

FOLK LAW IS THE CULPRIT:

WOMEN'S 'NON-RIGHTS' IN SWAZILAND

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1. Introduction

Swaziland is a small land-locked country about the size of Hawaii, bounded on the North, South and West by the Republic of South Africa and on the East by the Peoples' Republic of Mozambique. Its population is a little over seven hundred thousand, predominantly ethnic Swazis. It is thus one of the few countries of the African continent that could be called a 'one-tribe country'. Therefore it has escaped many of the problems arising from tribal pluralism that characterise the socio-legal situation in most African countries after independence.

The history and formation of 'modern' Swaziland may be dated from the early 19th century when, by a series of conquests and alliances, compromises and assimilations, the Swazis, led by the Dlamini clan, secured dominance over the original inhabitants. The head of the Dlamini clan, referred to as the *Ingwenyama*, is king of the Swazis and this position continues to this day (Bonner 1983: 27-46; Kuper 1963: 1-15).

Further expansion of the Swazi state was aborted by the general scramble for land both by other African ethnic groups and European adventurers in search of land. The activities of the latter, mainly British and descendants of Dutch settlers (later called 'Boeren') led to what has been described as the 'paper conquest' by which through a series of machinations, trickery and sometimes outright blackmail, the Swazis through their king gave away virtually their whole land to the white adventurers, in the form of concession grants over land and minerals (Kuper 1963: 9-13). Simmering rivalries between the

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British and Dutch descendants led to the 'Boer War' after which, the Boers having been defeated, the British reluctantly annexed the Swazi kingdom in 1903. In 1907 an attempt was made to clarify the confusion over land rights. This resulted in one third of the country, called Swazi Nation land, being set aside for the exclusive use of the Swazis. The rest of the country, called Title Deed land, was available for ownership by the settler community (Concessions Partition Act, no. 28, 1907). Today the latter comprises what is generally known as Crown or Government land and Private Tenure land, both being governed by the Common Law. Swazi Nation land is vested in the *Ngwenyama* who holds it in trust for the whole Swazi nation. It is governed by customary law and individual portions or parcels are allocated by the various chiefs acting for the King. Swazis never liked this state of affairs and their protestations led to a court case which was eventually lost in the Privy Council in England, the highest court of Appeal for all British colonial territories. Not content with the court decision the Swazis started a process whereby repurchase of the land held by white settlers with funds contributed by the Swazis themselves has continued to this day (Takirambudde 1981: 182). Current law makes it almost obligatory that a Swazi have the first option to purchase in a proposed sale of land (see Land Speculations Act, no. 8, 1972).

Swaziland achieved political independence from Britain on September 6, 1968. A modern British or Westminster-style parliamentary democracy was envisaged for the country and grafted onto an essentially tribal system which was very much alive (Marvin 1973). After some disagreements, the long-reigning King who had led the country to independence, Sobhuza II, abolished parliament in 1973 and banned party politics. The proclamation that abolished parliament (Proclamation to the Nation, April 12, 1973) invested the King with executive and legislative powers and although parliament was later revived (Establishment of the Parliament of Swaziland Order no. 23, 1978), it became a radically altered institution. Its members are not chosen by direct elections but by an electoral college whose membership is elected from district constituencies which are essentially traditional administrative sections of the country called *Tinkhundla* (A.G. Marwick 1973: 58). A picture of the present-day structure may be obtained from the following description by Nhlapo (1987: 38):

The Prime Minister and Cabinet, appointed by the king from among members of Parliament, head a western-style bureaucracy and have their Ministries' budgets and legislative programmes approved by Parliament. At the same time, Swazi traditional

institutions (which have been systematically strengthened since 1968) continue to flourish. The strongest of these, the *Libandla* (theoretically comprising all Swazi male adults), is the traditional 'Parliament' and meets regularly at the Royal Kraal to discuss national matters.

As a legacy from the colonial era which imposed a western legal system on an indigenous one without abolishing the latter, Swaziland's court structure and legal system share the dualism that is characteristic of most post-colonial Africa (Armstrong, ed., 1987: 221; Nhlapo 1982; Mlangeni 1985.). For analytic purposes we may consider the legal system to consist of the customary law and the general law. The customary law is roughly the folk law, the law which has evolved with the Swazi people and which they have always applied to their own affairs. The general law was imposed by the colonial regime and comprises Roman Dutch common law and statutes (Nhlapo 1982: n.17).

There is a difference in the application of the two systems. The general law applies to everyone in Swaziland; customary law applies only to people who are ethnically Swazi (Armstrong & Nhlapo 1985). There is also some dualism in the administration of the law. While the general law is applied by the magistrate's courts and the High Court, the customary law is applied by the customary courts called Swazi National Courts (Nhlapo 1982: 37). Such a repertoire of laws and courts gives rise to many problems in the sphere of internal conflicts of law, but that is not the focus of our inquiry here (compare Nhlapo 1982: 66).

