

AN EVALUATION OF THE SADC GENDER AND
DEVELOPMENT PROTOCOL ON EQUALITY,
EMPOWERMENT AND GENDER BASED VIOLENCE
IN SOUTH AFRICA (2008-2012)

By

Mothepane Yaliwe Petunia Selebogo

**An Evaluation of the SADC Gender and Development Protocol on
Equality, Empowerment and Gender Based Violence in South Africa
(2008-2012)**

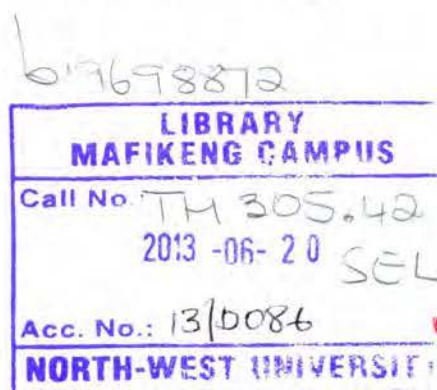
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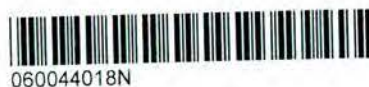
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**A dissertation submitted in fulfilment of the requirements of the Masters of
Social Science Degree in International Relations to the Department of
History, Politics and International Relations, in the faculty of Human and
Social Science of the North West University: Mafikeng Campus**

Supervisor: Prof. Victor Ojakorotu



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DECLARATION

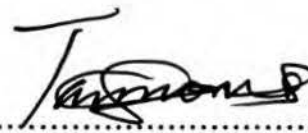
I declare that this dissertation/thesis is my own unaided work. All citations, references and borrowed ideas have been appropriately acknowledged. The thesis is being submitted for the Masters of Arts Degree in International Relations in the Faculty of Human and Social Sciences, in the Department of History, Politics and International Relations of the North West University: Mafikeng Campus, South Africa. None of the present work has been submitted previously for any degree or examination in any other University.

..... Selebogo

MYP Selebogo

..... 23 JANUARY 2013

Date

..... 

Prof. V Ojakorotu

..... 9/4/2013

Date

DEDICATION

My FATHER in heaven, hallowed is thy holy name! Despite my frailties, YOU have come through for me once again. This time YOU have enabled me to attain an important degree in my life, and for this I am eternally grateful! This is your doing, and the least I can do is to dedicate it to YOU alone. I pledge to use it to glorify YOU always as YOU take me to the next level with it.

ACKNOWLEDGEMENT

I will like to first and foremost appreciate my supervisor, Prof Victor Ojakorotu for his ever kind disposition towards me from the moment I first stepped into his office for assistance through the course of my study in the North West University. I could not have wished for a better supervisor; ever so kind, supportive in every ramification, friendly and yet firm as a mentor. I would also like to thank Mr. M. Mosenogi, from Commission on Gender Equality (North West Office) for all the information he gave me so that I could complete this study.

To Gaolebalwe, my truly supportive husband, please accept my gratitude for your invaluable support and for putting up with almost endless months of neglecting you in my quest to get this degree. I thank you for having faith in me, especially in the last few months when I lost my manuscript and almost gave up. You told me I could do it afresh, and I did. I can only promise to be a better wife to you.

My family members: my parents (Selina Selebogo, Isaac and Yvonne Pei), my brothers (Basego, Bongane and Sandile) and sister (Tiisetso) all deserve some gratitude for understanding my need to study further. The pursuit of my studies sometimes made me appear negligent of my “big sister” role and I thank you all for your patience in this regard.

Finally, this study would have been a mirage without adequate funding. In this regard, I acknowledge the support of the North West University Postgraduate Bursary (2011-2012), for making my dream of studying further a success.

LIST OF ACRONYMS

AAWC	All African Women's Conference
AIDS	Acquired Immune Deficiency Syndrome
ANC	African National Congress
ANCWL	African National Congress Women's League
BPA	Beijing Platform for Action
CALS	Centre for Applied Legal Studies
CASE	Community Agency for Social Enquiry
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CGE	Commission on Gender Equality
DA	Democratic Alliance
EEC	Employment Equity Commission
FGM	Female Genital Mutilation
GFP	Gender Focal Point
GSI	Gender Status Index
HSRC	Human Sciences Research Council
ID	Independent Democrat
IEC	Independent Electoral Commission
JMC	Joint Monitoring Committee
MDG	Millennium Development Goals
M&E	Monitoring & Evaluation
NGM	National Gender Machinery

NPA	National Prosecuting Authority
OSW	Office on the Status of Women
RSA	Republic of South Africa
SAHRC	South African Human Rights Commission
SAPS	South African Police Services
SOCA	Sexual Offence and Community Affairs Unit
UNESCO	United Nations Educational, Scientific and Cultural Organisation
UNHCR	United Nations High Commissioner on Refugees
WNC	Women's National Coalition

EXPLANATION OF TERMINOLOGY

Commission for Gender Equality is an independent body established in terms of Chapter Nine, Section 187 of the Constitution of South Africa.

Constitutional Court is the highest court of South Africa on constitutional matters.

Joint Monitoring Committee on the Improvement of the Quality of Life and Status of Women is a national parliamentary committee which is part of the South Africa gender machinery and must monitor and evaluate progress with regard to the improvement of the quality of life and status of women in South Africa.

Judicial Service Commission is an institution responsible for judicial recruitment, appointments and governance matters.

Thuthuzela Centre is South Africa's unique one-stop, integrated response to the burgeoning incidence of violent sexual acts against women and children and its intersect with HIV/AIDS.

Ukuthwala is an Nguni cultural practice whereby an intending bridegroom, together with one or two friends, would waylay a desired bride in the neighbourhood of her own home, and forcibly take her to the young man's home, thereby pre-empting marriage negotiations.

ABSTRACT

Southern Africa must confront a myriad of challenges as it attempts to address effectively the needs and aspirations of its hundred million people, 40 per cent of whom live in extreme poverty with per capita incomes ranging from \$256 per annum in Zimbabwe to \$5099 in Mauritius. The greatest challenge of the Southern African Development Community (SADC) continues to be the need to build a life for its people free from poverty, diseases, human rights abuses, gender inequality and environmental degradation.

Gender activists played a lead role in influencing the development and adoption, on the 17 August 2008, of the SADC Protocol on Gender and Development. In 2005, they undertook comprehensive regional research on sector-specific gender equality issues and gaps. Following the adoption of the SADC Gender and Development Protocol, gender activists came together between 2005 and 2008 to form cross-border and national alliances to undertake a campaign to influence the content of the Protocol, as well as lobby for its adoption. The adoption of the Gender and Development Protocol is one of the fastest in SADC Protocol history.

This study is an evaluation of the SADC Gender and Development Protocol, focusing on gender equality, women's empowerment and the reduction of gender based violence in South Africa. The protocol has a direct bearing on all its signatories in both the "developed" and "developing" countries within the SADC region.

Furthermore, this research focused only on South Africa, one SADC country, in order to evaluate the progress made since the adoption of the Protocol in 2008. The most salient progress has been made with regards to women's representation and participation in state and political governance. Target-setting within the structures of the Protocol greatly contributed to appointment and promotion of women into leadership and decision-making positions. The target of 50% representation of women has already been achieved in Cabinet, the National Assembly, Provincial Premiers, Provincial Council of Provinces and Provincial Legislatures.

Policies, strategies and plans have been put in place to address gender based violence. Despite legislative reform, trends continue to indicate that in South Africa there is still a gender division of labour. Fear of gender-based violence on the one hand, and real life experiences of gender-based violence continue to be deterring factors that keep women from progressing and advancing in the workplace, in schools and institutions of learning, in business and in governance.

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CHAPTER ONE

1.1 Background of the study

The status of women is closely linked to the political context within any country in the world. In Southern Africa, this context includes colonisation, decolonisation, the shift from one party to multiparty politics, liberation struggles from white minority rule and occupation to black majority, as well as the ideological inclination of dominant parties. The reality is that patriarchy and democracy are still comfortable bedfellows (Ndulo, 2009). Patriarchy is not an ideological construct. It is a violent system as experienced vividly in the mindboggling number of women and children who are marginalized in our society. It is a system that entrenches economic inequality, as supported by statistics showing that the feminisation of poverty continues, particularly in rural areas, working class communities and among the unemployed (Ndulo, 2009).

