

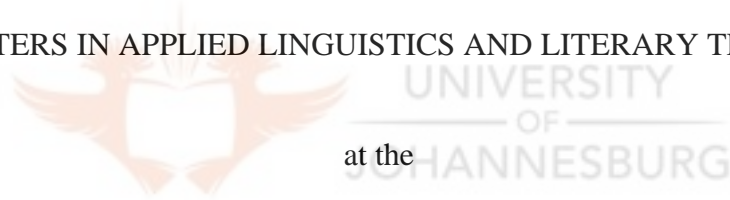
LANGUAGE, GENDER AND POWER RELATIONS IN SWAZI NATIONAL
COURTS: A DISCOURSE BASED ANALYSIS

by

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Declaration

I **Lindiwe Nkhosingiphile Dlamini** declare that this is my original work. It has never been submitted before for any degree or examination to any other University. I am submitting it for the degree of Masters in Applied Linguistics and Literary Theory at the University of Johannesburg, Johannesburg.

May 2009.



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My academic achievements would have been impossible without the contribution of some people who, in their various ways, saw it that my programme is completed at all odds.

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My special gratitude also goes to my husband, Bheki and son, Baphiwe, for their untiring and invaluable interest, care, love and support.

The logo of the University of Johannesburg is centered in the background. It features a stylized orange and yellow emblem resembling a sun or a flower above the text "UNIVERSITY OF JOHANNESBURG" in a light grey font.

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Abstract

This dissertation examines the use of language and its implications on gender relations within the Swazi courts. Starting from the premise that language use is an important guide in understanding gender differences and differences in power between men and women, this dissertation investigates the language used by the different participants in court proceedings of selected court cases, particularly on offences that involve or otherwise touch on assault. The data is based on proceedings in two selected courts, one in Mbabane (an urban court) and the other in Lobamba (a semi urban court). Analysis is strengthened by an array of theories of gender and cultural studies. The major analytical methodology for this study is Critical Discourse Analysis (CDA). The study ultimately locates itself within the line of gender studies on cultural influences, examining how lexical choices in linguistic discourses contribute to sustaining or subverting age-old ideas of manhood versus womanhood in Swaziland. The analysis leads to a conclusion that:

- (a) Women are viewed as docile and unchanging in terms of their interaction in the society.
- (b) Within the patriarchal Swazi context, the linguistic expectations of “good women” put them at a disadvantage when communicating with men.
- (c) Traditionalists have to shift from patriarchal values and integration of the Swazi custom with some of the positive ways in life borrowed from education, Christianity and other modernized institutions. If this is enforced then women would cease to be treated as doormats and marginalised by society.

This gender imbalance is revealed in situations of contest. It not only draws on, but also engenders the already existing ideologies of strong and knowledgeable men versus weak and ignorant women, in part by muting the latter. This, in the researcher’s view, is worsened by the fact that such linguistic disempowerment takes place within the structures of the State such as the courts, whose authority can easily be mistaken for that of the men who function within them. Put differently, the connotations of power, authority, coercion and fear within the courts are reinforced when one half of participants are disadvantaged by cultural ideologies such as those of linguistic control.

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CHAPTER 1

1.0 Introduction

This study is concerned with gender and power relations as mediated through language directed towards women in Swazi National Courts. It attempts to determine whether Court discourse constructs gender, power differences and social inequalities within the legal system and if so, how it does this. Specifically, the study addresses this aim within patriarchal Swaziland. The dissertation uses the Mbabane and the Lobamba National Courts as case studies, focusing specifically on the cross-examination of female witnesses¹ in assault cases² by both the court officials and the accused.³ The language used in the cross-examination of witnesses is the main source of data for the study. Specifically, the study investigates whether there is gendered prejudice that is mainly constructed and used against women.

Some studies on gender relations in different societies (Trudgill 1983; Fasold 1990; Tannen 1994; Romaine 1994, 1997, 2003; Lakoff 2003; Zigira 2003) have tended to emphasize the discrimination that women suffer at the hands of their male counterparts. Others reveal the difference between women and men's speech. Even though these studies seem to have dealt much with issues in western culture, there seems to be a rise of scholastic work which is researched in Africa, especially Southern Africa today. In Swaziland for instance, writing about gender relations, Shongwe (1997); Ndwandwe (2000); Ndlovu (2002) and Zigira (2003) observe that the use of the siSwati⁴ language in conducting affairs in different contexts, such as in religion, proverbs and idiomatic expressions and as well as in tribunal affairs discriminates against women, thereby reinforcing their subordinate position in society. Shongwe (1997) notes that generally

¹ In this study the female victims in any of the assault offence cases will be called 'witnesses' because to the researcher's knowledge in criminal cases the victims become witnesses for the State.

² Assault cases seem to be the most frequently occurring cases in these courts. Cases of such nature are published in the local newspapers – *The Times of Swaziland* and *The Swazi Observer*

³ Representation of parties is excluded and the courts during cross-examination allow even the defendant to cross-examine the witness.

⁴ One of the two (English and siSwati) official languages spoken in Swaziland.

women play a subordinate role of being perpetual minors, always deferring to the authorities of their fathers and later of their husbands through the discourse of proverbs and idiomatic expressions. Such division of roles is not just limited to the domestic and cultural fronts but to other aspects of life as well. This study investigates whether the same dynamics get replayed in State institutions such as the Swazi National Courts. In these courts the Court Presidents, who are predominantly men,⁵ are traditionalists who have a traditional orientation and socialisation. In view of their traditional background they are seemingly bound to cling to traditional ways of thinking and doing things. It is likely that they do not think contrary to patriarchal principles to allow for cultural dynamism. Investigating such institutions may yield whether or not the language used in the courts unearth the dominance of men.

While submitting that the Swazi society is grounded in patriarchy, it is equally true that not every Swazi man can be said to exercise absolute social power over women. After all, there are perpetual contests over social power by men and women. That could be part of the reason why men and women find themselves arguing cases in the courts. For these reasons, the approach in this study is informed by Critical Discourse Analysis (CDA) to investigate the nature of this reality and generate a unique viewpoint regarding this knowledge. The CDA approach is instrumental and relevant to this study as it will provide a more comprehensive, informed understanding of gender ideologies. This is especially true as the researcher focuses on courtroom discourses, particularly cross-examination discourses, with the aim of investigating the interplay between discourse and power.

1.1 Brief Information about Swazi Society and its Social Structure

Swaziland is a small landlocked Kingdom located in the south-eastern part of Africa. The Swazis are Bantu-speaking people currently led by King Mswati III. The King rules the Swazi nation and is an absolute monarch with all ruling powers vested in him. Although

⁵ It is worthy to note that the Swazi courts are largely manned by male personnel, from the cleaner to the Presiding officers, and can be described as male-gendered institutions (Caplan 1994).

the Queen Mother rules side-by-side with King Mswati, traditionally her powers are limited as long as the King remains alive.

The Swazi social structure includes kinship systems, culture, religion, and the traditional role of women, among other things. Most of these concerns are looked at in relation to traditionalism. The Royal influence has a strong ideology of traditionalism and the King plays a central role in the Swazi culture, hence appellants can further take up their cases to the King for ruling if justice fails them either in the Swazi National Courts, Magistrate Courts or the High Court. Swazi culture and tradition allows males to have power of control over the family. Women are considered minors and as such are deprived of their right to access resources such as land, bank loans, etc. except through fathers, brothers, uncles and other male relatives. Social transformation⁶ makes it inevitable for Swazi society to face some change and challenges of traditional customs and values. The Swazis still cling to some of their customs, for example polygamy and treating women as minors. These practices are, however, becoming less important among educated people and to those who are flexible to cultural dynamism. According to Booth (1983) many of the traditional values are increasingly being challenged and questioned. Even though the Swazis value their traditions, Swaziland is being modernised and industrialised.

A dualistic law-making arrangement exists in Swaziland with a traditional absolute monarchy operating with a modern Westminster type of government. At the top of this arrangement is the King who rules together with the Queen Mother. Power sharing between the King and Queen Mother is not clearly defined except when the King dies and the Queen Mother assumes full powers (as mentioned above). The King appoints Chiefs who are all male⁷ to also assist and allocates them with other powers. While the two systems may seem separate, they are, in fact, symbiotic with one feeding into the other and ultimate power remains with the monarchy. Alongside this traditional authority are the legislature, cabinet and judiciary.⁸ These executive departments are mostly

⁶ This is discussed in Section 1.5 -Problem Statement.

⁷ Swazi custom allows women to be in power on behalf of their sons temporarily until the boy child reaches the required age to become chief and lead a Constituency.

⁸ See appendices section for an explication of the structure of Swazi government – Appendix 9

dominated by men and there is little female representation in most areas of Government.⁹ Much as the judiciary is a legal organization, the nature of dispensing justice in this institution is more influenced by traditional values than constitutional principles as in Anglo Courts.

Women in Swaziland are not a homogeneous group and while it is true that the socio-economic, political, cultural and legal conditions in the country have created an environment in which women are subordinate to men, there are educated women who have been elected to Parliament over the years. Despite entering politics women seem not to be given fair play in the process of democracy as their number does not match the number of their counterparts. There are women who have managed against all odds to liberate themselves from some of the barriers that have been created by society, such as the educated ones. There are other woman who have not been privileged enough to free themselves because of illiteracy. Their conditions have resulted in more adverse experiences including violence.

In Swaziland violence against women has become prevalent and is rarely reported.¹⁰ Violence against women seem to be prevalent even though most cases are not reported in the daily newspapers for the world to know, but is highlighted mostly during the campaign of Sixteen Days of Activism,¹¹ is an event which runs yearly from 25 November to 10 December. This period is used to raise awareness on issues of gender based violence in the country and women are encouraged to speak out about all forms of abuse they experience, whether at home or outside home. Women are able to come forth with shameful stories of their experiences. Swazi society tolerates men who abuse women physically or otherwise to 'discipline' the women, more than it accepts women

⁹ See Aphane *et al* (2000)

¹⁰ The statistical extent of domestic violence in Swaziland is not publicly addressed as the local newspapers and other local media do not make mention of statistics of this nature, but there seem to be indicators that it is common, and takes place behind closed doors.

¹¹ An event organised by the Swaziland Action Group Against Abuse (SWAGAA) in Swaziland. SWAGAA is an organisation that aims to provide support to abused persons and creates awareness about abuse and its damaging effects on women and children. SWAGAA also works with other groups, such as Women and Law in Southern Africa (WILSA), among others to campaign for legal reform in Swaziland in order to ensure that abuse is addressed properly.

who beat men. Women have been socialised to accept male violence. Women are usually blamed by family members and society for having provoked the violence against themselves. Thus, they avoid reporting their male counterparts as they fear that they would be labelled as failures in their marriages. Traditional Courts where most domestic violence trial cases occur spurn women who take action against their husbands. The researcher believes this has enabled Government to deny its seriousness and its responsibility in dealing with assault cases as the reigning linguistic discourses in the Swazi Courts are entrenched in Swazi ideology of the belief that the ‘woman’s place is in the kitchen.’ Even the appointment of only males to the position of Court Presidents depicts traditional way of thinking that only males can preside better over cases and not women. In view of the above, the study seeks to investigate whether the nebulous system of justice delivery is open to bias interpretation and if it discriminates against women.

There are two official languages spoken in Swaziland, i.e. English and siSwati. SiSwati is the most spoken language as it is the mother tongue for almost all Swazis. English is used as the medium of instruction in schools and in business, it is mostly spoken by the elite. SiSwati is the language used in the Swazi Courts whereas English is used in the other court structures such as the High Court. Language is a vital tool in every society as it enables us to understand the way societies operate. For example it is a tool that can show, through different languages spoken in one country that in that particular country there may be different ethnic groups, for example in South Africa. It is important to note that one major vehicle of the creation and perpetration of a gender ideology that is suppressive towards women in any community is through language. Language is culturally loaded in the sense that underlying the language used in various institutions, such as the courts, is an ideology that supports the culture of protecting the legal profession and in the process delineates witnesses and also accused. Lawyers use legal language that can present a problem to anyone who is not familiar with the courts or the language used in courtrooms. In the case of Swaziland, dominance then becomes an attribute of male/manhood, and the subordination of female/womanhood. In view of the above, we realise that through language there is a reflection of hierarchical structures that create differences in a society and existential experiences of men and women. This

traditional value has undergone profound change and is largely considered to be archaic by contemporary and learned persons. This is why women's struggles to be heard in the traditional courts are seen as a threat to the old way of doing things, a way that mainly favours men. The study proposes to investigate whether siSwati as the main language used for court procedure, in the Swazi court situation, marginalises women accessing justice in these courts.

1.2 Swazi Legal System

The legal system of Swaziland is a dual one in that common law – the law that binds everyone in the country regardless of the person's national origin – operates side-by-side with customary law – the latter being applicable only to indigenous Swazis. Customary law in Swaziland has recently been codified but is provided for in the Swazi Courts Acts 80/1950 and is enforced.¹² Subject to certain limitations, the Swazi legal system allows the plaintiff to institute a civil claim in the forum appropriate to the nature of his/her claim. Even though the traditional courts do not observe the comprehensive procedural rules of the common law courts many Swazis believe that they are more efficient in dispensing justice. For example, the absence of legal representation¹³ allows the Swazi people to feel at ease when presenting evidence. Witnesses are asked if they want representation and if the response is in the affirmative, the court refers the matter to the magistrate's court. The choice of courts is in itself a good thing as each citizen has a right to choose which court and which law will apply to their disputes. However, such choice of law and of court may bring problems. For example, legal practitioners both in the Anglo courts and Swazi Courts possess certain amount of discretion. In the common courts the discretion is exercised within defined parameters and in Swazi Courts, which follow customary values, the Court Presidents carry out trials using imaginary discretion (Aphane *et al* 2000). Such dilemmas are aggravated by the fact that it is not clear whether the general or customary law has superior status in Swaziland. However, Swazi

¹² The King has been ruling according to unwritten Swazi Law and Custom for a long time. Only recently the law has been recorded (*The Times of Swaziland* – Monday September 2007). All along a few customary “rules have been epitomized in proverbs and kindred sayings” (Van Schalkwyk 2006: 36).

¹³ Section 23 of Swazi Courts Act, 80/1950.

Law and Custom like Common law has also the ability to “adapt to changing socio-economic and socio-political circumstances and will constantly undergo change” (Van Schalkwyk 2006: 23). A brief look at the operation of Swazi courts may help contextualize the study.

Until the introduction of the National Constitution,¹⁴ which began operating in 2006, the highest Court in Swaziland was the Court of Appeal. However the new Constitution proposes a replacement of this structure with the Supreme Court. There are also regional Swazi National Courts and their highest structure is the Judicial Commissioner’s Court.¹⁵ Swazi National Courts are customary Courts that follow Swazi traditional laws in court proceedings. They are the lowest level of courts created in terms of the Swazi Courts Act 80/1950¹⁶ to provide parallel court structures for the resolution of less serious cases involving Swazi parties. In this dissertation they will be referred to as Swazi Courts, which is a name commonly used for these courts in Swaziland. Swazi Courts fall under the jurisdiction of the Judicial Commissioner’s office and the language used in these Courts is siSwati, hence there is no interpreter because all participants, as has been explained earlier, are Swazis and use siSwati as their first language. There are no laid down rules as to how Swazi courts should operate. However, they derive their status and procedures from Swazi customary values and practices.¹⁷ The powers of Swazi Courts are limited in that they can only determine cases involving members of the Swazi nation within the limits defined in the warrant issued under the hand of the King by which the court is established.¹⁸ Cases in these courts are tried faster and the *modus operandi* is flexible because it is designed by the Court President.¹⁹ Court Presidents are in a position

¹⁴ The 1968 Independence Constitution was repealed in 1973 by the then King Sobhuza II a year after the 1972 elections, Parliament dismissed and all parties banned. The King and his advisors felt that the Constitution had failed to provide "good government, maintenance of peace and order" (Constitutional framework of Swaziland (1998: 50) Between 1973 and the commencement of the new constitution in 2006 Swaziland did not have a working constitution but had retained some of the old constitution’s provisions and new laws were gazetted and citizens had to abide by them.

¹⁵ See Appendices section – Appendix 10b).

¹⁶ See explication of the structure of the Swazi Courts in the Appendix 9a) and 9 b).

¹⁷ Before the Swazi law was codified, court procedures were conducted orally and there were different interpretations between one place and another, but since customary practices and values have been codified, the status of the Swazi law and custom is the living law for the people.

¹⁸ Section 3 (1) of Swazi Courts Act, 80/1950.

¹⁹ A man considered to be an expert in Swazi custom.

to provide leadership in ensuring gender governance. They have the platform of adjudicating over disputes and in the process create the law.

In the Swazi Courts witnesses and the accused are questioned by the presiding officer with his assessors. The procedure in these courts is that a criminal suspect is guilty until proven innocent as opposed to modern courts where the accused is innocent until proven guilty. The *modus operandi* is made up by the courts and is simple, informal and more rigid than the procedure applicable in the Common Law courts. The result of the informal procedure in the conduct of trials in Swazi Courts is that parties become willing participants in seeking a resolution of the problem at hand. Each party is allowed to present his/her side of the story, to introduce witnesses and question the other party and his/her witnesses. In cases of criminal cases conducted in Swazi Courts, the court takes the role of prosecutor and leads the witnesses and cross-examines them. Swazi Courts use the inquisitory method and the Court President and his assessors²⁰ become masters of the proceedings in the sense that they actively conduct and even control the search for the truth by dominating the questioning of witnesses and accused.²¹ The inquisitory method according to Van der Merwe (2002: 152) “proceeds from the premise that a trial is not a contest between two opposing parties but essentially an inquiry to establish the material truth”. Simply put, it is a fact-finding method. What is also worthy of note is that Swazi Courts inform the accused, in terms of explanation of the rights of the accused persons and witnesses, of his right to cross-examination but is not told why he should cross-examine witnesses and how he should conduct cross examination.

1.3 Women and Transformation in Swaziland

The reality of women in Southern Africa, and in particular Swaziland, is that they remain a vulnerable, marginalized group that is yet to enjoy equality in status and access to

²⁰The Court President and other officials who work in these courts are handpicked by the King regardless of their legal expertise. Some commentators are lobbying for appointments based on formal academic qualifications.

²¹ In one Lobamba National court (where the researcher was an observer), the researcher found one clerk of court to be so steeped in the examination and cross-examination of the witness and accused that it was no longer clear who the bench was.

services and resources with their male counterparts. Women are found at the “bottom rung of poverty, of literacy, of landlessness” (Mintso 1997: 22-24), and are concentrated in the rural areas where facilities and services are scarcest. Mintso further mentions that women are most affected by the negative impacts of economic adjustment programmes. Cuts in social expenditure such as in health and education mostly impact on women and girls, who are victims of the worst forms of violence.

Gender-related division of labour traditionally characterizes Swazi society. Men’s activities reflect freedom to leave their families to go and work outside their home areas. On the other hand most women are restricted by culturally and biologically determined childbearing responsibilities to performing routine domestic work (Tyobeka 1986). This pattern of gender-related division of labour is however changing in response to changing trends at social and economic levels. It seems that traditional gender stereotyping is no longer sustainable, as many women now attain higher levels of education which qualify them for more progressive positions outside the home (Miles 1991: 31). The professional careers outside the home provide women with chances to earn monetary remuneration that is in turn used to negotiate power relations with their men-folk.

The impetus to initiate this study did not only emanate from mere curiosity about what goes on in the Swazi Courts nor sheer thirst for factual knowledge, but, on the one hand, was encouraged by several factors that include the observation of the social transformation (Cornwall & Coehlo 2007) that Swaziland is going through; the establishment of a new National Constitution - which calls for equality before the law, right to equality, freedom of speech and to a fair trial, women’s rights to object to subjection to dehumanising customs - and the effects of the Beijing Women’s Conference in China in 1995²² in which women from all over the world took part. Swaziland, being

²² In this Convention women met to discuss common global concerns and also regional concerns and try to identify strategies to address the situation of women. To the Southern African areas of concern Swaziland also adopted her own so as to begin addressing issues facing women and girls within the country. Some of the issues included concerns of power-sharing and decision making and also violence against women. Back home The Ministry of Home Affairs was mandated to coordinate interventions and programmes aimed at promoting gender equality in the country.

a member State of the Southern African Development Community (SADC), was represented and we have subsequently seen some developments introduced to the recognition and protection of women's rights and gender equality by government. In 1998 for instance, Swaziland acceded to the United Nations Convention on the Elimination of All Forms of Discrimination (CEDAW). The recent Parliament moved a motion in September 2007²³ to domesticate the convention through pilot legislation and law reform. However, despite the positive developments for the Swazi nation, chiefly women and girls, the benefits from these developments have not reached the majority of women in the country. One of the main reasons for this is that many people in the country, particularly women, are unaware of the changes that have occurred and how these relate to their daily lives. As a result women have not been able to assert these rights and make positive changes to their lives. It is therefore important that woman receive civic education on CEDAW and the Constitution so that they can understand the nature of their rights and their implications at practical level.

Another positive move for Swaziland is the codifying the Swazi Law and Custom.²⁴ This is the law that is applicable to all Swazis and Swazi Court processes. Previously there was no single version of this law that existed in Swaziland. Since time immemorial, this law had not been codified until the King commissioned its drafting. Even so it existed and was binding to indigenous Swazis. The Swazi Law and Custom document is now in place and one of its aims was to match it with the Bill of Rights in the newly developed Swaziland Constitution. It has also addressed gender issues which the Swazis believe are

²³This was revealed through the President of the Senate's interview with the local newspaper, *The Swazi Observer*, at a workshop that was held in Mbabane which was meant to capacitate members of Parliament who serve as chairpersons of the different portfolio committees. The President of the Senate also mentioned that Parliament was moving forward with reforms to ensure full compliance with all Conventions and the Constitution (*The Swazi Observer*, September 17, 2007).

²⁴ Swazi Law and Custom is age old traditions and custom validated by the ideology of traditionalism that has been recently put down and classified as law. The process of codifying Swazi law and Custom was commissioned by the King in 1995 to guide the drafting of the constitution of Swaziland. Another reason was to ensure that the living norms and values of the Swazi nation be reflected in the constitution. Professor Dr. Frans Whelpton of the Department of Constitutional International and Indigenous Law of UNISA, South Africa, was commissioned to assist the team that was mandated to do the exercise. The research team had thorough training in law, including indigenous law, sociology, anthropology and siSwati. The research methodology that was utilized for the exercise was field research and existing literature on various aspects of Swazi Law and Custom was also studied. The theoretical framework was juridical, however, researchers were able to use anthropological research methods. They also consulted anthropological literature (*The Times of Swaziland* Monday September 2007).

bound by international or regional human rights declarations such as rights for the child and women's rights.

Looking at the foregoing, we realise that Swaziland has in recent years been undergoing a transitional period involving deep social change. The new National Constitution is a milestone in its recognition of equality²⁵ and of women's rights and freedom.²⁶ This commits Government to implement measures to rectify the imbalances that have until now kept women out of the mainstream. On recognition of equality the Constitution states that:

“All people are equal before and under the law in all Spheres of political, economic, social and cultural Life and in any other respect and shall enjoy equal Protection of the law” (Section 20 (1))

“For the avoidance of any doubt a person shall not be discriminated against on the grounds of gender, race, colour, ethnic origin, tribe, creed or religion or social or economic standing, political opinion, age and disability” (Section 20 (2)).

On the issue of the rights and freedom of women, the Constitution states that “Women shall have the right to equal treatment with men and the right shall include equal opportunities in political, economic and social activities” (Section 28 (1)).

Despite these changes people are often reluctant to embrace changes that overturn power relations, regardless of where such powers emanate from (Miles, 1991). Swaziland is one of the contemporary societies that have adopted western institutions such as the court system based on the Roman Dutch Law. It also blends this system with its own

²⁵ Section 20 (1), 20 (2) of the Constitution (2005).

²⁶ Section 28 (1) of the Constitution (2005).

indigenous traditional structures and values. Over the years, this has resulted in conflicts between the traditional norms, ideals and practices and modern ideas. This means there is a change in the way the gender relations have been perceived by Swazi society, but that change does not affect the available common structures of patriarchy. These changes have invited many studies (e.g. Aphane *et al* 2000; WILSA 1998; SCOGWA 1996) that reach more or less the same conclusions, i.e. that the existent power scales generally disadvantage women.

1.4 Statement of the Problem

There is an imbalance in power relations between men and women as manifested in dominance, oppression, power relations and exploitation of women by men in Swazi society that is reflected in courtroom discourse in Swazi customary courts.

1.5 Objectives of the Study

The study attempts to describe the status quo of discourse which involves women in Swazi Courts in order to expose the relations of dominance, oppression, exploitation and power by men. Possible options for intervention to change the status quo and achieve social justice are suggested. The study describes the struggles of women in the Swazi culture through examining some of the characteristics of female witnesses' replies – the kind of language they use when being cross-examined. Focus is on what meanings are constructed and how those meanings construct gender differences within the Swazi society.

Data for the evaluation includes an investigation of the perceptions of women and men who have been involved with traditional courts as well as selected courtroom transcripts of recorded court proceedings. This investigation studies the perceptions of those participants who have been involved with the courts. It also attempts to scrutinise the underlying ideologies of the Swazi tradition and to question the status quo. In line with the aims of critical linguistics, this study could also serve as a starting point to changing

discourse practices and raising awareness of the relationship between language and power and the maintenance of power imbalances in the Swazi courts.

The main objectives of the study are -

- to investigate whether the nature of the language used in the courts discriminates against women;
- to establish whether men and women act differently in courts and if these differences can be related to dominance versus subordination ideologies; and
- to determine whether there is any inhibition against women expressing themselves as freely as they would like within the contexts of the courts.

In order to address the objectives above, the study attempts to answer the following questions:

- Are women disadvantaged by language used in the courts during cross-examination?
- Is the language directed towards men in any way different from that directed towards women, and if so, does this situation advantage men?

1.6 Structure of the Study

Chapter 1 – Introduction

In this chapter the researcher briefly discusses the structure of the dissertation and the background information to the study, focusing on the main aim and objectives of the entire study and explicating the research question and rationale for undertaking the study.

Chapter 2 – Literature Review and Theoretical Framework

This chapter provides an exploratory literature review on gender studies that are pertinent to the questions raised in the study and also the theoretical framework. Specifically, emphasis is placed on how different authors have addressed issues that manifest in gender differentiation, such as language and power, gender and language and expressions

of respect and politeness through language. The theoretical framework that is adopted for the study is Critical Discourse Analysis (CDA) (Fairclough 1995; Fairclough & Wodak 1997; Van Dijk 1997, 1998, 2000). CDA as an approach will be instrumental in this study as the researcher focuses on the discourses of cross-examination with the aim of investigating the interplay between discourse, power, and inequality.

Chapter 3 – Research Methodology

The chapter discusses the methodological approach the researcher used when collecting and analysing data using the qualitative approach. Focus in this chapter is laid on the method and procedures that are used in carrying out the research.

Chapter 4 – Data Analysis

In chapter four, data collected in the field is transcribed, presented and analysed. The data is also categorised using a CDA approach to determine whether there are links, correlations and causality patterns that emerge.

Chapter 5 – Recommendations and Conclusion

This chapter deals with recommendations that emanate from the study and is followed by a summary and conclusion.

CHAPTER 2

Literature Review and Theoretical Framework

2.0 Introduction

The subject of gender relations has attracted scholarship in various disciplines ranging from the humanities to social sciences. While most of these studies tend to relate specifically to particular societies, there are parallels that can be drawn to inform subsequent research, including this analysis. In this section the researcher examines the literature on gender studies and other gender-related issues that add value to the study of court discourse in Swaziland. The literature is arranged into sub-categories that address issues relating to gender differentiation. These include language and power, language and gender, language and ideology and how expressions of respect and politeness are manifested in language.



2.1 Language and Discourse

Language is a complex phenomenon. As a vital tool in the study of sociolinguistics, language enables us to understand the way societies operate since it is a “social practice and not a phenomenon external to society ...” (Fairclough 1992: 63). This means that language is a system that remains at the service of society by transmitting the specific society’s values among other things. According to Mesthrie (2000: 6) language has a relationship with society because it denotes "one’s social class, status, region of origin, gender, [and] age group”. Alvesson & Skoldberg (2000: 205) perceive language the same as the above scholars and add the notion that language is both “constructed and constructive”, thereby emphasizing the way language draws from existing meanings in a given society and also shapes the subsequent construction of such meanings. Summarising the above views on language, Fairclough (1992: 63) states that language is part of “social practice rather than a purely individual activity”.