In concluding this short introduction it is important to note that membership of the Swazi state is linked with allegiance and loyalty to the royal family. Nhlapo (1982: 38) remarks:

The diplomatic style of conquest and assimilation employed [in creating the Swazi state] forged a state in which allegiance to the royal family became the basis for membership. This personal loyalty to the hereditary leadership continues to be the single most important force in the maintenance of Swazi solidarity and the preservation of traditional values.

This loyalty is regularly demonstrated by people working the royal fields. It is not an uncommon sight today to behold a Swazi man dressed in full traditional costume journeying on foot for miles and headed for the King's royal village because he has been summoned to

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plant or weed the King's field as part of his traditional duty to the King.¹

2. Women's 'non-rights': the problem in perspective

The Swazis argued in a petition of 1932² that:

The high position which the Queen holds, has greatly helped to raise the status of other Swazi women. The laws and customs of the Swazis provide that every *kraal* shall be under the joint control of mother and son.... The mother's hut is the chief hut in every *kraal*.... All matters of importance must be referred to her and must be discussed in her great hut, *indlukhulu* as it is called.... The Swazi mother takes a higher status and exercises greater responsibilities than her sisters amongst the other tribes.

More recently, at the 1985 Nairobi U.N. Conference on Women, the Swazi delegation lauded themselves when they stated:

In Swaziland great strides have been made within the decade in this regard with reference to family law in general, the end results being that women have become conscious of their rights. One prominent example of such rights is the inherent right of Swazi women to influence all the major decisions in the family. There could not be a better manner of showing this other than that our beloved Queen Regent is the Head of State.³

1 On such occasions, even though the King may provide some presents of locally-brewed beer and meat, the workers are required to provide their own food even if they have come from the opposite end of the country (B.A. Marwick 1966: 180; Kuper 1963: 43 n.5). Quite recently, on April 16, 1988, people turned up in large numbers for the harvesting of the royal fields (see *The Times of Swaziland*, Monday April 18, 1988, p. 1 : 'Well Done, Mswati Tells the Regiments'-Mswati being the reigning King).

2 See 'Petition of the Swazi tribes of Eastern Transvaal to the Union Parliament, March 1932,' in A.G. Marwick 1973.

3 'Statement of the Swaziland Delegation to U.N. Women's Conference to Appraise, Review the Goals, Achievements and Obstacles Encountered by Women During the U.N. Decade for Women, 15 to 26 July, 1985, Nairobi, Kenya.' Social Science Research Unit (S.S.R.U.),

It is understandable that one finds such an ideal representation of women's position in Swaziland in what are essentially political statements. Reality is quite different. A.G. Marwick, the source of the first statement quoted above, remarks that "All the effective political power is, nonetheless, in the hands of the males." (A.G. Marwick 1973: 65) And while it is not clear who sent the petition of 1932 to the South African Union Parliament, it is almost a cinch that the party was all male. Anyway, the delegation to the more recent Nairobi Women's Conference in 1985 was led by a Swazi male.⁴ Finally, with respect to the remark on the position of the Queen Regent it must be added that she only acted temporary as Head of State when the young prince was away at school in England. She relinquished the position to the rightful male at the appropriate time.⁵

In any case, as the saying goes, 'one tree does not a forest make', and the exceptionally high position held incidentally by one woman in Swazi society, is not an accurate reflection of the status of the average woman.⁶ While it may be true that the Swazi woman exercises 'greater responsibilities' in regard to the household and the 'domestic' realms of life, she is stamped with inferior status in practically all other important aspects of life by the ideology of folk law.⁷ Many Swazi women complain - in letters to newspapers, at conferences and in interviews (as with the present author) - about the implicit notion of women's inferior status that gives them practically no rights in society (see generally Armstrong & Nhlapo 1985: 1-12 and n.19).

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p. 7.

4 The author has been informed by one of the conference participants that the leader was the former Swaziland permanent representative at the U.N., although he "remained in the background".

5 Even in such cases where the Queen acts, she is "the living representative of her deceased husband" (A.G. Marwick 1973: n.27).

6 We may take a cue from Hafkin and Bay's admonition, that a more balanced interpretation of women's activities should put less stress on individual rulers and give more attention to the mass of women (Hafkin & Bay 1981: 4).

7 In view of the controversy on the distinction between 'domestic' and 'public' realms regarding women's rights and activities proposed by Rosaldo (Hafkin & Bay 1981), I feel hesitant in using these terms here.

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The male-biased ideology is reflected clearly in the assumption of many Swazi men that women should be controlled by men. Thus in a recent case, widely reported in the newspapers, a man whose girlfriend had jilted him, organized his friends with the purpose of kidnapping this girl from her new boyfriend. Despite protestations from the new boyfriend and the loud screams of the girl herself, she was dragged away and brought to the home of the jilted lover where "he had put her inside the house and had locked the doors". There the girl stayed for a whole day until she contrived to escape by asking to be allowed to go to the toilet (rural toilet's are at some distance from the house). In his testimony in court, the accused reasoned that he "could not stand the thought the woman had taken his children to live with another man", even though he also admitted that no form of marriage had ever taken place between him and the woman.⁸

One might expect that the man would have kidnapped his children rather than the woman but it was said that the woman, "being a nothing" had to be "punished". This attitude may be considered within the cultural context of the ideas about power relations between male and female and the control of women by men, that are not limited to the situation in Swaziland.⁹ However, as will become evident, there are few places in the world where a woman's position is worse than in Swaziland.