On the health front, the HIV/AIDS pandemic has become one of the major obstacles to sustainable development. This include erosion of productivity in the work place, food insecurity and the livelihood asset base, decreased access to education and other productive assets thereby intensifying poverty. Women constitute the majority of those infected and affected by the virus, and those whose time and effort are now called on with no compensation and remuneration to care for those living with HIV/AIDS (WHO, 2009).

Like masculinities, femininities are not monolithic so we cannot speak of a position of women in pre-capitalist African societies given the historical and socio-cultural differences that characterise the vast geographical space Africa occupies. However, as Coquery-Vidrovich (1997) argues, there are certain main tendencies, mediated by regional differences, which are discernible and common about women's places in pre-capitalist African societies. These prevalent commonalities will be explored at the social, economic and political levels of pre-capitalist African societies. African women have a long history of consciousness and public participation that predate colonialism and nationalism (resistance) politics in the continent. Contrary to Eurocentric and materialist history on African women (see van Allen, 1976; Wright, 1981), the authority and power of women in most pre-colonial societies were particularly evident in both the socio-economic and political spheres. Unfortunately, these have been largely neglected and obscured by analysis which emphasised domesticity and the unwaged role of women as primary producers and as subordinates to men in agriculture-based economies (Guy, 1987, Walker, 1991).

The roles women played as primary producers in pre-colonial African history tends to suggest that real power must lie in the control of both agriculture and women as primary producers and of labour (Wright, 1981). However, in most of pre-colonial Africa, there is evidence of women playing active and prominent roles in public decision-making and maintaining social peace by regulating and preventing conflict (Sadiki, 2001). In these times, due to the flexibility of the gender systems of most traditional cultures and languages, women assumed positions and roles that have today become the exclusive preserve of men, and as such exercised considerable power and authority in society based on an entrenched system of matriarchy that enabled a unique dual-sex socio-political system (see Amadiume, 1987; 1997). For example, according to Amadiume (1997), pre-colonial African women retained autonomy as women within their societies through their social institutions of women's organisations and the Women's Councils, a status that European women at that time never achieved (Amadiume, 1997: 100). Examples of such women include Nzinga, Muhumusa, Me Katilili, Nehanda (Angola), Amina, Idah, Aisha (Nigeria), Nandi, Mkabayi, Mma Mmanthatisi (South Africa), just to mention a few.

It is noteworthy that, apart from examples of royal women which were not a rarity in the assortments of political systems that existed then, women leadership during this period was also demonstrated at popular levels of other spheres of society such as economic, social, religious, political and military (Nzeogwu, 2000), prompting Amadiume (1997) to distinguish between African feudal queen mothers and the market queen mothers, who ostensibly were equally active in the socio-political and economic spheres of their communities as shown by the famous 1929 Aba Women's riots against colonialism (Amadiume, 1997: 89 – 104).

In the economic realm, although patriarchy dictated relations in diverse African societies in varying forms before colonialism, yet, in general terms, it was a kind of patriarchy that respected women and retained significant economic spaces for them, as men and women complemented each other in varying ways. For example, Gordon (1996: 29) contends: "production and consumption were centred in the extended family where both men and women had vital productive roles in predominantly agricultural or pastoral societies". Therefore, while women's condition and position in various pre-colonial African societies obviously varied from one society to another according to the kinship structures and the role women played within the economic structure of each society, they commonly held complementary positions to men, although patrilineal and patriarchal kinship structures

dominated most African societies. Women in most societies often controlled a range of economic activities. For instance, there was a distinct sexual division of labour, with certain crops, handicrafts, animal husbandry activities, and other tasks assigned to both women and men (Gordon, 1996: 29). Although Gordon argues that elder males tended to have more control over productive assets than women as well as power over the labour and products of women within the household, she concurs that “women often had enormous autonomy that helped to dilute tendencies toward male dominance” (Gordon, 1996: 29) such that, in some societies, they had parallel or dual authority structures which allowed them control over their own spheres of activity as well as a measure of economic independence and control over productive assets (Gordon, 1996: 29; Okonjo, 1976).

Besides, this male dominance was also mediated by age, as elder women, just like elder men within these societies, were privileged over younger members of society based on recognition of women’s dual roles as producers and reproducers. For example, the societal position of a young wife improved as she grew older, bore children, and earned approval from society’s older members. She gained assistance from younger wives as she grew older, thus allowing her to spend less time in the home and more time engaging in activities outside the household – activities such as farming and craft making – which allowed her to provide the material resources needed in order to care for her family (Nzeogwu, 2000). Amongst the Yoruba in what is now Western Nigeria, elder women had opportunities to participate in other economic activities such as manufacturing and trade.

The responsibility of a woman to provide for her family included providing the material resources for such care. Women believed that providing such resources met and validated their responsibility as women and citizens. The work the women did was considered complementary to the work of men, and some women achieved impressive status in the economic and social realms of Yoruba life (Awe, 1977).

Socially, women had a value, as they were a symbol of fertility and, as such, a guarantee of children. Kinship groups, whether patrilineal or matrilineal, expected their married women to give birth to children to ensure the future of the group as such women’s fertility is at the core of the African existence. This in no small measure underscored the importance of women in these societies. At the religious level, while Coquery-Vidrovich (1997: 46), for instance, may have been correct to assume that “women’s role in ancestral religions appears to have been

small", perhaps because "enough research has not been done, most anthropologists being male", strong evidence exists that women occupied positions of prominence in African traditional religions. For example, Mbiti (1988) uses mythology, proverbs and prayers to juxtapose the prominent place and role of women in African traditional religions in pre-capitalist African societies. According to him, as in the family and economic structures, African traditional religions conceived the position of women as complementary to that of men even though, as aforementioned, men were believed to be superior to women and, to some extent, in control of women.

Also, as a measure of women's social value, Amadiume (1987: 17) argues, based on her empirical study of gender relations amongst the Igbos of Nigeria, that sexual duality in economic and socio-cultural division of labour and expectations was not rigid as is the case in the West, but was often mediated by the flexibility of gender constructions in language and culture which enabled both men and women to straddle each other's worlds without fear of stigmatisation or sanction. For example, she contends, "in Igbo grammatical construction of gender, a neuter particle is used in Igbo subject or object pronouns, so that no gender distinction is made in reference to males and females in writing or in speech. There is therefore, no language or mental adjustment or confusion in reference to a woman performing a typical male role".

This flexibility in gender construction had implications for gender relations at the social realm as it meant that gender was separate from biological sex and that gender roles were not sexually defined. For instance, daughters could become sons and be treated as completely male just as daughters and women in general could be husbands to wives and consequently males in relation to their wives (Amadiume, 1987:15). It should be noted that flexibility in gender relations was not peculiar only to the Igbos of Nigeria, but was prevalent in other ethnic groups across pre-colonial Africa. For example, in Southern Africa, amongst the Lovedu and their neighbours who inhabit the Limpopo, the Venda, Tsonga and even the Zulu, daughters could also become sons and husbands and they, as such, enjoyed a higher status than wives (Weir, 2007: 6). In most of these societies, the queen, whose power is believed to be derived from divinity, shares power with the King as is the case amongst the Swazis (Swaziland), and she is referred to as the mother of the kingdom and the earth (Lebeuf, 1963:99-100).

Politically, pre-colonial African patriarchies provided spaces for women to participate in the public arena contrary to formal and circumscribed Western-invented history, which perpetuates the view that before colonialism African women did not participate in governance and existed only in shadowy spheres and meekly accepted whatever their male lords and masters directed (Nzeogwu, 2000). No doubt, as Coquery-Vidrovich (1994: 34) notes: "men certainly asserted their political supremacy, but women always retained opportunities for power." For example, in very patrilineal societies such as the Sherbro and Mende in Sierra Leone (West Africa), Ganda in Uganda (East Africa) and the Zulu Kingdom in South Africa (Southern Africa), there is evidence of women playing active roles and having a fair share in politics. Also, in matrilineal pre-colonial societies such as in the Ivory Coast, Ghana and Zimbabwe; the Baule, Ashante and Bemba women, respectively, held sway politically. For example, the Ashantes had a female joint ruler with the King (Ashantehene), and she was indeed very powerful such that she participated in royal ancestral rituals, was involved in the selection, presentation and enthronement of a new king, and in his absence, took his place in war. This perhaps was a formal reflection of women power in a matrilineal society ruled by a patriarchal aristocracy where a mother's descendant's relationships determined land rights, inheritance of property, offices and titles.