Fairclough (1992) and Martin & Rose (2003) view language as shaping and constituting society. Martin & Rose (2003) see language as having patterns of meaning which they call the strata of language, i.e. language as grammar, as discourse and as social context. We observe discourse in social activity and grammar within discourse. Language is made of patterns of meaning (discourse) which are realized in patterns of wording (grammar) which in turn are realised in social activity (Martin & Rose 2003: 3). Martin & Rose's view is similar to Halliday's (1985: 11) explanation that language as a resource for making meaning enables people in speech communities to exchange meaning through the use of language. Halliday (1985: 12) explains that language can be broken down into three concepts – Field, Tenor and Mode – that form the register of a text. Field is the social interaction taking place in a text, Tenor the social roles and relationships of participants and Mode the channels of communication (Halliday 1985: 12). This relates to strata of language in that when people communicate they are able to make predictions of meanings and are able to understand the register by using the field, tenor and mode.

Language as socially constructed cannot be divorced from ideology. Van Dijk (1998: 8-9) argues that ideology is socially based, stating that ideology is “a basis of the social representations shared by members of a group ... the mental frameworks - the languages, the concepts, categories, imagery of thought, and the system of representation which different classes and social groups deploy in order to make sense of, figure out what and render intelligible the way society works.” According to him, this is a sociocognitive definition in that it views social practices, including language and prejudices, as ideologically based. To Van Dijk (2000: 96-99) ideologies are sociocognitive in that they become social as they are shared by members of the community, cognitive (mental) as they involve mental processes such as beliefs and goals, evaluations, emotions and mental or memory representations involved in discourse and interactions of members of a speech community. Fairclough's (1995: 27) view on social institutions agrees with Van Dijk's argument above. Wooffitt (2005: 140) also views ideologies as taken to be organized sets of beliefs which mobilize practices and viewpoints which sustain inequalities across society”. Such kinds of ideologies construct power relations and are unconsciously accepted by society as just the way things are. Each of these views has a

bearing on this dissertation in the sense that its focus is on courtroom interaction, a socially-based interaction where cultural power relations are contextually negotiated.

Interest in language has tended to move from limited linguistic units to larger textual units such as discourses (Alvesson & Skoldberg 2000). The term discourse is widely used in different scholastic research such as in sociology and in linguistics, among others. In linguistics discourse is viewed as language in use or simply language use (Brown & Yule 1983; Coulthard 1977; Fairclough 1992; Johnstone 2008). The analysis of discourse in the 1980s focused on the role of grammatical features in discourse (Schiffrin 1988). Discourse analysis refers mainly to the linguistic analysis of spoken and written discourses. According to Stubbs (1983: 1) discourse analysis is concerned with language in use in social contexts, and in particular with interaction or dialogue between speakers”.

Discourse analysts work with texts, “working outward from texts to an understanding of their contexts, trying to uncover the multiple reasons why the texts they study are the way they are and no other way” (Johnstone 2008: 30). Discourse analysis has increasingly shifted focus and adopted a social definition that combines both the linguistics and social aspects. Central to this shift in the emphasis is the constructionist view that reality is socially constructed through discourse (Foucault 1972; Wetherell & Potter 1987; Martin & Rose 2003). In the 1990s, there was a move to raise consciousness in the use of language through Critical Discourse Analysis (CDA) where emphasis is on the ‘hidden’ meaning behind discourse (Martin & Rose 2003: 214). As a result, CDA as an instrument of analysis has been widely implemented in different disciplines such as linguistics, psycholinguistics, politics and education (e.g. Hodge & Kress 1979; Fairclough 1989, 1992, 1995; and Van Dijk 1997, 1998; Wodak 1997; Martin & Rose 2003; Thomas 2004).

In the tradition of CDA discourse means “actual instances of communicative action in the medium of language” (Johnstone 2008: 2). Rogers *et al* (2005) state that discourse refers to how language functions to establish social relationships, identities and systems of knowledge and belief. The way discourse is explained by Rogers *et al* and Johnstone

suggests that there is a connection between language and communication and other meaning making. Still on discourse, Fairclough (1992: 64) asserts that discourse constitutes and constructs the world in meaning. Looking at the way language and discourse are defined by these scholars, it can be deduced that both terms (language and discourse) can be used interchangeably as both are interrelated. In view of this, through discourse we are able to understand the way societies operate since language is a system that plays a great role in reproducing and transforming power relations in different dimensions of culture, gender and age in society. Van Dijk (1997), who derives his work from Halliday, in a framework closely related to Martin & Rose's (2003) Systemic Functional Grammar discourse-cognition-society triangle, sees discourse as a sociocognitive approach located in the disciplinary triangle of cognition, society and discourse. Defining this framework, Van Dijk argues that language contributes in the shaping of people's thought processes, their view of reality and influences their memory and thinking processes. It is through language that people create a worldview different from a speaker of another language or a variety of that language. This is because people are not just individuals, but also members of groups in society, and become members through shared interests, goals and relationships based on ideological considerations.²⁷ According to Van Dijk context (the circumstances surrounding the use of language, e.g. the participants, the topic and the genre) contributes to people's understanding and misunderstanding of other meanings and is also critical to the interpretation of discourse.

The importance of discourse in the present study derives in part from Van Dijk's suggestion that even though discourse is not ideologically based, it is a form of social action where discourse norms and rules are socially shared by members of a speech community. Pennycook (1994:8) suggests that discourse allows us to understand how meaning is produced through a range of different systems embedded in social institutions. The term discourse in this study is derived from Martin & Rose's (2003) sense, i.e. as a stratum of language. This way, the concerns of the research are underpinned largely in the CDA framework whose main thesis is that discourse is a form of social practice and

²⁷ Martin & Rose (2003) take a similar view to Van Dijk's.

an important way in which ideology is manifested and reproduced. CDA is utilised as an instrument of analysis to expose how discourse is intimately linked with ideology. Below is a discussion of discourse, ideology and power.

2.2 Discourse, Ideology and Power

The concept of ideology in discourse studies has been widely researched (e.g. Fairclough 1989, 1992; Van Dijk 1997, 1998, 2000; Martin & Rose 2003; Johnstone 2008). The broadness of ideology as a concept is partly evident in the fact that even scholars in the same disciplines define it differently. This not only demonstrates the centrality of “ideology” in such disciplines and the work of such scholars, it also underlines the fact that it is a contested concept on which there is no consensus. According to Mesthrie (2000: 320) ideology refers to the “system of ideas, beliefs, speech and cultural practices that operate to the advantage of a particular social group”. Fairclough (1992) contends that the most influential person on discourse and ideology is Althusser, a classical Marxist.

Classical Marxism has defined ideology in political theory as a top down process where the ideas of the dominant group (the State) prescribe the actions and inactions of those at the bottom of society (subjects). The Marxists perceive ideology as a phenomenon that calls for the subjects to be dominated and oppressed by the state (Van Dijk 1998). Positions and dynamics of power tend to advantage those in power and oppress the powerless. Such kind of power, following Althusser (1971) results “through ‘hegemonic’ ideas²⁸ about the naturalness of the status quo to which people assent without realizing it” (in Johnstone 2008: 54). Althusser calls these ideas of power Ideological and Repressive State Apparatuses (IRSAs). It is important to note that language use is one of the (IRSAs) that have been invoked continuously to maintain state and power. Fairclough (1989: 55), when describing power, argues that the “social order of discourse is put and held together as a hidden effect of power”. Because language is a social entity, the use of social power

²⁸ Hegemony is discussed later in this same section – 2.3

to explain social relations enables the researcher to analyse if indeed language discriminates against women. This study describes the status quo of discourse in selected Swazi Court cases which involve women in order to expose the relations of dominance, oppression, exploitation and power, the purpose of which is to suggest possible options for intervention to change the status quo and achieve social justice.

Non-Marxist approaches to the study of ideology do not define ideology from the point of view of a top down process where the state machinery is used to oppress the society, but concur with Marxist approaches as they view ideology as constructed through discourse. Martin & Rose (2003) view ideology as “socially based” and conclude that through discourse as text and talk, ideology is constructed via daily social interaction. Martin & Rose (2003:12) view ideology as a phenomenon that is embedded in language and differentiate between the powerful and the powerless citizens in a society. They view ideology in relation to the speech community and argue that “speakers of a language share an equal range of meaning making resources...” (Martin & Rose 2003: 23). Van Dijk (1998:5) takes a very similar view when he contends that ideologies of any culture or society can be “sociocognitive – they are social in that they are shared by members of groups or institutions ... and cognitive in that they involve mental objects such as ideas, thoughts, beliefs, judgements and values”. He further argues that ideologies “establish links between discourse and society ... and ideologies monitor how language users engage in discourse as members (dominant or dominated, or competing) groups or organisations, and thus also try to realise social interests and manage social conflict” (Van Dijk 1989: 7). This definition suggests there is a link between language and society through discourse. It also suggests that ideology in any speech community organises social structures of people in a society. This suggestion has a direct bearing on the institutional object of the study.

Critical linguists who build on Foucault’s (1972) concept of ideology, i.e. that power is exercised not by virtue of coercion but through institutions of knowledge, view ideology as constructed through social practice. This means that ideology has been studied by Critical linguists in relation to social practice, such as the study of text and talk. They

have looked at ideology as discursive (see Fowler 1996; Hodge & Kress 1979; Wetherell 2003) and therefore through discourse as text and talk it is possible to construct ideology via daily interactions. Critical linguists further argue that the analysis of the discourse of ideology and power is located in the process of argumentation and in discrimination or inequality (Wooffitt 2005).

For the purpose of this study, ideology is examined as it relates to discourse and power relations between men and women, given the type of gender ideology manifested in Swazi society. Further, it is necessary to ascertain the extent to which this ideology is constructed in the Swazi Courts. The most relevant language issues will be register variation and its ideological implications (which will be discussed in more detail below). The researcher uses Van Dijk's (1998) and Martin & Rose's (2003) view on ideology because it is given from the linguistic community point of view.

Power Relations

Within the broader fields of language studies, language and power studies continue to attract interest of some researchers in the field of sociolinguistics (for instance, Foucault 1972; Fairclough 1989; Cameron 1992; Johnstone 2008). The issue of power is central to CDA (Johnstone 2008) since it is in discourse that power relations as social relations are negotiated and contested by members of speech communities, and such discourse is often ideological. Related to the definition of ideology is power and hegemony. Power, according to Fairclough (1989: 33) can be classified in different forms, such as “state power, social power, ideological power and economic power”. There is also the discourse of traditional power that distinguishes the different ages of people in society. Traditional power is used to maintain the *status quo* that advantages and/or disadvantages members of given societies (Shongwe 1997). The way people in speech communities think and do things brings forth the different ways in which they experience power in society (Shongwe 1997). Such examples of power yield hegemony in society.

Hegemony, according to Fairclough (1992: 92), is “leadership as much as domination across the economic, political, cultural and ideological domains of a society”. Simply put,

social power results from hegemony in a society which portrays ideas and issues such as gender as a natural status quo and to which people thus subscribe to without knowing it or questioning it. Using the notion of social power to discuss social relations that are gendered, this dissertation also focuses on the traditional power which appears to be located in Swazi customary courts. Research on gender and communication has predominantly viewed social power as important. For example, Fishman (1983) and Zimmerman (1987) look at the construction of gender in complex arrays of social practices and attempt to understand male dominance in communication. This is an important element in the study taking into account that the researcher investigates evidence of disparity in power relations.

2.3 Discourse and Gender Studies

Meena (1992: 1) views gender as “socially constructed and culturally variable roles that men and women play in their daily lives”. Traditionally, gender has been defined as a biological concept (Coates 1986). In diverse fields of discourse studies, i.e. sociology, anthropology and linguistics, gender is seen as constructed through discourse. Some theories (stratification, social networking and the difference approach, among others), view gender as built through discourse (e.g. Lakoff 1975; Coates 1986). Thus gender has been institutionalised such that gender reveals inequalities between men and women which are ideologically justified as natural (Lips 1993). Gender has been one of the central issues in linguistics, especially with the concern that language use is gendered. In some research variables such as pronunciation, grammar expressions and social stratification reveal that men and women’s speech is different.

Many scholars (e.g. Lakoff 1975; Tannen 1994; Romaine 1994; Trudgill 1983) have studied gender using the difference approach, i.e. whether or not there is evidence for different linguistic behaviours between men and women in speech communities. Their general consensus is that such differences do exist, and can be accounted for by what could explain gender differences in language use such as social stratification, cultural socialization and economic disparities. Given the differences between men and women’s

speech, it is probable that such differences exist (Lakoff 1975; Baxter 2002) from as early as childhood.

According to Lakoff (1975) men and women are socialized differently early in life and learn to assume gendered ways of playing and speaking. For example, women learn to be submissive and supportive in their speech and men on the other hand, become rough, pushy, competitive and authoritative (Lakoff 1975: 221). In public speaking, for example, men dominate positions as leading speakers and women, on the other hand, experience difficulties in public contexts (Baxter 2002). The way language can be coded at an early stage seems to be influential in the later linguistic behaviour of children. This suggests that it is society that teaches young girls to keep their place and talk 'lady like' when they eventually grow up. Lakoff (1975), in studying a Japanese society, mentions that both boys and girls first learn women's language as their first language until they reach the age of five. She concludes that "... both sexes use the particles proper for women until the age of 5 or so, then the little boy starts to be ridiculed if he uses them, and so soon learns to desist" (Lakoff 1975: 221). The findings of the above scholars have a bearing in this study.

Related to the above findings is Trudgill's (1983) discussion when he refers to other researchers' work that emphasizes a greater orientation to community prestige norms as the main driving force in women's as opposed to men's linguistic behaviour. Trudgill (1983) cites research conducted in North America which reveals that there is a correlation between gender and language. Basing his discussion on the American Indians, particularly the Koasati community, he finds that women are more conservative in their speech than men. In that study, he asserts that women are more prestige-conscious than men and speak a language variety that is closer to the standard language. In a related study conducted by Eckert and McConnell-Ginet (1992: 90) women are found to be more conservative in their speech than men as their speech indicates their "conservatism, prestige-consciousness, upward mobility, insecurity, deference, nurturance, emotional expressivity connectedness, sensitivity to others, solidarity...".

Trudgill's (1983) discussion of the Koasati community leads him to see women as overwhelmingly conservative, since they tend to over report their use of prestige forms while men underreport theirs. He therefore argues that women and men respond to opposed sets of norms: "women to overt standard language prestige norms and men to conceal their vernacular prestige norms." (Trudgill 1983: 182). According to Trudgill "overt prestige attaches to redefine qualities as associated with the cosmopolitan market place and its standard language, whereas covert prestige attaches to masculine, rough and tough qualities" (1982: 182). One possible conclusion from this is that women's overt prestige orientation is a result of their powerless position in society. Trudgill (1983) argues that as much as society does not allow women to advance their power or status through action in the market place, they are thrown upon their symbolic resources, including language, to enhance their social position.

Examining Trudgill's assertion, one can argue that since his discussion was based in one community but generalised for all communities, it becomes difficult to generalise it for the communities in the world. It can also be argued that Trudgill's assertion could also depend on social cultures and factors of society like the level of development, the level of female liberation, the level of democracy, among others.

Fasold (1990: 104) also credits the opinions of Lakoff (1975) and Trudgill (1983) with respect to the use of tag questions by women saying that "[g]reater use of this form by women could mean that women, more often than men, are presenting themselves as unsure of their opinions and thereby as not really having opinions that count very much. Tag questions usage, then, "represents another example of submersion of women's individualities" (Fasold 1990: 104). Admittedly, question tags can facilitate communication more than express doubts or hesitancy but the patriarchal set up coupled with socio-cultural operations in Swaziland leans more to question tags used by women as an expression of doubt and hesitancy than as a facilitator of communication.²⁹ My view however is informed by personal experience with gender.³⁰

²⁹ See discussion of this in Chapter Four – Section 4.2 Courtroom Observation.

³⁰ This may sound presumptive to a non – Swazi reader.

Brown (1980) examines the language of women in Tenejapan society (a Mayan Indian community in Mexico) and demonstrates that women do have characteristics of politeness such as the use of tag questions that is suggestive of tentativeness and lack of confidence. These findings echo the study carried out by Lakoff (1975) and other work such as that of Holmes (1995). In most of these works women's speech is presented as being characterized by hesitancy, lack of confidence, shyness and probably feelings of insignificance. Viewing such instances, the researcher argues that women who present their cases in court may be thought to be unsure of themselves if they answer using many tag questions and would be thought to be evasive.³¹

Coates (1986) lends credence to the fact that women, more often than men, use linguistic devices called hedges that weaken down what they want to say. According to Coates (1986: 152) linguistically women hedge when they "avoid saying something definite and so keep [their] options open". Hedges can be used but minimally. According to Coates women who hedge because they express doubt and confidence are sensitive to other people's feelings, are searching for the right word to use, negotiating sensitive talk and so on. In some institutions such as the Swazi courts, in the case of this dissertation, when women hedge they are misunderstood and thought to indicate doubt and uncertainty.³²

Kunene & Mulder (1990), in a paper on the imbalance of sex differentiation in the African languages, discuss gender differentiation at lexical level (looking at derivational morphology) and the differences in the connotation of lexical forms.³³ Their view that "[C]ertain verbs are used in a passive construction when referring to women, but are used actively when referring to men" (1990: n. p.) led to the conclusion that "women in Swazi society are accorded a lesser social status than men and that these cultural values are evident in the siSwati language" (1990: n. p.). Kunene and Mulder's research has a

³¹ See discussion of this in Chapter Four – Section 4.2 Courtroom Observation.

³² See discussion of this in Chapter Four – Section 4.2 Courtroom Observation.

³³ Even though their paper is on siSwati their findings cannot be generalized to all African languages, it is important to mention their research at this juncture because Kunene & Mulder's findings have a bearing to this study because it also touches on women and how language is used towards them.

bearing on this dissertation in that they discuss how Swazi cultural views about women are codified in the siSwati grammar. This dissertation will transcend Kunene and Mulder's research with a specific focus on Swazi Courts as representative of the intersection between state and patriarchal power on the one hand, and women on the other.

2.3.1 Gender and Feminist Research

McInnes (1994) posits that feminism is based on the understanding that the construction of gender is the most significant organising feature of society. Although feminists are all concerned with recognising and addressing women oppression, feminist theories (Alvesson & Skoldberg 2000, Adair 1992) differ in the way they analyse the origin of this oppression, how they explain the perpetuation of oppressive gender relations, and what creates women liberation. According to Alvesson & Skoldberg (2000: 209), feminism means that "women's perspective is applied to a variety of social phenomena." Adair (1992) asserts that feminism is based on the equality of women and is concerned with intervening in cultural practices that marginalise and subjugate women. Collectively the above researchers are concerned about a commitment to women. The feminist's aim seeks to unearth the oppression and inequity which women experience in their daily life, at the changing gendered ideologies of power relations between men and women in society. It also aims at the liberation of women through using feminist methods to improve the social life of women.

Different feminist theories give different approaches to the issue of women oppression, the Marxist, radical and liberal theories. For this study, the radical theory will be the most suitable since it directly encompasses the theory on power relations which the study addresses.³⁴ Radical feminist theory analyses the oppression of women according to the structure of the organisation of society. This theory claims that the oppression of woman reflects the structural relations between genders and therefore analyses the power relations between men and women. This leads radical feminists to challenge the

³⁴ The other mentioned theories, liberal and Marxist, will not be discussed because of the scope of the study.

patriarchal system in society which is based on men's domination over women. Radical feminists stress the concept of power when challenging male dominance, and they distinguish between the terms 'power over' and 'power to' (Brock-Utne 1989). 'Power over' implies dominance while 'power to' implies competence. Since patriarchy is built on 'power over' radical feminists challenge this type of power and aim to substitute it with 'power to.'

Other feminist scholars outside radical feminism such as Davies (1992); Bergvall, Bing & Freed (1996); Sheldon (1997); Weedon (1997); Cameron (1997) and Walkerdine (1998), explicitly highlight the continuing ways in which females are constituted as less powerful than males in many public and professional settings. However, from the feminists' perspective we cannot recognise females as disempowered victims, but as talented people. Feminists' approach to explaining this suggests that the ceaseless interaction of competing discourses means that females will continuously change between positions of powerfulness and powerlessness both within the *same* context and across *different* social contexts. Such background can be detailed by Foucault's (1972: 49) informed view of discourses as "practises that systematically form the object of which they speak". In other words, discourses are systematic ways of making sense of the world by inscribing and shaping power relations within all texts, including spoken interactions.

Generally, feminist research holds the view that gendered language differentiation discriminates against women (Hooks 2000; Cameron, 1996). Hooks, as a modern feminist, contends that "feminism is a movement to end sexism, sexist exploitation and oppression" (2000: viii). Modern feminists do not agree on the way language is viewed as a way of differentiating between men and women's speech. Differentiating between men and women's speech seems to be a phenomenon of sexist language. Sexism according to feminists is deeply flawed as it exposes gender inequalities. According to Hooks (2000) it is flawed in the way it is understood with regard to language use. Sexism, according to feminist views, reflects a male emphasis on individual competition, on dominating and controlling the environment. Yet feminist researchers see the world as a social web of

interconnected relations. To them, language cannot differentiate between men and women.

The way societies construct gender seems to differentiate between men and women by presenting and using language in gendered terms during varied discourses. Since feminism challenges are directed at deeply held beliefs about the patterns of society, feminist views are important to this research as the researcher examines whether women are marginalized in the courts. This study will grapple with some of these issues as they emerge in Swazi society.

2.3.2 Gender and Linguistic Repertoires

The analysis of gender relations can be examined through reference to linguistic repertoires (Finlayson 1995). Linguistic repertoires as explained by Gumperz (1982: 177) are defined as “an individual’s particular set of skills (or levels of proficiency) that allow him/her to function within various registers of (a) language(s)”. For example, linguistic repertoires in a society may allow people to understand the political and social structural settings, such as power relations, respect and politeness. Gumperz describes linguistic repertoires as being the property of both communities and individuals. Some of these members may be identified in terms of gender, age, and social class differences, all which impact on their linguistic interactions. In this dissertation the researcher will mainly look at linguistic choices made in interaction between court officials, accused and complainant witness to determine whether courtroom exchanges create gender imbalance. The researcher examines men’s and also women’s repertoires – the different (or similar) type of language they use in speaking to men and to women.

Linguistic repertoires can be looked at as registers with regard to respect and politeness (Finlayson 1995). Finlayson has postulated that the tendencies of women to be polite make their speech to be different from that of men. In studying ‘*ukuhlonipha*’ (loosely translated as ‘respect’) among Xhosa-speaking women, Finlayson shows how women in Xhosa society respect their male in-laws by avoiding using syllables of words found in

their in-laws' names.³⁵ '*Ukuhlonipha*'³⁶ is also used among Swazi people, where women have been socialised to respect their husbands and other male in-laws through '*ukuhlonipha*.' Swaziland as a strong patriarchal society, on the other hand, does not expect men to use the avoidance technique. This is a further reason to believe that men's language directed to women may differ from the language they use to other men. Researchers have postulated that the tendencies of women to be polite make their speech different from men. Holmes (1995) writes that in whatever discourse, women generally do have feelings of compassion for their conversational partners.

The study in part examines the extent to which the cultural demand for linguistic courtesy inhibits women's ability to express themselves in the context of Swazi courtroom discourse. Some of the questions arising from these concerns include the following: Are these features really unique to women's speech, or do they reflect their status and position in terms of power? For instance, is it not possible for men to have these features in their speech when their roles and status are reversed in the courtroom? Does this reflect the manner in which speech patterns are used in Swazi Courts?

2.3.3 Gender Differentiation of the Swazi Society

The gender differentiation of a society is reflected in the gender-based division of labour and the division of labour depends much on sex, age, and to some degree rank (Booth 1983). In a male dominated society, the existence of some tasks which are allocated predominantly or exclusively to women rather than to men, some of which may be done both by men and women, embodies the subordination of women. For example, as women are expected to do domestic work, they do a great deal of agricultural work too. Girls and boys gradually take part in the gender divided work.

³⁵ The Xhosa women either delete the syllable or insert one that will fit. For example, if a woman's father-in-law's name is *Bheki*, she has to avoid the usage of the syllable *bh-* and choose an alternative form for the syllable (Mesthrie *et al*, 2000). The word '*i-bhekile*' (a tin/can), for example, is either '*i-wekile*,' or is given a synonym '*ikonkxa*.'

³⁶ The term '*ukuhlonipha*' in this dissertation will be borrowed and used in its broadest sense to make room for discourse choices such as euphemistic expressions and lexical patterns.

Gender differentiation is a major principle upon which Swazi patriarchal society has been organized. In an attempt to reconstruct the traditional division of labour in Swaziland, Marwick (1940: 60) observed that “in the economic life of the Swazi there is rigid differentiation between male and female with little overlapping in the work performed by these sexes”.³⁷ In his study he provides us with examples that men traditionally occupied themselves with cattle keeping, hunting and doing leatherwork. Women on the other hand, performed domestic chores, which included beer brewing and making their own cooking utensils (Marwick 1940: 61). Traditionally, Swazi women’s influence was confined to the homestead, to community and decision-making bodies while their husbands were away working in the mines. This suggests that the impact of men’s absence from home when they migrated for greener pastures to neighbouring countries like South Africa modified traditional division of labour to some extent. With the change in times, however, these traditional roles have also undergone profound changes and are largely considered to be archaic. Some of the changes have not been accepted though, especially where women are seen to be ahead of men or men’s rights are thought to be trampled upon. This is why women’s struggles to be heard in the traditional courts are seen as a threat to the patriarchal way of doing things, a way that mainly favoured the men.

According to Nhlapo (1992) there was a turn of events when African states that were colonised, among them Swaziland, underwent a transformational change of their customs. For example, girls had to be allowed to go through school which was previously reserved for boys. The Swazi tradition then allowed only males to experience formal education and girls had to be groomed by their mothers in preparation for motherhood. Males were introduced to domestic work which was always thought to be for women. Nhlapo (1992: 2) explains that male elders, as “holders of power within society”, were the most affected by the social transformation “ushered in by urbanisation” and “seniors could no longer command the obedience and the economic output of junior members of

³⁷ Though this is an old publication, it is critical to my research as it marks the initial research on gender in Swazi society.

the family”. This point is in line with the view that contemporary gender division of labour was influenced by colonial capitalists’ expansion³⁸ (Tyobeka 1986). Yet even now, Swazi gender differentiation has to do with the power relations between men and women in Swazi society. The remnants of traditional cultural values are responsible for the domination³⁹ of men over women. Domination can be by threat, as Schmidt (1991) points out, by coercion, by influence and by manipulation. It can also be by ideology which constructs power relations without needing to resort to obvious coercion, the ideology is just accepted without being challenged (Martin 1985).

2.4 Legal Discourse

Within the broader fields of language studies, much has been written on institutional discourse such as legal discourse in social science and in linguistics (Dante & Bogoch 1980; Atkinson 1992; Drew & Heritage 1992; Coulthard 1992; Moeketsi 2001). Drew & Heritage (1992: 22) define institutional discourse as “characterized by an orientation to some core goal, tasks or identity associated with an institution and constraints on what participants can relatively say”. In linguistics in particular, legal discourse has been perceived as socially based (Mesthrie & Deumert 2000), as it involves interactions between defence lawyer-witness and also prosecution-defence lawyer debates in court proceedings. Courtroom discourse is operational in various genres such as police versus witnesses’ reports and records of evidence (Coulthard 1992) and also in direct cross-examinations of witnesses (Drew & Heritage 1992). This study focuses on the latter as it investigates if direct cross-examining - where the accused cross examines the complainant in cases that involve assault offences - unfairly discriminates against women.

Courtroom discourse is one genre of legal discourse that can be described as different from normal conversation. This is because in the interaction in the courts there is

³⁸It is worthy to note that colonialism played a major role in influencing customary practices in Swaziland (see Nhlapo 1992).

³⁹ According to Schmidt (1991: 109) domination refers not to the single kind of power, but to a relationship between two social agents that is constituted by the existence of the power differential between them.

controlled turn-taking⁴⁰ between the participants and the power relations are asymmetrical (Moeketsi 2001). This results from the fact that the law requires that some participants, such as the defendant and witnesses, are required to answer questions asked by the bench. Shuy (1987: 43) contends that the roles of the participants in the court are strictly “overbalanced in one direction and the other underbalanced”. This can be interpreted to mean that the technical knowledge that the bench has gives them control of the court interaction⁴¹ as opposed to the lesser knowledgeable defendants and witnesses. For example, the judges and lawyers ask questions which require the defendants and witnesses to answer in a short space of time.

