of 2018.

22 Sec 100 of the SODV Act of 2018.

23 Emphasis added.

24 Emphasis added.

25 See National Disability Action Plan, 2015 retrieved from <http://www.gov.sz/nw17/images/dpm/social/Swazi%20National%20Disability%20Plan%20of%20Action%20FINAL%20PRINTING%20October%20%20Final.pdf>

26 These were members of the National Mechanism for Reporting and Follow-up (NMRF) based at the Ministry of Justice and Constitutional Affairs on 15 October 2020 and 20 October 2020 in Mbabane.

27 As above.

28 *Makhosazane Eunice Sacolo (nee Dlamini) and Women and Law – Eswatini v Jukhi Justice Sacolo and Others*, Unreported (1403/16) 2019 SZHC (166).

29 Emphasis added.

marriage and equality before the law with men without regard to their gender'.³⁰

However, the judgment does not make any reference to the Maputo Protocol. The court acknowledged that the applicant's argument was reliant on international treaties and convention.³¹ The court concluded that there was no need to resort to international law when domestic law was sufficient in resolving the issue in question.³²

In this case, the parties were husband and wife and married in community of property in terms of the Marriage Act 67 of 1964. The facts were that Mrs Sacolo sought to terminate the entire concept of marital power which allowed husbands the sole discretion to administer matrimonial property. The suit emanated from Mrs Sacolo's frustration after she bought ten cows which were registered in her husband's name since she was married in community of property and the husband was the administrator of the joint estate. He then sold some of the animals without informing the wife and without sharing the proceeds. The husband had frequently refused her requests to sell part of the livestock she had bought to meet the children's academic needs as well as the family's needs. Mr Sacolo refused the requests despite having sold a number of the beasts even after he had moved out of the matrimonial home.

She sought the following orders:

- Declaring the common law doctrine of marital power to be unconstitutional in so far as it was inconsistent with Section 18, 20 and 28 of the Constitution of Eswatini Act 1 of 2005.

30 Applicants Heads of Arguments, para 10.2.

31 The *Sacolo* case (n 28) para 29.

32 As above.

- Declaring that section 24 and 25 of the Marriage Act of 1964 are unconstitutional and invalid in that they were inconsistent with section 20 and 28 of the Constitution of Eswatini.
- Declaring that spouses married in terms of the Marriage Act of 1964 and in community of property have equal capacity to administer marital property.
- That the first applicant was authorised to administer the marital assets accruing to her marriage with the first respondent.

The Court referred to two landmark cases (cited below) as providing the 'much-needed watershed'³³ regarding women's rights in Eswatini. The Court observed that these cases dealt with specific instances and did not address the main challenge, which was marital power vested in men. The Court further adverted to the prejudice endured by women which included not being able to deal with the marital property despite contributing to the common pool of assets. The Court acknowledged that this practice had been abused over the years and was a continuing source of tension in marital relations.

The Court decided that it 'was not fair that women must put in place certain measures in order to attain equality',³⁴ especially since husbands did not have to take this legal step to preserve their right to equality. The Court ruled that such practices violated the right to dignity of women which embraced 'human value and the requirement to respect others'. Mlangeni further asserted:³⁵

[L]ife without dignity is like a sound which cannot be heard. Dignity speaks ... It is a

33 The *Sacolo* case (n 28) para 10.

34 The *Sacolo* case (n 28) para 15.

35 The *Sacolo* case (n 28) para 16. The Judge quoted J Leburu in *Letsweletse Motshidie Mang v Attorney General*, (unreported case) MAHGB -000591-16, 11 June 2019.

combination of thought and feeling ... It has to be borne in mind that dignity of all is a sacrosanct human right and sans dignity, human life loses its substantial meaning.

The Court made the following orders:

- (1) Common law marital power is hereby declared unconstitutional as it is discriminatory against married women.
- (2) Spouses married in terms of The Marriage Act 1964 and in community of property have equal capacity and authority to administer marital property.

Before the 2019 decision, two cases had been brought before the Eswatini High Court, challenging certain aspects of the principle of marital power.³⁶ The decisions in these cases had chipped away at the marital power of the husband in respect of standing before courts unassisted (*locus standi*) and women's rights to property registration, paving the way for the *Sacolo* decision. These are the *Sihlongonyane v Sihlongonyane*³⁷ case and the case of *Attorney-General v Aphane*.³⁸ These cases were extensively discussed in the 2016 report.