In diverse states such as Nigeria where there were variants of centralised and decentralised pre-colonial political systems, Igbo women groups such as the *Umuada* constituted a social base of political power and also served as checks on the abuse of power by the Council of Elders. As Coquery-Vidrovich (1994: 36) put it that "Igbo women ruled among themselves by an assembly or *Ikporo-ani* of related women, widowed, married, or not". According to her, "these women heard spousal disputes, adultery cases, and quarrels between groups and villages along, and the existence of this body meant women could also impose rules on their village political authorities" (Coquery-Vidrovich, 1994: 37). Okonjo (1976) described the Igbo political system as a dual sex system in which political interest groups were defined and represented by sex such that every adult participated. As aforementioned, this is modified by Amadiume's (1987) incisive analysis of the politics of gender in Igbo societies using her society, Nnobi, as a case study, which showed that indigenous Igbo society was not based on strict sexual dualism, contending rather that sexual dualism and the parallel gender relations it spawned was mediated by flexible gender construction of language and culture (Amadiume, 1987). Therefore, sex and gender did not necessarily coincide in these societies as women played roles usually monopolised by men and were then classified as males just to underscore

women's power - facilitated by their economic independence and the existence of a strong goddess-focussed religion (*Idemili*) which was the basis of women's political power at the extra-descent level of political organisation in Nnobi (Amadiume, 1987: 52-99).

Violence against women and girls in Africa is on the increase. More violent forms, such as femicide, acid attacks, ritual rapes and murders, gang rapes, abductions, defilement and forced early marriages, military sexual slavery, rape as a weapon of war, trafficking in women and girls and ill-treatment of widows have become more widespread. In spite of legislation against some cultural practices, women in Africa continue to be vulnerable to harmful traditional practices and customs such as FGM and widow inheritance, which expose them to the risk of HIV and AIDS. Although laws have been passed in some countries to provide a framework for protecting women from gender-based violence, implementation still lags behind policies and rhetoric, and measures taken are far from adequate. In most countries, NGOs and civil society groups provide most support programmes and services to survivors. There is limited capacity to monitor the impact of the measures taken. The attitudes of law enforcement agents in most countries lead to abuse of victims who venture to report incidences of violence against women and girls (ibid, 2011).

Only a few countries have enacted legislation to deal specifically with domestic violence (Gender Links, 2009). Even where such laws exist, enforcement is made difficult by the attitudes of law enforcement agents as well as societal attitudes that reinforce a culture of tolerance and silence. Adverse economic conditions, in many cases, combine to make it difficult for economically vulnerable women to get out of abusive relationships. Sexual abuse of women increases their vulnerability to sexually transmitted infections (STIs) and HIV (Gender links, 2009).

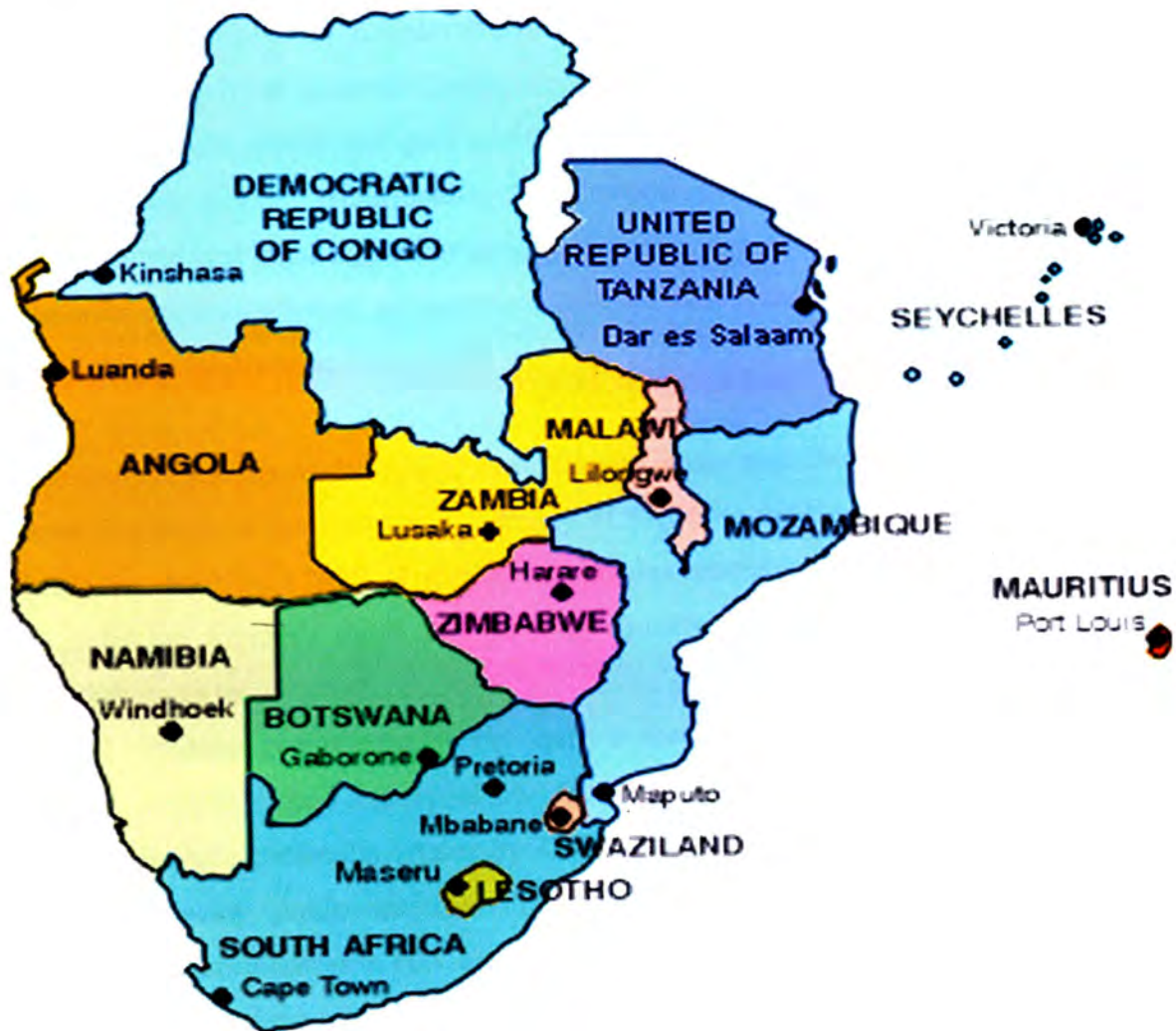
Further challenges to strategies for eradicating gender violence include: cultural attitudes that reinforce the subordination of women and lack of programmes to tackle the root causes of violence against women. There are very few comprehensive programmes to change attitudes of male dominance and mobilise men to join in the struggle for gender equality (Amadiume, 1987: 52-99). Socio-cultural attitudes that encourage silence, especially on domestic violence, inhibit the collection of adequate data on the extent of the problem. As a result, prevention strategies remain fragmented, reactive and have not received adequate resources. In most countries of Africa, policy makers and top decision-makers remain silent on issues of

violence against women. They shy away from discussing the issues or commenting on the wide prevalence of the problem. Advocacy on gender-based violence is mainly left to NGOs and civil society groups (Jambaya, 2012).

