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# Law and Policy Review

## How far has SADC engendered law and policy?

By Seodi **White**

**I**n 2004, several countries in Southern Africa saw an emergence of new policies and laws relating to gender equality and the advancement of women. It is a well-known fact in this region that new laws relating to socio-economic rights and particularly relating to advancing the status of women are not a common occurrence and therefore when they do happen it is something noteworthy. This article highlights some key policies that have emerged in Malawi, Zimbabwe, Botswana, Swaziland and Namibia, explores and analyzes the extent to which these laws and policies have incorporated gender equality in the light of the fact that gender inequality is still a dominant aspect of people's lives in Southern Africa.

### *To what extent have new laws and policies incorporated gender equality?*

In Malawi the Government Launched the Malawi National HIV/AIDS Policy in January; 2004. The Policy was completed and finalized in September, 2003. The government of Malawi through the National AIDS Commission in the Office of the President and Cabinet came up with the national AIDS Policy entitled "A Call for Renewed Action". Some of the policy statements which have a gendered implication or significantly recognize the position of women in relation to HIV and AIDS relate to mainstreaming

of HIV and AIDS into all relevant policies, plans and programmes. This is a very important policy statement as it ensures that policy statements plans and laws that will advance the gender agenda will include HIV and AIDS issues and therefore an encouraging official development in the light of the fact that women are more vulnerable to HIV and AIDS. Further, the government recognizes Information, Education and Communication (IEC) for behavior change as an important strategy for dissemination and includes information on parent-to-child transmission of HIV and AIDS, breast-feeding, treatment, nutrition and safer sex. This is critical especially for women who lack information on these subjects and therefore engage in behaviors which put their lives at risk. The challenge facing the policy relates to making sure that this information is properly disseminated and is actually reaching the women.

Over and above these provisions the government undertakes to provide affordable male and female condoms and other barrier methods of good quality are made available to all those who need them, in particular prisoners. This is a progressive policy statement. The female condom is not readily available in most Southern African Countries and let alone Malawi. At times when it is available, it is usually very expensive and yet research has so shown that women are more vulnerable to HIV and AIDS compared to men, due to

the construction of masculinity and gender relations which make it difficult for women to negotiate use of the male condom.

The challenge would also be to address the constraint women will face in using the female condom

tive nation; that all Batswana males and females will have paid employment and will be compassionate and caring so that income will be distributed fairly. It will also be safe and secure and will be free from violent crime.

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given the power relations between men and women. Pilot study research results from WLSA national studies reveal that use of the male condom is highly a political issue in horizontal power relations between men and women as well as vertical relations between people in general and the state. In most cases, women are the losers.<sup>1</sup>

However despite the fact that a major challenge faced by the policy is effective implementation as well as effective monitoring and evaluation and the allocation of funds for these to happen. The policy is a highly progressive document that effectively mainstreams gender. It represents a major leap forward for women in Malawi regarding official government support to reduce their vulnerability to HIV and AIDS as well as the challenges of living with the epidemic. It is the right instrument to take the gender agenda forward with regards to mainstreaming HIV and AIDS.

In the same year (2004), the government of Botswana came up with the Vision 2016 plan. This is the official national Manifesto for the people of Botswana; a statement of long-term goals that identify challenges implied by those goals and proposes a set of strategies that will meet them. It incorporates four National Principles of Democracy, Development, Self Reliance and Unity and adds a new one, the Botho (Setswana word for respect, good manners) which is supposed to permeate every aspect of Batswana lives.

Botswana pledges to be, by 2016, an educated nation, to be in the fore-front of information technology with the state of the art computers and technology. It also pledges to be a prosperous, productive and innova-

In itself the Botswana vision 2016 document is another highly progressive document. However, it assumes that men and women are at the same level and will automatically rise to the occasion when technology is placed before them, as well as when employment opportunities are laid out before them. It overlooks the fact that safety and security for women not only relates to violence on the streets, but also, and more importantly, in the home. It also assumes that accountability is particularly concerned with good governance and its response to the rule of law in general and not how women fair in the governance of the country as the rulers and the ruled.

And lastly the document does not explicitly state that equality between men and women in education and leadership, for example, would be achieved and yet this country is a signatory to the SADC Declaration on Gender and Development and has also ratified The CEDAW Convention. These blanks and lack of specificity for gender equality makes the gender equality agenda for Botswana merely rhetoric as opposed to real commitment to end discrimination against women by 2016.

In the case of Swaziland there has been a drive to move from real and tangible resistance to the advancement of women, to the creation of the first steps to break down the barriers for gender equality. In this regard, in honour of its commitment under the SADC Declaration as well as other International and regional women's human rights instruments; Swaziland in 2004 ratified the Convention on the Elimination of all forms of Discrimination against Women without any reserva-

tions. Notable is that Swaziland was the only country in SADC that had not ratified the Convention. There had been a lot of Lobbying in the country by NGOs in to push the government to ratify CEDAW. For example, in 2001 WLSA Swaziland was joined by other WLSA chapters from Lesotho, Zimbabwe, Zambia, Botswana, Mozambique, and Malawi in lobbying the government to ratify CEDAW. This was done through a visit to His Majesty King Mswati III where the seven countries brought the matter to the King's attention and urged him to ratify CEDAW.

At governmental level, the Swazi Government set up a national Strategic Plan of Action for CEDAW which was a joint programme with the UNDP. Whilst the ratification of CEDAW is an important step in the advancement of women's rights in Swaziland, it remains exactly that: a first step. The UNDP Swaziland newsletter of July 2004 states that "The implementation and domestication processes are at the heart of ensuring that CEDAW works for women in articulating comprehensively and translating the rights of women in all national development initiatives."