6 Awareness and use by lawyers and judges

As correctly reported in the 2016 volume of the Impact of the Maputo Protocol, Eswatini uses a dualist system, which requires the domestication of international instruments before they can be invoked in domestic courts.³⁹

In the case of *Sacolo v Sacolo*, the applicant's lawyer referred to the Maputo Protocol, and the judge did not consider it. It looks like there is an erroneous belief on the part of judges in the Kingdom that international conventions and treaties even though domesticated, are not part of domestic or municipal law, therefore should be evoked when there are no domestic laws addressing the point in issue.

However, there are many avenues that are available which should enable lawyers and judges in the Kingdom to have sufficient knowledge and understanding of human rights in general. The University of Eswatini is a custodian of the law degree in the entire country and the syllabus covers human rights at both international, regional, and sub-regional levels.

7 Awareness and use by civil society organisation

CSOs in Eswatini are familiar with the African Charter and have taken advantage of the African Human Rights system including engaging with the African Commission. The Maputo Protocol is quite known by CSOs, however, interviews revealed that organisations do not set out to specifically mention that their interventions are under the Protocol. Instead, they implement provisions of the Maputo Protocol under the blanket name of international and regional conventions.⁴⁰ One of the reasons NGOs have lagged behind in engaging the government on the Maputo Protocol is the fact that Eswatini has been non-compliant with article 62 of the African Charter, and article 26(1) of the Maputo Protocol and as such the country submitted its initial report in year 2000

36 See *The Attorney General v Mary Joyce Doo Aphane*, unreported civil appeal case 12/2010 and *Nombuyiselo Sihlongonyane v Mholi Sihlongonyane* unreported High Court case No 470/2013 A.

37 As above.

38 *Attorney General v Mary Joyce Doo Aphane* Unreported Civil Appeal case 12/2010.

39 Dlamini & Hlatshwayo (n 1).

40 As above.

and then omitted to report up until year 2020. This state of affairs can be seen in the combined 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, 8th and 9th Eswatini State Periodic Report under the African Charter and the initial report under the Maputo Protocol deposited with the African Commission in 2020.

8 Higher education and academic writing

The country through the University of Eswatini Law Department offers courses to law students designed to protect Human and Peoples' Rights and respect for the rule of law. Courses offered by the University that advance the subject of human rights and respect for rule of law are amongst others: Constitutional law, Public International Law, Human Rights Law, International Organisations, as well as introduction to Legal systems and methods.

Since the last 2016 writeup, very few articles touching on the Maputo Protocol were written by Eswatini's scholars. For instance, an article was published by Mavundla and others in the 2020 *Potchefstroom Electronic Journal*.⁴¹ The article heavily relies on the Maputo protocol to enumerate women's rights and finds Eswatini government's obligation to protect women from GBV wanting.⁴²

There has been a key milestone in relation to legal aid as the university offers free legal services to indigent members of the community who require legal assistance. The establishment of a legal aid clinic at the University of

Eswatini has been a novel intervention which sees law students under the supervision of lecturers and practising attorneys provide legal aid services to non-paying members of the society, focusing on the vulnerable and minority groups such as children and women. The Legal Aid Clinic was set up through support from the United Nations Joint Gender Programme, the Ministry of Justice and Constitutional Affairs and the University of Eswatini Law Department.

9 National human rights institutions

The Commission on Human Rights and Public Administration is mandated by the Constitution to promote and protect human and peoples' rights. The mandate of the Commission is to, among other things, sensitise communities on human rights, and investigate complaints concerning alleged violations of fundamental rights and freedoms enshrined in the Constitution. The Commission is a creature of statute and is said to be independent.⁴³ However, it is totally dependent on government for funding.

The Commission for Human Rights and Public Administration has been criticised for its lack of visibility in the country and is perceived to have taken a back seat in dealing with human rights issues in the country.⁴⁴ However, the Commission has been instrumental in assisting the state in drafting state reports. For instance, the Commission

41 SD Mavundla and others 'Marital Power Finally Obliterated: The History of the Abolition of the Marital Power in Civil Marriages in Eswatini' *PER/PELJ* 2020 (23).