Trafficking in women and children is one of the most violent and fastest growing areas of organised crime. Women and girls are increasingly being trafficked within and across borders in one of the most corrosive violations of women's human rights. In the process of being trafficked, women are subjected to gender violence, are humiliated, go through psychological and physical trauma, and are highly vulnerable to HIV/AIDS. Denial of rights to liberty, freedom from violence and torture, the right to health and care, education and employment, to a home and family are the main characteristics of trafficking. It has been described as a modern form of slavery. Trafficked women and girls end up engaging in enforced prostitution and other forms of commercialised sex, forced marriages and forced labour. Examples of the extent of violence against women in Africa are in the Democratic Republic of Congo where 5,000 cases of rape, corresponding to an average of 40 a day, were recorded in the Uvira area by women's associations since October 2002 (UN 2003). In Rwanda between 250,000 and 500,000 women, or about 20% of women, were raped during the 1994 genocide (International Red Cross report, 2002). In Sierra Leone 94 per cent of displaced households surveyed had experienced sexual assaults, including rape, torture and sexual slavery (Physicians for Human Rights, 2002).

Find below the map of the SADC Member States and the position of South Africa on the map:

The SADC Member States



Map by World Investment News, 2004.

By 2008, eleven out of the fifteen SADC countries signed the Gender and Development Protocol. Madagascar followed suit soon after, bringing the total number to 12. On the eve of the 2009 September Heads of State Summit, Botswana, Mauritius and Malawi had not signed the Protocol. The fact that the three did not sign does not necessarily reflect less commitment on the part of the three governments. Rather, it reflects the fact that these three governments were closely studying certain aspects so as to be sure that they are signing on commitments that they are able to deliver. Pressure from civil society to get government to sign the Protocol is strong in all three countries. This represents an important step in work towards the empowerment of women, the elimination of discrimination and the achievement of gender equality and equity (Gender Links, 2012).

This Protocol is a legally binding agreement compelling SADC Member States to accelerate efforts towards gender equity in the region. The SADC Protocol on Gender and Development calls for far-reaching changes, and includes timelines for these goals. Included in these goals is gender equality and equity in National Constitutions, the cancellation of all discriminatory laws, and work towards the continental goal of fifty per cent women in political and decision making positions by 2015. Additionally, the Protocol includes regional goals in terms of constitutional and legal rights covering governance, and education and training, productive resources and employment, gender based violence, health and HIV and AIDS, peace building and conflict resolution and the media.

The implementation of the SADC Protocol on Gender and Development will be monitored through reports by the Executive Secretary of SADC to the Heads of State and Government every two years from 2008. The protocol contains concrete, time-bound commitments aimed at protecting women's rights and ensuring equality between women and men. It requires member states to:

1. Enshrine gender equality and equity in their constitutions;
2. Review, amend and repeal laws that discriminate on the ground of sex or gender;
3. Reduce maternal mortality by 75 per cent;
4. Develop gender-sensitive strategies to prevent new HIV infections and ensure universal access to HIV and AIDS treatment;
5. Ensure gender parity in political representation;
6. Adopt policies and enact laws that would ensure equal access to economic resources by women and men;

The protocol requires member states to report on the progress achieved in implementing its measures every two years. The SADC Protocol on Gender and Development will now be transformed into national plans of action for implementation as SADC Member States begin the process of ratification. Special procedures have to be invoked to incorporate provisions of international and regional instruments into national law. This usually involves legislation development, presentation and adoption by parliament. For example, with the drafting of the Domestic Violence Act, the South African Law Commission used a framework provided by a United Nations Educational, Scientific and Cultural Organisation (UNESCO) project. The courts play a leading role in the enforcement of international and regional instruments ratified by the state. The South African Constitution enjoins the judiciary to have regard for foreign jurisprudence.

1.2 Statement of the research problem

In South Africa, the SADC Gender and Development Protocol is posited as one way of addressing issues of equality, empowerment and the reduction of gender based violence in the country. Much is said about the positive effects the protocol has on the signatories thereof. While the structures, frameworks and processes are still patchy, the future ahead is bright. South Africa through its African National Congress-led-government has already started a massive campaign towards the equal participation of men and women in all spheres of life in order to close the gaps that were created by apartheid, and a poor policy and legal framework that did not protect the rights of women. Currently, South Africa is acknowledged globally and nationally as having made significant progress as far as several spheres in the Protocol is concerned. The problem with the SADC regional groupings is its habit of making numerous commitments and intentions only on paper without corresponding practical activity and drive to implement the plans. Some member states have made notable progress on gender equality, empowerment of women through increased representation in politics and other important decision making positions both in the private and public sectors. Only four SADC member states have reached the original 30% representation of women in parliament by 2005, but none has yet reached the 50% target set for 2015. At the snail pace that SADC has been moving in this regard, one can only hope for a miracle if even half the countries will have reached the 50% representation in Parliament, and reduced gender based violence by half by 2015.

1.3 Rationale of the study

The study evaluates the SADC Gender and Development Protocol on Equality, Empowerment and Gender Based Violence in South Africa from 2008 to 2012. The Protocol calls for stepping up prevention, treatment and support for those affected and infected with HIV and AIDS. According to the SADC Gender Monitor (2010), the SADC Protocol on Gender and Development aims to empower women socially, economically and politically, eliminate discrimination, and achieve gender equality through gender responsive legislation, policies and projects. The SADC Gender Monitor further indicates that the protocol caters for constitutional and legal rights, governance, education and training, productive resources and employment, Gender Based Violence (GBV), health and HIV and AIDS, peace building and conflict resolution as well as media, information and communication which are among other issues that affect women.

1.4 Aim of the study

The aim of this study is to evaluate the SADC Gender and Development Protocol in relation to equality, empowerment and the reduction of gender based violence in South Africa. Moreover, the significant progress made in South Africa since 2008 can be linked to the adoption of the protocol by the South African government.

1.5 Research objective

The study has the following objective:

- To evaluate the extent to which the Protocol is the key factor in the significant progress made by the South African government on the issues of equality, empowerment and Gender Based Violence.

1.6 Significance of the study

Several studies have been undertaken on Gender and Development in South Africa, but no specific study has been undertaken which provides for the SADC Gender and Development Protocol as an instrument that accelerates efforts to achieve gender equality, women's empowerment and the reduction of gender based violence in South Africa. This study will be significant in that it will help speed up the need to engender development initiatives as well as the examination of issues such as women's participation and representation in development and governance processes; policy harmonization, gender mainstreams and institutional capacity building. Therefore, this study will be important to government officials, policy makers, students and development practitioners in achieving the objectives

1.7 Research hypothesis

The effective implementation of the SADC Gender and Development Protocol by the South African government since 2008 has played a significant role in enhancing gender equality, women's empowerment and the reduction of gender based violence.

1.8 Research methodology

Methodology is a set of procedures applied in conducting a study and it is imperative since it describes methods used. These include research instruments and the population being studied. The theoretical framework on the other hand, is important in every research since it defines the theoretical underpinning of a specific study. The purpose of the theoretical framework is to identify and label important variables that are relevant to the research problem. This enables the researcher to connect the dependent variables with the independent variables and if possible elaborate any moderating variables.

The research approach adopted for this study was the qualitative research approach. Qualitative research method is the most suitable as it paved the way for an in-depth study of data. The qualitative approach generated a comprehensive study of SADC as well as the issues related to equality, empowerment and gender based violence. Therefore the study best suited the case study research design. It is an in-depth study of a particular situation, narrowing down a very broad field of research into one easily researchable topic.

The case study gives indications and allows further elaboration and hypothesis creation on a subject (Shuttleworth, 2008). Out of the SADC region, South Africa is chosen as a case study. Regional Economic communities in Africa, are the Community of Sahel-Saharan States (CEN-SAD), Economic Community of Central African States (ECCAS), Common Market for Eastern and Southern Africa (COMESA), East African community (EAC), Economic Community of West African States (ECOWAS), Intergovernmental Authority for Development (IGAD) and the Union du Maghreb Authority for Development (UMA).

This method was appropriate for this study in that it helped the researcher to concentrate on the implications that the SADC Gender and Development Protocol has on equality, empowerment and gender based violence in South Africa. In that light, it is an important method which excels in revealing an understanding of the complex issue of gender equality, women's empowerment and the reduction of gender based violence in South Africa and will add strength to what is already known from previous researches. Case study research excels at bringing us to an understanding of a complex issue or object and can extend experience or add strength to what is already known through previous research. It emphasizes detailed contextual analysis of a limited number of events or conditions and their relationships. Social scientists, in particular, have made wide use of this qualitative research method to examine contemporary real-life situations and provide the basis for the application of ideas and extension of methods.