The reasons for the generally disadvantaged situation of women vis a vis men are beyond the scope of this article (for a general review of the literature on this see e.g. Etienne & Leacock 1982: 1-24). Our task here is to analyze the situation of women in Swaziland. This being a massive subject, the inquiry is necessarily limited to the following aspects: a) the position of women in politics, law and administration and the economic position of women and b) women's general social and personal status in connection with marriage, divorce and inheritance. All this is considered from the perspective of folk law as affected by state law.

An investigation of this kind has inherent problems. Apart from the traditional dichotomy between the 'official law' or the 'law in the books' and the law 'in practice' or the 'living law', there is the more

8 *The Swazi News*, Mbabane, Saturday, April 2, 1988, p. 16.

9 Armstrong, ed., 1987: 255-270 n.16. See also Fikile Dlamini who puts the matter poignantly: "Swazi society ... was (and still is) a man's world" (Dlamini 1933: 33, 34).

intractable one of knowing whether in a given situation there is 'law' at all (e.g. Armstrong, ed., 1987: vi n.16, 230). The rapidly changing nature of Swazi society has made the ascertainment of a rule of law difficult as old rules are subjected to re-interpretation to fit new facts leading to potential disputes on almost every point. In Swaziland it is further complicated by the King's exalted and special position which sometimes leads to the almost absurd situation in which 'spokesmen' for the monarch, or more generally, for the Royal Family, will issue orders to the nation to observe some traditional ritual or ceremony.¹⁰ This raises the question whether or not this is 'law'.

To meet the first problem of 'official law' and 'law in practice', I have divided the main inquiry into two parts. The first discusses the structure of women's rights as stated 'officially', the second examines the problem as currently perceived. Thus the first dovetails naturally into the second. As in this study a social scientific idea of law has necessarily been adopted, information has been collected from sources other than those acknowledged as having 'authority' in a strict juridical sense. Information has been collected in interviews conducted over a period of two months (March-April 1988) with over seventy women. These women formed a cross section of the female population, ranging from illiterate rural women to journalists and teachers and to one of the only two female members of the present parliament. Newspaper articles have also been an invaluable source. In addition the author's own perceptions and observations of Swazi society, as a participant observer who has lived for the last three years in this society that is not too different from his own, have been taken into account (compare A.G. Marwick 1973: 6 n.15; Nader 1982: 456-467; Kuper 1966: 5 n.5).

3. The traditional structure of women's rights

As suggested above, because of the state of flux in the developing society of Swaziland, its institutions, laws, politics, economics etc. are also in that state, leading to ambiguity and confusion in almost every sphere. To get a balanced picture it is necessary to examine select areas of women's existence. This will be done by utilizing

¹⁰ Nhlapo 1983: n.16 and 53 n.18, citing the case of *George Mokoena and Ors.* of 1983 (unreported) where members of the Jehovah's witnesses religious sect refused to shave off their hair in response to an announcement to do so from the Governor of the Royal Residence.

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recorded historical data, anthropological descriptions, monographs, case studies etc.

**3.1 *The position of women in traditional politics,
law and administration***

A good starting point for examining the position of women in traditional society is the observation of Ginindza (1982: 7 n.34) in his study of the traditional aspects of Family Law:¹¹

We [talk] about all the rights on the father's side. Maybe we should find out what the rights and duties are on the female side.... It does not seem that the mother has much to offer you in terms of your public life as a member of the society. You do not take your mother's name. Your residence is that of your father. Your citizenship is that of your father; inheritance comes down along the male line. Ritual is performed by the man, not by the woman and even if you are a child it starts off at birth.

From the ideological perspective age is irrelevant to the overall position of the female in many traditional African societies and in Swazi traditional society in particular (Nathan 1981: 8 n.5). For all practical purposes a female is a minor from cradle to grave. As an infant she is under the guardianship of her father and this right over her passes to her husband upon marriage. Upon divorce it reverts again to her father or the father's heirs where he is deceased (Nathan 1981; Fannin 1967: 7).¹² These ideological circumstances do not bode well for the rights of women in practice and, indeed,

11 Compare Kuper 1966: 26 n.5:

No equality is expected or desired between Swazi husband and wife. He is the male, superior in strength and law, entitled to beat her and to take other women. She must defer to him and treat him with respect.

12 This, it seems, extends even to the absurd situation in which:

As with all major decisions in her life, a woman is expected to consult [the] homestead head, who is usually her husband or another male in authority (her father, her uncle), to obtain his permission to visit a traditional healer. (Armstrong, ed., 1987: 33 n.16)

politics seems traditionally to be an exclusively male preserve.¹³ Politically, apart from the *Indlovukazi* or queen mother, a woman lives *incognito* in Swazi society.