42 Mavundla (n 41) 8-9.

43 The 2005 Constitution of eSwatini established the Commission on Human Rights and Public Administration (CHRP).

44 The 2005 Constitution of eSwatini (n 43). According to the state report to the UPR process of 2021, the Commission is raising awareness on human rights by running a radio program through the National Radio Station.

played a pivotal role in the state report to the African Commission submitted in 2020. The Human Rights Commission is part of the team of officials known as the National Mechanism for Report Writing and Follow-up (NMRF) which was established sometime in 2019 with the mandate to draft state reports and to follow up.⁴⁵ The Commission normally forms part of the government delegation when a state report on human rights is to be discussed by a treaty body.

10 State reporting

Since the publication of the 2016 Report on the Impact of the Maputo Protocol, Eswatini in 2019 embarked on drafting the first state report on the implementation of the Maputo Protocol with technical assistance and financial support from the University of Pretoria's Centre for Human Rights. The final report has been submitted to the African Commission by the Government of Eswatini. As stated above, in 2019, the Government of Eswatini established the NMRF – a body of officials from different ministries that has the sole mandate to write state reports. CSOs participate in the drafting process only by invitation from government. The invitation is extended as a matter of practice and it is not every organisation that is invited. CSOs again through invitations, participate at validation meetings of the drafted state report. As things stand, there is a need to ensure that CSOs are made part of the NMRF so as to avoid a situation where an invitation get lost or is never sent or issued.

45 The Human Rights Commission has taken part in the drafting of the state report on the implementation of the African Charter and the Maputo Protocol, an exercise which took place in 2019 and the state report has been submitted to the African Commission on Human and Peoples' Rights.

11 Relationship with the African Commission

Since the last report of 2016 on the Impact of the Maputo Protocol in Eswatini, two Commissioners of the African Commission had a joint promotion mission to the Kingdom of Eswatini.⁴⁶ The two commissioners were Pansy Tlakula and Solomon Dersso.⁴⁷ Their mission was from 7 to 11 March 2016. After meeting with various stakeholders, including the Government,⁴⁸ the Commissioners raised areas of concern on the way the country was discharging its human rights mandate of promoting, protecting and fulfilment of human rights.⁴⁹ The commissioners noted the failure by the Eswatini government to domesticate ratified regional and international instruments, including the Maputo Protocol; as well as the failure by Eswatini to submit periodic reports in fulfilment of her obligations under the African Charter and the Maputo Protocol.⁵⁰

The commissioners' report on the promotion mission visit contains elaborate recommendations addressed to the state party. The commissioners recommended that Eswatini domesticate all regional and international human rights, in particular the African Charter and the Maputo Protocol which were ratified by her, as well as, to submit periodic reports in fulfilment of her obligations

46 The first promotion Mission to Eswatini was done in 2006 by Commissioner Pansy Tlakula, and the details of the mission were covered in the 2016 Report on the Impact of the Maputo Protocol in Eswatini.

47 African Commission on Human and Peoples' Rights – Report of the joint promotion mission to the Kingdom of Swaziland by Commissioner Pansy Tlakula and Commissioner Solomon Dersso 7-11 March 2016.

48 As above.

49 As above para 200.

50 As above para 200(iii).

under the African Charter and the Maputo Protocol.⁵¹

The report further recommends that the Eswatini government urgently expedite a comprehensive law reform process, in order to align all existing laws with the Constitution, and in particular with the Bill of Rights, amongst other recommendations.⁵²

12 Factors that may impede or enhance the impact of the Maputo Protocol

The country does not have a Law Reform Commission to review all laws that have implications on the rights of women (which can then review, and then recommend that certain laws be repealed, amended or enacted). However, according to the state, in 2020, 'Eswatini established a Law Reform Unit to systematically review and reform laws of the country so as to comply with international norms and standards as well as the Constitution'.⁵³ The state report further reveals that the Law Reform Unit will at a later stage cascade and develop into a Law Reform Commission.⁵⁴

The failure to set a fully-fledged Law Reform Commission in line with the provisions of the Constitution delayed the process of fast-tracking the review of many laws that have a bearing on the improvement of the status of women in society; for instance, laws such as the Matrimonial Property Bill, Administration of Estates Bill, drafting

of the Land Policy and the review of the current citizenship Bill to promote gender equality.

One of the biggest challenges to the implementation of laws and policies that would ensure the enfranchisement of women in the country is the absence of the provision of budgetary commitments that will aid the implementation aspect of those laws and policies. The budget would ensure that the justice enforcement sector is trained and made aware of their role in guaranteeing that women's issues receive all attention they deserve instead of being dismissed. This includes the courts, police, lawyers and government officials. Insufficient budgets also contribute to a lack of awareness of main laws and policies on women's freedom to the general populace as the laws would end up not being translated to a language understood by the locals.