According to Yin (1984:23) this method is an empirical inquiry that investigates a contemporary phenomenon within its real life context especially when the boundaries between phenomenon and context are not clearly evident and in which multiple sources of evidence are used. This captures the prevalent gender issues in South Africa as well as efforts to remedy the situation as per the SADC Gender and Development Protocol.

The study drew extensively on relevant empirical studies based mainly on literature review. This was augmented by internet sources and relevant SADC reports.

1.8.1 Data Collection methods

The study limited the techniques of data collection to documentation review, which is a critical qualitative method of data collection so as to ensure that the study does not lose sight of the original purpose. It also entailed an analysis of previous regional gender and development strategies and policies and deductive reasoning from facts of evidence as well as the assessment of qualitative data, and therefore the type of data collection method adopted in this research was largely qualitative. Data was collected from primary and secondary sources such as SADC conference reports, presentations, documents. Primary sources of data provided first-hand information of the problem under study. This included one interview. Interviews are a common approach used in social sciences to get information through well placed individuals in relevant institutions and in society.

A key member of personnel involved in gender related issues in South Africa who was interviewed was:

- Research Officer at the Commission on Gender Equality- Mr Marumo Mosenogi.

Primary data was also derived from a number of sources including relevant documents from the SADC countries websites, public statements, speeches and conference papers, and reports from the SADC secretariat, SADC Gender and Development Minister as well as from the Gender Links. The listed sources offered credible first-hand insight on SADC's Gender and Development Protocol in South Africa as well as in the region.

Secondary data included a wide-range selection of journal, published articles, books, newspaper articles (Mail and Guardian), internet/electronic sources and Magazines (The Africa.org and New Africa). The above sources contain invaluable information relevant to this study and relating to Gender and Development, gender equality statistics, statistics of violence against women and girls as well as access of women to resources and institutions of empowerment. Reference was also made to a broad range of academic texts.

1.8.2 Data Analysis Methods

There are several techniques normally used in analysing the multiple sources of data which a case study research like this engenders. Considering that data was collected from a single interview and mainly from documentation review, information was categorized and tabulated to address the initial propositions and purpose of the study and conducted cross checks of facts and discrepancies in accounts. Content analysis is the most suitable as it looks at documents, text, speeches and presentations then sees what themes emerge.

The data collected was analyzed using this method. Throughout the research process, another research analysis method used included discussing the information with other students conducting similar studies in order to gain the advantage provided when a variety of perspectives and insights are applied to the same data. In order to strengthen the conclusions and findings, a system of triangulation was applied for the purpose of validating the data; this method of triangulation uses multiple methods to ensure that a single phenomenon is examined thoroughly from different perspectives.

Against this backdrop, the triangulation method is appropriate in the context of the complexities associated with the subject matter of this study: the potentially powerful impact that the SADC Gender and Development Protocol has in promoting gender equality, women's empowerment and the reduction of gender based violence in South Africa. The use of the triangulation method also informs the modes of data collection as discussed above.

1.9 Scope of the study

The study focused specifically on gender equality, women's empowerment and gender based violence in South Africa. The study was an evaluation of the August 2008 SADC Protocol on Gender and Development making specific reference to South Africa.

1.10 Limitation of the study

The researcher was unable to travel to all parts of South Africa due to financial constraints and limited time given before completing the dissertation. Travelling to all Provinces within South Africa would have exposed the researcher to the pressure and challenges faced by the beneficiaries of the Protocol as well as citizens facing hardships of accessing the required institutions to remedy their situations. The researcher was also unable to interview officials from the Commission on Gender Equality as well as those at Gender Links, due to their commitments; the officials were unable to proceed with the interviews as scheduled.

Their input would have enhanced the quality of this paper, as they were the most relevant sources of data. The information collected from the one interview, reports and presentations as well as readily available data from secondary sources assisted the researcher in surmounting these limitations.

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CHAPTER TWO

Literature review and theoretical framework

2.1 Introduction

This chapter comprises the literature review and theoretical framework. The purpose of the literature review is to present a critical and in-depth evaluation of previous researchers' works on the subject matter. It also ensures that the works of others are not duplicated; instead it goes further in identifying gaps in literature which may be explored in further studies (Denscombe, 2007). A theoretical framework, on the other hand, is important in every research since it defines the theoretical underpinnings of a specific study. Its purpose is to identify and label the important variables that are relevant to the research problem. This enables the researcher to connect the dependent variables with the independent variables and if possible elaborate any moderating variables.

2.2 Literature review

Several studies have been conducted on gender and development in Africa as well as South Africa. While South Africa's democratic project after 1994 sought to reshape the way in which South Africans would participate in creating a new non-racial national consciousness, it was not uncontested. However, the national debate about a new constitutional dispensation had initially excluded any reference to women's issues or to the notion of gender equality. This gave rise to a coordinated and unusual coalition of a diversity of women's pressure groups and organizations to ensure that these issues became part of the democratic discourse. A Women's National Coalition (WNC) was formed in 1992 across the divides of race, class and ideology. The coalition's objectives were to inject a gender perspective into the discussions and negotiations about South Africa's Constitution and the country's future as well as to influence the shape of the institutions that would oversee the creation of a democratic state and society. Eighteen years later, the question of how effective these institutions are in promoting gender equality and women's empowerment is being debated by feminists and gender activists alike.

The outcome of the post-apartheid settlement saw the development of a broadly agreed-upon strategy among members of the WNC to create a clutch of institutional mechanisms to promote gender equality and women's empowerment in South Africa, exemplifying a form of inclusionary feminism driven by, and perhaps at the expense of, a more transformational

feminist agenda (Albertyn 1995; Hassim 2005a). A progressive Constitution drew together both liberal and social democratic rights, formal and substantive, that promised both a political and a social transformation in the country. The Constitution provides for the establishment of bodies to promote and protect democratic rights.

The Commission on Gender Equality (CGE) was one of these bodies. Its specific mandate was to monitor the progress of gender equality and to promote and protect gender rights in the state and in society. This was one strand of the institutional strategy. Another was to ensure that feminists in parliament create a mechanism to monitor legislation and to ensure that the gender implications were well understood- this led to the establishment of the Joint Monitoring Committee (JMC) on the Quality of Life and Status of Women. A third strategic site of state institutional development was the Office on the Status of Women (OSW) in the administration- to be situated preferably at the highest level of the state, the presidency. Civil society and the women's movement tended to think about their relationship with these organizations as one of accountability: these bodies were the creatures of civic virtue and action, and should be accountable to the women's movement as broadly conceived. How that accountability would operate was less clear (Meintjies, 1998: 74).

Since gender norms shape sex and gender relations in society, the struggle for full gender equality challenged identities in ways that racial equality did not; which is not to suggest that the latter is not contested, as Goldberg's work shows (1993, 2001). In South Africa, the discourse around gender in most institutional environments is located as a "women's issue" and thus the responsibility of women. In practice, the effect was that many non-feminists were able to work within the gender sector without having to deal with the more challenging aspects of the 'transformation' of gender relations and norms. Gender mainstreaming became the focus of the institutional strategy in promoting gender equality and women's empowerment after 1994, which in effect took the form of demanding the presence of women in a 'critical mass', established internationally (Baker and van Doorne-Huisken, 1999).

The translation of gender mainstreaming into institutional practice, however, varied in different countries that signed the UN protocols after the Beijing Women's Conference in 1995. In South Africa, the purpose of the gender machinery, particularly the OWS, was to interface with government departments to ensure that gender mainstreaming became a key aspect of policy. Here, the strategy focused on the development of a national gender policy that would ensure that women were provided equal opportunities with men for promotion,

training and participation in decision making. The JMC would monitor the way legislation dealt with gender equity and equality. Intersection with civil society would be an independent constitutional body, the CGE, whose responsibility would be to promote and protect gender equality and democracy, underscoring the dominance of the constitutional prescripts of the Bill of Rights (Meintjies, 1998: 75).