Women do not fare any better in the administration of law in the courts than they do in politics. Although the Swazi have a highly developed legal system and a graded hierarchy of courts (Kuper 1966: 36 n.5), these generally coincide with the traditional political structure in which women do not count. They are consequently excluded from the administration of law (Ginindza 1982 n.42; Kuper 1966: 36-38). When it comes to the traditional administrative institutions evolved for the general administration of the country, the institutions of the *Liqoqo* and *Libandla* are central. The latter corresponds to the western idea of a parliament where basic decisions on policy are developed, while the former may be considered the parliament's executive body (B.A. Marwick 1966: 263-266 n.23; Kuper 1966: 33-34 n.5; Marvin 1973: 98 n.12). What is important here, is that these bodies are all composed of men, with the single exception of the *Indlovukazi* or Queen Mother (B.A. Marwick 1966: 65). The real significance of the position of the Queen Mother, moreover, seems to be psychological, to atone for the temper of her son the King, who may occasionally be given to tantrums (Ginindza 1982: 10; Kuper 1963: 26-27 n.5).

It is also exclusively the preserve of men to be custodians of the land. Since it is the chiefs who control and allocate land on behalf of the King, women's custodial and administrative functions here are non-existent (Fannin 1967: 5 n.14; Kuper 1966: 35 n.5, 42). To compound this, the all-powerful and absolute King must be and always has been a male.¹⁴

13 B.A. Marwick 1966 ch. VI n.23; Ginindza 1982: 9 n.39. Compare Molokomme (1987: 212 n.16) on the case of Botswana; Tiger (1969: 141) on the political position of women generally.

14 The only time a female comes near the throne is when she acts as a queen regent during the minority of a prince (see *e.g.* Marwick 1966: n.46). For some idea of the powerful position of kings of Swaziland in modern days, see Nhlapo 1987: n.16 and Marvin 1973: n.45.

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3.2 *The traditional legal position of women
with respect to economic activities*

In Swazi folk law, a "married woman can never own property in the fullest meaning of the word" (Fannin 1967: 29 n.41). The unanimity with which this is repeated by both old and new authorities (B.A. Marwick 1966: 67; Kuper 1966: 42 n.5; Ginindza 1982: 8 n.39; Armstrong & Nhlapo 1985: ix n.19, 40; Gumede 1985) and by women themselves is startling in contemporary times.¹⁵ The unmarried fare no better. The folk law emphatically denies to women all capacity to hold property in their own right, except for personal articles like clothing.

The law leaves women very little opportunity for economic advancement. Cattle-tending, formerly considered the most prestigious occupation, is exclusively a male affair.¹⁶ The less prestigious work of cultivation and raising crops is left to the women (Kuper 1966; Marwick 1966: 60-61). Although a woman is responsible for supplying the foodstuffs to feed her family, the plot of land on which cultivation takes place is not hers but her husband's, in the case of a married woman, or her father's if she is unmarried. The foodstuffs are not her personal property. The only property of any worth that the folk law seems to accord to a woman is the *insulamnyembeti* cow (Fannin 1967: 3, 8, 29-30; Marwick 1966: 179). This cow 'to wipe away the tears' is the cow set aside for the bride's mother from the herd of cattle usually given by the bridegroom as bridewealth. It is a kind of consolatory present which a mother receives for the 'loss' of her daughter in marriage. It is doubtful whether a woman benefits much in practice from this gift (Ginindza 1982: 8 n.39): when she receives this animal she is usually old and not able to profit from it. Moreover there is a customary rule that the offspring of this cow should provide for the bridewealth of the last son. In essence the cow 'presented' to the bride's mother ultimately serves the needs of another man.

¹⁵ In my research this was most evident with women in the rural areas, which might have been expected.

¹⁶ B.A. Marwick 1966: 60 n.23, 172-174 says that cattle constitute the principal form of wealth for the ordinary Swazi, even today, and that very little importance is attached to the size and condition of the cattle for however poor in quality, the animal is prized. Kuper 1966: 43 n.5 observes: "Cultivation provides the staple food of the Swazi, but pastoralism is more highly rated. Swazis have the so-called 'cattle complex' typical of many tribes of eastern Africa...."

3.3 Women's position in marriage, divorce and inheritance

The folk law governing Swazi marriage, in common with most other African systems, emphasizes kinship and group rights more than individual rights. Therein lies the key to the submergence of women's rights which are of little importance in almost every aspect of the marriage relationship (Kuper 1963: 22 n.5; Nhlapo 1987: 125 n.16). Since marriage means the joining of two families with reproduction as its most important goal, the consent of a woman to marriage, though desirable, is not essential. In Swaziland, an essential element of the marriage ceremonies is the smearing the bride with red ochre (clay) signifying completion of the marriage. A woman could be tricked into marriage if she slept in her lover's hut and in the morning was smeared with red ochre, even in the face of her protestations.¹⁷ Polygyny is allowed and since it is through marriage payments in cattle, *lobola*, that animal herds primarily circulate, cattle and wives together are the traditional hallmarks of status and indices of wealth (Kuper 1963: 44; Gumede 1985: n.50; Ginindza 1982: 5 n.39). Apart from the prestige, there is also an economic incentive to taking many wives, for their property falls under the general administration of their husbands (Gumede 1985). The possibility of a woman obtaining a divorce is limited (Kuper 1963: 23; Armstrong & Nhlapo 1985: 52 n.19) and this has led to the widespread but erroneous belief on the part of women that 'there is no divorce in Swaziland'. In contrast, a man can leave an unwanted marriage comparatively easily. Grounds for divorce in his case range from the wife's barrenness, through adultery to inability to keep a good house (Armstrong & Nhlapo 1985: 52-53; Armstrong, ed., 1987: 224-225 n.17). On the death of her husband a Swazi widow has no claim to his estate, which devolves to his heirs who are defined by the rules of customary law so as to exclude wives.