Most studies on courtroom interaction (e.g. O’Barr 1992; Atkinson 1992; Drew & Heritage 1992; Phillips 1992) argue that courtroom discourse gives a most excellent interpretation of power relations in courts. Levi (1990) states that when power relations are defined in court proceedings it is because of the environments that do not allow change easily. This has been evident in Swazi Courts in the analysis of cross-examination of witnesses and argumentative structures (Nhlapo 1992). According to Nhlapo emphasis of power in these courts is on the female witnesses to show respect to both court officials and also accused (male) during cross-examination.⁴² Nhlapo’s study is similar to this dissertation as it also focuses on power in argumentative structure in Swazi Courts and this study follows his idea. The dissertation investigates whether courtroom discourse, power relations in court marginalise women. Relationship between discourse and power is documented in studies of legal discourse (Berk-Seligson 1990, on unequal power relationships). Looking at the unequal balance of power between the bench and other participants (litigants) in courts, Moeketsi (2001: 135) asserts that imbalances of power in courtroom discourse would be the result of “linguistic manipulation” where the bench has “control of the linguistic situation while the less legally aware defendants and other witnesses are bound by law to be linguistically obedient”.

⁴⁰ It is controlled in the sense that the language is formal and the litigants cannot talk when not asked or referred to do so by the bench.

⁴¹ It should be noted that the court officials have power vested in them by the law and have a way of dictating cues for the weaker participants, i.e. accused and witnesses.

⁴² Swazi custom expects women in or outside court to respect all males regardless of their age.

Apart from “linguistic manipulation” by the bench, power can also be apparent in the rules of conduct. Power in this case results directly from the way legal professionals frame their questions and also make demands from witnesses. Witnesses seem not to possess such power. For example, witnesses have to respond to questions asked and cannot give more information than required. Viewing the foregoing Moeketsi’s (2001) study is similar to this dissertation in that she focuses on the imbalances of power in courtroom discourse while this study investigates whether there are asymmetrical gendered power relations in the Swazi Courts through courtroom discourse.

The above discussion on the argumentative structure of the Swazi Courts may explain how meaning is constructed and how that meaning in turn constructs gender differences within the wide Swazi society.

Below is a discussion of Critical Discourse Analysis, a methodology that will be used later to analyse data.

2.5 Critical Discourse Analysis

Critical Discourse Analysis (CDA) (Fairclough 1995; Fairclough and Wodak 1997; Wodak & Meyer 2001; Van Dijk 1998; Thomas 2004; Wooffitt 2005) originates from a critical theory of language that views language as a form of social practice. CDA tries to give an explanation of why some discourses that are produced in society have come to be accepted as natural and can be used to unpack those ideologies (Fairclough 1995). As an interdisciplinary approach, CDA according to O’halloran (2003: 1), is concerned “with highlighting the traces of cultural and ideological meaning in spoken and written texts”. In CDA language is not only a linguistic concept based on sentences and text, it is also predicated on the premise that language is a form of social practice, that is, language is represented by society and it represents society (Van Dijk 1997). In other words, CDA aims at capturing the dynamic relationships that exist between discourse and society. One main objective of CDA is to help critical analysts unpack the ideological beliefs that are

taken for granted and have become naturalised and are treated as natural in society. CDA seeks an understanding of how ideology is expressed through discursive forms (Wodak 1997: 8) and is aimed at exposing ideological social factors that could be a barrier to change such as prejudice, among others. These factors may be seen to have ideological bases.

Central to CDA are issues of power and language, and inequality across society and language. Wooffitt (2005:137) states that CDA is concerned to “analyse how social and political inequalities are manifest in and reproduced through discourse”. Thomas (2004) also purports that CDA is concerned with how a particular account of events becomes the decisive public version, or definition, of the situation. It focuses on how such a definition generates meaning through particular representations, identities and power relations within discourses. CDA is concerned with “how power, [inequality] and social relations are negotiated, are legitimated and are contested toward political contexts” (Thomas 2004: 55).

According to Wodak & Meyer (2001: 2) CDA aims “to investigate critically, social inequality as it is expressed, signalled, constituted, legitimized by language use”. Discourse in CDA refers to how language functions in society to establish beliefs and social relationships in a society. As discourse in CDA is about language, in this section, the terms discourse and language will be used interchangeably. Fairclough (1992: 64) contends that discourse signifies and constitutes the world. Language and power are closely linked firstly because using language is the commonest form of social behaviour that relies basically on ‘common-sense’ assumptions. Secondly, they are linked because power in modern societies is increasingly achieved through ideology and more importantly through ideological workings of language (Thompson 1984:2). Moreover, the use of language in daily life contributes to realisations of goals, hereby showing the power that language has within a certain community (Thompson 1984:2). Language has the “power to” impress and influence people, attitudes and behaviours. This is achieved through the use of words that relate to promises, threats, requests, demands, among other things (Hung & Bradac 1993: 5). Power in this study is partly viewed from the Marxist

point of view (top-down power)⁴³ and more based on the social and is used to explain social relations. CDA looks at the discursive constructions that are found in texts in relation to their contexts. Reisigl & Wodak (2001) assert that as Critical Discourse Analysts we assume a dialectal relationship between particular discursive practices and the specific fields of action (situations, institutional frames, and social structures) in which they are embedded. It is worth investigating how courtroom discourse is constitutive of social practices.

CDA methodology was used in two ways in this study. Firstly, it was used to analyse the social relations that are found in courtroom discourse, based on the language used in the cross-examination of women. Secondly, it was used to analyse the processes of interpretation that takes place in courtroom occurrences. CDA offers a systematic way of interrogating the interplay of discursive constructions and deconstructions made by the audience. In the analysis of courtroom discourse it is important to analyse discourse from a critical perspective in order to investigate gender and power relations as manifested in discourse and to point to possible changes in these social practices. This dissertation follows Fairclough's (1992, 1995) analytical approach to CDA.

As this dissertation investigates whether courtroom discourses marginalise women, CDA will be specifically utilised to unpack and explain the underlying ideologies of gender and power relations through language used in the Swazi Courts and to “provide resources for those who may be disadvantaged through change (Fairclough 1995: 9). The methodology that will facilitate the use of CDA to analyse data is described below.

⁴³ This is discussed in section 2.3:- Discourse, Ideology and Power.

CHAPTER 3

Methodology

3.0 Introduction

This chapter expounds the outlines of the methodological framework that were used in this investigation. The first section discusses the qualitative research method that was utilised to collect and analyse data, paying particular attention to case study methodology. The qualitative methodology was used closely to ethnography because it is the most basic form of social research. The subsequent section is a detailed account of data collection in relation to the research questions below:

- Are women disadvantaged by language used in Swazi Courts during cross-examination?
- Is the language directed towards men in Swazi Courts in any way different from that directed towards women, and if so, does this situation advantage men?

Below I present the rationale for selecting the qualitative method of data collection.

3.1. Qualitative Research

Qualitative research methodology is ethnographic in nature in that one may use a number of methods such as observation, interviews and analysis of documents (transcripts of recorded court proceedings in the case of this dissertation). It is an approach in terms of which the researcher participates in a social context for an extended period of time, collecting available data in order to shed light on the research topic (Cohen & Manion 1994; Hammersley & Atkinson 1995; McMillan & Schumacher 2001), and it attempts to describe intact human life. McMillan & Schumacher (2001: 15 – 16) purport that the purpose of qualitative research is to give a detailed “understanding of social phenomena from the participants” perspectives. It is a continual process of developing a research design and of collecting and analysing data and assumes interactive social roles in which observations are recorded and participants are interviewed within a range of contexts. By

interactive social roles McMillan & Schumacher mean the researchers should acknowledge situational cues, i.e. communication behaviour arising from the social interaction of participants. Klirk & Miller (1986) on the other hand, assert that qualitative methods of collecting data allow the researcher to study individuals in their own territory and interact with them to get their own understanding of their social roles. Because the present study is a case study that seeks to investigate if courtroom discourse discriminates against women, the research is in part concerned with understanding people's thoughts, feelings and beliefs as they occur in their natural settings (McMillan & Schumacher 2001), hence the selection of this type of research method. A case study according to Mouton (2001: 194) is usually qualitative in nature and "aim[s] to provide an in-depth description of a small number of cases".

Wallace (1998: 45) defines a case study as the systematic investigation of an individual 'case' whether that refers to one group, individual event or unit. Some of the possible aims of case study investigation involve solving problems, generating a hypothesis, providing illustrations and applying theories to practice (Wallace 1998: 168). In view of the above it is important to note that the results of a case study will therefore not be statistically generalised to the whole population of groups or institutions. The format of a case study can vary and can depend on several factors, i.e. the purpose of the case study and the nature of the report to be written in the investigation (Burns 2000). Data analysis in a case study focuses on a single phenomenon which the researcher chooses to get deep insight into the point of investigation (Cohen & Manion 1994; McMillan & Schumacher 2001). The case study method was used in this research because of its flexibility and adaptability (McMillan & Schumacher 2001).

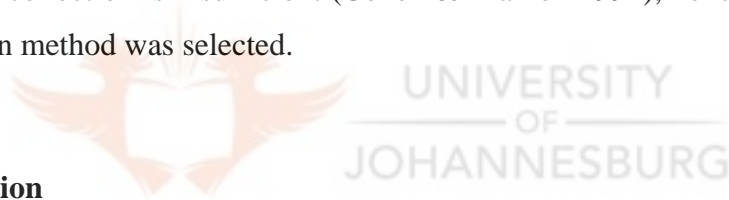
3.2 Data Collection Process

The study employed several qualitative data collection methods which included transcripts of recorded court proceedings, courtroom observation and interviews and were employed in a way that allowed triangulation. Of these methods the recorded court proceedings were the main source of data collection. This method was used because the

research investigates if courtroom discourse in cases involving assault discriminates against women and one way to have access to what occurred in court is through transcripts.

3.2.1 Triangulation

Triangulation can be understood as the use of two or more methods of data collection in the study of aspects of human behaviour (Cohen & Manion 1994). Denzin & Lincoln (1998: 199) define triangulation as a research tool that assists the researcher to get to the finding, i.e. by seeing or hearing multiple instances of it from different sources, using different methods, and by squaring the finding with which it should coincide. Denzin & Lincoln (1998) argue that the triangulation method carries the assumption that there is a 'fixed point' that can be triangulated. In view of the above this suggests that any one method of data collection is insufficient (Cohen & Manion 1994), hence in this research the triangulation method was selected.



3.2.2 Observation

Observation is perceiving appearances, events or behaviour of participants in their natural setting (Cohen & Manion 1994; Wallace 1998; Burns 2000; McMillan & Schumacher 2001). The observation method was not preplanned for this research, but was utilised because the researcher observed that rich data was collected in the process of familiarising myself with what goes on in the courts. The purpose of the observation was to develop field notes which, according to Wallace (1998: 106) involves observing and analyzing events as they actually happen without using any electronic means of recalling the data, but simply writing notes. Field notes, according to Burns (2000), consist of jottings during the day which will be sufficient to assist a researcher to remember what she/he had seen and wishes to write down. According to Patton (1990) the degree of valid observational data depends upon the distinction between overt and covert observation and to which degree the people who are being observed are informed of the purpose of the research. Covert observations are more likely to capture what is really happening than the overt observations when the people in the setting are aware they are being studied.

The observation was conducted from September 5th to October 9th, 2006. During this period of time a total of six observations were conducted. On average the researcher would be at the court for almost the whole day as times for observation of each trial differed in the sense that sometimes trials did not start at the scheduled time and others took longer to finish. The trials that were scheduled for after lunch would sometimes not come to an end and would be adjourned till the following day. In one trial the Court President was reported to have been summoned by the King and the trial was abandoned.⁴⁴ Observation was conducted in two Swazi Courts, mainly the Mbabane National Court (urban area) and the Lobamba National Court (semi urban area). The rationale for observing these two courts was to find out if proceedings in the urban area were similar to what goes on in another Swazi Court that is outside town.

In this study the researcher was a non-participant observer not involved in the proceedings, who sat at the back of the courtroom and observed the happenings. The researcher was able to write down notes on an exercise book which helped extensively during the writing of this report. Writing notes during court proceedings did not alarm participants for three main reasons. First, the researcher had requested permission from the Court Presidents (from both courts) prior to the trials; secondly, participants in the court proceedings were not aware of her presence and intentions; and lastly the researcher was seated at the back where she made observations and wrote down notes without disturbing the proceedings. The purpose was to observe the examinations that took place in the courts and to focus on the cross-examination of women by both the accused and the Court Presidents. Although the researcher tried to capture both the language directed towards women in the courts as well as the gender related issues that unfolded, she could not record everything as field notes are not elaborate enough to capture all that was happening (the use of a tape recorder was not allowed in court). This is a clear disadvantage of the observation methodology. In this regard, Fraenkel & Wallen (1990)

⁴⁴ It should be noted that when one is summoned by the King it can take the whole day waiting to have an audience with the King as, customarily, the King does not come out to start business until the sun takes a certain position.

posit that observations do not reveal what people perceive, however, the researcher was able to use this methodology as rich data collected from what took place inside the court. The researcher therefore had to make a selection, not taking down everything that was said, but only what was relevant for her study. Taking Hammersley & Atkinson's (1995: 180) view that "Some selection has to be made" when one is engaged in observation methodology, the researcher believes that the validity of her observations increased because the courtrooms created an open and inclusive environment in which there was little note-taking. The other two data collection methods that were used in this study are described below.

3.2.3 Interviews

Interviews were also employed in this study. Cohen & Manion (1994: 271) contend that an interview is a potential means of pure information transfer. Cohen & Manion (1994) and McMillan & Schumacher (2001), among others, suggest that there are different types of interviews, i.e. formal interviews and informal interviews. According to Cohen & Manion (1994: 271) formal interviews involve specific questions asked and answers recorded in a standard format. Informal interviews, on the other hand, involve the changing of the sequence of questions, explaining the questions for more clarified answers. Interviews can be structured (Cohen & Manion 1994: 273) as opposed to unstructured interviews. Structured interviews, sometimes known as face-to-face interviews, are structured around a set of questions, themes or topics. In this type of methodology questions may comprise a set of open-ended questions and the interviewer may probe for more clarity on unclear answers. Unstructured interviews, on the other hand, are guided by the purpose of the research and do not require specific questions. The themes or topics can be adjusted to an individual interviewee. It is more flexible and allows more freedom in the conversation.

A structured interview is a method of collecting data from a small sample (McMillan & Schumacher 2001). As a means of testing the conclusions that arose from the transcriptions, the researcher was able to conduct two sets of interviews: four women and

four men who went through cross-examination in Swazi Courts were interviewed in order to test their perceptions of the process through using structured interviews. The interviews were conducted over a period of a month and a half (from April to around mid June 2006). The researcher perceived both women and men's views as important, hence the selection of both males and females. The criterion for the selection of interviewees was carefully considered as the researcher sought help from the Judicial Commissioner's Office. Because the researcher needed to make certain that she obtained an extensive range of opinions from the interviewees and have the views of people who came from different backgrounds, the participants were selected from two different locations, i.e. those whose trials were heard in the urban Swazi Court (Mbabane) and those whose cases were heard in a semi urban Swazi Court (Lobamba). The researcher, being female and looking into gender related issues and the language used in the courts, may have affected both the male and female participants differently. Although the researcher comes from the same culture, female participants may have felt that they had more in common with her because of her gender. They seemed rather relaxed and open with the researcher and answered questions on personal matters. The male participants, on the other hand, the researcher believes, had less in common with her than they would have with another male interviewer owing to her gender. Another contributing factor was that men, according to Swazi culture, are not answerable to women.

The interviewees were sent invitation letters⁴⁵ towards the end of February 2006 inviting them to participate in the study.⁴⁶ In this invitation letter they were informed that interviews would be recorded for the purpose of data analysis. Attached to the invitation letter was an informed consent form⁴⁷ where participants had to endorse their signatures consenting to participate in the study voluntarily. Participants were assured that they would have the liberty of withdrawing anytime they wished. The interviews were independently conducted with informants contacted through neighbourhood networks that were generated from the researcher's daily contacts among neighbours and friends.

⁴⁵ Letters were written in siSwati and later translated into English for the purpose of this study.

⁴⁶ See Appendix 1 for an example of the letters of invitation both in siSwati and English.

⁴⁷ See Appendix 2. Forms were written first in siSwati and then later translated into English.

Upon entering the interviews, the researcher had compiled a set of questions that asked more or less the same questions. The sequence and the way the questions were put differed and different follow-up questions were asked depending on the responses. All the informants were interviewed individually.

The researcher opted for a combination of formal and informal interviews, as well as structured interviews. One reason for this choice was that the researcher wanted to dig deeper into the informants' understanding of the language used in the courts and also because of her belief rooted on the assumption that the information gathered from both sources of interviews would not be mutually exclusive, but would rather prove to be complementary. The point in getting the two sources was to take care of the possible gaps in any one source. A further reason for the selection of the combination was that the study attempted to follow Labov's sociolinguistic style of interview that, according to him, minimizes the observer's paradox (Mesthrie 2000: 92-93). This process was also used to establish the formal nature of the undertaking to ensure that both the interviewer and the respondent were not distracted by intriguing but non-pertinent issues (see, for instance, Mesthrie 2000: 92-93). The process is to lead off and open up a topic domain that one wishes a subject to address.

The risk of excess informality can especially be challenging given that the interviews were conducted in siSwati and all interviewees were siSwati native speakers. Sociolinguistic interviews usually start with an informal free conversation followed by formal language tasks that demand more attention from the interviewee. As free conversation aims at eliciting natural speech, the challenge related to the informality could result from the fact that interviewees were likely to express themselves freely in a language they know best, are familiar and comfortable with. The formality of the interview situation and its structured nature helped to avoid excess informality. The way the interviews were carried out helped the researcher to gain a detailed picture of participants' interpretation and perception of the language used in the Swazi Courts. One

main theme that the question assessed was whether linguistic discourse within the courts accord different statuses to women within the court system.⁴⁸

Before the respondents completed the interviews, they were informed that their completed interviews would be used for an M.A. dissertation. They were also told that they would remain anonymous and that their answers would be treated with confidentiality. This provided the respondents with some degree of freedom to recount and express their opinions and feelings uninhibited. They were also informed that the researcher wanted to discover how they perceive the language used in the courts, especially towards women.

In the interviews the researcher was able to use a combination of closed and open-ended questions. The open-ended questions were used to allow respondents to give answers that could be compared (Klirk & Miller 1986). The researcher's choice to use open-ended questions was based on their advantage that allow the interviewer to expand on responses of informants. A further reason to utilise open ended questions was that, according to Klirk & Miller (1986), they give an indication of the strength of informants' feelings, the level of information respondents give, etc. The interview schedule was used as a guide that assisted the researcher in conducting a well articulated conversation with the respondents.⁴⁹ The interview schedule contained 15 questions 7 of which required fixed answers and eight required open-ended questions. These questions were not put in any particular order and informants were probed for clarity as questions allowed. Each interviewee was required to answer questions from structured interviews. Since the interviews were structured, the researcher was able to deviate a bit where she found that participants were bringing forth interesting information. At that point the researcher was able to access more information and used probing techniques to further interrogate beyond the original question. The researcher was also able to ask for clarity from

⁴⁸ See Appendix 4 - Interview schedule.

⁴⁹ See Appendix 4 - Interview schedule

informants to whom she was able to explain complicated questions and probe for more information on vague answers (Klirk & Miller 1986).

The plan to conduct the interviews was that they would run for not longer than one and a half hours each, but because other responses took more time than was anticipated, the interviews therefore could not take the same period of time. The participants were asked to relate how they perceived the language used in the courts. The researcher also benefited to a great extent from the technology of audio recording since these recordings gave her the advantage of being able to pay more attention to the responses and asking related questions without missing any information. McMillan & Schumacher (2001) identify the use of tape recordings as an important way of ensuring trustworthiness.

3.2.4 Documents - Transcripts

The researcher was first able to peruse the recorded transcripts a week after she had met with the Judicial Commissioner in February – March 2006 and also when she went to observe and found that the trials were either postponed to the following day, or when trials finished earlier than expected. The transcripts were selected by court officers at the Swazi National Courts as the researcher was not allowed to select transcripts. The researcher settled for the officers' choice on the assumption that they were familiar with what goes on in the courts and they would know which cases reflected the violence of assault in its explicit language (assault is a violent crime). Documents, according to Cohen & Manion (1994), can be categorised into two categories, i.e. Primary and Secondary documents.⁵⁰ According to Cohen & Manion (1994: 50) primary material are the more reliable sources and include transcripts, log books, records of minutes of a meeting, etc. Secondary sources, on the other hand, are said to often be less reliable, but not always. They are less reliable in that there can be much variation in the accuracy of information since it is interpreted by one person and passed on to another (Cohen & Manion 1994: 51). Secondary material includes textbooks, third person written accounts including the researcher's field notes. Comparing the two types of methodology, the

⁵⁰ The study will focus on only primary material in this case because there was no secondary material utilised

researcher opted for the primary type of methodology, particularly transcripts, for this research. Another reason why official documents – transcripts – were chosen was because official documents are a useful means of analysing the official view and assessing the official record of events, decisions and plans (Cohen & Manion 1994: 50).

3.3 Data Analysis

The researcher mainly obtained data from recorded transcripts of courtroom proceedings and tape recorded interviews of men and women who had been involved in the cases. This was transcribed and then typed. Thereafter, data was read and coded in terms of important topics that recurred. After it was coded it was sorted into key thematic areas. As patterns and new themes emerged, they were sorted until the most dominant themes were identified. This exercise was tedious and it demanded continual working back and forth with data.

The researcher also extensively benefited from the field notes she wrote during the observation process. Since the interviews were in siSwati the researcher analysed the data by way of transcribing the proceedings and then subsequently translating the data into English.⁵¹ However, since there are certain words in the siSwati language, particularly assault related terms, whose meanings may be altered through translation, and interviews were conducted in siSwati, attempting to translate some useful information into English would not yield good results because of the cultural uniqueness of the terms. This could be a result of some siSwati words not having equivalents in the English language and therefore trying to translate them would make the words lose their meaning. The researcher retained the actual siSwati terms for those words in the transcripts and explained them in notes. The researcher then selected those aspects of discourse that are likely to yield evidence of gender inequalities in Swazi Courts, for example, cultural linguistic practices that had hidden meanings that restrained women's expressions within the context of the courts. Evidence of such meanings was investigated through linguistic

⁵¹ The interview transcripts were given to a second person, a specialist in SiSwati Grammar, who also serves in the siSwati Language Board (a board that looks into the development, promotion and advocacy of the siSwati language) to check for accuracy of the transcriptions.

analysis: grammar, lexical and rhetorical choices, i.e. how questions and answers are used.

An open-coding system was used and was based on the type of responses that the transcriptions provided. Coding, according to Cohen & Manion (1985: 306), refers to “the translation of question responses and respondent information to specific categories for the purpose of analysis”. Cohen & Manion (1985) further expound that coding in research can be done in two ways. First, they argue that there is pre-coding which is done so that the interviewee’s free responses to open-ended questions are assigned the content according to pre-coding categories. The second is post-coding the interviewee’s free responses to open questions. In this dissertation the latter method was used. The interviewee’s responses were later post-coded. Coding of free responses to open-ended questions provided easy means of data analysis and interpretation.

3. 4 Research Site

The study was carried out in two Swazi Courts, the Mbabane National Court, a court situated in the capital city and Lobamba National Court, a court in the semi urban area, mainly because Mbabane is accessible and since Lobamba is not very far from Mbabane, it is also therefore accessible.⁵² The study located itself within the courts for three reasons. First, the courts might provide one of the sites at which the gender discourses are performed, even when the contesting parties defer to both cultural and constitutional authorities. Considering that the traditional courts generally follow the same procedures and are guided by the same penal structures, it is valid to suggest that an analysis of linguistic behaviour in one of the courts reflect a general consistent pattern of behaviour in the traditional court system as a whole. This is in line with Cohen & Manion’s (1994: 106) view that the researcher “observes the characteristics of an individual ... institutions, society ... with a view to establish a generalization about a wider population to which that unit belongs”. Secondly, men and women’s disputes are consistently tape

⁵² The researcher resides in Mbabane and found both Mbabane and Lobamba National Courts accessible.

recorded and also transcribed within the context of the courts, as there are many documents from which one is able to choose primary data, e.g. transcripts of documented assault cases and translating them into English. The records were a reliable source of authentic documents for the purposes of this research.

3.5 Sampling and Data Description

In order to ensure that purposeful sampling was followed, a list of Swazi Courts was obtained from the Judicial Commissioner's office after the researcher approached the Commissioner in February – March 2006 and secured a meeting with him through his secretary. We discussed the proposed research and he confirmed my understanding by clarifying the protocols associated with meeting with Court Presidents of the Swazi National Courts to access the courtrooms. The researcher was then able to identify the two courts that the study used, the Mbabane National Court (in an urban area) and Lobamba National Court⁵³ (in a semi urban area). The purpose of the spread was to try and capture a sense of whether what goes on in one court applied to other courts too. In order to determine whether there is discrimination against women through courtroom discourse, the researcher compared the way men and women are treated through language used in the Swazi Courts. Sampling according to McMillan & Schumacher (2001) involves selecting a part of the population to represent the whole population. Simple random sampling was used in this research. The researcher selected a sample of four cases to be transcribed from a wide spectrum of trials involving assaults where women are both the victims and perpetrators, and looked at cross-examination of men and women in each of the four trials as representative sample. A small sample was chosen to limit the size of the study (Macmillan and Schumacher 2001). The small sample helped the researcher conduct in-depth interviews with each participant. This provided the researcher with rich data which made possible a detailed analysis of the participants' understanding of the language used in the courts. To avoid bias in the selection the researcher sought the help of the Judicial Commissioner's office to assist in identifying

⁵³ The reason for the selection of this court is discussed in Scope and Limits of the Research section below.

the participants on the assumption that the officers would be able to refer to their records and identify relevant participants.

Before data collection, the researcher had to ensure that research ethics were adhered to. The next section outlines the steps that were followed in an attempt to address research ethics.

3. 6 Validity and Reliability of the Study

There are different ways in which questions of validity of the study can be distinguished. One way is to make a distinction between internal and external validity. External validity refers to generalising findings that apply in similar environments. Internal validity on the other hand, is concerned with how correctly the phenomenon of research is portrayed (Brock-Utne 1996). External validity can be related to ecological validity which, according to Brock-Utne (1996) is concerned with the extent of generalising about observations made in one context to the other

One way to deal with validity is the resource of triangulation, that is, the comparing of data related to the same phenomenon. Triangulation is not a matter of checking whether or not the collected data is valid, but it is a strategy that is used to indicate whether or not the inferences drawn from the data are valid. According to Hammersley & Atkinson (1995: 231) “if we rely on one piece of data there is danger that undetected error in our inferences may render our analysis incorrect. If, on the other hand, diverse kinds of data lead to the same conclusion, we can be a little more confident in that conclusion”. It is important though to note that even if we use a number of data collections methods and findings become consistent, there is no guarantee that the inferences are completely valid, however, the threat of invalidity is minimised. In order to corroborate the analysis the researcher utilised a number of data collection methods, namely observations, interviews and recorded transcripts of Court proceedings.

3.7 Ethics

Hammersely & Atkinson (1995: 263) posit that “there are ethical issues surrounding social research, just as there are in any other form of human activity”. Below is a discussion of ethical concerns relevant to this study. The first invitation letter⁵⁴ to invite respondents indicated that participation of informants was voluntary and explained the research objectives clearly and solicited permission from the participants to be interviewed. It also indicated that participants may withdraw at anytime if they so wish. The second letter⁵⁵ expressed commitment to set appointments for the interviews. This was done to demonstrate commitment and trustworthiness. To gain trust from participants, they were assured that their anonymity would be guaranteed. A meeting with the Judicial Commissioner served as an entry meeting to establish a trust relationship with him so that the information the researcher would gather from the recorded transcripts would be utilised only for this dissertation. Viewing that the research dealt with human subjects, the participants were also assured that their interview would purely be used for academic purposes.