The growing focus on women meant that a 'women empowerment' model began to emerge as the central approach in the process of promoting gender equity and equality in South African state institutions.

The literature on South Africa's transition has been somewhat triumphalist about the change from apartheid to democracy. Political democratisation, economic restructuring and liberalisation seemed to flow easily within the process of 'elite pacting' in the period of negotiations between liberation and apartheid forces. Although the contest was not without bloodshed, a civil war did not unfold. Feminists, however, have tended to focus on different aspects of the transition- particularly the way in which diverse women's organisations strove to develop gender as a significant variable in the construction of a women- friendly state and post-apartheid society (Murray, 1994).

The WNC drove a women's agenda that saw a remarkable increase in women's political representation after the first democratic election in 1994. The change from apartheid to democracy instilled a dramatic shift in the balance of race and gender appointments in the transforming state.

In the new South African democracy, transforming apartheid-based institutions or building new post- apartheid institutions meant developing them from the artefacts of the struggle for democracy- the vision, values, principles and practices that drove the change in the first place (Albertyn, 1994). For gender transformation in the state, the influence of the WNC and its constituents, including the African National Congress Women's League (ANCWL), was significant.

Manicom (2005) argues that the discourse around women, gender and citizenship in South Africa is somewhat 'ambiguous or permeable' and 'multivalent'. She suggests that one of the consequences of the constructions given to 'women' as a category in the South African debate was to induce a 'particular hegemonic representation of the relationship between the category in question... and other forms of differences' (Manicom 2005: 28), thus abstracting

both gender and women from lived social relations. These other forms of difference referred to race, ethnicity, and above all, class. Manicom's insight is particularly relevant to the way in which *the state* used the concepts of women and gender. However, the WNC was a coalition that placed difference at its centre, and the descriptive category of 'women' was not intended to essentialise women's experience or their identities. It was the state's appropriation of the women's agenda that tended to create a discourse that reproduced gender 'as binary and heteronormative' (Manicom, 2008: 28). Manicom is right in that in the policy discourse and even in some academic discourse, 'the term "gender" often stands in for "women" as the subject of gender politics' (Manicom, 2005: 29). She argues:

"The 'women' of the politics of transition represented a gendered construction that was integral to the building of an emergent discourse of socio-economic and legal equality and rights-bearing citizenship, one that simultaneously worked to marginalise or down-play identities based on race, class, religion and nation. That strong emphasis on 'women' expressed the politics of democracy and non-racialism, as actively espoused by the African National Congress, against other contending constructions of women-citizens in relation to ethno-nationalist or communal identities" (Manicom, 2005: 31).

The effect of the 'women's' coalition politics of the transition, however, was to open spaces for women's participation in the public sphere in the context of a particular configuration of androcentric, male centred, heteronormative, gendered power that did not lead to a more inclusive transformation of gender power relations in society. Gay and lesbian organizations were certainly part of the WNC, but the particularities of their concerns were somewhat muted. Their concerns were part of a coalition politics that organised separately in a National Coalition for Gay and Lesbian Equality.

Manicom does not pursue why the ANC downplayed the politics of non-sexism. Indeed, she glosses over the implications of the use of the term 'non-sexist'. Yet its significance was that it might have opened spaces around which gender activism directed towards a change in gender relations could occur. In the context of the struggle against apartheid, however, South African gender activists in the transition to democracy were more concerned about women's representation than about confronting the nature of 'patriarchy' and the androcentric, male determined social norms and values that created different forms of secondary status for women in society. Indeed, the focus on representation in democratic institutions and the

creation of new institutions to protect and promote gender equality in the years immediately after the first democratic election essentially shaped and limited the possibilities for gender transformation for years to come. By not confronting the deeper issues of patriarchal cultures and the idea that women are inferior to men, which is a deeply held belief in the traditional ethnic and linguistic groups to which many South Africans belong, women would continue to be conceived as secondary subjects.

This shortcoming in the campaign to assure gender rights as central priorities in South Africa's nascent democracy became even more urgent after the mid-2006 trial of Jacob Zuma, , (who was then the deputy president of the ANC and later elected president in December 2007) on a charge of rape,.

The Zuma rape trial brought to the surface the extraordinary depths of belief that women are 'at the service' of men, particularly in sexual terms. If women wear revealing clothes, they are 'asking for' sex, and saying 'no' is simply another way of saying 'yes' (Meintjies, 2009).

For feminist activists, it became alarmingly clear that the previous twelve years of democracy had not shifted people's beliefs about women. Clearly a 'new front' needed to be opened, where the discourse about gender equality had the objectives of activism needed to confront deeply held cultural beliefs about 'good' women and 'bad' women (Motsei, 2007).

These views are pervasive in society, across the divides of race, ethnicity and gender. Growing conservatism and reaction to gender discourse and equality bode ill for any social change.

Manicom emphasises that the way women were defined during the earlier transition period, both in the WNC's Charter for Effective Equality and by the ANC, could be construed in two ways: first, where women were constructed as substantively 'equal citizens' to men; and second, where women were constructed in a more limited sense, as maternal citizens, mothers of the nation (Manicom, 2005). The latter resonates strongly with the role that women play in the home. In the national liberation movement and in the ANC in particular, this idea remained dominant, although not uncontested. Hassim (2006) has shown how women in the ANC challenged this identity from at least the mid-1980s and strove for equality. This was clearly evident in the leading role that the feminists in the ANCWL played in mobilising a wider constituency of women to influence the gender content of the negotiations for a new constitutional democracy.

The strategic choices made by the broad coalition of organisations they drew together – including the feminist policy analysts and gender activists - during the transitional period were to have a significant effect on the ways in which the new democratic state took up what it called ‘gender transformation’.

Would a more concerted emphasis on non-sexism by the women’s movement have altered the politics of the transition in any significant way, heralding a different kind of struggle for substantive citizenship? The effect of the way in which the arguments unfolded was to differentiate the ‘women-as-women’ struggles from those of others, such as the gay and lesbian movement. But it also limited the debate to one that did not significantly demand gender transformation. The opportunities for a broader, united approach to gender transformation were effectively curtailed by the terms of the debate. It also enabled a silence around cultural practice that subordinated women and gay people (Meintjies, 2009).

The Constitution supports two rather ambiguous sets of equality rights in the Bill of Rights (Chapter two, section nine, subsection three): those of gender, sex, sexual orientation and those of cultural practices. While these could support women in traditional relationships to secure their rights and entitlements, they could also define new divisions between different social categories: unemployed ‘dependent citizens’ in contrast to an educated, skilled and employed middle class of ‘independent citizens’. In this context, some citizens are more equal than others. It is important, however, that we understand that the use of the term ‘women’ should not be read in an essential fashion. Nussbaum’s (2000) philosophical approach to women’s urgent needs and interests in developing nations provide a thought-provoking antidote to the idea that the category ‘women’ merely universalises women’s diversity. In her view, ‘real women’s lives... help us to see the salient problems and how they bear on one another’ (Nussbaum, 2000: 11). Her account of the situation of women in India points to the significance of cross-cutting factors such as caste, geographic location, educational opportunities, child labour and general economic opportunities in shaping the gender outcomes of life chances. Accordingly, women in India experience high levels of sexual assault and abuse. The poverty gap for women, including those in higher castes, is much greater than among men. Yet in principle, India’s Constitution is ‘women-friendly’ and outlaws discrimination on the basis of sex. The Indian Constitution also abolished the category of ‘untouchable’ and the practice of child marriage (Nussbaum, 2000: 24-33).

Yet, neither of these has come to an end in India. Comparatively, then, the women friendly nature of South Africa's Constitution should not blind us to the enormous difficulties entailed in changing society norms, values and behaviour around gender relations. As this collection surveys the landscape of predominant spaces where gender inequalities persist despite the enormous progress in centralising gender in constitutional protections as well as state institutions, we see in each case a parallel to the Indian context, where such public victories have failed to transform gender relations (Meintjies, 2009).

While the Constitution and the setting up of the gender machinery provided the first building blocks for the promotion of gender equality and women's empowerment in South Africa, these institutions also promoted notions of substantive democracy that linked gender rights to women's needs and interests.