In summary, the Swazi woman has no importance and no rights. Her nonentity as a person starts from birth, for while sons are valued as the 'men of the village' who will continue the patrilineage, daughters are viewed only in terms of the cattle they will fetch at the time of their marriage as they will eventually leave for their husband's village and live there until they die (A.G. Marwick 1973: 67). In her

17 Gumede (1985: 21 n.50) observes that an unmarried woman visiting the parents of her children's father may be forced or tricked into concluding a traditional marriage by being anointed with red ochre, which is legally binding according to customary law. From my interviews it is clear that this customary rule is still alive today.

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husband's family (her family of procreation), a woman is never incorporated as a full member; she is only to bear children for her husband's group (Ginindza, 1982: note 39 at p.9).

Socially, a woman is looked down upon and is supposed to keep her distance from cattle, traditionally the most valued property, lest her ritual impurity might affect them adversely (A.G. Marwick 1973: 64 n.23). Even after death there remains a difference in social status between men and women, for while a man is buried between the cattle byre and the huts, a woman is buried outside the homestead and behind the village (A.G. Marwick 1973: 67). A woman's only importance is in the home where she provides for and cooks the food, is boss over her little sons and daughters, sees to it that proper shelter is provided for them and that the sick are properly cared for. But even here she has to report her stewardship to the master of the house (Ginindza 1982: 10 n.39; B.A. Marwick 1966: 60).

4. The situation today

Modern Swaziland, belonging to the world of nations, shares increasing political, economic and cultural ties with the outside world and is therefore influenced by events taking place in the rest of the world. When A.G. Marwick, the judicial commissioner, wrote about 'The attitude of the Swazi towards government and its causes', roughly three decades ago, he had already had occasion to quarrel with the authoritative anthropological works of Hilda Kuper and B.A. Marwick, describing them as outdated (A.G. Marwick 1973: 6 n.38).¹⁸ Because of rapid change in developing countries, studies are soon out of date and need constant revision, except for those few areas of life which alter little or not at all. Our concern here being not only with the status of women 'in the books' but with the actual situation of women today, we would only get half the picture or even worse, a picture wholly distorted and not representative, if the current situation were not considered along also with any modifying legislation. The following is therefore a brief attempt to meet that goal.

¹⁸ Although A.G. Marwick had other criticisms, such as the 258 'faults' he found in Kuper's book, he was generally full of praise for the two works as containing much valuable information not found elsewhere.

4.1 *Women's position in today's politics, law
and administration*

Not much has changed in this respect for the Swazi woman. Political and administrative institutions are primarily male domains. This probably is the result of the overthrow of the western style parliamentary constitution inherited at independence and the assumption of all powers by the traditional monarchy. The 'new parliament' is largely an institution existing at the King's pleasure.¹⁹ And even though theoretically it would be possible for the King to right the patent imbalance between men and women, this has not been done and under the circumstances it is not likely to happen in the immediate future. The Parliament of Swaziland consists of the House of Assembly composed of 50 members, and an upper House of Senate of 20 members. There is only one female member of the House of Assembly and one in the Senate. The executive branch of the government is headed by a Prime Minister and 11 cabinet ministers, with one exception all male.²⁰ The lone female member of Senate, who was appointed the first woman Cabinet Minister, retains her membership of the House of Senate, but her usefulness there as a voice for women is severely limited. At the top of the civil service career structure of each ministry is a Principal Secretary and there is no woman at any of these posts.²¹

19 When it appeared to the new King that the parliament he met on coming to the throne was dominated by people who belonged to a political faction that had fallen out of favour just before he was crowned, he simply dissolved it, paving the way for new elections (by electoral college) to the present parliament. (See Legal Notice no. 12 of 1988)

20 The appointment of the one female cabinet member, a medical doctor by profession with the portfolio of the Health Ministry, was greeted in a front-page article in one of the two national newspapers as 'A milestone for women'. The story continued in the middle pages under the heading 'Women recognised'. (*The Swazi Observer*, Tuesday December 1, 1987, pp. 1 and 17.)

21 Incidentally, this same woman made 'history' by being appointed the first woman Principal Secretary for the same ministry at Independence in 1968. The excuse that her professional services were more needed in the new position of Director of Medical Services was used to remove her and assign her as Director, a position she understandably resigned from later.

