



Parliamentarians for Women's Health

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BOTSWANA AND INTERNATIONAL HUMAN RIGHTS INSTRUMENTS

One objective of the Parliamentarians for Women's Health* project is to strengthen the capacity of members of parliament (MPs) to actively review and promote legislation that improves women's access to health care.

To achieve this, the project formed a legal policy group to implement the following:

A PROJECT BY:



REALIZING RIGHTS
THE ETHICAL GLOBALIZATION INITIATIVE

- Review and comment on the legal audit of legislation that has direct relevance to women's health in Botswana;
- Review and comment on policy gaps based on a policy analysis of women's access to health care in Botswana;
- Assist in identifying the obstacles that hinder women's access to health care services in Botswana;
- Share information and experiences in their respective capacities with regard to access to health care services for women; and
- Develop a plan for legislative action by making recommendations to members of parliament to improve access to health care for women and lobby for increased budgetary allocations for women's health.

Women and HIV/AIDS

Women around the world have moved from the periphery of the AIDS epidemic to its very heart in less than a decade.¹ The high prevalence of HIV/AIDS-related stigma against women contributes to their vulnerability in this epidemic as well as the social and economic inequality they have long endured.²

¹ Mary Crewe (no. 118 above) 3

² As above

Commercial sex workers and female refugees are particularly vulnerable to the spread of HIV and AIDS, and they often face barriers in accessing treatment, care and support. These vulnerable groups require special attention with targeted HIV/AIDS prevention messages and treatment rollout.

Social norms about gender roles also often result in inequalities that leave women without the voice and opportunities to determine their own health and life choices within families and communities. To change these norms and inequalities, women need greater health care access, but men also need to be involved and made more aware of their roles in their wives' and daughters' reproductive and sexual health.

For example, campaigns to reduce HIV/AIDS stigma in Botswana could do more to emphasize the plight of women living with AIDS, and to reach both men and women in rural and urban communities. To expand this reach, the government and media would need to use the various ethnic languages in their communications and not just English and Setswana.

Empowering Women and Girls

Reversing the spread of HIV and AIDS, particularly among women, means addressing gender inequality by challenging the social norms and values that contribute to the lower social status of women and girls and condone violence against them; strengthening the legal and policy framework that support women's right to economic independence and popularizing these laws and policies; and pursuing social human development, education and employment policies to eliminate poverty among women to reduce their susceptibility to ill health.

Governments can establish mechanisms that support and involve nongovernmental organizations, particularly women's organizations, professional groups and other bodies working to improve the health of girls and women; and ensure the involvement of women

in HIV/AIDS program design and decision making, especially those infected or affected by HIV and AIDS.

Youth's Rights

Children also have the right to participate in raising awareness of HIV and AIDS by speaking out about its impact on their lives, and in developing HIV/AIDS policies and programs.³ Children can be trained as peer educators, both within and outside schools. Where appropriate, girls living with HIV and AIDS can raise awareness by sharing their experiences with their peers and others, a critical and effective tool for preventing and reducing stigma and discrimination.⁴

National HIV/AIDS Issues

Botswana has made significant progress in its national response to HIV and AIDS. National legislative efforts, however, could be strengthened, and the Legal Policy Group is tasked with identifying those priority areas for Botswana.

Currently, Botswana lacks legislation that specifically spells out government's obligations for HIV and AIDS, as well as the rights and obligations of people living with HIV and AIDS, including special provisions for women's specific needs. The government in 2004 promulgated the Abolition of Marital Power Act No. 34 to address common law and socio-cultural practices that prejudice women, including gender inequalities that contribute to the spread of HIV. Still, many women, both married and unmarried, are not aware of these new legal protections and therefore are not using them.

Domestic violence is another legal area associated with women's increased vulnerability to HIV. Currently, domestic violence victims may lodge complaints and press charges for common assault, but domestic violence itself is not a crime.

³ General Comment No. 3 (2003) of the Committee on the Rights of the Child, paragraph 12

⁴ As above

Parliamentarians can contribute to improving women's health and strengthening Botswana's fight against HIV and AIDS by:

- Demanding the urgent ratification of the international instruments that have direct relevance to women's access to health;
- Moving motions for the domestication of their provisions after ratification;
- Ensuring that adequate and sustainable budgetary allocations are made for implementation of such domestication; and
- Requiring the necessary steps for effective implementation under the national legal system.

International and Regional Instruments

In the process of Botswana's enforcement of ratified international instruments, international law does not automatically apply locally. According to Botswana law, ratified international treaties have to be purposely incorporated into local law, unlike Namibia, where all international law is enforceable at the local level provided the government has ratified it.

Botswana has ratified the following international and regional instruments, which have direct relevance to women's health:

International Covenant on Civil and Political Rights

Adopted by the General Assembly of the United Nations on Dec. 16, 1966; Ratified on Sept. 8, 2000

Article 2(2) states:

“Where not already provide for by existing legislative or other measures each state party ...shall take the necessary steps in accordance with its constitutional processes ... to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present covenant.”

Article 26 states:

“All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

- *Current Status of Women’s Property Rights*

The government of Botswana has taken necessary steps to address this issue with the new amendment of section 15, which includes sex as a ground for discrimination, but gender inequality persists under the country’s customary laws and traditions.