Gender mainstreaming critics elsewhere have shown that in the shift to 'women-focused' policy and practice, the idea of gender transformation was completely subverted (Kabeer, 1994).

Concessions can be made to women's needs and interests without upsetting conventional political, social or economic power and control.

Any understanding of how gender power and authority operates is then replaced by a focus on women's empowerment or on the integration of women in development and into decision making positions, including as public representatives. The rational aspect of women's social subordination is thus not addressed. The focus on women then allows for the co-option of an elite cadre of women to the detriment of real social transformation (Sainsbury, 1996).

In the last decade or so, there has been a spate of feminist studies that argue for the political representation of women in the state as 'a necessary first step to the institutional transformation that is required if "substantive" representation is to be achieved' (Goetz and Hassim, 2003: 5). In this instance, substantive representation is realised when (1) women actually effectively represent and are accountable to women's real interests; and (2) the system is both gender-sensitive and accountable in order to assure that 'sanctions against public sector actors who have abused women's rights' are enforced (Goetz and Hassim, 2003: 6).

Goetz and Hassim argue that women's access to public engagement through consultation and dialogue, and even representation, is not enough to ensure accountability to women. They

suggest that appropriate means of holding decision makers to be accountable need to be established. This is more difficult to achieve. In South Africa, the practical outcome of the debate was to establish the 'national gender machinery', which comprises the OWS, JMC and the CGE. The fourth leg of this institutional set-up was to be the 'women's movement', which, in the 1990s, comprised civil society organisations including non-governmental organisation (NGOs) as well as community based organisations (CBOs).

If the three state bodies could be made to promote and even represent the needs and interests of women and hold the state to be accountable, then the issue of accountability might be dealt with in a novel way. Parliament itself would then have to account to the national gender machinery and the women's movement.

Bringing women into the public arena in ways that do not confront men's traditional political role or patriarchal systems of power, as in the Ugandan model of local government, where special seats for women councillors are added on, would not be satisfactory, for it merely made women representatives 'lesser politicians' (Goetz and Hassim, 2003: 7). Indeed, globally, the main focus of integration of women has been into bureaucracies- not in terms of numbers alone, but also in the establishment of specialised bureaucratic structures dedicated to improving gender representation in the state. This follows the UN prescriptions about gender mainstreaming.

Thus, a critical aspect of women's integration relates to the terms of their public engagement. Affirmative action policies and specialised gender machinery were the chosen mechanisms of states to ensure women's participation in policy making.

Some feminists have argued that the effect of the bureaucratic route to integrating women's concerns has been to depoliticise their needs and interests (Gouws, 1996 and 2004). Indeed, Goetz and Hassim suggest a somewhat more active 'anti-political' effect of what they call 'discourse of inclusion'. They argue that 'the stress is on avoiding politics and competition, except perhaps within a more narrowly defined field of contestants: women, and particularly urban and privileged women' (Goetz and Hassim, 2003: 12). Although the focus of their argument relates particularly to political-party involvement, the difficulty for gender activists and feminists is to weigh up the risks of co-option with the risks of marginalisation in the choices made in either engaging the state through establishing gender machinery (inclusionary feminism), or pursuing a feminist agenda in civil society through social movement activism (transformational feminism) (Hassim, 2005a; Salo, 2005).

The new Interim Constitution that was agreed upon before the first democratic elections in 1994 grew out of a dialogue, negotiations and compromises between very diverse parties, but the main contenders were the White-Afrikaner- dominated National Party (NP) and the broader- based, though predominantly black African, African National Congress (ANC).

The constitution makers were mindful that apartheid had underpinned the huge social and economic disparities between different racial groups and had oppressed the majority of the South African people. The foundation principles of the Constitution Act of 1996 included two unusual concepts: non- racialism and non- sexism (Meintjies, 2009).

The Constitution was based on the idea of promoting a national human rights culture, while also acknowledging that the state would have to provide a bridge for the creation and protection of new socio-economic rights for previously excluded and disadvantaged sections of society. The legal regime was thus one that constructed a rights and welfare approach and one that brought together two quite different philosophical and democratic paradigms, the one liberal and other socialist. In trying to balance the universal rights of citizens, with particular interests of specified groups, the Constitution had to address ways of promoting equality for all without tempering with the rights of particular groups.

The rights recognised in the Constitution in the Bill of Rights (Chapter 2) emerged from the acknowledgement of demands made by 'the people' over the previous eighteen years and sought to promote equity, or the provision of resources to previously disadvantaged and excluded groups, as much as to promote democracy and political equality. Socio-economic rights complemented rights to substantive equality based on race, gender, sex, pregnancy, marital status, ethnic or social origins, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth. The Bill of Rights also enumerated a host of material rights: to trade; labour; a clean environment; property; housing; health care; food; water and social security; and to education, among other cultural and legal rights. These were not abstract rights, but were embedded in earlier and contemporary demands made by ordinary people in their everyday struggles against apartheid. Behind the different substantive clauses of the new Constitution lay assumptions about justice and equity which appear in the Preamble (Meintjies, 2009).

The compact between the negotiating parties included a combined process of institutional design and affirmative action for previously excluded citizens in the development of racial and gender equity as a way in which South Africa may overcome its divided past.

While the new democratic state would try to reform existing governments departments and institutions to embrace norms and values of democratic civil service, it also set about providing new institutions in order to protect and promote South Africa's new democracy and to create a new citizenship for all South Africans, especially for those previously excluded or marginalised (Meintjies, 2009).

The Constitution enjoined a range of different bodies to protect democracy in various ways. In Chapter 9 (section 181-94) six bodies were established to promote and protect democracy: the Public Protector; a Human Rights Commission; the Auditor General; the Electoral Commission; the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities; and the CGE. In other sections of the Constitution, other constitutional bodies that protect citizens either directly or indirectly included the Constitutional Court (section 167, subsection 1), the High Courts and Magistrates' Courts, the Judicial Service Commission, the National Directorate of Public Prosecution; and an independent complaints police body (section 206, subsection 6) that was later set up as the Independent Complaints Directorate. Collectively, these institutions instilled tangible processes that connected the social democratic ideologies of the post-apartheid transformation with the pressing need to redress severe inequalities.

Gender activism had determined that the new democratic state should establish the national gender machinery, in effect a cluster or 'package' of institutions designed to promote gender equality and women's empowerment.

The idea of a package crystallised at the international conference convened by the WNC in May 1993 at Johannesburg where feminist scholars and 'femocrats' debated the advantages of different models at this meeting. Although at that stage, there was no discussion of what became the constitutional CGE, which would intercede in the relationship between civil society and the state and monitor the progress of gender equality and empowerment. The CGE would have specific powers allocated to it to undertake its work (Meintjies, 2009).

There was a strong belief that these institutions would only be as effective as their relationship with a vibrant and organised civil society actively involved in policy planning and implementation. Underpinning the dominant thinking about the institutional mechanisms and their effectiveness was a particular unspoken vision of participatory democracy.

In the new democratic order, there is both recognition and concern that the patriarchal nature of political parties and liberation movements include the needs and interests of women. At the same time, women's independent initiatives were not integrated into the broader political consensus developing around the negotiations. Autonomy held its own dangers. Some of the rationale for women's separate organisations was never publicly debated; these issues were simply part of a practicing process within the Constitution-making process and the ANC (Albertyn, 1994).

The legislation setting up the CGE was developed after that of the Public Protector and the South African Human Rights Commission (SAHRC) in 1996. The former was the direct heir of an earlier structure set up under apartheid, which dealt with citizens' complaints about the service of different state departments and statutory bodies, while the latter was established in order to protect citizens' social and economic rights. The SAHRC was given specific powers to conduct litigation on behalf of its 'clients', authority that was not specifically provided for in the CGE Act. However, the Commission on Gender Equality Act gave considerable powers of investigation to the CGE, and gave the Commission all the rights that would enable it to act as a 'juristic person' (Mentjies, 2009: 83).