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The administration of law in the courts is no better for women. By Swazi folk law, women are 'constitutionally' excluded from sitting on the traditional courts. The parallel modern judicial structure in ascending order of the Magistrate Courts, the High Court and the Court of Appeal has no woman in any position.²² For a woman to see a chief, she must at all times be accompanied by a man, a situation unchanged from earliest times (A.G. Marwick 1973: 66 n.23). Today, in order to get a travel document (passport) a man must sign on a woman's behalf (see Gumede 1985: n.50).²³ It is clear from these examples that women have a great distance to go in ensuring their rights.

4.2 The contemporary economic position of women

In many ways, the position of women today is mixed and difficult to analyze. The two most important traditional items of wealth, cattle and land, will be used as a way of beginning to untangle the complexities. While women may now herd cattle and no legal prohibition against their owning cattle exists, cattle herding and ownership are still regarded as male economic preserves.²⁴

The most confusing picture is found in the position of women in regard to land. Chiefs in charge of Swazi Nation Land to which every Swazi is theoretically entitled, routinely refuse to allocate land to women.²⁵ Land is only allotted to men and the invariable practice

22 This article had been completed when in a front page news-story in the *Swazi Observer* (Thursday, May 19, 1988, p. 1) it was reported that a certain female prosecutor had been appointed magistrate, becoming the first woman magistrate in the history of Swaziland.

23 My interviews amply confirmed this and also the practice in the civil service where a married female officer is requested by the government to present a written consent of her husband if she takes professional training. Compare Khoza 1982: 45 nn.39, 42.

24 In my interviews women seemed particularly reluctant to state their investment in cattle even though this is probably still the most popular form of investment in the country (Kuper 1963: 44-45 n.5; A.G. Marwick 1973: 172-173, 178-179). The only real reason one can suggest for this reluctance is the old tradition.

25 A common assertion of all the women interviewed and especially stressed by the rural women who, one might reasonably guess, are the most affected.

for women is to use a husband, son or other male relative as a representative in order to get a plot of land of this category. With respect to Government land, certain categories of women fare better. Single females, and women married under Swazi customary law, through some ingenious interpretation by the Registrar of the Deeds Registry, are deemed capable of buying and owning such land (Nhlapo 1987: 46-48 n.16).

This 'progressive development' is blunted in practice by the fact that owning building plots in one of the two urban centres of Mbabane, the capital and Manzini, the industrial town, is unlikely. For if a married woman wants to buy a plot there, she is required to 'go home and bring the man', i.e. get her husband's consent (Nhlapo 1987).²⁶ The lot of unmarried women working in the urban centres seems generally to be better. Although the folk law rule seems to be that all their earnings belong to their father or other legal guardian, this law is honoured more in its breach than in its observance (Nhlapo 1987: 46). Thus an appreciable number of those who can afford it own houses, stocks and shares and get bank loans in their own names. Studies show that women generally have better loan repayment records than men (Armstrong & Russell 1985: 35-41). In this situation the position of women is more in accordance with the common law whereby a person, male or female, reaches majority at the age of twenty one.

On the whole, the picture is not too dismal in other areas of what one would call more 'modern' forms of economic activity, viz. employment in government departments, in manufacturing, clerical jobs, teaching etc., thanks to modern legislation and the uncontrollable forces of economic and social reality. Among the most significant of the legislation favouring greater participation of women in employment are the Employment Act (Act no. 5 of 1980) and the Industrial Relations Act (Act no. 4 of 1980). Their combined effects debar discrimination on grounds of sex, mandate equal pay for equal work and guarantee representation of workers in work councils resulting in formation of Trade Unions many of which have their own women's wings specifically to address women's peculiar problems.

Before one gets over-optimistic, however, we observe that, as is common in the rest of the world, Swazi women invariably occupy

²⁶ Many women when asked about this practice in the interviews, stressed the fact that "they [i.e. the officials] will never give you land if you don't bring a man".

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low status jobs (Khoza 1982: 43-44 n.79). The managerial and higher ranks of the job hierarchy are occupied by men. The common attitude that questions the suitability of women for employment in high positions is reinforced by the lack of women in the Civil Service Board in charge of appointments and promotions and other similar bodies like the Parastatal Board of Directors and Managing Directors (Khoza 1982: 45; Armstrong & Russell 1985: 92 n.86). Since it is men who invariably administer the law, the law is ineffectual because of hesitation and a lukewarm attitude at best; at worst, these laws are simply ignored. Furthermore, extra-legal forces work in the same direction (Nhlapo 1982: n.16ff) such as the potent one in Swaziland that even where women are legally entitled to buy immovable property, they have no financial wherewithal to do so.²⁷