Namibia, on the other hand, has in the last one and half years, been a shining example of what progressive realization of women's human rights means on paper. The year 2003 saw the passing of two major laws aimed at advancing women's rights and therefore achieving gender equality. In June 2003, the president of Namibia assented to the combating of the Domestic Violence Act. The Act aims to protect persons in domestic relationships including married persons, persons of different sexes living together as partners, parents, family members related by consanguinity and affinity through protection orders.

The Act is progressive in that it moves away from identifying physical violence as the only form of violence as per most criminal and Penal Laws in Southern Africa and therefore joins forces with existing laws on domestic violence in the SADC region, such as those in South Africa and Mauritius. However, the difference and therefore progressiveness of the Act arises from the fact that it combines both civil remedies and criminal sanctions for acts or conduct of domestic violence. It provides for a protection order which in effect may restrain the respondent from subjecting the complainant to acts of domestic violence complained of and also includes surrendering of fire arms where applicable as well as "no contact" provision by respondent vis-à-vis

complainant. The criminal sanctions include breaching a protection order, which makes the offender liable to a fine not exceeding 8000 Namibian Dollars or a prison term of not more than 2 years or both.

The Namibian law has also tried to cover some of the major loopholes that arose from the South African law, where for example enforceability of a protection order was not ensured due to the fact that the law in South Africa failed to impose criminal sanctions for failure to comply.

The Maintenance Act of 2003 was also enacted and signed by the President of Namibia and seeks to create legal obligations on persons or institutions to support children and on spouses to support each other. It particularly highlights relationships where there is a legal duty to support such as parental duty to maintain a child for support which the child reasonably requires for his or her proper living and upbringing. This includes provision of food, accommodation, clothing, medical care and education. The Act erases the distinction for such support based on whether such child is born within or outside marriage, or whether parents of the said child are subject to any customary law that does not recognize both parents' liability to maintain a child. It also gives clear and yet simple procedures on how such maintenance as well as that between spouses can be obtained.

The Act empowers women with children born outside marriage as it creates a legal obligation for fathers of such children to pay maintenance and lessens the burden on the women. The law also de-stigmatises such children. The law goes further to challenge and neutralize customary practices such as matrilineal systems that do not recognize one or both parents' obligation to maintain a child. The matrilineal system fails to recognize the father's rights and obligations over the children; attributing such rights and obligations to the uncles who have, in many circumstances, proved to be not supportive. In the end the burden tends to fall back on the mother. Therefore this Act takes care of this scenario and in this regard is a progressive piece of legislation.

Sadly, whilst some strides have been made in the last year or two to improve the status of women in some countries in Southern Africa, Zimbabwe has not been particularly progressive. Last year 2004, saw the enactment of the infamous NGO law that is said to provide for the registration of the NGOs in the country and to

provide an enabling environment for their operation, monitoring and regulation.

that the Zimbabwe experience should never be repeated and that governments should remain accountable.

**THE LAWS RELATING TO TRADE, CORRUPTION AND OTHER SUCH ISSUES STILL REGARD GENDER MAINSTREAMING AS ANOTHER TYPE OF “ANIMAL”, ANOTHER “WORLD” NOT RELATED TO THEM. AS LONG AS THIS REMAINS THE CASE, MAINSTREAMING GENDER INTO NATIONAL POLICIES AND LAW, BE IT WATER RELATED, ELECTRICITY RELATED OR ECONOMY RELATED, WILL REMAIN ILLUSORY AND SO WILL GENDER EQUALITY.**

However, the contents thereof seek to suppress and control the work of the NGOs in the country. The NGO Act facilitates the formation of a Council known as the NGO Council which consists of five NGO representatives who shall be considered by the Minister to be such representatives as well as 11 government representatives. Although these may be nominated by either, an NGO body or government Ministry, the Minister finally appoints them and has right to veto any nomination thereto. Therefore the independence of the Council is fully compromised. The duty of this council is to consider and determine every application for registration and proposed cancellation or amendment of a certificate of registration.

The question which then arises is what this means in terms of human rights in general and women's human rights in particular. Any move by the State to curtail the work of NGOs amounts to infringement of the freedoms of association, expression and the right to effectively participate and contribute without fear to processes of governance. In Zimbabwe like in most Southern African Countries NGOs that work towards advancing of women's rights are fewer than other NGOs and getting funds for this purpose is much more difficult than in other areas. A law that suppresses the work of NGOs kills NGOs and usually the first to go are NGOs working in the area of gender equality for the reasons already highlighted. The Zimbabwe experience is a lesson for all countries in the region that civil society should always be on the alert and work in partnership with other civil organizations across borders so

*So what is the way forward?*

Most countries in the region are under a lot of pressure (by donors and to some extent citizens) to come up with laws and policies that relate to corruption, money laundering, trade and similar subjects. The challenge is that gender-related laws and policies are still in the back burner or that they are trickling in. It was a disappointment that even in the course of this research, there seems to be more talk of new laws and policies on gender equality than what is already on the ground. Southern African governments are still not walking the talk. It is hoped that 2005 and 2006 will be different.

Another challenge is that the laws relating to corruption, trade and money laundering still regard gender mainstreaming as another type of “animal”, another “world” not related to them. As long as this remains the case, mainstreaming gender into national policies and law, be it water related, electricity related or economy related, will remain illusory and so will gender equality. ☹

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**Endnotes**

- 1 WLSA is conducting research on Women, HIV and AIDS and the Law in seven Southern African Countries of Botswana, Lesotho, Malawi, Mozambique, Swaziland, Zambia and Zimbabwe.