3.8 Scope and Limits of the research

The study is restricted to Swazi National Courts because of their traditional nature, i.e. the way these courts follow traditional practices and customs of Swazi people and are manned by traditionalists. The researcher deliberately confined the research to assault cases only because the investigation attempts to discover if there is interplay between discourse, power, and inequality demonstrated through language used during cross-examination of female witnesses by the accused (males) and the Court President in Swazi Courts. In terms of subject matter, the study is confined to the language used in court proceedings. Linguistic choices made by the different participants in the courts point to the level of technical knowledge of courtroom discourse subsequently used by people involved, (i.e. Court President(s), court clerks, witnesses and accused).

⁵⁴ See Appendices Section - Appendix 1

⁵⁵ See Appendices Section – Appendix 2

Another key limitation is the sensitive nature of the topic being researched. Lee (1993: 3) equates sensitive topics as “laden with emotion or inspire feelings of awe or dread”. In Swaziland assault of women by men is a sensitive matter and is not often discussed voluntarily among other women folk. On the contrary, it is very difficult to locate people who admit to their social prejudices which are an outcome of a society that is embedded in patriarchy. Assault cases can be sensitive in that the practice and legislation in Swaziland considers violence against women as not illegal if it took place within the private spheres, particularly if the violence is inflicted by the woman’s husband. The State does not intervene in such cases, but if the woman is battered by a foreigner it becomes illegal. Matrimonial families, on the other hand, where the woman is supposed to report issues such as assault, do not involve themselves in ‘private’ matters or find women to be perpetrators of aggression.

The interviewing of participants was also another limitation. Some participants were unable to open up easily even though they had agreed to be interviewed. The questions asked were found to be too sensitive to others and therefore the researcher did a lot of talking and utilizing probing techniques that led the interviewees to respond with ‘yes’ or ‘no’ answers only. For example, one respondent was not able to respond to some of the questions. She would keep quiet for a while and later asked if she could be allowed not to comment as she felt uncomfortable to talk about her experience.

The unique nature of legal language made it difficult to find siSwati translation equivalents for English legal terminology and implied an inevitable loss of meaning, for example, *sincanakazana*, found in section 4.2 - excerpt 2 ((b) line 16). The closest English equivalent could be *mistress*, however, the English meaning does not give us the siSwati interpretation of the word. This is because the siSwati word has undergone profound changes (semantic shift). At first the word referred to a ‘secret lover.’ But because the word has undergone changes because of language development the meaning has shifted and now refers to the youngest woman in a polygamous relationship, a secret lover, and also can be used to refer to the most loved wife in a polygamous relationship

regardless of her position, i.e. first, second or third wife. In such cases the researcher had to do a literal translation which resulted in the legal sense of the concept being lost.

3.9 Conclusion

In this chapter the researcher examined the data collection methods that were used in this study and explained the rationale for utilizing the qualitative methodology. Within the qualitative research approach a triangulation method that comprised interviews, transcripts and observation was utilised.

Observation was one method that was used to collect data to gain insight into what happens inside the courtroom as the researcher was able to jot down notes in the two courts the researcher visited. This method complemented the interview methodology and also the use of transcripts. The rationale for utilizing such triangulation was explained.

Methods of data collection were discussed. These included how the interviews were conducted, description of informants, research location and also how data was analysed. The use of a tape recorder for the interviews ensured that everything that was said would not be missed. In the next chapter the researcher gives an in-depth analysis, interpretation and discussion of data.

CHAPTER 4

Presentation, Analysis and Interpretation of Data

4.0 Introduction

In this chapter the researcher presents and analyses data obtained during the research. The presentation is organized around themes based on the aim of the study, i.e. investigating whether or not language directed towards women in Swazi Courts discriminates against them, whether the issue of power imbalance is manifested through courtroom discourse, focussing on the discourse of cross-examination in the Courts. Equally, it will also examine some of the characteristics of female witnesses' replies – the kind of language they use when cross-examined. In this chapter three types of data are presented, namely:

1. Data from observation;
2. Data obtained from structured interviews conducted with persons who have been to court; and
3. Data obtained from transcripts of recorded court proceedings.

Although data collected from interviews will be discussed, it will be examined differently from the way recorded transcripts will be presented. This is because during the interviews the researcher was able to incorporate important non-verbal communication cues that obviously lent weight to the responses that the interviewees came up with. When discussing these responses together with those from recorded transcripts, the researcher found that the recorded cases are documented for a specific context and there are supportive non-verbal forms as this was obvious from the documents. This is a point that will emerge clearly later in this dissertation. The analysis of the three types of data will be discussed in relation to the research questions set out at the beginning of the first Chapter.

In the analysis and interpretation of data similar themes have been coded as per the requirements of qualitative analysis. In order to allow confidentiality and anonymity, the researcher decided not to mention the respondents' names. However, for the

identification of the cases (in the case of transcripts), the selected cases were given numbers 1-4.

An open-coding system was used and was based on the type of responses that the transcriptions provided. The coding was not pre-determined but depended on the responses provided by the interviewees and recorded transcripts. Coded statements were grouped according to similarities. For example, the following codes, in SiSwati and English, were used in the transcripts:

SiSwati

M – Mphatsinkantolo

U - Ummangali

L – Lomangalelwe

English

CP – Court President

W – Witness

A – Accused

Excerpts of the responses to support the findings of how the participants perceived the language of the Swazi Courts are provided.

The presentation below is divided into three sections. First the researcher presents and analyses data obtained from courtroom observation. The subsequent sections will be a presentation and analysis of data from interviews and recorded transcripts of court proceedings. These presentations will largely draw from the CDA approach to analyse forms of discourse and structures of power that give rise to power relations ideologies. More importantly the study draws from this approach because the goal of CDA is to expose discrimination and misrepresentation in order to cause social justice and social change since the main aim of the dissertation is to explain the ideologies underlying gender and power relations in Swazi courts. Below is the presentation of the analysis of courtroom observation.

4.1 Courtroom Observation

The study was carried out in two Swazi Courts, the Mbabane and Lobamba National Courts because of the courts' accessibility. Courtroom observation afforded the opportunity to understand how Swazi Courts operate. Operations of both courtrooms were the same as the bench in these courts were staffed by men. The routine of the proceedings were the same. Going into the court with the knowledge of how magistrate courts and the High court operate and finding that they operate differently, for example accused and witnesses having no legal representation, create an anomaly in these courts. This anomaly is caused by the fact that the bench itself lacks formal knowledge of the procedure they need to execute in the courts to be at par with standard justice, because most of them do not have formal legal training, but are officers because they have been handpicked by the King. This is one glaring part that is distinct from a constitutional court where the parties are allowed legal representation and in case of criminal matters, such as violence among others, the prosecution stands for the Crown. This shows the disparity of the Swazi Courts structure in basic standards of justice and fairness. In the case of Swazi Courts, it is the court that leads the witness and cross examines the witness instead of letting the witness tell his/her own story in his/her own words unobstructed and without contradiction. The Court President and his assessors become the masters of the proceedings and they are the ones that search for the truth by dominating the questioning of witnesses and accused as opposed to the procedure in common law courts. In the Swazi Courts the bench has control of the turn-taking process in the court. Because there is no legal representation, litigants answer directly to the Court President and his personnel. Such practice poses a challenge to women in that where litigants are flooded with questions there is no room for raising objections, overruling or sustaining questions by either the defence council or presiding Court President. The intervention of lawyers or prosecutors during cross examination of a victim in constitutional courts helps in that even when the person in control of the questioning exceeds the bounds he can be overruled and female victims or accused females can be calmed down.

In the Court asymmetrical relationships are obvious between the bench and the litigants. Berk-Seligson (1990) contends that once a trial begins asymmetrical power relationships

become evident. In the Swazi Court, for example, it is the bench that has power over the litigants in the set up of the courts, particularly the seating arrangement. The authorities have their own place and have a dais which separates them from the other participants and audience in the court. The Swazi Courts are handled in such a way that they reflect male supremacy, i.e. the operation of the courts is predominantly coloured by male officials, who sometimes lack sensitivity in dealing with cases involving women. As a result a woman litigant or offender finds herself in a position of disadvantage by her mere presence in the courtroom, a public space within the preserve of men and this may have an adverse effect on female witnesses as they respond to questions asked, hence affecting the quality of justice she receives. Witnesses only answer what they are asked and may not provide unrequested information. Culturally women are taught to respect males, i.e. cannot answer back at men regardless of age or relation, but when the bench starts to ask questions from all directions it becomes difficult for the woman to remain calm and speak with respect. Some court officials use high pitched tones which may bring fear to the woman in the dock and may hinder her responses to the questions asked. Women in these cases where they are questioned by a number of men sometimes with pitched tones, subject them to hostile treatment in the courtroom. Males are not disadvantaged by the operations of the courts, i.e. having court officials, who are males presiding over their cases in the criminal justice system as they take it easy when answering back to other men.

The researcher discovered that witnesses and accused were sometimes reprimanded for not answering to the questions asked by the bench. Participants in the court, i.e. witnesses and also the accused, would at times not be able to answer questions asked. This according to the researcher's observation could have been caused by the fact that anyone from the bench⁵⁶ was able to ask questions and the respondent had to answer all the questions. There was no representation for the respondents. It was however different with some of the participants because they were able to answer questions asked and were

⁵⁶ It should be noted that the bench in the Swazi Court also includes the court clerks as they are eligible to pose questions to the one on the dock.

active in the court proceedings. This type of participants provided the insight that those eloquent find it easy to participate and the shy ones, or maybe naïve, find it difficult. Below, two excerpts showing different behaviours of accused persons when questioned by the bench are presented. Out of the many cross examination excerpts that this study could have employed, the selected two are an exception because they explicitly bring out the different kinds of behaviours that males and females show when they are cross examined, behaviours that are influence by both cultural gender ideologies and different socialised upbringing. The results of the behaviours as the researcher observed were culturally inclined in that both accused were obliged to answer questions posed to them, however, cultural influences of gender ideologies and gender socialisation propped up. For these excerpts the following codes in SiSwati and English are used:

SiSwati

M – Mphatsinkantolo

SS – Sisebenti Senkantolo

U – Ummangali

L – Lomangalelwe

English

P – Court President

CO – Court Official

W – Witness

A – Accused

Sicephu sekucala

Sendvulelo - [Indvodza imangalelwe isenkantolo ngekutsi iphindze ishaye lomunye lomsikati ngekutsi aketanga kuye uma ambita ngesikhatsi basemtsimbeni]

(a)

- 1 *M* *Yini lebangela kutsi ube lapha enkantolo?*
- 2 *L* *Ngulokutsi ngashaya nangu umfati [Akhomba lakuhleli ngakhona lolomsikati]*
- 3 *M* *Wake wavela lapha enkantolo yini?*
- 4 *L* *[Atsi kumayima] Yebo... Nkhosiyenkantolo, ngekutsi ngangishaye lomunye wetingani tami.*
- 5 *SS* *Lendvodza ungatsi iyatsandza kuhlukubeta labasikati [Wahleba lokutsite kuMpatsinkantolo]*
- 6 *M* *Ngiyakhumbuteka lapha kutsi nakucala wawulapha ngekutsi wawushaye*

waphose wabulala lomunye lomsikati loneminyaka lengemashumi lamabili
nakutsatfu ngoba wawukholelwa kutsi nguye lowatsatsa lomunye
wetingani takho wayo naso kamagidasibhekane e-Why Not?

7 L [Ngekudvwala] Yebo kunjalo.

Excerpt 1

Synopsis - [A man was in court because he had assaulted yet another woman {not his girlfriend} for not responding to his calls during a traditional wedding]

(a)

1 P Why are you in this court?

2 A For assaulting this woman here [Pointing towards the witness' direction]

3 P Have you ever been to this court before?

4 A [Pausing a while] Yes ... my Lord, for having assaulted one of my girlfriends.

5 CO This man is fond of abusing women [Whispering something to the Court President]

6 P I'm reminded that even the other time you were in this court for almost clubbing a 23 year old woman to death because you believed she took your girlfriend to the "Why Not Disco?"⁵⁷

7 A [boldly] Yes I assaulted her.

The accused in the above excerpt has been examined a number of times in the same court as the court official was able to recognize him from a similar offence. Seemingly, in all the times he has appeared before the bench he had assaulted a woman. He finds pleasure, shows no remorse and seems not afraid of the Court President. One assumption that could have caused the man to batter the woman could be grounded on the traditional gender expectation. That is, showing 'respect' to a man by attending to his call whether she is his relative, wife, girlfriend or not. When this woman in the above excerpt breached the

⁵⁷ The "Why Not Disco" is one of the famous discos in Swaziland where prostitution is rife. Parliament once debated that the disco be closed as it corrupts young Swazi women.

customary norm, the man felt that his pride had been attacked by the woman's action of ignoring him. What also could have aggravated the anger could have been that there were other people in the vicinity who heard and saw him call the woman, but she did not take heed to the call. His thwarted effort to win over the woman was 'traditionally' disrespected.

One of his victims was once a young woman of 23 years old [see line 6 in the excerpt]. It is however not clear why the man assaults women who are not even related to him [in the case of line 5 above]. From my observation the accused's attitude towards the bench was arrogant, for example, when asked if he had ever been to the court and arrogantly answered "for having assaulted one of my girlfriends." The accused was arrogant because according to Sacks *et. al's* (1974) model of conversation i.e. *turns of speech*, speakers are assigned cues and in a speech conversation the current speaker has control of the speech. This however varies from culture to culture. In this case the accused, according to my expectations, had to answer showing empathy of his wrong doing in order to get a lighter sentence. Instead he used the *no gap-rule* which Zimmermann and West (1975: 115-116) would interpret as interruptions. Sacks *et al* define 'the no-gap rule' as the next speaker's turn coming in immediately before the current speaker's cue ends. The accused above does not think of what to say, but immediately cuts in (see line 4 above – "Yes ... my Lord, for having assaulted one of my girlfriends").

Below is the second excerpt where the researcher understood that the participant answered differently from the one in the above Extract 1. Extract 2 is presented in English, however, some siSwati phrases have been literally translated into English so as not to lose the essence of the meaning. The literal translation is bolded.

Sicephu 2

Sendlalelo – [Umfati ubekwe licala lekushiya umyeni wakhe nebantfwana ngoba indvodza yakhe iganiwe, kantsi futsi ayisabuyi ekhaya. Lomfati wahamba wayawukulwa nesincanakazana ngekutsi sesimemuke indvodza. Basalwa lesincanakazana salimala sase siyammangalela sowubekwa licala.]

(b)

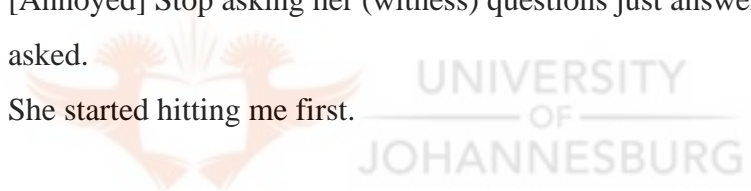
- 8 M *Yemakoti asewuchaze-ke makoti kutsi wawuyowufunani endlini yalolomunye?*
- 9 L *Ngangiye ngiyewufuna indvodza yami.*
- 10 M *Wawucabanga kutsi uyawuyitfolo khona yini?*
- 11 L *Ye...bo Nkhosiyenkantolo, ngangicabanga, nga...*
- 12 M *[Amjube lulwimi, aphakamise livi] Nguloko lowafundziswa kona ngunyoko? Awufundzisekanga!*
- 13 L *Nga... Ngangingakacondzi... ku... [Acale kukhala].*
- 14 SS *[Ngelivi lelifanana neleMphatsinkantolo] Uyedzelela kantsi futsi bekufute kushayeke wena [Babukane baphatsi benkantolo, lomangalelwe achubeke akhale]*
- 15 SS *Siva kutsi nguwe lowacala ngekwetfuka sincanakazana wendlula lapho wasishaya kucala. Ase usitjele kutsi wamentani?*
- 16 L *Angi ... [Asho akhala] zange mine ngimetfuke. Ngu ... nguye lowacala kucala [Abuka lapho kuhleli khona ummangali abese uyabuta] Angitsi nguwe lowacala kucala?*
- 17 M *[Ngekucasuka] Yekela kubuta ummangali imibuto, uphendvule lobutwe kona.*
- 18 L *Wacala kucala kungishaya.*

Excerpt 2 [A woman is accused of neglecting her husband and children because her husband has a mistress and rarely comes home. The woman went and confronted the offender for stealing her man. They fought and the “mistress” was injured in the process and laid a charge.]

(b)

- 8 P Why were you found at the Witness' flat *makoti* (**young woman**)
- 9 A I had gone to look for my husband.
- 10 P You thought you would find him at her place
- 11 A Ye...s my Lord, I thought ... I ...

- 12 P [Interrupts and raises his voice] *Nguloko lowafundziswa kona ngunyoko? Awufundzisekanga!*
(Is that what your mother taught you? You have never been taught good manners) .
- 13 A I... did not mean... to...[begins to cry]
- 14 CO [same tone as Court President] *Uyedzelela kantsi futsi bekufute kushayeke wena. (You should have been the one injured because you are uncouth)*
 [The accused continues to cry as the bench exchange glances]
- 15 CO It is said you hailed insults to your rival and were the one who began hitting *sincanakazane*. Tell us what you did to her. **(mistress)**
- 16 A I ... [sobbing] did not insult her. She ... she started first [looking at the witness' side and began asking]. You started first, Didn't you?
- 17 P [Annoyed] Stop asking her (witness) questions just answer what you are asked.
- 18 A She started hitting me first.



From the cross-examination we see that the accused's speech is characterized by hesitation and tag questions, (this is evident in line 11- "Ye...s my Lord, I thought ... I ...," In line 13 - I... did not mean... to, line 16 - I ... (sobbing) did not insult her. She ... she started first (looking at the witness' side and began asking). You started first, Didn't you?). One can speculate about the causes and effect of these linguistic variables. These variables occur in instances where the accused is expected to reflect on what happened. Again they occur when the tone of both the Court President and Court Official changes, and as a result the high occurrence hinders the accused to answer precisely and explicitly. The use of the question tags according to legal discourse imply lack of confidence and are described as disempowering devices by Lakoff (1985: 174) in the court of law. It should be noted that the accused still remembers what exactly happened on the day she approached her rival. Her use of tags is caused by the fact that the bench seem to accuse her that she was wrong and irrational to injure her competitor and demand confidence and assertiveness from her.

Again in the cross-examination above (Excerpt 2 (b)), power and gender bias relations are mapped out. This is evident when the participants (CP and Accused) use different approaches to achieve their goals. In this case the CP wants to find out the truth from the accused, while the accused on the other hand attempts to prove that she is not guilty of the crime. We see the P and CO use what Sacks *et al* (1974) call interruptions. According to Sacks *et al* interruptions are considered to be violations of the rules of conversation and their use is derived from their (men's) social status. Above in lines 12, 14 and 17 (Excerpt 2 (b)) we find that the P and the CO make use of interruptions and this depicts their social rank in the court. They are in power and dominate in the cross-examination. Their power in this case is determined by the fact that, as they are the bench, they ask questions which when the accused responds, the bench interrupts the flow by either making comments or demanding clarity where possible as in line 14 (“*Uyedzelela kantsi futsi bekufute kushayeke wena*” **(You should have been the one injured because you are uncouth)**). The accused who is a woman does not use interruption, but question tags - see line 16 in the following example:

16 A I ... (sobbing) did not insult her. She ... she started first (looking at the witness' side and began asking). You started first, Didn't you?

The accused is thought to be evasive of what she has been asked and therefore powerless regarding her social position in the court. The CP and the CO's choice of words and tone are also very patronising. The tone is also a bit harsh to the woman and probably that made her began to hesitate and cry. In line 12 above – “*nguloko lowafundziswa kona ngunyoko? Awufundzisekanga!*” **(Is that what your mother taught you? You have never been taught good manners)**, we observe that the Court President's tone changes as he learns that the woman went to her rival's flat to fight for her husband's return. In the process it can be deduced that her mother is blamed for the daughter's behaviour. This probably originates from the social upbringing of the Swazis that if a child does wrong, that child takes after his/her mother. In most cases the child's paternal side is always overvalued. The P blames the woman for being uncouth, because traditionally

women are expected to accept whatever men do; to accept promiscuity, hence he blames her for the unbecoming behaviour. The use of the term '*sincanakazane*' (**mistress**) (in line 16) is used with the tone showing that the witness' action was grotesquely uncalled for. The term is usually given to the mistress of a polygamous man and now because of semantic shift, the term is used when referring to the last woman to wed a polygamous man or the latest girlfriend to a young man who has multiple lovers. The CO's intention to use this term is deliberate so that the witness regrets or rather realises that what she did was wrong.

Unscrupulous men's behaviour is the root cause of bitter jealousies which sometimes lead to foul play. Men are traditionally not affected by gender stereotyping, i.e. the status quo of men and women not being equal, in family laws and criminal justice system in this case. Tradition restricts a woman from vocalizing her marital problems. So, her only channel of communication where she expresses her feelings and 'let off the steam', is to confront her competitor in an attempt to get her man back. The woman who suffers the injustice cannot, however, confront the husband and tell him to shoulder responsibility for all his family since in Swazi traditional society a woman never reaches a stage at which she gains freedom of speech. In a 'humble manner' the woman in the excerpt is trying to persuade her husband to validate the social system of serving wives and girlfriends equally and also criticizing him for his failures.

Comparing the two excerpts we see two different behaviours of accused persons before the Court President and other court officials. In the first excerpt the accused is male and in the second a woman. The male accused displays a character of being assertive when he responds to questions directed to him. The female is hesitant and has to be interrupted (see line 12 above), encouraged or shouted (see line 14 above) at to be more precise in her responses. This, according to gender studies such as Lakoff (1975) and Baxter (2002), among others, is a result of the fact that males dominate in conversations and women do not. This could be the result of the social upbringing as both men and women are socialized differently early in life and learn to assume gendered ways of playing and speaking. Another difference we find in the two excerpts is that the CP does not address

both accused the same way. He uses the term of endearment '*makoti*' (**literally means bride in English**) when he addresses the female accused (see line 8 above). The manner in which the term is used is mocking the accused for her unjustifiably immoral behaviour. In reality, the term is used when one refers to a woman who has just got married, but in this case it might be that the CO was belittling the witness because, according to him, she 'might' have behaved like a new comer in the field of marriage who fights for what she believes is hers, yet the Swazi culture allows a man to have multiple sexual partners/lovers.

The choice of the CO to use the passive in line 15 above –“It is said you hailed insults to your rival and were the one who began hitting *sincanakazane*. Tell us what you did to her”. (**mistress**)” - is also significant to note. It is significant in that according to Johnstone (2008: 55) the passive in discourse can “be used to hide the agent who is known, or downplay the fact that an agent was involved”. When the CO uses the passive sentence (see line 15 above), he does not want to directly tell the accused that he is accusing her but from his cue it is implied. According to Johnstone (2008: 55) the speaker's choice to either use the active or the passive can map out semantic roles into grammatical structures. For example, the role of the 'doer' in an active (transitive) sentence can be mapped onto the position of 'the grammatical subject, and the 'patient' (who suffers the action in a sentence) into the position of grammatical object. In passive sentences (non transitive sentences) the “same entity that is represented as the semantic patient in the transitive sentence can be represented as the semantic experiencer” (Johnstone 2008: 55). Considering line 15 above it is discovered that in the sentence structure there is no place for the semantic role of agent.

4.1.1 Interview Responses of Women and Men who Participated in Court Proceedings

The study had eight informants and a wide range of information was solicited through interviewing the respondents. The interviewees were contacted through neighbourhood networks generated from the researcher's daily contacts among neighbours, and the

Judicial Office. The interviews were conducted in siSwati, and where problems with understanding the question asked were encountered, clarification was given. The researcher was able to shape the interviews and probed for more information as participants opened up. Examples of the interview schedule can be found in Appendix 4.

In the interview responses the following codes, in siSwati and English, were used:

SiSwati

LL (1) - Lomdvuna Lophendvulako 1 *WL (1) – Wesifazane Lophendvulako 1*
LL (2) – Lomdvuna Lophendvulako 2 *WL (2) - Wesifazane Lophendvulako 2*
L - Lobutako

English

MR (1) – Male Respondent 1 FR (1) – Female Respondent 1
MR (2) – Male Respondent 2 FR (2) – Female Respondent 2
I- Interviewer

For the excerpts of the interviews I used the following key:

{ } my comments

... for unfinished sentences

The questions that were asked were a combination of closed and open ended questions and covered the researcher's questions. Although the researcher's arguments were based on evidence from eight interviews, the researcher used only extracts from four of these interviews⁵⁸ as a representation of sample. For the purpose of the presentation, utterances in the extracts were edited, for example, the back channels support⁵⁹ and rambling noises were omitted. Including these utterances would have been beyond the scope of this study.

⁵⁸ The four were selected because as the researcher went through the interview transcripts, the researcher noticed that the transcripts provided rich data as the interviewees became more detailed in their responses than in the other transcripts.

⁵⁹ This can be verbal and non-verbal feedback in a conversation, for example, saying things like *mmm, yeah* or body gestures, etc (see Zimmerman and West 1975)

Some of the interview extracts are given in the SiSwati original version and were translated into English with equivalent meaning.⁶⁰ The interviews gave the researcher insight into how women and men perceive language used in the courts. It turned out that participants perceived courtroom discourse differently. Some of the participants would create themselves as ‘you’ in a way that brought the researcher into the context. The researcher would become ‘you’ as different from them when they brought out issues of power. For example, one female informant said:

(c)

19 WL (2) *UMphatsinkantolo uyakuva kutsi utsini kepha uyakufemba ngemibuto yakhe lengapheli. Nine bantfu leningatange senibekwe emacala kuletinkantolo nicabanga kutsi kuyadlalwa lapha. Utikhandza sewuphendvula nalongakabutwa kona ngendzaba yekutsi kufute uyiphendvule yonkhe imibuto lebutwako.*

19 FR (2) The Court President will understand you but will continue to ask more questions. You people who have never been involved with the courts think that being involved is a joke. You find yourself saying things you did not mean to because you must have an answer to all questions asked.

The way she uses ‘you’ in the first sentence brings out the ‘you’ that is ‘me’ as another woman. It is a ‘you’ that is inclusive of both of the researcher and the interviewee. However, the ‘you’ in the second sentence is not inclusive. She becomes different when the researcher is seen as a member of society who has never been involved with the courts. Listening to these differences as in the construction of our selves, made the researcher realise that our worlds are different, although similar in some respects.

⁶⁰ As discussed earlier in the Methodology section – 3.3 Data Analysis - this happened because meanings of certain words in the siSwati language, particularly assault related terms, may be altered through translation.

4.1.2 Respondents' Involvement with the Swazi Courts

All the respondents that were interviewed reported that they were once involved with the courts either as witnesses or as complainants. One respondent who had been involved as complainant had this to say:

(d)

20 L *Wake wabekwa licala yini enkantolo?*

21 WL (1) *Kuyiphi inkantolo?*

22 L *Uma ngikhuluma ngetinkantolo ngisho tinkantolo takaNdabazabantu.*

23 WL (1) *Yebo ngake, hhayi kanye kepha kabili.*

24 L *Ungatsi sewake wabona letinkhulu! Kuya ngani kube kanyenti?*

25 WL (1) *Ngangilapho ngekutsi indvodza yami leseyasishiya yayingishayeke kutsi ngayiphendvula kantsi akukafaneli, nangekutsi ngangingufakazi ngesikhatsi make acosshwe ngubabe ekhaya kabuhlungu.*

26 L *Bebakhona yini labanye bofakazi kulelicala noma kwakunguwe wedvwa?*

27 WL (1) *Bebakhona, besibatsatfu.*

28 L *Wo! Ngiyabona.*



(d)

20 I Were you ever involved with the courts?

21 FR (1) Which courts?

22 I By courts I meant the Swazi Courts.

23 FR (1) Oh yes I have. Not once but twice.

24 I It looks like you have seen the worst, why so many times?

25 FR (1) When my late husband had hit me for answering back at him and when I was a witness when my father forcefully evicted my mother from their home.

26 I Were you the only witness in the trial or there were others?

27 FR (1) Yes there were three of us.

28 I Oh! I see.

Another male respondent who appeared as witness had this to say:

(e)

29 LL (1) *Ngamangalela laba labangishaya enkantolo kaLobamba.*

30 L *Bobani labakushaya futsi bebebangakhi?*

31 LL (1) *Lomunye umzala wami lomsikati kanye nebangani bakhe lababili.*

Kwakusikhatsi sebuganu sikulomunye umuti {asho akhomba kulomuti} sinatsa. Kwatsi nakufika litfuba lekutsi kubhadale mine ngatsi nangibatjela kutsi anginayo imali kwasula lomkhulu umsindvo bagcina bangihlanganyela bangishaya .