4.3 The contemporary situation for women with respect to marriage, divorce and inheritance

By virtue of the dual legal system, intended spouses who may wish to do so, can conclude a statutory marriage (usually termed a civil marriage) and have 'western law' govern their relationship in most respects (Marriage Act, Act no. 77, 1964). 'In most respects' because by the curious inclusion of two provisions in the Act, for most Swazi who do marry under it, the consequences, especially with regard to the husband's rights over his wife's property, are not very different from those under customary law. This is because the procedure required for opting out of the customary law regime and applying the common law one is never alluded to when such marriages are celebrated.²⁸ In any event, only a few marriages each year fall under the civil marriage system so that it can be safely assumed that the customary law is still prevalent in this field. One is inclined to assume that not much has changed with regard to the traditional foundations of the institution, viz. the attitudes towards consent on

²⁷ This seems to be generally acknowledged. The Swazi delegation to the 1985 Nairobi Women's Conference (see note 3 above) observed: "[T]he laws pertaining to the commercial and industrial activities of women were being reviewed to reduce the rigidity of the laws which tend to favour men in the securing of collateral agreements like securing of loans and acquisition of property."

²⁸ Section 25(2) lays down the procedure by which the parties declare their preference to the celebrating marriage officer who is then required to endorse this on the marriage register.

the part of the woman, the payment of bridewealth (*lobola* ²⁹) and perhaps most important, the question of married women's property. With regard to the latter, there is considerable disagreement, both in interviews by the author and in the relevant publications.³⁰

On the question of divorce women still maintain that 'there is no divorce in Swazi law and custom', even in the face of a law to the contrary. This is so, even though men desert their wives for other women, to live with these for a long period of time and then return to their first wife's home after perhaps two or three years, expecting her to be waiting for them, having remained chaste.³¹

Little has changed with regard to the folk law on inheritance. Strong family pressure prevents a woman from getting property from her deceased husband's estate (Armstrong, ed., 1987: ix n.16). In general, the family law area where folk law whether interpreted wrongly or rightly still reigns supreme, presents a bleak picture for the Swazi woman.

29 Perhaps the most fundamental change here is that payment of *lobola* may now be made in cattle as in old times, by a combination of cattle and cash or in cash alone. The latter mode of payment has led to a general outcry that many parents of girls are exploiting prospective bridegrooms by demanding so much cash, depending for example upon the girl's educational level. See e.g. Dlamini 1988: 10, 11. According to Dlamini, one parent of a prospective bridegroom incensed over the exorbitant demand, asked rhetorically, "At school, did they also train her how to make love better than other women?"

30 In the interviews the women who declared that their salaries and wages were solely theirs to spend, strongly labelled other womenfolk who gave their wages to their husbands as 'fools', who were 'backward' and 'not civilized' because, as they said, 'why should a woman in modern times work for a man?'

31 Cases of murder resulting from the unexpected return of such an 'absentee husband' are legion. See e.g. *The Times of Swaziland*, Monday, May 16, 1988, p. 1 under the title 'Betrayed miner kills adulterer'. Gumede (1985: 21 n.50) states that women stay married because of the stigma of having children outside of marriage and also in the hope of strengthening their relationship with their in-laws in case of future inheritance claims.

5. Conclusion: folk law is to blame

In traditional pre-capitalist Swazi society, what existed by way of property was limited to land, cattle and a few household items (A.G. Marwick 1973 60-61 n.23). Economic activity centering around these was rigidly controlled by gender (A.G. Marwick 1973). With the changes introduced by contact with western civilization, it seems that folk law has refused to respond to the changing situation of women. While a man may own virtually any property of worth, the folk law has frozen the rights of women and limited them to those of the law in times past (Simons 1968: 9). The same situation prevails in politics, law and administration. Whether it is the traditional or modern institutions, the folk law impinges on women's rights. Thus, she effectively cannot be King, a judge or serve in the top echelons of the modern day civil service. Women are excluded from all these fields because the folk law states that traditionally all these were male preserves.³² With regard to marriage, divorce and inheritance, the delicate balance in those relationships, which may have worked well in the past,³³ is simply absent today. And yet, as we have seen, folk law still holds women rigidly to standards that were only appropriate in that state of balance. In some respects, these standards are merely a distortion of what actually prevailed in the past, used as an excuse to discriminate against women (see Molo-komme 1987: 212 n.16, 217; senator Mary Mdziniso's opening address, in Nhlapo 1982: 1-2 n.34; Gumede 1985: 22).

The attitude of men, as manifested in the folk law of Swaziland, is cited by practically all Swazi women as the most potent factor reinforcing the situation that maintains women in their positions of

32 One reason suggested to A.G. Marwick (1973: 66) for women's disadvantageous situation is that, "while important matters of state were being discussed a woman might commence her monthly curses and have to leave the meeting at a critical time," a laughable excuse indeed.

33 Thus Simons observes (1968: n.104):

Patriarchal rule, male tutelage, male primogeniture, polygyny, arranged marriages, the sororate and the levirate are strands in a single cultural complex. It provided women with a fair measure of protection and secured their rights when they belonged to self-sufficient households in peasant communities.