Under customary law, women lack rights to property inheritance, property rights and access to land. Notwithstanding her right to matrimonial property or legal protections afforded through wills, gender norms which afford men more value and authority than women often mean that widows have little to no say in what happens to their family property. Even in cases where widows can assume ownership of the family property, her eldest son – as the oldest male within the nuclear family – often serves as “chairman” of family meetings and the family representative in matters needing male representation, which undermines her authority. The eldest son also assumes management of the family cattle and property.⁵

The institution of bogadi (bride wealth) is a customary requirement that legitimizes marriages in Botswana. The practice of a husband “paying” for his wife affects the power dynamic within the marriage. It is common to hear women attribute their inferior status within marriage to the fact that they have been “bought.”⁶

Consequently, many women have little power in the marriage to negotiate safe sex

⁵ Unity Dow and Puseletso Kidd *Women, marriage and inheritance* (1994) 65

⁶ Unity Dow and Puseletso Kidd (no. 144 above) 19

practices.⁷ However, the implications on bogadi on women's health have not been formally explored.

Convention on the Elimination of All Forms of Discrimination against Women [CEDAW]; Ratified Aug. 13, 1996

Article 1 states:

“For the purposes of the present convention, the term ‘discrimination against women’ shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”

Article 2(f) states:

“Parties shall undertake...to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women.”

Article 5 (a) states parties shall take all appropriate measures:

“To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.”

Article 12 (1) and (2) state:

(1) “Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.”

⁷ Bride wealth usually transfers the woman's reproductive powers to the husband's family and limits the rights of the wife over their children when the marriage ends by divorce or by death

(2) “Notwithstanding the provisions of paragraph 1 of this article, states parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.”

Article 14 (1) and (2) state:

(1) “States parties shall take into account the particular problems faced by rural women and the significant roles which rural women play in the economic survival of their families, including their work in the nonmonetized sectors of the economy, and shall take all appropriate measures to ensure the application of the provisions of the present convention to women in rural areas.”

(2) “States parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women that they participate in and benefit from rural development and, in particular, shall ensure to such women the right:

(a) To participate in the elaboration and implementation of development planning at all levels;

(b) To have access to adequate health care facilities, including information, counseling and services in family planning;

(c) To benefit directly from social security programs;

(d) To obtain all types of training and education, formal and nonformal, including that relating to functional literacy, as well as, *inter alia*, the benefit of all community and extension services, in order to increase their technical proficiency;

(e) To organize self-help groups and co-operatives in order to obtain equal access to economic opportunities through employment or self employment;

(f) To participate in all community activities;

(g) To have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes; and

(h) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.”

Solemn Declaration on Gender Equality; adopted by all SADC [South African Development Community] heads of state and governments

Under the declaration, the heads of state in the SADC region committed themselves among other things to:

- Repeal and reform all laws, amend constitutions and change social practices which will still subject women to discrimination, and enacting empowering gender-sensitive laws;
- Make quality reproductive and other health services more accessible to women and men;
- Protect and promote the human rights of women and children;
- Recognize, protect and promote the reproductive and sexual rights of women and the girl child;
- Take urgent measures to prevent and deal with the increasing levels of violence against women and children; and
- Encourage the mass media to disseminate information and materials in respect of the human rights of women and children.

Current Status of Ratifying International Law

The Republic of Botswana must ratify and domesticate other international law instruments, which have a particular bearing on improving women’s access to health care. These instruments include the International Covenant on Economic, Social and Cultural Rights; the Optional Protocol of CEDAW; and the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa.

Drafted by Africans, the Protocol to the African Charter addresses problems and issues that are specific to Africa and have been major constraints and hindrances for African women. The protocol covers fundamental issues like the right to inheritance, widowhood and affirmative action to promote equal access and participation in politics and decision making. It also protects women against harmful traditional practices as well as including the rights of particularly vulnerable groups of women including elderly women, women with disabilities, women in conflict situations, pregnant women and nursing mothers. The protocol boldly addresses current and emerging issues like HIV and AIDS, refugee women, right to food security, and adequate housing.

The protocol reflects consensus throughout the African continent of what all governments and states have committed to by ratifying CEDAW and similar instruments. Ratifying the protocol would broaden the scope of the state's responsibilities and create benchmarks to measure the success of state activities to improve women's health.

HIV/AIDS Budget Allocations

Under CEDAW, the state is obliged to remove all existing barriers to women's access to health services and to allocate resources for programs aimed at HIV/AIDS prevention.⁸ In the June 2001 Abuja Declaration, African heads of state and governments pledged to allocate 15 percent of annual budgets to the health sector. To date, Botswana has allocated 11 percent of its budget to the health sector.

National HIV/AIDS Treatment

Botswana has a high concentration of migrant workers, refugees and expatriates. Yet its HIV/AIDS treatment program is reserved for Botswana nationals. The frequent interaction between nationals and foreigners, as well as the increasing rate of cross-border marriages, raises the question of whether Botswana should expand its antiretroviral (ARV) treatment to expatriates. If budgetary constraints do not permit the free distribution of ARVs to expatriates, then ARVs could be made available to them at significantly reduced rates.

⁸ CEDAW General Recommendation No. 24, paragraph 31

* Parliamentarians for Women's Health seeks to assist select parliamentarians in East and southern Africa to more effectively improve women's and girls' access to health services, particularly HIV/AIDS treatment, prevention, care and counseling. Funded by the Bill & Melinda Gates Foundation, this three-year project is being implemented by the International Center for Research on Women (ICRW), European Parliamentarians for Africa (AWEPA), the Centre for the Study of AIDS (CSA) of the University of Pretoria, the International Community of Women Living with HIV/AIDS (ICW) and Realizing Rights: The Ethical Globalization Initiative (EGI).