32 L *Kwate kwabakubi-ke loko. Kodvwa wagcina ukhonile kubhadala?*

33 LL (1) *Utsini! Kwakute lenye indlela, kwamela ngibhadale.*

(e)

29 MR (1) I took my assailants to the Lobamba National Court.

30 I Who were your assailants and what had happened?

31 MR (1) My female cousin and her two friends. It was a marula⁶¹ season and we were at that homestead [pointing to the direction of the homestead] drinking. When it was my turn to buy drinks for everyone I told them I did not have money to pay. An argument broke and they all hit me.

32 I That was bad. Did you finally pay?

33 MR (1) Ha I had no choice ... I paid!

Even though from the above extracts we gather that some respondents who appeared in the Swazi Courts as witnesses appeared alone, but there were those who had other witnesses to testify. One female respondent described her experience where she was accused of refusing to meet her conjugal obligations and was assaulted by her husband. When further probed to relate why she was assaulted she had this to say:

⁶¹ Marula is one of the indigenous fruit found in Swaziland. It is usually in season around February-March. Swazi people make beer out of this fruit among other things. A lot of cases such as those of assault, public indecency, and those with sexual connotations are mostly brought to the courts around this time.

(f)

34 WL (2) *Ngashayelwa lite ngoba ngangingafuni nesidlo seNkhosi.*

35 L *Washayelwa kutsi uyala nje? Kwaze kwaba kubi- ke loko.*

36 WL (2) *Kwakumatima, {amtjengisa sibati etsangeni} ... awubuke nje ...*

37 L *Kwabakhona yini umuntfu lowavela atowukwelekelela?*

38 WL (2) *Mm ... Ngenhlanhla lapho sihlala khona esitandini kukhona babe abekhona, weta kutongilekelela. Kwaba ngumusa nje kutsi abekhona ekhaya.*

(f)

34 FR (2) *Ngashayelwa lite ngoba ngangingafuni nesidlo seNkhosi*⁶²

(I was abused because I refused with the ‘Holy Communion’)

35 I You were beaten because you refused? That was bad.

36 FR (2) It was very serious, {showing me a scar on her thigh}... just look at this...

37 I Was there any other person around who came to help you?

38 FR (2) Mm ...One gentleman who stays in one of the houses in our compound came to my rescue. I was lucky that he was home that afternoon.

From the above extracts we gather that the informants were all involved with the courts and their experiences differed. However, in (line 36- It was very serious, {showing me a scar on her thigh}... just look at this...) the respondent avoids the use of sexual explicitness in her utterance, even before the Interviewer. In other words, the interviewee finds it difficult as it is a linguistic taboo. Linguistic taboos, according to Wardhaugh (1986: 230), are “certain kinds of behaviour believed to be harmful to its members, either for supernatural reasons or because such behaviour is held to violate a moral code”. In the above case we find that the taboo has to do with the latter, in the definition above, i.e. it violates a moral code. The way the interviewee avoids being precise in why she was

⁶² Will be treated later in the interview section.

abused in line 34 above- “*Ngashayelwa lite ngoba ngangingafuni nesidlo seNkhosi*”⁶³ (**I was abused because I refused with the ‘Holy Communion’**) indicates that the taboo has to do with her moral values. It is important to note that not all taboos impact on women alone but also to men. However, in the case of Swaziland taboos that have to do with morals impact more on women than on men. For example, most men are able to mention sex related words with ease. What Wardhaugh (1986) calls linguistic taboos, according to Finlayson (1995) is known as linguistic avoidance system, a system where certain words are not allowed to be said by a married woman, especially words that relate to names of her male in-laws. Perhaps such behaviour could be caused by her upbringing that there are things that could never be said by a woman in public. She finds it embarrassing.

4.1.3 Who Cross-Examined You?

All the respondents in response to this question pointed out that they were cross-examined by the Court President and three of them mentioned that they were also cross-examined by the accused persons (FR (1), FR (2) and MR(1)). One respondent, FR (2), who was cross-examined by both the CP and the accused, further explained that when the accused cross-examined her, she could not help thinking that the court was subjecting her to maltreatment once more. Consider the following:

(g)

39 L *Wawukadze ubutwa ngubani?*

40 WL (2) *Ngangibutwa nguye uMphatsinkantolo.*

41 L *Ngaphandle kweMphatsinkantolo kukhona yini lomunye lowakubuta imibuto?*

42 WL (2) *Angikuva kahle kutsi ucondzephi ngoba nalalamanye emadvodza labekhona abebuta.*

43 L *Ngiyacolisa angibeke kanjena, kukhona yini lomunye lowakubuta imibuto ngaphandle kweMphatsinkantolo nalabo lababanaye labaye babutabute*

⁶³ Will be treated later in the interview section.

nje?

44 WL (2) *Yebo, umyeni wami lebengimmangalele.*

45 L *Wo ngiyabona. Weva kunjani kubutwa yindvodza yakho?*

46 WL (2) *Lokutsi nje ngangimphendvula ngimkhulumisa kantsi phela wangihlukubeta, futsi abetsembise kungibulala kwangesabisa. Ngisaphendvula ngangehluleka ngoba engcondvweni kwakusolo kunalesitfombe sekungihlukubeta.*

47 L *Utsi wawukhona kuphendvula nje konkhe labekubuta kona?*

48 WL (2) *Ngangihle ngehluleka kumphendvula ngoba nganginalokwesaba. Ngibonga uMphatsinkantolo nje kutsi abekhona kusho lutfo nasengehluleka kuphendvula. Uyati kutsi noma ngabe ngangitfukutsele ngibila ngangehluleka kuphendvula, ngangingafuni kumhlazisa. Yindvodza yami lebeyihleti ingilalalele.*

(g)

39 I Who cross-examined you?

40 FR (2) I was cross-examined by the Court President.

41 I Any other person?

42 FR (2) Mm ... I don't understand because the other men also asked me questions.

43 I Oh! I'm sorry let me put it this way. I would like you to tell me if there was any other person who cross-examined you beside the Court President and the other court staff who asked one or two questions?

44 FR (2) Yes there was, the accused person, my husband.

45 I Oh I see. How did you feel about it?

46 FR (2) The mere fact that I was again speaking to my husband who abused and tormented me and above that had threatened he would kill me made my blood curdle. I could not answer him because I responded to his questions I could visualize what he did to me.

47 I Did you have answers to all his questions?

48 FR (2) Sometimes I could not respond as I lost my cue because I shivered as I

spoke to him. Thanks to the Court President who would intervene when I could not answer. But you know, even though I was angry with him I failed to respond because I did not want to embarrass him in front of the audience and the Court President. *Yindvodza yami lebeyihleti ingilalalele* **(This was my husband seated there listening to me reporting to the court).**

The other respondents, FR (1) and MR (1) were also cross-examined by the accused beside the Court President. When asked to further relate their experience during this time both seemed to share the same sentiments. MR (1) further related that:

(h)

- 49 LL (1) *Kunye lengakufundza ngisabutwa ngumzala wami. Ngangitsi nangehluleka kuphendvula kahle, ebese yena usima kulokwehluleka kwami. Wakujabulela loko ngoba abesolo afuna ngiphindzaphindze. Ngicabanga abentela kungihlaza nje angihlambalate.*
- 50 L *Yini leyayikwenta wehluleke kuphendvula leminye yemibuto labekubuta yona?*
- 51 LL(1) *Wena ucabanga kutsi nangehluleka? Ngangingehluleki. Ngicabanga kutsi nga ... ngadliwa ngemahloni kutsi wonkhe umuntfu abesenkantolo abebuka lesiphukuphuku sendvodza lesehluleka kutivikela sishaywa bafati.*

(h)

- 49 MR (1) There is one thing I realized as I was cross-examined by my cousin. When I failed to respond to her questions she would capitalize on that and enjoyed hearing me repeating over and over again. This was to scorn me.
- 50 I What made you not respond to some of her questions?

51 MR (1) Do you think I was afraid? I wasn't. I believe I f ... felt
embarrassed by the fact that I was hit by females and everyone present in
court was looking at the fool who could not defend himself.

In the extract above (in (g) lines 39- 48) the woman has adopted the culture of blame as a coping strategy because she does not want to embarrass her husband in front of other men. The woman considers herself to be blamed for putting her husband on the spot. She considers it “culturally” unbecoming to tell the world that her man has battered her. She shows compassion and wishes she should not have done it. One could attribute this kind of behaviour to the social upbringing of the woman. She has internalised the fact that by offending the man she has overstepped her boundaries. Another reason for the woman to feel sorry for the man is the fear of living with the stigma of having embarrassed her husband and shamed him, a thing that can never be allowed or encouraged by her in-laws, her own family and also society. What she fears is that she will feel the brunt to shoulder her ‘shame’ should her marriage fail if her husband is taken to jail and result in her being a failure. Also it could be that she has to live with her husband after serving time; something she cannot face.

At this juncture it is worthy to note that society has created double standards in terms of norms and system of supremacy. In the western tradition it is right for the woman to come out clean and talk about violence, whereas traditional standards still maintain that a woman should remain silent, particularly on domestic violence. This, however, does not mean that such traditional structures condone domestic violence, rather there is a ‘traditional’ way of dealing with such violence, for example, giving men lighter⁶⁴ sentences for the offence they have committed hence devastating the women involved. Women thus resort to keeping silent about future victimisation, feeling pity for their victims (especially their husbands) and resolve not to respond in a manner would satisfy them. For example, in line 48 above, the respondent pitied her husband when he sat there listening to her relating to the court what he did to her. To her it was like she was

⁶⁴ Even though women are not equal to men in Swaziland, society still views men as superior to women.

belittling her husband as there were other men in the court. Society finds it embarrassing for a man to be ‘humiliated’ among other men. Men therefore cannot be emotionally traumatised hence the woman did not want to humiliate him. Men on the other hand feel ashamed and ridiculed if they relate what befell them and abused by women (see line 51 above - “Do you think I was afraid? I wasn’t. I believe I f ... felt embarrassed by the fact that I was hit by females and everyone present in court was looking at the fool who could not defend himself.”)

In some societies such as Swaziland, wife battering is still common (Armstrong 1998; Aphane *et al* 2001) and because a woman is prone to discipline should she misbehave, women prefer to suffer silently or blame themselves if their men are exposed to abuse, such as in the case above. Saayman (1996:220) comments that women tend to suffer in traditional societies where male dominance is buttressed by an ideology of male superiority. It then becomes possible for us to see how patriarchal systems generate inequality among citizens of the same society through the use of linguistic discourses. In view of the above we see how gender inequality in some societies, particularly Swaziland, allow members of the same community to interact at various levels of power, which thwart and bring about the collapse of women’s uprightness.

4.1.4 Language Used in Cases of Assault

Here the informants were required to describe how they found the language used in the courts. When responding to this question respondents had different views:

(i)

52 LL (2) *Ngitfole kutsi kuwo onkhe lamacala lapho kutsintseka khona emadvodza, ngiwo lahlukubeta bafati asitakale ngabo.*

53 L *Usho kutsini?Asewelule kabanti.*

54 LL (2) *Ngisho ngoba uma emadvodza avele enkantolo ngekutsi ashaye bafati, futsi nebafati bate bufakazi lobuphatsekako, emadvodza asolo acinisa kutsi wona akabashayi. Lesinye sikhatsi bafati bayehluleka kuchazela*

inkantolo ngendlela lencomekako emadvodzeni, loko kuyawajabulisa ngoba bafati bagcina bawesaba emadvodza. Ngicabanga kutsi lulwimi lolusetjentiswako luyabandlulula kubomake ngesizatfu sekutsi loku kwenta emadvodza awine kalula. Kubukeka ungatsi kuwo onkhe emacala lafaka ekhatsi emadvodza bomake bete kahle kuhlonipheka kantsi bayahlukubeteka.

(i)

52 MR (2) In most of the cases where men have been involved I found that men are very cruel to women and have come to take advantage of them.

53 I What do you mean? Please elaborate.

54 MR (2) I say this because in the cases when they are in court especially for assault cases, men still maintain that they have not assaulted women even though most of the time women come with evidence that work against men's testimonies. Sometimes women are not able to say exactly what happened in the words men want to hear, and this makes men happy because they know it will eventually make the women fear them. The language is therefore cruel as men are easily acquitted because of this. It looks like in cases where men have been involved, men have been malicious to women as a result of no respect for women.

Another informant had this to say:

(j)

55 LL (1) *Mine ngikhandza ungatsi lulwimi lolusetjentiswako luyahlukubeta kubomake. Lubentela phasi.*

56 L *Usho njalo!*

57 LL (1) *Ngisasho nje ngikhumbula kutsi kukhona lenye indvodza leyahlukubeta*

umkayo nemfwanayo wentfombatana ngekwelicasi. Awuzange sowuke ufundze ngako emaphepheni? {Angemeli imphendvulo asho achubeka} lelicala latsatsa sikhatsi lesidze ngoba kwakungekho bufakazi lobanele. Kwate kwasita yena umshushisi ngekuletsa bufakazi lobusha , kwabitwa nabofakazi labasha. Lomfati waliwina lelicala kwatsi lendvodza yona yagwetjwa kabuhlungu. Lokwahlasimulisa umtimba kwaba kutsi lelicala uma lichubeka lase lifaka ekhatsi bantfwana.

- 58 L Labantfwana bona bebanabo yini buhlobo nalona abemangalelwe?
- 59 LL (1) Yebo bekubantfwabakhe.
- 60 L Kwate kwaba kubi – ke loko.
- 61 LL (1) Labantfwana bebabutwa imibuto lengetulu kwabo futsi bakhulunyiswa tinhlamba, lengicabanga kutsi bebatibuta kutsi batali babo babafundziselani kukhuluma kahle uma lapha enkantolo babakhulumisa ngato. Kulabanye kulabantfwana bebabutwa emva kokutsi batali babo bavumele labakushoko. Ngicabanga kutsi loku kwaba lukhuni kulabantfwana kanye nakulomake lebekufanele aphindzaphindze lokwamehlela kubantfu langabati enkantolo.

(j)

- 55 MR (1) I find the language cruel and as I look at it, it does not favour women.
- 56 I Oh really!
- 57 MR (1) I remember one case where one woman and one of her daughters were assaulted and sexually abused by her husband. Didn't you read about it from the papers {Does not wait for me to answer and continues}. The case took a long time because there was lack of evidence but before the man could walk free of blame, the prosecutor was able to bring in fresh evidence. Some witnesses were called up to testify. The woman later became a victor. The accused was not spared but given a heavier sentence. The

embarrassment in the whole saga was that when the case resumed there were young children involved.

- 58 I Did the children have any relation with the accused?
- 59 MR (1) Yes they were his children.
- 60 I That was bad!
- 61 MR (1) The children were asked difficult questions and were also exposed to vulgar language that left them wondering why they had been warned against using such language by their parents when adults were using it in courts anyway. It happened that some of the children were asked by the court officials after which adults corroborated what they said. This reception was too stressing for the children and the female complainant who had to withstand a repeated telling of her experience to strangers in the court.

In this regard the male respondents above have observed that in cases involving assault offences, women have to use the 'right' language to make their accounts strong. For example, these informants mentioned that when a woman fails to use the language that the court wants, like using the exact swear words the accused used, she gives the accused a chance to win the case. If the witness is unable to use or is not familiar with swear words it becomes a problem. One of the female respondents had this to say:

(k)

- 62 WL (1) *Lolulwimi lukahle nje lusemkhatsini. Lokuyinkinga kutsi nebantfwana bemantfombatana kumele basebentise lulwimi lokungakafaneli balusebentise njengemantfombatana. Ngikhumbula kutsi kulelinye licala lomunye umntfwana loneminyaka lesikhombisa kwamele eme etafuleni kute akhombise inkantolo ecaleni lekudlwengulwa kwakhe kutsi lendvodza leyamdhwengula yayimtsintsa kuphi. Lomntfwana akakhonanga kusebentisa lulwimi lolufanele inkantolo. Wakhala kwate kwasho*

lijaji kutsi akehwele etafuleni atjengise inkantolo kutsi ngukuphi lapho lendvodza beyimtsintsa khona emtimbeni.

- 62 FR (1) The language is neutral, however, what becomes a problem is that even young girl children are subjected to the use of taboo language. I remember a seven year old girl was made to stand on a chair because of her height to show the court where the accused fondled her in a case that had sexual connotations I once attended. The child was unable to use the 'right' language suitable for the court. She began crying and that was when the judge intervened and ordered that she stands on a chair to be able to show where exactly she was fondled.

And the other mentioned that:

- (1)
- 63 WL (2) *Ngicabanga kutsi lolulwimi alusilo lolwefukako kepha nje ngobe ngikholiwe angilukhoni. Kulesinye sikhatsi kuye kutsi ngisukume ngihambe uma licala lifaka ekhatsi bantfwana. Emadvodza wona akanankinga ngekusebentisa emagama latfukako. Kulelinye licala nje lenye indvodza yayibekwe licala lekushaya umzala wayo lomsikati kantsi amdzala kunayo. Lenkantolo nakanikwa litfuba lekumbuta abebuta ngendlela yekutsi ahlekise ngaye. Uma lomsikati ehluleka kuphendvula ingachubeki lomsikati angakasho lamagama latinhlamba latifunako. Lendvodza yaphuma yangaboshwa ngenca yekwehluleka kwalolomsikati kusebentisa lulwimi lolungcolile.*
- 64 L *Maye lomake wavelwa! Wena ungatsini nje ngendlela lekubutwa ngayo nangalemibuto yakhona?*
- 65 WL (2) *Kimi sekuyacaca kutsi labasikati, akukhatsalekile kutsi limuva labo*

linjani, noma iminyaka yabo mingakhi kufanele basebentise lulwimi lekungafanele balusebentise njengebafati kute bakwati kuniketa inkantolo bufakazi lobanele kutewuboshwa lomangalelwe.

(l)

63 FR (2) The language is not vulgar but because I am a Christian I once felt I should leave the court especially when the case involves children. Men do not find it too hard to use swear words. In one case a man was accused of assaulting his female cousin older than him. When he was given the chance to examine her I thought the accused deliberately scoffed at her. If the lady failed to use the exact swear words he would not pass the question but would wait for the exact words. The man was acquitted because the woman could not use 'dirty' language.

64 I That was a nasty experience for the woman. What was your perception of the cross examination?

65 FR (2) I have now come to understand that women regardless of their age and family backgrounds have to use taboo language where necessary so that they give the court enough evidence to nail the culprits.

In light of the above views, all the informants found the language used in courts intimidating and disadvantageous to the women who attended courts (in responses i, j, k and l above). The respondents indicated that the cause of the use of such intimidating language is that in most cases it is the court officials that demand those cross-examined to explicitly use swear words (see line 63 above) to substantiate their accounts so that when the court comes to judgement it will have enough evidence to sentence the accused or set him free if not enough information was gathered from the complainant. Male respondents above also agree that women suffer in most cases because of either their (women) language use or the language used in the courts. Culturally, society expects women to have a certain kind of talk that shows respect and avoid having characteristics of anti-

social forms of behaviour in her speech, such as using insults, 'swear words,' and slander. Women will refrain from using such words but, if used that behaviour creates a bad name for women. In other words, some words become taboo to women and society perceives women who use taboo words as women who are uncouth, who use dirty language as such words cannot be for public discussion by women. (It should be noted that this again is evidence of the inequality that society ascribes to the two sexes and this stands in the way of social justice).

Taboo words, according to Wardhaugh (1986: 230), are things that people do not say "not because they cannot be, but because people don't talk about those things". In the transcript analysis below (in **(p)** - see lines 94 and 98) much as women are expected by the court to be explicit in their accounts, they use a lot of euphemism to try and avoid using what to them would be "dirty" language, yet the court expects them to be precise. Euphemism according to Wardhaugh is not being precise about things "but if those things are talked about they are talked about in roundabout ways" (1986: 230). Specifically, the fact that women avoid using some words like '*umfati lomubi*' (**bad woman**) in 94 and '*ingwababane yenja*' (**harlot**) in line 98 below, makes it difficult for them to put forth their cases in a strong manner, thus jeopardising their own integrity as well as chances of their cases getting a fair hearing. What is of equal importance is that the space of the courts becomes one of fear and terror for the women complainants and others in similar situations who may wish to lay charges against men. Here we also see two different institutions diametrically opposed, i.e. the law and culture. Legally all participants in court are expected to be open, yet culturally gender identity opposes this. Because of women's upbringing they cannot bring themselves to abide by the regulations of the court, i.e. to be precise in their talk. Cultural influences crop up in such instances, hence the law and culture are in conflict.

4.1.5 Respondents' feelings when they were in court

The question required the respondents to talk about their feelings when they were in court. One of the informants had this to say:

(m)

- 66 WL (1) *Bengihle ngidliwa ngemahloni ngendlela lulwimi lusetjentiswe ngakhona, ngekutsi uMphatsinkantolo abeba nelulaka kulesinye sikhatsi. Lengakutsandza kutsi lommangali wentelwa yinkantolo umusa aliwine licala. Loko kwangenta ngakhululeka kuba ngulomunye wabofakazi.*
- 67 L *Loku kwenteka ngesikhatsi umangalele umyeni wakho yini noma ngesikhatsi nawe ungulomunye wabofakazi ecaleni lamake wakho?*
- 68 WL (1) *Ngingasho kutsi kwenteka kuko konkhe lolokubalako kepha Ngingakhona kukhuluma ngalesikhatsi ngiyele kuyawuba ngufakazi.*
- 69 L *Kepha utsi make wakho wacoshwa ekhaya lakhe?*
- 70 WL (1) *Yebo, ngoba bacabana nesincanakazana sababe.*
- 71 L *Wo ngiyabona!*
- 72 WL (1) *Ngatfola lokutsi lolulwimi lolusetjentiswako lubi, lungcolile, kepha kute lenye indlela luyasetjentiswa. Uyati ngamangala uma uMphatsinkantolo alibele kukhumbuta make kutsi babe wamshaya ngoba akhweletela sincanakazane.*
- 73 L *Kukhona yini lapho weva ungapatseki kahle khona ngaphandle kwasetinkantolo?*
- 74 WL (1) *Kukhona langikhumbula khona lapho ngeva tinhlamba tisetjentiswa ngesikhatsi kucabane labanye bantfu lababili. Angiphatsekanga kahle.*

(m)

- 66 FR (1) I was sometimes embarrassed by the way language was used and because of the way the Court President was harsh to the victim. Most of all I appreciated the fact that the victim deserved justice and that is why I was keen to testify against the accused.
- 67 I Was it when you had laid a charge against your husband or when

- you were there as one of the witnesses at your mother's trial?
- 68 FR (1) I could say both, but let me talk about the time I was there as a witness.
- 69 I By the way you said your mother was evicted from her home?
- 70 FR (1) Yes because she quarrelled with my father's younger wife.
- 71 I Oh I see!
- 72 FR (1) I found the language to be ordinary vulgar but inevitable. You know I was taken aback by the way the Court President kept on reminding my mother that *ukhweletela sincanakazana*. (**jealous of the younger wife**)
- 73 I Did you feel any discomfort anywhere other than the courts?
- 74 FR (1) I remember similar vulgarity between two quarrelling parties out to humiliate each other.

In her view, the Court President was making disparaging innuendos that were injurious to the esteem of her mother, the complainant. This is because the Court President kept on arguing that her mother was jealous of the younger wife and that shamed her. Culturally in a polygamous relationship the women involved need not be jealous of one another and society expects them to become 'sisters' and love one another. One other thing the researcher found in the above extract is that the language used in the courts is sometimes used with the express aim of embarrassing the female complainant, as well as female witnesses who not only feel uncomfortable when such language is used. Take for example (line 72) above. We find that the Court President kept on using the word '*ukhweletela sincanakazana*' to mean **she was jealous of the youngest wife**. Because this woman is the younger wife to the man, the woman therefore cannot be '*sincanakazana*' (**mistress**), but the Court President repeated using this word yet it is used in the ordinary parlance in the siSwati language when people talk among themselves referring to the 'youngest' wife. He wanted to embarrass the complainant and make the plaintiff feel her mother did something unSwazi; yet jealousy is natural. This means that in as far as gender relations in courts go, women are disadvantaged by a complex set of

factors that singularly or collectively mute them in situations where they need to speak out.

Another informant had this to say:

(n)

- 75 LL (1) *Bafati babasetinkantolo ngekutsi emadvodza awabaphatsi kahle. Ayabahlukubeta ngekwemtimba noma futsi nanguluphi lolunye luhlobo lokuhlukubeta. Phindze nase basetinkantolo emadvodza abahlukubeta ngekutsi asebantise emagama bafati ngekwelisiko labangakafaneli kuwasebantisa njengebantfu besifazane.*
- 76 L *Nawutsi emadvodza usho kutsi ufaka ekhatsi ngisho nebaphatsi betinkantolo?*
- 77 WL (1) *Ngisho onkhe emadvodza latsintsekako etinkantolo ngekuhlukubeta bafati lokufaka ekhatsi ngisho nebaphatsi betinkantolo.*
- 78 L *Wo ngiyabona.*
- 79 WL (1) *Kulamanye emacala lapho kutsintseka khona emadvodza nebafati, ungatsi esikhatsini lesinyenti ngulamadvodza lawa lanebucili noma-ke lasoleka kutsi ente bucala. Ngiyabevela bafati labamikisa emadvodza abo noma tingani tabo etinkantolo ngoba ngeke vele baze baliwine licala labo. Emadvodza ayawuhlala angemadvodza!*

(n)

- 75 MR (1) Women are always in court because men are not fair to women. They abuse women either physically or otherwise and when they are in court men intimidate them by using taboo language.
- 76 I If you say men do you also mean even the Court Presidents?
- 77 MR (1) I mean men who are involved in court contests with women in domestic violence case including the Court Presidents.
- 78 I Oh! I see.

79 MR (1) In cases where men and women are involved say in property squabbles, it is the men in most cases who either want to cheat or are to blame. I feel pity for Swazi women who have to take their husbands or loved ones to court because they never win. *Emadvodza ayohlala angemadvodza! (Men will always be men!)*

The respondent above (MR (1)) seems to also feel that women are disadvantaged in the Swazi Courts. Take for example (line 79) above where he says that men win contests because they are above women and there is no way women can match them in courts. The view above goes against the declarations of women's rights which came about after The Fourth World Conference on Women held in Beijing, China, 4-15 September 1995, i.e. women have a “right to have control over and decide freely and responsibly on matters relating to their sexuality including sexual and reproductive health, free of coercion and discrimination and violence” (Kamera 1999:61). As mentioned in Chapter 1, in this convention women from all over the world met to discuss common global concerns for women with an aim to find ways to eradicate female subordination in all spheres and have women equal to men. Swazi men, however, still do not respect this right, yet even the Swazi Constitution clearly stipulates that “Woman have the right to equal treatment with men and that right shall include equal opportunities in political, economic and social activities.”⁶⁵ When examining the responses above there seem to be a general consensus that the language of the courts disadvantage women who come to courts.

4.1.6 What Do You Think Needs to be Done to Address the Situation?

All the respondents maintained that the women involved in all cases regardless of their worth need to be informed or told that they would encounter use of taboo language while in the courts when it is necessary. Their observation to this was that if women involved in court matters are not able to use taboo language then they always let their violators get

⁶⁵ Section 28 (1) of the Constitution (2005).

acquitted. They also indicate that where women fail to respond relevantly to cases, their cases are often struck off the roll.

There was one respondent who added a different thought:

(o)

80 MR (2) *Onkhe emacala ekuhlukubeta noma kanjani kanye nalamanye lahlaza emadvodza, kufanele angabi yindzaba leyatiwako kepha akhulunyelwe ngasese.*

81 L *Yini leyenta kutsi ucabange kutsi kukhona emacala lekumele kutsi akhulunywe ngasese?*

82 WL (2) *Wena ucabanga kutsi bangatsini bantfu kuva kutsi indvodza beyisenkantolo ngoba umfati ushaye indvodza?*

(o)

80 MR (2) Assault cases and other indecent assault cases and all other cases that have the potential of embarrassing and shaming males should be held in camera.