'non-rights'.³⁴ The interesting thing is, that women think the present situation (which they all condemn) is better than the past. In the words of my informants "then [i.e. in the past] women were really slaves".³⁵ Of course there is difficulty as to how far this 'past' extends, which should not detain us here.³⁶ However the past is construed, there is no doubt that the basis of the folk law rules, founded in the legend that the law came from the ancestors, receives general acceptance from the broad spectrum of Swazi people.³⁷ The readiness with which women recite anti-female maxims of folk law, such as 'there is no divorce in Swaziland', 'women cannot own land', etc. puts aside any doubt about the current vitality of folk law. In these circumstances one might surmise either that Swazi women are completely indoctrinated or that they are overwhelmingly ignorant of their true position. Otherwise they could not possibly accept such demeaning legal notions as representing their rights. We can only say here that if Swazi women have been indoctrinated, Swazi men have done an exceptionally good job at it. If it is a question of not knowing their rights, then that is a strong suggestion that until recently no such rights existed. We must remind ourselves, however, of the fact that if a Swazi woman states that a particular law states so and so that is not the same as her accepting or thinking that the law is just. The frequently expressed reservations and condemnations, some muted, others not so muted and the various forms of institutionalized protest against the injustices of

34 To my question: 'What do you think accounts for the present situation of Swazi women?' *all my informants* referred to 'the attitude of men' as the most important reason. Compare Etienne & Leacock 1982: 16, 221, 233-234; Nhlapo 1987: 35 n.35; Mullins 1988: 239 n.30, 259-262; *Weekend Observer*, Saturday, March 12, 1988, pp. 10-11: 'Time to swing into action, women told'; *Newsweek International Magazine*, April 18, 1988, p. 43: 'Religion - renouncing the sin of sexism'.

35 Interview with a woman at Siphofaneni, Thursday, April 21, 1988. In keeping with my promise to my interviewees, the speaker remains anonymous.

36 This question provided the basis for lively discussion at a recent seminar on 'The origins and development of male supremacy: suggestions for research in Swaziland', led by Dr. J. Kingsley, Kwaluseni Campus, Swaziland, Thursday, November 12, 1987.

37 Kuper writes (1963: 38): "Swazi laws, rooted in precedents drawn from a relatively static society, are validated by reference to the past, 'they were in the beginning' or 'they were from the ancestors'."

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the folk law, are surely manifest expressions of women's rejection of their current situation.³⁸

There is little hope that injustices will be speedily and effectively attended to. Nearly two decades ago, Marvin predicted that in Swaziland, "the traditionalists will hold power for a long time to come..." (Marvin 1973: 98 n.12), and the prediction remains valid today. The youthfulness of the new King does not help matters, for this in effect means that his older, more conservative, traditionalist councillors rule the country.³⁹ All sorts of behaviour which is termed 'un-Swazi' - encompassing topics from speech mannerisms to ladies' dresses - are appropriate subjects of condemnation for being against tradition.⁴⁰

While it is dangerous to predict the future, one can only guess that ironically it is the forces resulting from the colonial process that hold out hope for some measure of equality for Swazi women. As Swazi society develops, the advancements made in education for women, and the new forms of economic and administrative organization will create opportunities - hopefully, equally available to both sexes - as factory workers, secretaries, civil servants etc.⁴¹ Coupled

38 The *Swazi Observer* article mentioned (note 20), reporting the appointment of a woman as the first cabinet minister, quoted a woman interviewed on the matter as saying: "It has been long overdue; I am not impressed but at least something has happened... which is a positive step towards the recognition of women's role in the development of this country." See also *The Times of Swaziland*, Monday, November 23, 1987, p. 5.

39 At the King's 20th birthday celebrations on April 19th, 1988, he stressed in his speech the traditional system of local government which the conservative forces want to see re-established. Even though it is generally criticised as unsuitable, the traditional elements want to see the old system replace the 'modern' local government system run by civil service appointees. The King is reported to have appealed to the entire nation to support the *Tinkhundla* system of government, calling it the basic foundation for the Swazi nation (see *The Times of Swaziland*, Wednesday, April 20, 1988, p. 1.

40 In 1979 an attempt was made in Parliament to enact a law banning women from wearing pants (see Armstrong & Nhlapo 1985: 5 n.19).

41 At a women's seminar last year, organized in Mbabane, Swaziland, for Botswana, Lesotho and host Swaziland, it was presented as one of the aims of the organizers - the Institute of Development Management - to embark on the training of women in management skills so

with the mild, albeit unrelenting pressure from national and international forums calling on nations to eliminate discrimination against women, it is hoped that the slow evolutionary process will bring about the necessary changes in the present folk law.⁴²

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as to help them to perform effectively and give them a chance to advance to positions that deal with policy-making (see Pule 1987).

42 Swazi men feel defensive and threatened, as witness the following remarks reported in *The Weekend Observer*, Saturday, March 26, 1988, p. 10, of a Zambian woman participant in a conference on women in Swaziland. She said that soon after the conferees' arrival in the country, they met a Swazi man at a bank who asked the purpose of their visit and they told him they had come for a conference on women. He made it clear to them that they must not come to the kingdom to confuse local women, because they themselves want to remain inferior. The man then inquired if the government was aware of the women's conference "which will confuse local women".

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