Women and girls in Eswatini still face a number of challenges as they bear the brunt of poverty, unemployment, inequality and are the most affected by HIV/AIDS in the country. The challenges face by the women are attached to the challenges that the country is facing at large. For instance, the Kingdom is facing a stagnant economic growth which has an impact on job creation, thus resulting in unemployment.⁵⁵ In an effort to alleviate this problem, the country has developed a Strategic Road Map 2018-2023, which identifies sectors of the economy that will have an impact on job creation amongst priorities.

51 The Constitution of eSwatini (n 43) para 202(i).

52 The Constitution of eSwatini (n 43) para 202(iv).

53 Eswatini National Report on the Universal Periodic Review – 3rd Cycle (draft report July 2021).

54 As above.

55 UNFPA Eswatini Annual Report 2019. See also the Eswatini National Budget Brief as reported by UNICEF for the period 2018/2019 3 which reported that Eswatini economic growth declined in real terms from 7.3 per cent in fiscal year 2015/16 to -0.7 per cent in 2016/17.

It must be noted that women and girls face various intersecting factors which increase their vulnerability to various forms of oppression. As a result, the Kingdom of Eswatini has made efforts to put in place a number of measures to address some of these challenges. For instance, to address these elements, CSOs and government departments such as Gender Coordination and Family Issues under DPMO have conducted consultations and sensitisation workshops in different communities on gender equality and women's rights.⁵⁶ In addition, with the support of development partners, studies have been carried out in the country on the drivers of violence against women and children.⁵⁷

Another thorny issue is that of GBV or violence against women and children. One of the biggest drivers of GBV in the country is harmful traditional and cultural norms which limit women's ability to enjoy the freedoms enshrined in the Constitution fully.⁵⁸ Such practices relegate women to minority status, thereby increasing women's vulnerability to violence. Furthermore, Eswatini is a country with high rates of HIV – there is a strong correlation between HIV/AIDS and GBV.

Despite the above-mentioned efforts, violence continues to escalate at an alarming rate. Intensifying efforts in addressing this scourge is necessary; recommendations include the expansion of services to hard-to-reach areas and allocating necessary budgets to ensure

that these establishments function optimally.

Finally, the issue of women participation in decision making positions as well as representation still is lagging behind despite the ratification of the Maputo Protocol in 2012. It is stated that barriers that hinder women's ability to be elected or appointed into decision making positions (politically) are patriarchy, economic disadvantages, social stereotypes, harmful cultural norms (such as mourning)⁵⁹ and socio-political perceptions around women's leadership.⁶⁰

The Kingdom of Eswatini currently has no programmes in place to tackle cultural and economic barriers that prevent women from equal participation and representation. According to WILSA, Eswatini's Baseline Survey 2018 on 'Breaking barriers: Enhancing Swazi women's participation and representation in decision making' barriers on women participation and inclusion include gender stereotypes, cultural and traditional beliefs, restrictions based on educational qualifications, and lack of preparation for political activity. The government has acknowledged in state reports that barriers still exist that hinder women's ability to be elected or appointed into decision making positions and include patriarchy, economic disadvantages, social stereotypes, and socio-political perceptions around women's leadership.⁶¹ A major obstacle for women was and continues to be financing for campaigns due to their

56 See the Eswatini National Gender Policy of 2010.

57 See for instance the UNICEF Study on Violence Against Children in Eswatini 2007.

58 Women and Law in Southern Africa Multiple Jeopardy: Domestic Violence and Women's Search for Justice in Swaziland (2001) 33-107.

59 It must be noted that during the mourning period according to Eswatini culture, widows are forbidden to be in public spaces such as Chief's residence and/or King's residence, yet elections begin at chieftdom levels.

60 Barriers to women's political participation 2018 (WILSA) Report.

61 UPR 2021.

underrepresentation in the economic sphere.

In conclusion, there is still a lot that needs to happen in order for the women of Eswatini to fully enjoy the rights and freedoms enunciated in the Maputo Protocol. For starters, there is a great need for the laws of the country to be aligned with human rights norms and for the government to be committed into promoting, respecting, and fulfilling women's rights. Women have a right to live in a country where they are protected from GBV, have a say on how they are governed and economically empowered. These attributes will ensure that women and men in the country live in harmony as equal partners. It will be then that it can be said that the Maputo Protocol has had a positive impact in the lives of women in Eswatini.