81 I Why do you think other cases should be tried in camera?

82 MR (2) What do you think people would say if they find out that *indvodza* (**a man**) was in court because *umfati ushaye indvodza!* (**a woman has beaten a man!**)

Above, the respondent is worried about his image that would be marred if the public can find out that he has been assaulted by a woman. The reason this man is concerned about his image (line 81) is because to him this is unacceptable and he knows that society will ridicule him which will be an indirect suggestion that he is less intelligent and unfit to be among other men. Men as supreme beings are culturally not to be clamped down and be embarrassed. The social upbringing of woman not to talk or do something bad to men is manifested here. The woman seems to regret having made her husband be in this 'mess' and perceived her act as irresponsible. To act in a 'responsible' way is the highest virtue in the Swazi society and neglect one's right as a man, i.e. to have physical strength to defeat women, is a vice hence the 'irresponsible and unintelligent men,' who should be

able to defend themselves against women, should be punished/ ridiculed. Dealing with assault cases in camera and excluding public scrutiny would be a way forward. In (line 82) again the siSwati phrase '*umfati ushaye indvodza*' is perceived negatively by the respondent. '*Umfati*' (**the woman**) is portrayed negatively as someone a man should be able to defend himself against, as it is believed that if a woman hits a man this has a crippling effect to the man. The assault limits his chances of mixing with other males freely and gaining respect of his community.

4.1.7 Conclusion

In this analysis we have seen how women who experience assault find it difficult to express themselves in courts and also fall victim of perpetrators of assault because of a number of reasons. In particular, the evidence discussed has given insight into why and how women fall victim to men through language for the second time in courts. The Swazi Court system allows the accused to cross-examine the witness which most women find intimidating and thus lose confidence to argue in these courts.

Again respondents in this study have mentioned in the interview that the language used in the courts discriminates against women. It discriminates in various ways, one of which is when the woman has to retell the court what the accused did to her. The woman has to be precise with the words/codes that were used by the accused during the incident. While it is true cross-examination "is the greatest legal engine ever mentioned invented for the discovery of the truth" (Van der Merwe, 2002: 152), the accused try to get a chance to pin down witnesses through using profane language. If they find that women are unable or hesitant to use some words they find a leeway to absolve themselves from blame. According to Van der Merwe (2002: 152) the accused cannot be blamed because courts rely "on ability, wit, energy, ruthlessness and even permissible rudeness which cross examiner might display".

Below is the presentation of the analysis and discussion of the results of transcribed recorded proceedings.

4.2 Results and Discussion of Transcribed Recorded Proceedings

In this section the researcher discusses results of the cases of recorded court proceedings and classified them according to the findings. It should be noted that it was not all the cases that were used for the discussion, but only excerpts from the cases where language issues intersect with those of gender. This is because the researcher's interest in the recorded proceedings was solely in the use of language, and specific researcher's examples suffice other than re-producing entire excerpts. For the purpose of the presentation extracts from four transcripts are used as a representative sample. The researcher deliberately omitted stresses, tones, etc, since the study centres on the discourses and utterances found in the language used in the courts. In these extracts the researcher concentrated on the linguistic features of the Court President, Accused and the Witness(s) and socio-cultural influences on the use of language such as notions of respect and avoidance, especially in as far as they impact on cross gender communication within the context of the courts. The researcher also attempted a discourse interpretation of the female and male Witness' conversational features, e.g. hesitation and pauses and also non-linguistic features of the witness' discourse.

4.2.1 Language and Power Relations

In all the cases that were transcribed the researcher gathered that power used in the court is asymmetrical in terms of language use, unequal power relations (Bhatia 1987). Shuy (1987: 42), on the other hand, views court room discourse as "overbalanced in one direction" in terms of participants' roles. Revelation of this is manifested in the court proceedings. In the case of the Swazi Courts, for example, the Court President (hereafter CP) seems to have power over the litigants and witnesses in terms of use of 'judicial' language/code control and also respect. For example, he determines the cues of the participants in court proceedings. That is the Court President is in control. In order to extract information from either witnesses or accused persons in an optimal order, he gives participants chances to talk and participants speak when only spoken to. This illustrated that the CP is also respected by everyone who is involved. For example, all the people

involved in the courts demonstrate respect for him. They listen to him and answer his questions. He is the only person in court who interjects and litigants obey him. The litigants who have little knowledge and sometimes no experience at all about court proceedings are dominated by the knowledgeable bench. Such structures reflect ideologically based attitudes of professional knowledge and the power of position as underlying the possibility and practice of dominance. Those who know and those who occupy official positions, dominate those who do not know and those who do not occupy any official positions within the framework of the courts. Figure 1 below illustrates this explanation of power relations in the Swazi courts.



Figure 1: Power Relations in the Swazi Courts

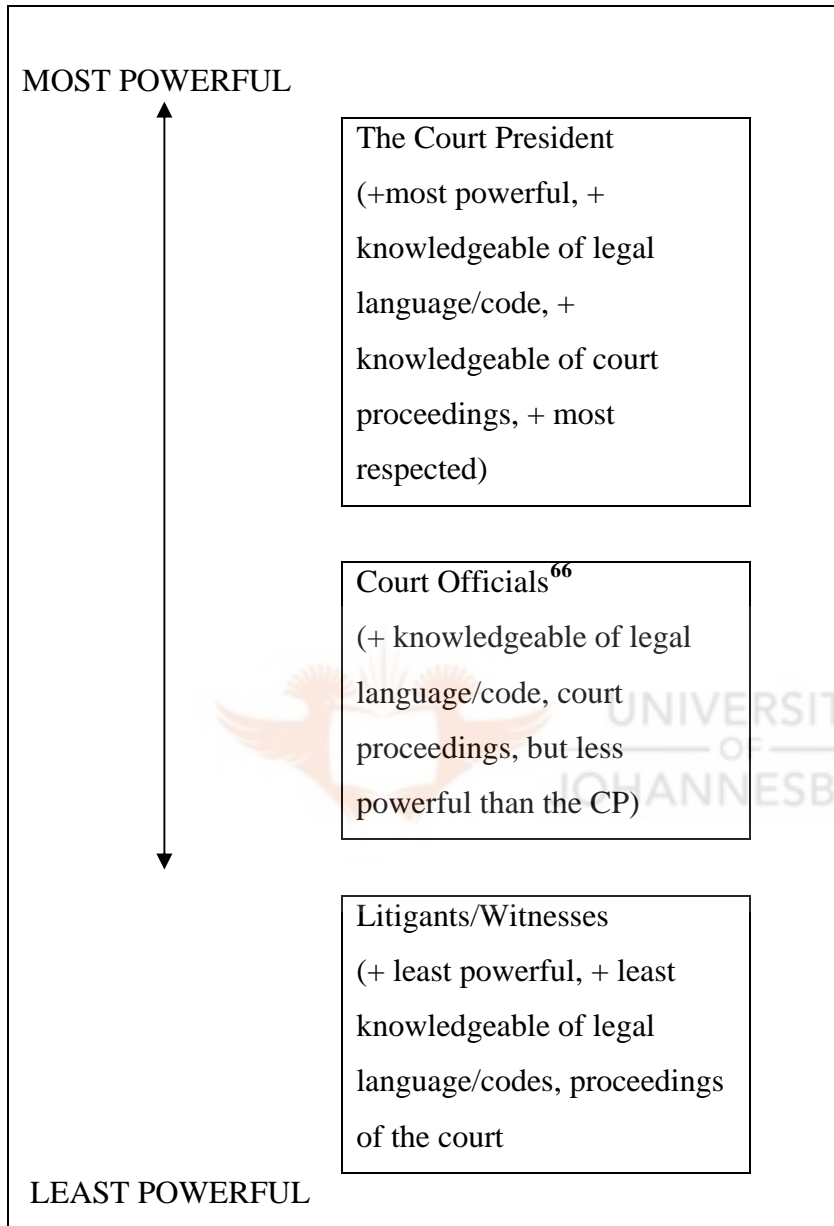


Figure adapted and modelled from Hanong Thetela (2000: 135)

The CP in the diagram above is knowledgeable of the judicial language/code, court proceedings and has power over everyone else in the court. He is the most respected in the court. The court officials have less power than the CP, but are also knowledgeable of

⁶⁶ The court officials in the illustration refer to the court clerks, recorders etc. (It is worthy to note that as in these lowest courts there is no representation there has been the exclusion of defence lawyers in the list.)

the judicial code and court proceedings. The last group in the hierarchy involve the litigants and the witnesses who in this case are least knowledgeable of the legal code and in most cases of proceedings of the courts. In comparison to the CP they are the least powerful in terms of authority in the courts. Consider the following excerpt which provides an example of what is illustrated in the diagram in terms of asymmetrical power relations:

Licala 1

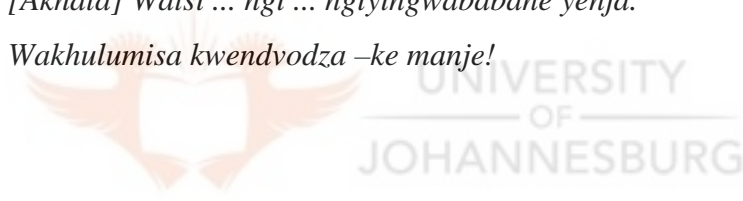
Sendlalelo – *[Ummangalelwa washaya umfati wakhe emva kokuba umfati ale kumgcebela lapho abetawulala khona nentfombi yakhe labekadze efike nayo ekhaya itewujuma. Umfati nakatsi uyabutisisa ngalentfombi kantsi walile nekubagebela, indvodza yamshaya yametfuka ngisho kumetfuka.]*

UMphatsinkantolo Ubuta Ummangali Imibuto

(p)

- 83 M Ase utekele inkantolo kutsi kwentekani ngesikhatsi ummangalelwa afika nentfombi ekhaya.
- 84 U Sasisandza kucedza kugeza titja tantsambama lapho efika babe nentfombi yakhe bangena ngasekhishini. Batsi nje nabangena bantfwana betfu bemantfombatana basuka bahamba baya entsangeni yabo. Babe yena wafuna kutsi ngibanike kudla futsi ngiphindze ngibalungisele ngisho nendzawo yekulala, ngehluleka kukwenta loko.
- 85 M Wehlulwa yini? Wawungafuni kwentela indvodza yakho lebekucele ubentele kona?
- 86 U Cha ...ke Nkhosiyenkantolo ngasuke ngacabanga kutsi uyangidlalisa, ngase ngitsi ngicela etfule lentfombi yakhe kute sitewatana.
- 87 M Wafuna kwati kutsi ngubani sivakashi sendvodza yakho? Yona yametfula yini kuwe?
- 88 U Cha akazange. Wangitjela kutsi kumele ngiphume ekamelweni letfu kute batewulala khona bona. Lapho abesaphakamise livi futsi asangetfuka nekungetfuka. Wangikhahlela, wate wangekhama.

- 89 M Mbambambamba wacala nini lokukwekhama?
- 90 U Nkhosiyenkantolo, ngesikhatsi mine ngimbuta kwesibili kutsi lentfombi lefike nayo ngubani yakuphi.
- 91 M Esitatimendeni sakho losifungele emaphoyiseni utsi ummangalelwa wasebentisa tinhlamba?
- 92 U Kunjalo Nkhosiyenkantolo.
- 93 M Wasebentisa letitsini tinhlamba?
- 94 U [Angingita] Watsi Nkhosi ...yenkantolo ... watsi ngingumfati lomubi.
- 95 M [Amjuba lulwimi] Lapha ubhekeke kutsi onkhe emagama lawasebentisa uwabite ngembaba kute inkantolo ikwati kulandzelela kahle kutsi kwentekani. Uyangiva kutsi ngitsini?
- 96 U Yebo ngiyeva Nkhosiyenkantolo.
- 97 M Ungachubeka.
- 98 U [Akhala] Watsi ... ngi ... ngiyingwababane yenja.
- 99 M Wakhulumisa kwendvodza –ke manje!



Case 1

Synopsis - [The accused wrongfully and unlawfully assaulted his wife after bringing home his mistress and demanded that his wife prepare them (him and his mistress) a place to sleep. When she (wife) questioned him about his mistress and refused to make up the bed, he assaulted her and used profane language in the process]

CP Cross-Examines Witness

(p)

- 83 CP Tell the court what happened on the day the accused came home with his lover.
- 84 W We had just finished washing dishes when my husband and his lover

walked through the kitchen door. As soon as they entered our two children left the kitchen and went to their sleeping hut. He demanded that I give them food and prepare them a place to sleep. I did not do as he asked me.

- 85 CP Why? You were defying your husband's orders!?
- 86 W No my L...Lord. I thought he was joking with me. I demanded that he introduced me to the lady.
- 87 CP You demanded to know who your husband brought home? Did he introduce her?
- 88 W No he did not. He told me that I had to vacate our bedroom. At that point he was shouting kicking and throttling me in front of his lover.
- 89 CP When exactly did he start throttling you?
- 90 W When I asked him the second time who the lady was, my Lord.
- 91 CP In your account and police statement you said the accused used profane language?
- 92 W Yes he did my Lord.
- 93 CP What did he say to you?
- 94 W [Stammering] My Lord he ... said I was ... *umfati lomubi* (**bad woman**)
- 95 CP [Interjects] You have to use precise words he used so that the court get the right information from you. Do you understand?
- 96 W Yes my Lord.
- 97 CP You can continue.
- 98 W [Crying] He said ... (sniff) *ngi...ngiyiwababane yenja* (**I am a harlot**)
- 99 CP *Wakhulumisa kwendvodza- ke manje!* (**You now talk like a man!**)

In the above excerpt the choice of the imperative form of the sentence, 'You have to use the precise words...' implies that the CP yields power over the witness. This means that the witness has to comply without questioning his power which is clearly indicated by her answer to the affirmative 'Yes my Lord.' The discipline instilled illustrates that the courts observe turn taking and the witness is not free to speak at whatever time she chooses

unlike the Court Clerk who interrupts⁶⁷ without having to seek permission or authority to do so from anyone. The Witness (either female or male) has to wait for his/her turn to come, or as dictated by the CP: “You can continue.” Research conducted on power relationships in the courts (Berk-Seligson 1990) found that when cross-examination begins there is immediate demarcation of power relations until the end of the trial. From the example above we also note that customary power in (see lines 84 and 85 and also (see line 79) of the courtroom is controlled and invoked by men. In lines 85 and 87, for instance, the questions asked by the CP also have a surprise tone as the CP finds it unbelievable to hear that the witness was trying to question her husband’s ‘unscrupulous’ behaviour. The CP is surprised that the woman was able to do this when society expects her to be submissive to her husband. Women as cultural minors to their husbands cannot question their husbands’ actions whether good, bad, humiliating, or dehumanising.

Much of what is portrayed in Excerpt (p) happens to both men and women in courts, because of the Swazi patriarchal ideologies and culture that have socialised men and women to use different expressions to describe the same thing, the witness is viewed as a second class citizen (line 84), as less intelligent (lines 84, 85) and generally not trustworthy (line 95). We find that her rights as a married woman to question her husband’s unbecoming behaviour and to be open about her feelings are down trodden when her man in marriage brings home another woman unannounced. Society expects her to prepare them a place to sleep just like her husband demanded. It is her behaviour that sold her out to the CP when she queried her husband about the other woman and was therefore found less intelligent. A well behaved woman in her marriage is one who does not question her husband's acts, either moral or immoral. From the behaviour of her husband society expects her to be a passive, silent individual, hence the questioning of the CP. The fact that she is expected not to question her husband shows Swazi society

⁶⁷Under the discussion of Courtroom Observation in section 4.1 above, see interviewee’s response marked (b) line 14 (*Uyedzelela kantsi futsi bekufute kushayeke wena. (You should have been the one injured because you are uncouth)*) and also the other marked 16- It is said you hailed insults to your rival and were the one who began hitting *sincanakazane?* (*mistress*). Tell us what you did to her. (*mistress*).

finds women to be foolish and that they lack responsibility even to claim what is really theirs. After a close scrutiny of the role of women in this excerpt, it is deduced that Swazi women are presented as valueless creatures, non-entities and sex objects who are to suffer silently and are depicted as docile and subservient. A man, on the other hand, is strong, rational aggressive and is a leader (see line 82 above). The man hits the woman for asking questions instead of demanding answers (see lines 86, and 90).

From the extract two different approaches are evident by the CP and the victim by the use of words that seem 'offensive'⁶⁸ to the victim. While the latter chooses to use euphemisms that also can be interpreted as 'hlonipha'⁶⁹ references (line 94) to refer to insulting statements said to her by her husband, the former prefers that she says exactly what the accused said to her (see lines 93, 94 and 98). She deliberately avoids the use of immoral behaviour explicitness in her utterance, but when prompted to do so she hesitates and begins to cry (see lines 94 and 98). Johnstone (2008: 145) argues that 'politeness' is "one of the main reasons for which people are often indirect, not saying precisely what they mean but implying it". From the examination we see gender identities mapped out again. The CP (in line 95) advocates familiarity with language used by men to refer to 'bad behaviour' of women to suit their own wants. After the victim finally attempts to respond to the CP with difficulty, the CP associates such talk with 'women talk',⁷⁰ (line 99) when he answers '*wakhulumisa kwendvodza ke manje*' to mean '**you now talk like a man.**' Because the victim has been able to explicitly say what seemed difficult for her, the CP associates her response with manly attributes because society envisages that only men can talk more sensibly. This also shows that the woman's voice does not carry the same weight as that of a man as her intelligence is compared to that of a man. If the victim was able to tell the CP out right, she would have been commended for her behaviour straight away. This is what Johnstone (2008: 129) refers to as "people's positions in the world are their positions in discourse".

⁶⁸ This is offensive to the victim because to her the word has been used derogatively.

⁶⁹ To a siSwati speaker the euphemism could be '*kuhlonipha*' (politeness) as the victim would try to avoid saying things that would undermine her cultural gender identity. It should be noted that it is the CP's right to elicit precise information from the victim as per legal requirements; however this in turn disagrees with the woman's linguistic code.

⁷⁰ Language society expects to be used by women.

The Swazi courts allow the defendant to cross-examine the victim, however, the accused in Case 1 did not cross-examine the witness when given the chance as he pleaded guilty of the offence. Let us consider the following example below:

Licala 2

Sendlalelo- *[Indvodza yashaywa embikwebantfu lasebenta nabo ngulomunye lomsikati leyatsi webe titulutulu temapulasitiki emsebentini wabo, kantsi tisebenti tatitjeliwe kutsi tingacali titsatse lutfo ngaphandle kwemvume yalobaphetse.]*

Lomangalelwe Ubuta Ummangali Imibuto

(q)

- 100 L Utsi ngakushaya, ngingamane ngikushayele lite nje?
- 101 U [Adliwa ngemahloni] Kwakute sizatfu ngoba mine ngangifuna kwati kutsi wawuyebele lani Inkampane.
- 102 L Awuzange sowungishaye, nasemhlafunweni awuzange?
- 103 U [Ngalelincane] Hhayi ngemanga lawo.
- 104 M Ungatsi ungaphakamisa livi kute losibhalelako atewukhona kukuva kahle.
- 105 L Ngingabe ngiyaphosisa yini kutjela inkantolo kutsi nguwe lowangishaya?
- 106 U Hhayi nguwe lowangishaya kucala.
- 107 L Wamemeta yini kucela kwelekelelwa nangikukhahlela?
- 108 U Nga ... ngagcine sengimemeta ngoba sengibona kutsi uyangehlula.
- 109 L Ingabe kukhona yini loweta watewukulekelela?
- 110 U Cha kute loweta ... bantfu bebabukela bahleka bachazwa ngulabebakubona.

Case 2

Synopsis - [A man was assaulted in front of his colleagues by a woman who the man accused of stealing a plastic container from their work place, yet everyone at work was told not to take containers home without their boss' consent. The man slapped the woman

on the face and she in self defence pushed him and he fell on the ground. She got a chance to kick and throttle him while he was still on the ground]

Accused Cross-Examines Witness

(q)

- 100 A You say I assaulted you, did I just hit you for no apparent reason?
- 101 W [Feeling embarrassed] There was no reason because I only wanted to find out why you were stealing from the company.
- 102 A Didn't you attack me and hit me on the jaw?
- 103 W [A little soft] no this is a lie
- 104 CP Can you say that a little louder so that our recorder could get what you are saying.
- 105 A Will I be wrong to tell the court that you are the one who hit me?
- 106 W No you ... you hit me first
- 107 A Did you scream for help when I kicked you?
- 108 W I ... fin ... finally screamed because you were overpowering me
- 109 A Did anyone come to your rescue?
- 110 W No one came to rescue me ... people were bemused and were watching us

In Case 2 above, power relations are mapped out. Even though the accused is female, she is able to exercise her power over the victim, the man, because she is trying to exonerate herself from blame. Power, according to Johnstone (2008: 130), "is seen as something one person has and the other does not". Positions and dynamics of power tend to advantage those in power and oppress the powerless, something which the study attempts to find out whether it happens in the Swazi court system. Swaziland still experiences different forms of power imbalance on many fronts. These forms of power imbalance are maintained in many ways by what Althusser (1984) calls Ideological and Repressive State Apparatuses (IRSA). For example, this is evident in the work of the benches in the traditional courts, as well as in the patriarchal power as represented by the men who appear there (see lines 83, 85, and 97 above). At the same time, because language is a social entity, the use of social power to explain social relations enables us to analyse if

and how language discriminates against women. Fairclough (1989: 55) writes that the “social order of discourse is put and held together as a hidden effect of power”. The interaction between genders in the Swazi traditional courts is largely mediated by cultural power that is mainly patriarchal, and which prescribes a given linguistic behaviour for its women as seen in cross-examinations in both Case 1 and Case 2 above. The dynamics of cultural and social power appear as ‘normal’ and ‘acceptable’ because they have been around for long.

4.2.2 Respect and Avoidance

So far the study deduces that women who had been subjected to physical abuse have a problem of stating explicitly their ordeals. For example, in Case 1 above we see this woman who fears to use what to her is culturally taboo language or swear words⁷¹ (line 94) and uses phrases that simplify (at least to her) things for her. Consider the example where a woman refrains from mentioning the actual words referring to their private parts such as ‘vagina’ or even male genitals, e.g. penis. This is the observation one makes when s/he considers the following case:

Licala 3

Sendlalelo – [*Lenye intfombatana yashaywa erenkini eMbabane ngulenywe indvodza lebeyihamba nadzadzewayo, ngekutsi lentfombatana igane sibali wayo loyindvodza yalodzazewayo.*]

Lomangalelwe Ubuta Ummangali Imibuto

(r)

111 L Ngake ngasho kuwe ngatsi utsakatse sibali?

112 U Yebo ngiko lowakusho

113 L Ngicela ungikhumbute ngoba mine angisakhumbuli kutsi mbambambamba ngatsini.

⁷¹ Some of the words may not sound as swear words to other people especially to their male counterparts, but because women have been brought up in the manner that there are words they cannot use, it therefore becomes a problem to women.

- 114 U Watsi wena mine ngitsakatse ligwayi lakhe kute
- 115 L Condza ngco ungatsemeleti ntfombatana.
- 116 U Watsi [angatsita] nga... ngatsakatsa umpipi wakhe kute atewushiya sisi wakho atewuhlala nami.

Case 3

Synopsis - [A young woman was assaulted at the Mbabane bus rank for having an affair with a married man by the man's brother-in-law who was in the company of the man's wife]

Accused Cross-Examines Witness

(r)

- 111 A Did I ever say that you bewitched my sister's husband?
- 112 W Yes that's what you said.
- 113 A I don't remember saying that to you, please remind me what I said.
- 114 W You said I bewitched *ligwayi lakhe* (**his cigarette**) so that ...
- 115 CP Be precise young lady.
- 116 W You said [hesitating] ...I ... bewitched ...his... penis so that he can leave your sister and come and stay with me.

Considering that most of the people who run the Swazi courts are men it may be that women start off at a disadvantage because they are under culturally sanctioned compulsion to 'respect' men regardless of the issues at hand. By extension and deriving from Van Dijk's (1997) views, women end up creating the impression that they are unconvincing witnesses precisely because they have to be 'polite.' They opt to use euphemistic language as seen in the hesitancy above (see line 114 in Case 3) and use of unclear reference because use of precise words embarrasses them. For example in (line 114) above, the witness prefers to use the word '*ligwayi lakhe*' instead of the siSwati term '*umpipi*' to refer to the penis. *Ligwayi* is a cigarette, and in a siSwati respectful manner refers to a penis. In the cross-examination in Case 1 (line 94) the witness uses '*umfati lomubi*' (**bad woman**) for '*ingwababane yenja*' (**harlot**) (line 98) respectively to

refer to a **harlot**. Showing respect to all people placed in similar positions of authority like her husband is one attribute the Swazi society expects women to display. In patriarchal Swaziland if a woman fails to “display ... basic attributes such as kindness, humility and self sacrifice ... the woman who is completely obedient to commands, obsequiously polite and shows respect at the cost of her humiliation ...” (Fergusson 1977:17) such as the women in the said cases above, is viewed as an ‘ideal woman’, one who displays potential to be submissive even to her own husband. For example in the court women, who are legally less powerful than the bench, will tend to be more polite (Brown and Levinson 1987 cited in Van Dijk 1997) and therefore use what Finlayson (1995) in her study of the Xhosa women call ‘avoidance system.’ Some scholars who concur with the use of respect and avoidance system, especially Kohlberg in Maccoby (1996: 105-106) stipulate that “women are usually disadvantaged by these linguistic styles as the systems of communication within which they learn to operate and pressure them to conform quietly, be nice and choose the prestige of goodness over the prestige of power”. In other words, women’s construction of their prior experiences with their offenders may give their opponents a leeway as they (women) try to avoid recalling their horrible experiences, especially if the very same men who held them victim at one point interrogate them (Penelope 1990).

4.2.3 Cultural Dimensions and their Implications to Language Use in Swazi Courts

Females (young or old) have been made victims of abuse, especially in assault offence cases involving close relatives. Some of the cases that the study pursued show how cultural dimensions inherent in language cause women to suffer. In one case, where the father of the young girl assaulted her for refusing to have breakfast with the other children, it illustrates how men in most cases abuse women in the name of culture. And because women are supposed to obey and respect their husbands and children their fathers, men then take advantage of their respect as is evident in the following case:

Licala 4

Sendlalelo – [Indvodza lehlala kaLobamba yatfolwa yinkantolo inelicala lekushaya umntfwana wayo wentfombatana loneminyaka lelishumi nakutsatfu budzala, ngekungafuni kudla kwasekuseni adle kanye nalabanye bantfwana ngesikhatsi unina angekho. Lendvodza yamlimata lomntfwana ngenkholelo yekutsi bantfwana bayashaywa uma bangawulandzeli umtsetfo lobekiwe welikhaya lakubo.]

UMphatsinkantolo Ubuta Lomangalelwe Imibuto

(s)

- 117 M Wamshayelani kabuhlungu kangaka umntfwana? Angiva kahle kutsi leyakwenta wamshaya kangaka.
- 118 L Nkhosiyenkantolo umntfwana yinja futsi wentfombatana yena! Kantsi futsi Nkhosiyenkantolo ngelisiko kanye nangembhalo...
- 119 M Nguliphi lelisiko? Lisiko labani? Lisiko lemaSwati noma ngelakho nje?
- 120 L Lelisiko Nkhosiyenkantolo lalekami emndenini wami . Loku bekungafaneli kuphumele ngephandle yatiwe. Angati ngubani lona lokukhiphele ngephandle.
- 121 M Usho ngani kutsi wetsembele embhalweni? Nguwo umbhalo lowenta ubenesibhuku kangaka uze ulimate umntfwanakho ngalendlela? Ukuhlanganisa kanjani loku lokubili emasiko kanye nembhalo?
- 122 L Sizatfu lesingente ngasho umbhalo kutsi lomntfwana abengafuni kudla nalabanye, wase uyangibuta kutsi Nkulunkulu uyakuvumela yini loku. Kungako-ke ngase ngibhekisa encwadzini yabaseFesu.
- 123 M Litsini lelivesi kulombhalo?
124. L Ngulapho Nkulunkulu atsi umntfwana kumele kutsi ashaywe uma angatsatsi teluleko tebatali bakhe, ngoba uyingati yebatali bakhe.
- 125 M Ungamane umshaye umntfwana ngoba umntfwana yinja? Ngiyo indlela lochaza ngayo liBhayibheli lena?

Case 4

Synopsis - [An old man residing in Lobamba⁷² was found guilty by the court of law for severely beating his thirteen year old daughter with a belt for failing to have breakfast with the other children while their mother was away. The man bruised the child because of his own private beliefs that have regarded the desirability of fathers beating their daughters when they defy 'home eating rules.']

CP Cross-Examines Accused

(s)

- 117 CP Why did you heartlessly beat your daughter? I don't understand what justification was there for you to do that.
- 118 A My Lord *umntfwana yinja futsi wentfombatana yena!* (**a child is a dog especially a girl child**) and My Lord according to my custom and scripture ...
- 119 CP What custom? Whose custom? Is it a Swazi custom or private custom?
- 120 A My Lord it a custom peculiar to my family alone. It was not supposed to be known to the public. I do not know who disclosed it to the public.
- 121 CP But how do you explain your reliance to the scriptures that you said according to certain scriptures you are entitled to cruelly beat your own daughter? How do you reconcile the two, custom and scriptures?
- 122 A The reason why I had to quote from the scripture was because my daughter was refusing to eat with the other children so she asked me if God allowed this, then I had to quote from the book of Ephesians.
- 123 CP What does the verse say?
- 124 A It is where God said a child should be beaten if he s/he defies his/her parents' orders. This means that the child is his daughter/son because she had come from his flesh.
- 125 CP So you are entitled to hit her because *umntfwana yinja* (**a child is a dog**)? Is that how you interpret the Bible? Do you read the Bible?

⁷² A semi urban area found outside Mbabane town.

In the example above we find the dominant culture being transmitted through language. For example, the girl's father in the case above uses his authority and power of being a parent and commands his own daughter to eat together with his other children after convincing her through the use of the Holy Book, the Bible. The Bible allows that a child be disciplined for wrong doing and so does the Swazi custom. Religion in most communities is used to marginalise women especially through the misinterpretation of the scriptures. Holmes (1995) observes that in whatever discourse women generally demonstrate feelings of compassion and empathy towards their conversational partners. This sometimes makes them vulnerable to abuse by their male counterparts. Women give in when they are convinced in a way that what they believe is right and cannot be questioned. For example, in the Case 4 (s) above, a man comes with a verse from the Bible and brainwashes a woman using the Bible because he favours the prevailing *status quo* of patriarchy, hence perpetuating the subordination of women folk in the name of religion, which then coincides with patriarchal designs of society. He reads a verse from the Bible to convince his daughter that it is good to listen to him because God allows it. The man's intelligence and knowledge of the scripture is put to test because the decision he takes after reading the Bible to punish the child is not reasonable. In the above example the girl has been victimised because of cultural injunctions. Culturally, the Bible as a Holy Book 'cannot' be defied. The father uses it to further abuse his own daughter to instil fear in her and at the same time satisfy his cruelty. In (line 124) above the accused points out to the CP that children have to be straightened if they become wayward, especially girl children. Paternal cruelty as a form of discipline is today viewed as child abuse⁷³ and whoever practices it is liable to prosecution and also imprisonment even though according to traditional Swazi ideology a man has a right to discipline/punish his children for disobeying his orders. Society expects the girl child to be instructed in obedience to be able to carry out duties faithfully and in a manner that would be pleasing to her husband as they prepare for marriage and motherhood.

⁷³ Section 29 (1) of the Constitution (2005).

4.2.4 Blame and Responsibility

Women who have been subjected to assault have been blamed by their perpetrators for having invited trouble either because of their stubbornness, jealousy or stupidity. Consider the following cross-examination:

Here we will refer to Case 1 again:

[In one case it is the CP who examines the witness and mentions the fact that women need not question their husbands when husbands bring home their secret lovers. In the latter cross-examination of the same case it is the accused that emphasises the ‘inquisitiveness’ of the woman]. These excerpts will be marked a) and b) for clarity.

a) *UMphatsinkantolo Ubuta Ummangali Imibuto*

(t)

126 M *Ucabanga kutsi indvodza yakho yona yini ngekuletsa lomunye lomsikati ekhaya?*

127 U *Ngicabanga kutsi yona Nkhosiyenkantolo.*

128 M *Usho ngani? Ase utjele inkantolo.*

129 U *Nkhosiyenkantolo mine njengemfati wakhe akangatisanaga kutsi utawuletsa lomunye lomsikati ekhaya.*

130 M *Awucabangi kutsi wagcumbukela lapho ungafanele khona. Wafuna kukhetsela indvodza yakho kutsi yenteni.*

131 U *Cha Nkhosiyenkantolo angizange.*

132 M *Ngalamanye emavi utsi emadvodza kumele atsatsise kubomkawo kucala etintfweni letidzinga wona?*

133 U *[Angatsita] Kunja ...lo Nkhosiyenkantolo.*

a) CP Cross- Examines Witness

(t)

126 CP Do you think your husband was wrong to bring another woman home?

- 127 W Yes I think he was wrong your Worship.
- 128 CP Tell the court why you think he was wrong.
- 129 W Your Worship, he did not inform me as his wife that he will be bringing another woman home.
- 130 CP Don't you think you were interfering with your husband's decision of who to sleep with?
- 131 W No my Lord I wasn't.
- 132 CP In other words you are saying men should consult with their wives on personal matters?
- 133 W (Hesitating) Ye ...yes My Lord.

b) Lomangalelwe Ubuta Ummangali Imibuto

(u)

- 134 L *Ngona yini kuletsa umlamu wakho ekhaya?*
- 135 U *Yebo wona.*
- 136 L *Ngake ngakucosha yini ekhaya?*
- 137 U *Cha awuzange, kepha wafuna kutsi ngiphume ekamelweni lefu utewulala naye khona.*
- 138 L *Kantsi kwakungasiyo yini indlela yekukukhombisa kutsi nawe ngiyakutsandza. (Angaphendvuli lomsikati)*
- 139 U *Phendvula umbuto lobutwe wona.*
- 140 L *Kangati.*

Accused cross examines Witness

(u)

- 134 A Was I wrong to bring home umlamu wakho (your co-partner) home?
- 135 W Yes you were.
- 136 A Did I ever chase you away from home?
- 137 W No you did not, but you asked me to give up our bedroom for the two of you.
- 138 A Wasn't this a sign showing you that I still love you?

(Woman does not answer)

139 CP Will you answer the accused question.

140 W I do not know.

From these interviews above, we gather that men in assault case are likely to blame women for being jealous and want explanations from them even in instances where they are 'supposedly' to be mute. Taking a close scrutiny at the CP's cross-examination, Swazi women are portrayed as silenced (need not ask questions to matters that concern their relationship), docile and subservient, hence the CP's question on (line 139) above. She therefore becomes a victim of circumstances as men want to satisfy their unscrupulous ways. In the case above the accused assaulted her because she was inquisitive as she wanted her man to explain why he brought home another woman. The CP also introduces the idea of the woman prying in the man's affairs as a confirmation that the witness had invited the beating. In (line 134) the man calls his 'mistress' umlamu (co-partner) and makes it sound like he was guilty of no offence. He implies that bringing another woman home is normal and the wife should appreciate it. This cows the woman to admit to some extent she was interfering, yet she had to respect her husband and do as instructed. The word umlamu in the Swazi tradition normally refers to the wife's younger sister sharing the same man with her, because the wife cannot bear children. The younger sister is sent by her family to come and bear children on her sister's behalf. However, nowadays the word has undergone a shift in meaning because it is now used when referring to 'mistresses.'

The use of hedges above shows expression of doubt and having no confidence in your answer which Wareing (1999: 77) posits as the linguistic forms "which dilute an assertion". In line 127 above -"Yes I think he was wrong your Worship" - indicates low affinity expressed in the subjective modality marker ("I think"). According to Coates (1996: 152) on the other hand, hedges are used when we "avoid taking decisive action". The use of the hedges points to the witness being anxious about how her remark will be received by the CP.

Viewing the foregoing, in patriarchal Swaziland the linguistic convention marks women as male property and it is through many 'wives' that men become fully-fledged and respectable in society. According to Leclerc-Madlala (2000:29) the model of manhood is the accumulation of several women, as it is believed that 'males' are biologically programmed to need sexual relations regularly with more than one woman. This, however, does not go unnoticed/uncontested by contemporary Swazi woman as they fear being infected with the HIV virus. It should be noted that AIDS is one of the feared diseases in the millennium and having more than one wife increases the chances of contracting the disease. Women have always been victims of infections brought home by the unscrupulous and reckless behaviour of their husbands (Leclerc – Madlala 2000: 30).

In the above analysis CDA was utilised as means of trying to question the nature of language and its underlying ideologies of meaning and unequal power relations in the Swazi courts. In the same analysis it was explained how and why particular discourses are produced. It was found, among other things, that in most cases women are less powerful and are silenced and literally at the mercy of their male counterparts who are directly responsible for the domination of men over women because of the particular gender ideology of the Swazi.

In the above analysis the nature of discourse and the underlying ideologies of meaning and asymmetrical power relations in the Swazi courts were addressed. It was explained how and why particular discourses are produced and perpetuated.

4.4 Conclusion

In this chapter discourse in the Swazi courts was investigated through the examination of interviews, courtroom observation and recorded transcripts of court proceedings. The researcher has examined how through language, certain discourses are portrayed, especially gendered identities. The focus was on linguistic choices of how both men and women use language and their non-linguistic choices. The analysis showed that while men are not afraid to make use of explicit language, women, on the other hand,

demonstrate a tendency to use euphemisms or avoid the use of direct linguistic terms. This is caused by the fact that women are brought up differently from the way men are owing to Swazi cultural imperatives. They become victims of assault on the one hand because of their helplessness, while on the other hand they are other victims of the courts because they, as Hanong Thetela (2002: 186) notes in a different context, “enter into a foreign discourse environment [in] which *hlonipha* code does not have any place”. Women find themselves trapped in the tension of living in two different ‘environments’: they are expected to live up to the standard of being ‘good Swazi women’ by using what is deemed be ‘good language’, and they are expected by the courts of law / other legal systems to be explicit in their talk and use codes they have been taught are taboo to them. Such situations make the contests difficult for women and see most men acquitted of the charges.

The unequal power relations between men and women in courts as manifested through the use of language was also investigated. The excerpts analysed show that with regard to power relations in the Swazi courts the powerless (women) are dominated by the powerful (men), but that these inequities do not only reflect male dominance but also that there are unequal power relations between those who work in the courts, such as the court clerks, court messengers and the witnesses, as well as the Court Presidents. As discussed, those who work in the courts have knowledge of the legal codes and are familiar with the language of the courts. The litigants and the witnesses demonstrate the least knowledge of these codes. It is no surprise then that people involved in courts contests use language which ends up disavouring them, especially women who fail to be assertive, who are hesitant in their speech notwithstanding the requirements of the courts that all contestants should be articulate in the relevant legal codes.

Following the findings of unequal power relations as manifested in discourse in the Swazi courts and the concomitant societal imbalances, recommendations to address this situation and indications of areas that warrant further research are discussed in the final chapter.

CHAPTER 5

Conclusion and Recommendations for Further Research

5.0 Introduction

In this chapter the results of the findings are interpreted by way of summarising them together with a discussion of the trends that were identified. Conclusions are drawn and recommendations for further research are made.

The study set out to explore the gender and power relations as mediated through the language used in Swazi Courts. The main focus was on what meanings are constructed and how those meanings in turn construct gender differences and power relations within the Swazi society. The study confined itself to the language used in the Swazi Courts in order to establish the validity or otherwise of the current views that language used in the courts discriminates against women. In order to arrive at a meaningful conclusion it is important to note that the study attempted to answer the following questions:

- Are women disadvantaged by language used in the courts during cross-examination?
- Is the language directed towards men in any way different from that directed towards women, and if so, does this situation advantage men?

5.1 Interpretation of the Results of the Findings

The research has revealed a number of issues in relation to the type of data that was used. The interviews, for example, provided rich data in regard to language. The data gathered confirms that language plays a role in creating gender differences, and also maintains asymmetrical power relations in institutions such as the courts. This observation was made with regard to Question 7⁷⁴ (How would you describe the language used in such cases? Modest? Vulgar? Neutral?) in the interview schedule. Although data was

⁷⁴ See Appendix 5.

collected and centred around courts, it should be mentioned that the revelation does not mean that respondents are always gender conscious. Respondents came to realize the difference through their experiences in these courts and some of them were subjected to similar kinds of oppression through the courts. Interviewees were victimised through discourse in the courts. The language draws discrimination even between those in authority and others who come to contest their matters in these courts as shown in Chapter 4 on Power Relation Structure, the CP and other officials have power over the contestants in cases brought to the courts. This is a meeting point between customary power that favour men and the judicial power as represented by the courts where all staff is male.

The study indicated that language used in Swazi courts discriminate against women. Women, the study has found, are mostly disadvantaged by the way they respond to questions posed during their cross-examination. This may be a result of the social stratification and cultural socialization of both males and females from childhood in terms of the Swazi culture. Woman in Swaziland have been socialised to demonstrate a behavioural pattern that is attributable to the way their society is structured; they have internalised the status of inferiority and subordination to men, preventing them of taking a leading position as men do when it comes to public speaking.⁷⁵

Women have been found to be more hesitant in their speech and thus use tags. In court interaction they appear either inarticulate and/or ignorant of court procedures as is evident when they fail to answer questions. The men who answer questions directly and appear comfortable with 'dirty' or obscene language',⁷⁶ appear to dominate the women. Since the court demands that women, when giving evidence, use the 'right language',⁷⁷ in, for example, divulging details of sexual connotation incidents, the accused are given leeway and hence the possibility of being discharged. Women who appear before the

⁷⁵ See Extract 1 and 2 under Courtroom Observation discussion in section 4.2. In these extracts both participants showed different attitudes when responding to questions in court. The male was arrogant and could answer quickly and positively whereas the woman in the other extract failed to impress the Court President because she was not confident but shy.

⁷⁶ "Dirty" language in this study means language that is not acceptable.

⁷⁷ By right language we mean language that is acceptable.

court cannot bring themselves to break the Swazi moral code by using what they regard as obscene and aggressive language because of their socialisation. This act puts women under pressure and creates tension between the demands of the court and the requirements of their culture's moral code. Men become victors as women, through being hesitant in their speech, 'acquit' their male competitors.

The study also found that gender bias manifests in the Courtroom with regard to litigants and witnesses. As to litigants, gender bias is evident when female litigants are subjected to hostile, demeaning or condescending treatment in the Courtroom (see Excerpt 2 of Courtroom observation – paragraph 4.1 – where the accused was reprimanded for attacking her rival and belittled for her behaviour) by officials and even the presiding officers. Gender bias is evident through the patronising use of terms of endearment such as '*makoti*' (**young woman**- paragraph 4.1 excerpt 2, line 8 of cross examination) in the case of female litigants. When addressing adult male litigants such terms were not in evidence (see Excerpt 1, paragraph 4.1). By conveying respect to all participants involved in court contests, court personnel need to play an important role in eliminating bias in the administration of justice. Some members of the public often have their first experience and sometimes their only experience with the court system without adequate guidance.

Since the traditional Swazi culture is built on patriarchy, the study has found that women are expected to persevere and tolerate all hardships they encounter whether at home or in the Swazi Courts, especially when women are subjected to unfairness when their husbands have multiple partners. When men have more than one wife they become obnoxious and the wife suffers the consequences, i.e. harassing women⁷⁸ like the man who came home with his mistress and demanded his wife to prepare them a place to sleep. Some men even forget to honour the sanctity of marriage bringing along with them other women to show off to their wives.

⁷⁸ See Case 1 cited in 4.2.1 – Language and Power Relations

The above shows that traditionally the status of the Swazi women both in the family and larger society is an inferior one. The Swazi society expects women to be persistent, hardworking, tolerant and submissive to their husbands even beyond cultural dictates. This submission of females extends to every other man whether a relative or not. This patriarchal ideology subjects women to also respect and tolerate the authority of the courts, even where court discourses are biased against them. The Swazi society admires obedience from a woman, hence a woman is perceived as bad by the Swazi society if she questions things, argues and raises her own point of view, and is obstinate. Women who take their men to court are seen as showing intolerant behaviour. This has made men become violent and abuse women to mute them or show their authority over them much to society's approval. The culture of silence is entrenched in socialisation and Swazi Law and Custom practices which disagree with the demands and requirements of the Constitution with regard to human rights and equal treatment. The tension between the two i.e. Swazi Law and Custom principles and the requirements of the Constitution, need to be harmonised "in order to be consonant with contemporary and changing socio-economic conditions" in Swaziland (Van Schalkwyk 2006: 19-20). The traditional norms of inequality create major obstacles to holistic and comprehensive approaches to gender imbalance in the Swazi society.

5.2 Recommendations

Having established that language used in the Swazi courts impacts differently on women and men, with women being on the negative receiving end, this study established that women are marginalised. The following recommendations, based on the findings on courtroom discourse and asymmetrical power relations, are discussed below.

5.2.1 Socialisation

The importance of proper socialisation regarding language generally and specifically in institutions, such as the Swazi courts, cannot be overemphasised. Language is power and therefore these issues need to be addressed so that people can be able to articulate themselves. In formative years, for example, children should be taught when acceptable

or unacceptable language can be used. At school teachers also have a role to play. They could also disseminate language while children are still at school. The community needs to be resocialised in terms of language so that women are socialised to use empowering language.

There are other stakeholders that have an important role to play in disseminating language. Initiatives should be taken by different Government Ministries, such as the Ministry of Education. The Ministry can do this by working with health departments and have community outreach programmes. Volunteers, who could reach out to Constituencies, in the case of the Swazi traditional structure, could develop processes that could aim at helping people to know that democratic discourse is possible. Respondents have complained about the trauma of going through cross examination in the Swazi courts. They felt that the language used is shameful and traumatic. The failure to overcome trauma in the courts indicates the unfairness of the justice system. Volunteers could form victim support groups and let people vent their frustrations.

The Government also has a role to play. In order to avoid gender bias and language discrimination in courts, terms of endearment should be avoided since such terms imply lower status. The terms may offend or demean even if the speaker does not intend doing so. Courtroom discourse and protocol requires the highest degree of professionalism and courtesy. The Swazi Court procedure and practice and courtroom discourse are implicated in this regard as adult female litigants are regularly addressed through the use of terms of endearment. In order to avoid this happening in these courts, language awareness campaigns aimed at creating change that will bring about changed attitudes and hence a change in behaviour, so that people do not discriminate, should be mounted. The campaigns can be done in a number of ways, i.e. through the media, i.e. the radio, newspapers, TV advertisements and programmes, even soap operas, in order to also reach illiterate people. Government can facilitate this happening in collaboration with Non-Governmental Organisations (NGO's) by making funds available for campaigns. The NGO's could also sensitise people about a human rights based approach including

language as part of their work. Government should take the lead in drawing policies for different institutions and Parliamentarians could ensure that language laws are protected.

5.2.2 Human rights and language

Upholding of human rights is central to sustainable development of any nation. It is therefore prudent that institutions and especially courts that are leaders in the administration of justice should use standards that uphold a human rights approach. The three important principles of human rights that need to be considered are universality, dignity and equality. Language should be universal, dignified and promote equality before the law. Dignity should be emphasised at the lowest courts, Swazi courts, before going to higher institutions such as the Magistrate and the High courts. The Judicial Commissioner's office should emphasize this as the High court might have had an oversight of what goes on in the lowest level of the courts.

Contemporary societies like Swaziland should take cognisance of asymmetrical power relations and the link between power and language as manifested in courtroom discourse. If this is considered, the Swazi courts could change the well known mindset of treating other citizens in society as 'children' as a result of cultural dictates. The Constitution states that all participants have a right to a fair hearing⁷⁹ and are equal before the law.⁸⁰ This also has implications for respecting human rights and fostering a culture of human rights in the Swazi society in consonance with the Constitution.

5.2.3 The role of Government

From the women's views on the language used in the courts it is obvious that there is a lot of work to be done by the Government in order to improve the situation in the Swazi Courts. Government's role should include sensitising its citizens about their human rights in terms of the Constitution in tandem with national initiatives on combating violence

⁷⁹ Section 21

⁸⁰ Section 20 (1)

against women, among other things. The Domestic and Sexual Offences Bill, which is still being canvassed, will enable the Courts, especially Swazi Court Presidents, to apply it when presiding over cases of violence, particularly violence against women. At the time of writing this dissertation, the Bill is not yet law and therefore the legal rights of women still remain compromised due to institutional, economic, social and cultural structures and attitudes that inherently perpetuate differential treatment.

It is recommended that relevant government initiate customised awareness campaigns and workshops to sensitise and inform Court Presidents and court officials regarding the international conventions to which Swaziland is party, including conventions that the government has assigned to such as the United Nations Convention on the Elimination of All Forms of Discrimination (CEDAW) and the Domestic Violence Bill. Court Presidents should be sensitised that once the laws have been signed government is bound to apply such law as part of her domestic law. Court officials should also pay attention to developments made by Parliament in passing new laws.

Women in court or outside the courts, i.e. at home, are dominated by their husbands and also court officials who are mostly men. They struggled in the oppressive situations they found themselves in either because of ideological underpinnings of the Swazi society, language, decision making or because of respect. They create themselves as objects in the service of their male counterparts. For some of them the period of self actualisation is either not experienced or experienced later in life. Women need to be sensitised through language awareness campaigns and informed about their rights to realise that they need to construct themselves as subjects which will then give them a voice in society. Judging from the data used in this study, especially from the recorded transcripts, some women are still trapped in the positions of being objects in society and are marginalised by language.

Looking at women's lives in this study revealed that women, like in all other human societies, live in a society where they interact with people through language. The women interviewed and the other women in the study had different experiences as they were

asked questions on their lived experiences or cross-examined. One of the basic tenets for sociolinguistics is that language is a factor that has an impact in everyone's social world. There is a need for a change in attitudes as regards discourse in Swazi institutions. This will reinstate the language of the courts and there can be equal linguistic access so that all people can be able to articulate themselves.

5.2.4 Code of conduct for legal practitioners

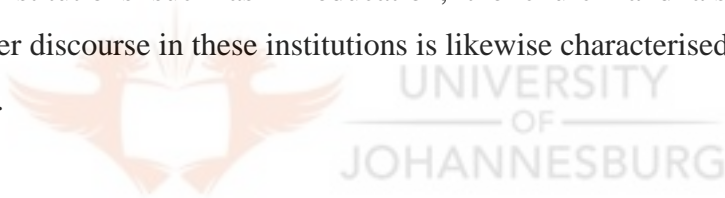
Court discourse should not be a vehicle to marginalise some sections of the community. The present practise of the courts support gender bias through courtroom discourse and the language of the courts might be overlooked yet it has an impact on other court participants, especially women. There should be fairness in all quarters so that questioning the credibility of female crime victims should be the same with credibility of male crime victims. The language used in cases that involve men and women should be fair to all. This may minimise blaming the victim for either causing the abuse or assault. Victims, either male or female, should be treated with respect and sensitivity to the trauma they have experienced. Victims of domestic violence should not be subjected to unjust scrutiny because of the nature of the acts perpetrated against them. Their testimony is no less credible because the alleged acts are physical abuse and are said to have occurred in a domestic environment.

To avoid gender bias in the Courtroom, differential treatment or appearance of differential treatment through language used in the courts, Court personnel should address both women and men in the same formal or professional manner. The Constitution addresses this aspect in Section 20(1): "All persons are equal before and under the law in all spheres of political, economic, social and cultural life and in every other respect and shall enjoy equal protection of the law". There should be neutral forms of address to all participants, whether male or female. Court Presidents should bear in mind that witnesses are subpoenaed to appear in court because they have information important to a case and not to be subjected to inhuman questioning and treatment by Court officials. Informal address of some participants in the courtroom suggests lack of

respect. By conveying respect and providing assistance to all participants in the courts, the court personnel's code of conduct and the role they play in the court is important in eliminating bias of all forms in the administration of justice. The Judicial Commissioner's Office should be an agent of the above, as all Swazi courts fall under this office.

5.3 Suggestions for further research

A possible area for further research would be an examination of language used in other courts such as the Magistrates courts involving other forms of cases of violence. Considering that this study was a case study, subsequent research in the other courts may be very useful in establishing the validity or otherwise of this study's findings. Similarly, studies on language use between men and women could be conducted in other governmental institutions such as in education, the church and also Parliament, to establish whether discourse in these institutions is likewise characterised by asymmetrical power relations.



5.4 Conclusion

In this dissertation the researcher has examined if language used in the Swazi Courts discriminates against women, and on the other hand, has also looked at the way gender imbalances and power relations are portrayed through the use of language. To be able to examine all the above the researcher has used CDA to analyse the utterances and discourses used in the courts. From the interviews that were conducted and the recorded tapes on proceedings in Swazi courts it is suggested that courtroom discourse sustains inequalities where men and women take their matters to the courts.

It appears that women in the Swazi Courts are discriminated against because the courts do not allow people who participate in the courts to be hesitant or use euphemisms as the study revealed. The researcher has suggested that men are more privileged when it comes to court proceedings, especially in assault related issues because they are able to use strong language whereas women cannot. This is because women in the Swazi society

have been brought up differently from men in terms of language use. As women grow up they are discouraged to use strong language and if they are found doing so they are ridiculed. Women transfer this kind of socialization to the courts, yet the courts encourage all participants to use 'strong' language where necessary. Women find themselves helping their male counterparts to be set free in the courts when they fail to use 'strong language.'

The study also examined power relations in the Swazi Courts. Using the recorded court transcripts the findings suggest that the way language is used in the courts determines who among the participants have authority over the other. The study has also shown that in the legal institutions it is the Courts President and the bench who have power/authority over the litigants and witnesses. The bench in this case is knowledgeable of the legal code which the litigants and witnesses do not have.

Violence and abuse are obstacles to the achievement of the objectives of equality, development and peace. They impede the ability of the affected to participate fully in the development of society. Women, in Swaziland, therefore, should not be viewed as objects but as human beings who should not be degraded and who deserve to be treated equally to men, even in the highest institutions like the courts. The Swazi society has to acknowledge the fact that society is dynamic and changes according to times and women cannot be viewed as unchanging in terms of their interaction in the society.

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APPENDICES

Appendix 1 – *Incwadzi Lekumema Kutsi Ungenele Luhlo*

Sawubona

Uyacelwa kutsi ube yincenye yaloluphenyo lwekubuketa budlelwane lobukhona emkhatsini welulwimi lolusetjentiswa enkantolo yakaNdabazabantu kanye nendlela lokusetjentwa ngayo mayelana nalabaphetse kanye nalabo labatekiswa emacala kutsi ingabe lulwimi luyahlukumeta yini kubomake noma kubantfu labasikati. Lokutawugcizelelwa kakhulu kuloluphenyo kutawuba kubuyeketa kutsi lulwimi ngabe luyehlukanisa yini emkhatsini walabasikati nalabadvuna.

Kulungenela loluhlolo kungaya ngekutsi uyafuna yini, kantsi-ke awukaphocelelwa kutsi ulungenele. Ungayekela uma uva kutsi awusakhoni kuchubeka nalo luphenyo. Kutawuba khona imibuto lotawubutwa yona lengeke itsatse sikhatsi lesingetulu kumzuzu lelishumi. Imiphumela yalemibuto lotawubutwa yona angeke yakuphocelela kutsi ulisho libito lakho kepha itawusetjentiswa kulenjongo yaloluphenyo.

Ngingabonga uma ungalungenela loluphenyo. Ngiyabonga.

Ngimi lotitfobako

LINDIWE DLAMINI.

Invitation Letter to Participants

Dear Participant,

You are kindly requested to take part in the study purposed to investigate the Swazi gender-occasioned power relations as mediated through the language used in the Swazi courts. Focus of this study will be on what meanings are constructed and how those meanings in turn construct gender differences within the Swazi society. The study will confine itself to the language used in the Swazi courts in order to establish the validity that language used in the same courts discriminates against women.

Participation to this study is voluntary, and you can at your wish decline to participate. Face to face interviews will be conducted and you are advised that the interviews will be tape recorded for the purpose of the data analysis. The interviews will take five to ten minutes of your time. Data collected in the interviews will mainly be used for the purpose of the study and therefore anonymity of the whole process of interviews is guaranteed. Your cooperation will be appreciated. Thanking you in advance.

Yours faithfully

LINDIWE DLAMINI.

Appendix 2: Lifomu Lelivumako Kutsi Ngingenele Luhlo

Minengiyacondza kutsi inhloso yaloluhlolo netincabekelwano talo luyini. Futsi kuyevakala kutsi kulungenela kwami angikaphoceleleki, ngingalungenela ngekutsandza kwami, futsi nasengiva kutsi angisakhoni kuchubeka nalo ngingaluyekela.

Ngiyacondza kutsi ligama lami angeke lavela kuloluhlolo futsi noma lencwadzi seyishicilelwe angeke lavela.

Konkhe lengitawukusho kuloluhlolo kutawuba yimfihlo.

Ngiyavuma kulungenela ngekuphendvula imibuto lengitawubutwa yona. Lapho ngitawuba nebulukhuni khona ngitawucela lusito kulowenta luhlolo.



Kusayine Lusuku.....

Mine (Lindiwe Dlamini) ngichazile injongo kanye nendlela yekwenta luhlolo lolungenele. Ngichazile kutsi luhlolo ungalungenela ngekutsandza kwakho, futsi uma sowuva kutsi awusakhoni kuchubeka nalo ungaluyekela.

Ngetsembisile kulongenele luhlolo kutsi konkhe latakuphendvula kutawuba yimfihlo, neligama lakhe ngeke lavela kulemibuto, futsi noma ngabe lencwadzi seyishicilelwe angeke lavela.

Uma ngabe longenele luhlolo kukhona lapho ehluleka khona ngiyawumniketa lusito.

KusayineLusuku.....

Informed Consent Form for Interviewees

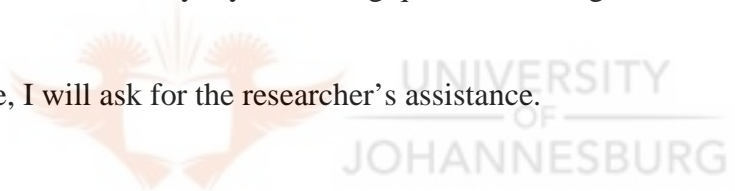
I understand the aims of the study and the procedures involved. I understand that my participation in the study is voluntary and I can withdraw anytime I want to.

I understand that my name will not appear on the interview schedule and it will not be used in the final report.

Any information I reveal to the researcher will be treated with confidentiality.

I agree to take part in the study, by answering questions during the interview.

If I have trouble, I will ask for the researcher's assistance.



Signature

Date

I, (Lindiwe Dlamini), have explained the procedures and the aims of the study to the best of my ability. I have assured the participant that participation is voluntary and that he/she can withdraw anytime he/she wants.

I have also guaranteed the participant that all information revealed to me will be treated with confidentiality and that his/her name will not appear on the interview schedule and it will not be used in the final report.

If the participant requires my help, I will be of assistance.

Signature

Date

Appendix 3: Lifomu Lokuvuma Kutsi Luhlole Lutsetjulwe

Mine ngiyacondza kutsi inhloso yaloluhlolo netincabekelwano talo luyini. Futsi kuyevakala kutsi kulungenela kwami angikaphoceleleki, ngingalungenela ngekutsandza kwami, futsi nasengiva kutsi angisakhoni kuchubeka nalo ngingaluyekela.

Ngiyacondza kutsi ligama lami angeke lavela kuloluhlolo futsi noma lencwadzi seyishicilelwe angeke lavela.

Konkhe lengitawukusho kulophetse luhlolo kutawuba yimfihlo.

Ngiyavuma kulungenela loluhlolo ngekuphendvula imibuto lengitawubutwa yona.

Niyavuma kutsi luhlolo lutsetjulwe nekutsi luhlolo luyawutjengiswa kuphela uma bothishela bakhe beNyuvesi nalabo labatawube bamuhlola bacele luhlolo lolutsetjuliwe. Uma sekwedlule sikhatsi sakhe sekuhlolwa lokutsetjuliwe kuyawudzatjulwa kulahlwe.

KusayineLusuku.....

Informed Consent Form for Recording Interview

I understand the aims of the study and the procedures involved. I understand that my participation in the study is voluntary and I can withdraw anytime I want to.

I understand that my name will not appear on the interview schedules and it will not be used in final report.

Any information I reveal to the researcher will be treated with confidentiality.

I agree to take part in the study, by answering questions during the interview.

I agree to allow the interview to be recorded by the researcher, and that the recorded interview will only be available to the supervisor and external examiner if requested. Once the examination process is completed, the interview tapes will be destroyed.

Signature

Date

Appendix 4 – Luhla Lweluhlolo Lwabomake Kanye Nabobabe Lababamangali Noma Labake Bangenela Luhlolo Enkantolo

1. Wake watekiswa licala kaNdzabazabantu?
2. Uma wake, ungakhumbula yini kutsi kwakukunini?
3. Wawutekiswe lani? Unesikhalo? Ungummangali? Ungummangalelwa?
4. Lelicala lewawulitekiswa lalifaka yini ekhatsi ummangali/ummangalelwa longumake noma longubabe?
5. Usakhumbula yini kutsi weva kunjani nawusenkantolo?
6. Ngubani lowakubuta imibuto ecaleni?
7. Ungaluchaza kutsi lunjani lulwimi lolusetjentiswako enkantolo? Lusimodeni? Lunenhlamba? Lundimundimu?
8. Ngicela uchaze kabanti kumphendvulo yakho lengenhla ku 7.
9. Loko kwakwenta weva unjani ngesikhatsi usenkantolo, akukuphatsanga kahle noma kwakudlisa emahloni?
10. Uma utsi yebo, ase ungichazele kutsi kwakunjani?
11. Wake weva uphatseka ngalendlela yini ngalesinye sikhatsi, mhlawumbe usenkantolo noma ungekho enkantolo?
12. Yini locabanga kutsi ibanga intfo lenjena?
13. Nawucabanga ucabanga kutsi lendlela lowaphatseka ngayo yenteka kuwe kuphela noma kuyenteka nakulabanye bantfu?
14. Ngicela uchaze kabanti kumphendvulo yakho lengenhla ku 13.
15. Yini locabanga kutsi ingentiwa kute kushintjwe kulendlela lokwenteka ngayo?

Interview Schedule for Women and Men Who Have Been Witnesses / Participants in Court Proceedings

1. Have you been involved in a case in the Swazi Courts?
2. If yes, can you remember when that was?
3. In what capacity were you involved? As a complainant? Witness? Or an accused?
4. Did the case involve any male witness / accused?
5. Can you remember what your feelings were when you were before the court?
6. Who cross-examined (information sort and given in way of questions and answers) you?
7. How would you describe the language used in such cases? Modest? Vulgar? Neutral?
8. Please explain your answer to question 7 above.
9. Did this cause you any discomfort or embarrassment while in the court?
10. If yes, would you mind describing the situation to me?
11. Have you ever experienced the same feeling any other time, whether in or out of court?
12. What do you think is the cause of such situations?
13. Do you think this experience is yours alone or it is shared by many other people?
14. Please explain your answer to question 13 above.
15. What do you think should be done to change the situation for the better?

Appendix 5 – Sibonelo Seluhlolo Lwabomake Labangenela Luhlole Enkantolo

1. Wake watekiswa licala kaNdzabazabantu?

Yebo ngake .

2. Uma wake, ungakhumbula yini kutsi kwakukunini?

Kwakungumnyaka wa1998, kuyinyanga yeNhlaba.

3. Wawutekiswe lani? Unesikhalo? Ungummangali?Ungummangalelwa?

Ngangingummangali kulelicala.

4. Lelicala lewawulitekiswa lalifaka yini ekhatsi ummangali/ummangalelwa longumake noma longubabe?

Lalifaka labanye bobabe lababili, bese kuba ngimi.

5. Usakhumbula yini kutsi weva kunjani nawusenkantolo?

Bengihle ngidliwa ngemahloni ngendlela lulwimi lusetjentiswe ngakhona, ngekutsi uMphatsinkantolo abeba nelulaka kulesinye sikhatsi. Lengakutsandza kutsi lomangali entelwe yinkantolo umusa aliwine licala. Loko kwangenta ngakhululeka kuba ngulomunye wabofakazi.

6. Ngubani lowakubuta imibuto ecaleni?

Ngangibutwa nguye uMphatsinkantolo.

7. Ungaluchaza kutsi lunjani lulwimi lolusetjentiswako enkantolo?Lusimodeni?

Lunenhlamba? Lundimundimu?

Ngatfola lokutsi lolulwimi lolusetjentiswako lubi, lungcolile, kepha kute lenye indlela luyasetjentiswa.

8. Ngicela uchaze kabanti kumphendvulo yakho lengenhla ku 7.

Uyati ngamangala uma uMphatsinkantolo alibele kukhumbuta make kutsi babe wamshaya ngoba akhweletela sincanakazane. Ngitfole kutsi kuwo onkhe lamacala lapho kutsintseka khona emadvodza, ngiwo lahlukubeta bafati asitakale ngabo.

9. Loko kwakwenta weva unjani ngesikhatsi usenkantolo, akukuphatsanga kahle noma kwakudlisa emahloni?

Akungiphatsanga kahle ngoba vele make abengeke ahlale angakhweleti. Kukhweleta yindalo, Ngako-ke kwakubuhlungu kummangali.

10. Uma utsi yebo, ase ungichazele kutsi kwakunjani?

Ngicabanga kutsi uMphatsinkantolo kanye nalabasenta naye babuta imibuto lenyanyisako kanye naledlisana emahloni. Abagcini lapho, baphindze bente kutsi uve buhlungu kakhulu.

11. Wake weva uphatseka ngalendlela yini ngalesinye sikhatsi, mhlawumbe usenkantolo noma ungekho enkantolo?

Yebo ngake. Lapho kungesikhatsi labanye bantfu lababili bahhwilitisana, naloyo etama kuhlaza lomunye.

12. Yini locabanga kutsi ibanga intfo lenjena?

Kwetama kuhlaza lomunye umuntfu embikwe bantfu.

13. Nawucabanga ucabanga kutsi lendlela lowaphatseka ngayo yenteka kuwe kuphela noma kuyenteka nakulabanye bantfu?

Ngicabanga kutsi akwenteki kumunye umuntfu kepha kuwo wonkhe umuntfu.

14. Ngicela uchaze kabanti kumphendvulo yakho lengenhla ku 13.

Kubonakala ngemiphumela emva kwendzaba lapho sekutekwa lona lelicala.

15. Yini locabanga kutsi ingentiwa kute kushintjwe kulendlela lokwenteka ngayo?

UMphatsinkantolo kanye nalasebenta nabo kumele balimele liciniso kuwo onkhe emacala. Bamangali nebamangalelwa kumele bayihloniphe inkantolo nako konkhe lokwenteka khona, bangatsatseli tintfo phasi. Onkhe emacala, ikakhulukati ekungcola, ladlisana ngemahloni kanye nekunyembenya labanye, kumele atekiswe ekhwaceleni hhayi kubanfu, futsi tintsatseli tingalokotsi tibe khona. Imiphumela yalawo macala ingavetwa kutsi luntfu luyibone.



Sample of Interview Responses with Women Participants

1. Have you been involved in a case in the Swazi Courts?

Yes I have

2. If yes, can you remember when that was?

This was sometime in 1998. It was in the month of June.

3. In what capacity were you involved? As a complainant? Witness? Or an accused?

I was a witness in an assault case

4. Did the case involve any male witness / accused?

Yes it did. There were two male witnesses and myself.

5. Can you remember what your feelings were when you were before the court?

I was feeling embarrassed of the whole thing but appreciated the fact that the victim deserved justice and that is why I was keen to testify against the accused.

6. Who cross-examined (information sort and given in way of questions and answers) you?

The accused /Court President conducted cross-examination.

7. How would you describe the language used in such cases? Modest? Vulgar? Neutral?

Ordinary vulgar, but in the circumstances it was inevitable. Sometimes it starts with modesty but along the way most of them (the bench during cross examination coerce witnesses to be vulgar) from the point of view of what society considers vulgar.

8. Please explain your answer to question 7 above.

Because if some taboo is associated with the use of some words contestants are at first shy and timid but as cases proceed words considered vulgar are engaged

9. Did this cause you any discomfort or embarrassment while in the court?

Yes I was a bit taken aback and disturbed and felt that this was very unfair and morally disparaging to the complainant.

10. If yes, would you mind describing the situation to me?

I felt the Court President and Court officials were asking irritating and embarrassing questions and making disparaging innuendos and suggestions.

11. Have you ever experienced the same feeling any other time, whether in or out of court?

Yes I have when two people are quarrelling trying to embarrass the other.

12. What do you think is the cause of such situations?

Attempt at causing embarrassment to a foe in the eye of the public.

13. Do you think this experience is yours alone or it is shared by many other people?

I believe it is shared by many

14. Please explain your answer to question 13 above.

Out of post event analysis where many people meet to discuss the whole episode.

15. What do you think should be done to change the situation for the better?

Court Presidents and Court officials should be firm when presiding over such case.

Witnesses and accused should be warned against undermining the Dignity of the court. Indecent assault and all other cases that have the potent of embarrassing and shaming some members of society (men) should be held in camera. Members of the press and the public should be excluded. Law reports should not disclose the identities of the victims.



Appendix 6 – Sibonelo Seluhlolo Ngesikhatsi Sekulandzelela Inchubo Yenkantolo

Sicephu 2

Sendlalelo – [Umfati ubekwe licala lekushiya umyeni wakhe nebantfwana ngoba indvodza yakhe iganiwe, kantsi futsi ayisabuyi ekhaya. Lomfati wahamba wayawukulwa nesincanakazana ngekutsi sesimemuke indvodza. Basalwa lesincanakazana salimala sase siyammangalela sowubekwa licala.]

(b)

- 8 M Asewuchaze-ke makoti kutsi wawuyofunani endlini yalolomunye?
- 9 L Ngangiye ngiyewufuna indvodza yami.
- 10 M Wawucabanga kutsi uyawuyitfolo khona yini?
- 11 L Ye...bo Nkhosiyenkantolo, ngangicabanga, nga...
- 12 M [Amjube lulwim, aphakamise livi] Nguloko lowafundziswa kona ngunyoko? Awufundzisekanga!
- 13 L Nga... Ngangingakacondzi... ku... [Acale kukhala].
- 14 SS [Ngelivi lelifanana neleMphatsinkantolo] Uyedzelela kantsi futsi bekufute kushayeke wena. [Babukane baphatsi benkantolo, lomangalelwe achubeke akhale]
- 15 SS Siva kutsi nguwe lowacala ngekwetfuka sincanakazana wendlula lapho wasishaya kucala. Ase usitjele kutsi wamentani?
- 16 L Angi ... [Asho akhala] zange mine ngimetfuke. Ngu ... nguyey lowacala kucala [abuka lapho kuhleli khona Ummangali abese uyabuta] Angitsi nguwe lowacala kucala?
- 17 M [Ngekucasuka] Yekela kubuta ummangali imibuto, uphendvule lobutwe kona.
- 18 L Wacala kucala kungishaya.

Sample of Cross-Examination During Observation

Excerpt 2 [A woman is accused of neglecting her husband and children because her husband has a mistress and rarely comes home. She went and confronted the offender for stealing her man. They fought and the “mistress” was injured in the process and laid a charge.]

(b)

8 P Why were you found at the Witness’ flat *makoti* (young woman)

9 A I had gone to look for my husband.

10 P You thought you would find him at her place

11 A Ye...s my Lord, I thought ... I ...

12 P [Interrupts and raises his voice] *Nguloko lowafundziswa kona ngunyoko? Awufundzisekanga!*

(Is that what your mother taught you? You have never been taught good manners)

13 A I... did not mean... to...[begins to cry]

14 CO [same tone as Court President] *Uyedzelela kantsi futsi bekufute kushayeke Wena.*

(You should have been the one injured because you are uncouth)

[The accused continues to cry as the bench exchange glances]

15 CO It is said you hailed insults to your rival and were the one who began hitting *sincanakazane*. Tell us what you did to her. (mistress)

16 A I ... [sobbing] did not insult her. She ... she started first [looking at the witness’ side and began asking]. You started first, Didn’t you?

17 P [Annoyed] Stop asking her (witness) questions just answer what you are asked.

18 A She started hitting me first.

Appendix 7 – Sibonelo Seluhlolo Lwetincwadzi Temlandvo Enkantolo

Licala 1

Sendlalelo –[Ummangalelwa washaya umfati wakhe emva kokuba umfati ale kumgcebela lapho abetawulala khona nentfombi yakhe labekadze efike nayo ekhaya itewujuma. Umfati nakatsi uyabutisisa ngalentfombi kantsi walile nekubagecebela, indvodza yamshaya yametfuka ngisho kumetfuka.]

UMphatsinkantolo Ubuta Ummangali Imibuto

(p)

- 83 M Ase utekele inkantolo kutsi kwentekani ngesikhatsi ummangalelwa afika nentfombi ekhaya.
- 84 U Sasisandza kucedza kugeza titja tantsambama lapho efika babe nentfombi yakhe bangena ngasekhishini. Batsi nje nabangena bantfwana betfu bemantfombatana basuka bahamba baya entsangeni yabo. Babe yena wafuna kutsi ngibanike kudla futsi ngiphindze ngibalungisele ngisho nendzawo yekulala, ngehluleka kukwenta loko.
- 85 M Wehlulwa yini? Wawungafuni kwentela indvodza yakho lebekucele ubentele kona?
- 86 U Cha ...ke Nkhosiyenkantolo ngasuke ngacabanga kutsi uyangidlalisa, ngase ngitsi ngicela etfule lentfombi yakhe kute sitewatana.
- 87 M Wafuna kwati kutsi ngubani sivakashi sendvodza yakho? Yona yametfula yini kuwe?
- 88 U Cha akazange. Wangitjela kutsi kumele ngiphume ekamelweni letfu kute batewulala khona bona. Lapho abesaphakamise livi futsi asangetfuka nekungetfuka. Wangikhahlela, wate wangekhama.
- 89 M Mbambambamba wacala nini lokukwekhama?
- 90 U Nkhosiyenkantolo, ngesikhatsi mine ngimbuta kwesibili kutsi lentfombi lefike nayo ngubani yakuphi.
- 91 M Esitatimendeni sakho losifungele emaphoyiseni utsi ummangalelwa wasebentisa tinhlamba?

- 92 U *Kunjalo Nkhosiyenkantolo.*
- 93 M *Wasebentisa letitsini tinhlamba?*
- 94 U *[Angingita] Watsi Nkhosi ...yenkantolo ... watsi ngingumfati lomubi.*
- 95 M *[Amjuba lulwimi] Lapha ubhekeke kutsi onkhe emagama lawasebentisa uwabite ngembaba kute inkantolo ikwati kulandzelela kahle kutsi kwentekani. Uyangiva kutsi ngitsini?*
- 96 U *Yebo ngiyeva Nkhosiyenkantolo.*
- 97 M *Ungachubeka.*
- 98 U *[Akhala] Watsi ... ngi ... ngiyingwababane yenja.*
- 99 M *Wakhulumisa kwendvodza-ke manje!*



Sample of cross examination of transcripts

Case 1

Synopsis - [The accused wrongfully and unlawfully assaulted his wife after bringing home his mistress and demanded that his wife prepare them (him and his mistress) a place to sleep. When she (wife) questioned him about his mistress and refused to make up the bed, he assaulted her and used profane language in the process]

CP Cross-Examines Witness

(p)

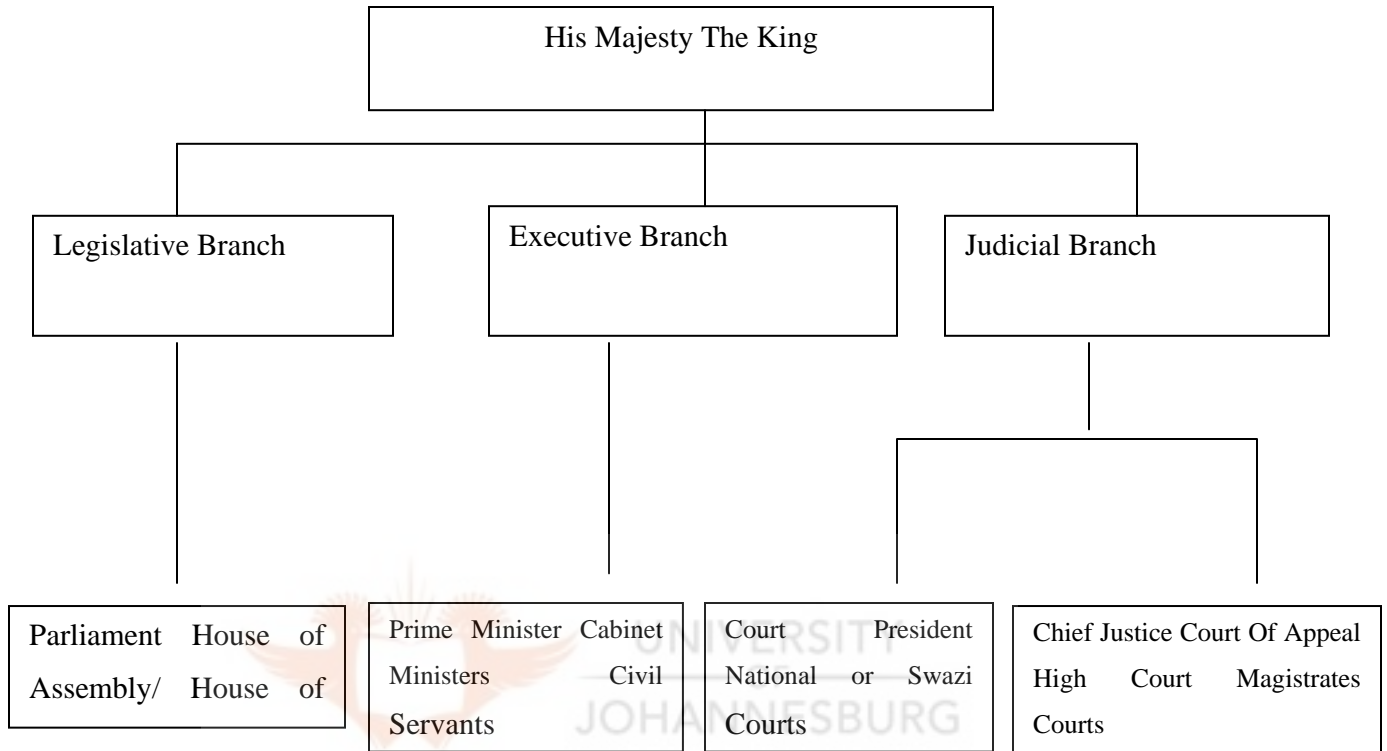
- 83 CP Tell the court what happened on the day the accused came home with his lover
- 84 W We had just finished washing dishes when my husband and his lover walked through the kitchen door. As soon as they entered our two children left the kitchen and went to their sleeping hut. He demanded that I give them food and prepare them a place to sleep. I did not do as he asked me.
- 85 CP Why? You were defying your husband's orders!?
- 86 W No my L...Lord. I thought he was joking with me. I demanded that he introduced me to the lady.
- 87 CP You demanded to know who your husband brought home? Did he introduce her?
- 88 W No he did not. He told me that I had to vacate our bedroom. At that point he was shouting kicking and throttling me in front of his lover.
- 89 CP When exactly did he start throttling you?
- 90 W When I asked him the second time who the lady was, my Lord.
- 91 CP In your account and police statement you said the accused used profane language?
- 92 W Yes he did my Lord.
- 93 CP What did he say to you?
- 94 W [Stammering] My Lord he ... said I was ... *umfati lomubi* (**bad woman**)
- 95 CP [Interjects] You have to use precise words he used so that the court get the

right information from you. Do you understand?

- 96 W Yes my Lord.
- 97 CP You can continue.
- 98 W [Crying] He said ... (sniff) *ngi...ngiyingwababane yenja* (**I am a harlot**)
- 99 CP *Wakhulumisa kwendvodza- ke manje!* (**You now talk like a man!**)



Appendix 8 – Structure of the Swaziland Government



THE LEGISLATIVE

- makes the law
- amends the law
- approves ministerial budgets
- debates state issues

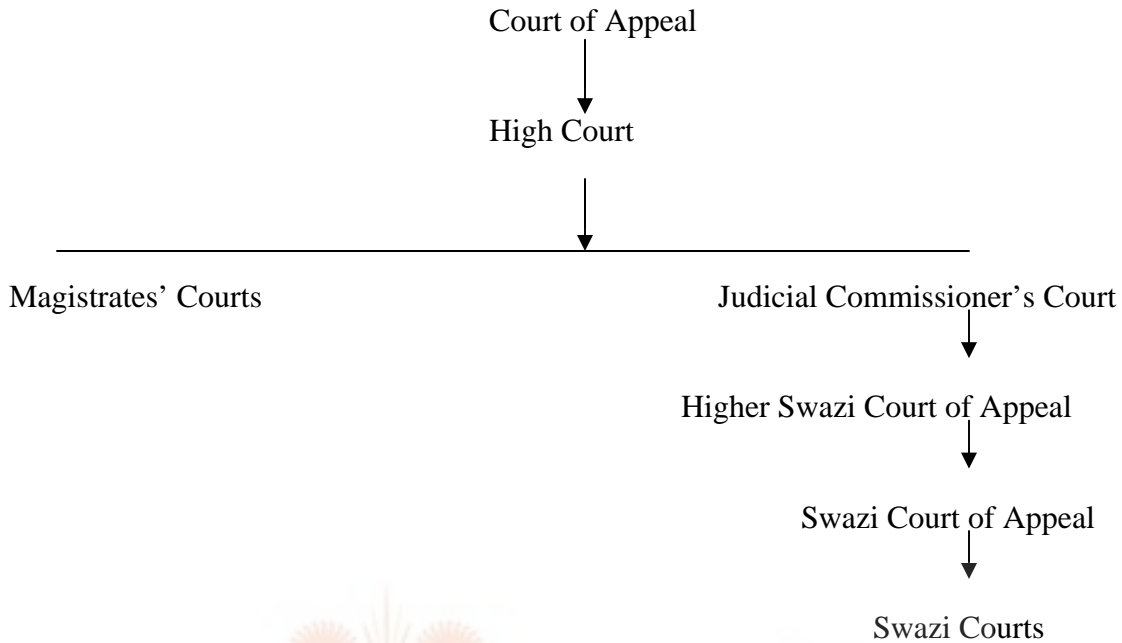
THE EXECUTIVE

- carries out the law

THE JUDICATURE

- administer the law
- dispense justice from the courts

Appendix 9a) -The Structure of the Swazi Courts

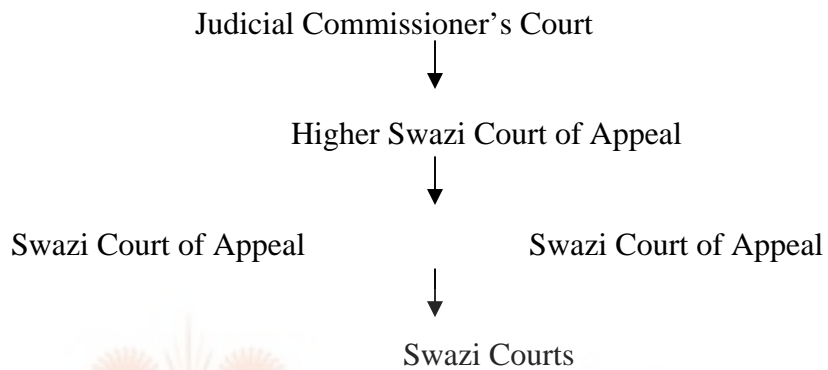


There are 18 Swazi Courts, 2 Swazi Courts of Appeal, 1 Higher Swazi Court of Appeal and the 1 Judicial Commissioner's. Appeal lies in the ordinary way from the Higher Swazi Court of Appeal to the Judicial Commissioner only in criminal matters. In civil disputes appeal lies directly to the High Court (by passing the Judicial Commissioner), though the High Court may order that the matter be heard first by the Judicial Commissioner. If the Judge rules that the written record is inadequate for a High Court hearing (Section 33 (4) Swazi Courts Act 80/1950).

(From Nhlapo (1992))

Appendix 9b) - The Swazi (Customary) Courts

The Swazi (Customary) Courts



Swazi Courts of first instance may not all be in operation at the same time due to delays in filling vacancies occurring within the Court Presidents' cadre and other staffing constraints. The Two Swazi Court of Appeals sit at Lozitha (The Swazi Traditional Administrative Capital) in the Manzini Region and at Nkhanini in the Hhohho region respectively. The Higher Swazi Court of Appeal sits at Lozitha.

(Adapted from Nhlapo (1992))