The CGE was able to take up any constitutional matters that it deemed necessary to promote and protect gender equality, which in effect gave it the power both to litigate and conduct constitutional court cases. In terms of the Constitution, the CGE and other Chapter 9 bodies were independent, subject only to the Constitution and the law. These constitutional bodies would be impartial and perform their functions 'without fear, favour or prejudice'. Other institutions of state must support and protect the independence, impartiality, dignity and effectiveness of these bodies. No organ of state can interfere in the functioning of these institutions, but they are accountable to the National Assembly and must report on their activities once a year (Reid et al, 2003).

The Commission on Gender Equality Act 1996 specified that those appointed to the Commission, no fewer than seven and no more than eleven, should be South African citizens, 'fit and proper persons', with a record of commitment to and knowledge about gender equality. A significant proviso of the Act was that appointments had to reflect the broad race and gender composition of South Africa. The functioning of the CGE was specified in the Act through its mandate: to protect and promote gender equality, to conduct research and investigate complaints and to provide public education and information. It had to monitor

South Africa's international agreements around gender equality, women's empowerment and gender based violence. This mandate provided the basis for the organisational form and scope of the activities of the Commission. One important clause was that the CGE had to develop relationships and partnerships with 'like-minded organisations'. These were to be civil society organisations working on gender as well as other human rights bodies, such as the SAHRC (Reid et al, 2003).

The second important body to be established as part of the gender machinery was the OSW. This institution was part of the civil service and was set up by a means of a cabinet memorandum. Its mandate was to develop public gender policy and promote gender mainstreaming in government. The OSW was first located in the Office of the former president Thabo Mbeki at the time he was the deputy president in the Mandela government. From the outset, there was little understanding of how complex this task would be. Each department had its discrete role, and the principle of non-interference by ministries in other's activities and functions was important for good governance. Thus the task of the OWS to ensure that government departments at national, provincial and local levels mainstreamed gender into their functions was fraught with difficulty (Seidman, 1999).

There was little understanding about gender budgeting out of feminist academe. The essentially hierarchical and functionally distinct ministerial and sectoral system of responsibility and authority did not change with the democratic order. So while the issues of gender cross-cut every aspect of policy, the implementation of gender mainstreaming would become a real site of struggle. In particular, while the new state committed itself to gender equality and equity, it did not make any budgeting arrangements for implementation. Moreover, departments had no line- function accountability to the OSW. All appointments to government and provincial departments were made from within, including those for the gender focal points. The latter appointments were not bound in any way to the authority of the OSW (Seidman, 1999).

The above difficulties were compounded by an understandable sensitivity of the OSW to the monitoring of its activities by the JMC and the CGE. It felt that the three organisations should work in tandem to challenge the reluctance of national government and provincial government departments and their line departments to do more than pay lip-service to the idea of gender mainstreaming.

It is no surprise that gender focal point appointments were 'add-ons' to the work that officials were appointed to do. After the 1999 general election, when Thabo Mbeki became president, the OSW moved into the presidency, into a new ministry whose portfolio was to promote the interests of special categories- women, youth and the disabled. It appeared as if the state would take the concerns of women seriously. However, the issue of cross-cutting responsibilities was never satisfactorily resolved and in many respects the OSW remained something of a lame duck (Sainsbury, 1996).

The third institution involved in promoting gender equality and women's empowerment was the parliamentary JMC. This committee was at first an ad hoc committee without a budget, but after three years was made into a fully budgeted joint standing committee, including members of the House of Assembly and the National Council of Provinces. Its chair, initially Pregs Govender, was always drawn from the House of Assembly and initially drove the process of maintaining oversight over government legislation, ensuring that each piece of legislation was analysed for its gender implications. The chair of the committee played a significant role promoting the idea of women's budget, an analysis of the national budget that probed the gender implication and outcomes of the process nationally. During 1998 and 1999, in fact, the minister of finance paid rather more than lip-service to this initiative and departments were enjoined to add gender instruments to their evaluation. But this was not pursued after 2000, and the gains made during the first period of democracy to promote the interests of women were subsequently lost. The JMC's effectiveness weakened in the subsequent years, especially after Govender resigned from parliament after voting against the arms deal, a R50 billion plan to purchase arms and refurbish the armed forces, rather than use these resources to address the needs of the poor. During the third term of the ANC government, the JMC has hardly met, and its leadership did not challenge parliament or the cabinet on its gender equality strategies or outcomes on such significant issues as HIV/AIDS (Meintjies, 1998).

One of the critical aspects in the establishment of the gender machinery was the problem of duplication in the functions and activities of three bodies. Role clarification remained an ongoing difficulty between the three institutions, with each jealously guarding what it conceived to be its territory. Yet each institution at times ran parallel research and monitoring programmes. The problem of overlap and coordination dogged the activities of all three bodies since their establishment (Manicom, 2005).

The CGE's mandate was much broader than that of the OSW: to oversee the promotion and protection of gender equality and women's empowerment in state and society. Its powers were quasi-judicial, with monitoring and investigations key components of its mandate, combined with powers that far exceeded those of the OSW. Through its public education and information dissemination, the CGE should theoretically have been able to mobilise communities around specific gender issues such as HIV/ AIDS, gender based violence and other aspects of people's lives that limited their access and thus their enjoyment of full human rights (Reid et al, 2003).

In reality, this was not without its ironies. One commissioner recounted to the new commissioners in 2001 how, in Kwa-Zulu Natal, women had marched to the provincial parliament to protest that gender equality infringed their right to test young girls to see whether they were virgins (Meintjies, personal papers). The CGE, on the other hand, took up the issue of virginity testing as a violation of human rights (Meintjies, 1998).

A complex range of activities was coordinated within the CGE: gender information workshops; gender dialogues; campaigns; and the dissemination of information through pamphlets; posters; comics; exhibition at conferences and a periodical newsletter. Initially, the CGE produced a considerable amount of information and literature. However, the organisation became embroiled in internal conflicts that were compounded by weak and ineffective leadership. Tensions between commissioners and staff dogged its internal relations from its inception (Reid and Walker, 2003: 15-21).

The tensions in the CGE prevented it from gaining the confidence of civil society organisations or interacting boldly with the other two national gender machinery institutions. Despite undertaking important research into a range of critical issues such as sex work, gender based violence, traditional leadership, the budget, unemployment insurance and social security, with many submissions to the relevant parliamentary portfolio committees, the CGE made little real public impact after an initial burst of enthusiastic consultation with government departments and NGO's (Seidman, 2003).

Seidman (2003) sees the limitations of the impact of the CGE in its inability to fully decide on what its role should be: a policy-making body or an organisation tasked with building the women's movement. Feminist analysis elsewhere in the world had pointed to the dilemmas faced by gender activists in promoting engagement with the state. It very often meant a growing distance between elite of 'bureaucratic' feminists with professional and legal

expertise, and grassroots activist who dealt with the real problems faced on a day-to-day basis by women in society. Such divisions within the CGE created a new intersection of social power and differences among women who shared a certain level of access to the state and political change process.

According to the preliminary literature that has been reviewed above, which address gender equality, women's empowerment and the eradication of violence against women, no specific study has been undertaken which provides for the SADC Gender and Development Protocol as an instrument that accelerates efforts to achieve gender equality, women's empowerment and the eradication of violence against women. Although South Africa has one of the most affirming constitutions in the world, gender equality is far from a reality and gender bias remains due to economic dependency that stems from a traditional patriarchy and an acceptance of violence against women. Therefore, given a lack of studies on the evaluation of the SADC Gender and Development Protocol, my study will fill the gap created by the dearth of research on the subject matter.

2.3 Theoretical framework

A number of different theoretical approaches that build on feminist theory more generally are used in most cases by international relations feminists. However, Landsberg, le Pere and van Nieuwkerk (1995: 15) argue that in contrast to many other scholarly fields, there is no single paradigm or theory in sociology that is widely thought to provide the basis for understanding global phenomena.

Radical feminists argue based on radical feminist thinking that gender difference is socially constructed. They contend that perceiving women in the African cultural context, serves to further entrench stereotypes that profile them as weak, subordinate and cultural beings. According to them, such subjectivities of gender difference are the root of gender inequality, and they provide legitimising grounds for the continuous treatment as property, marginalisation and disempowerment of women everywhere and as such serve to undermine the feminist goal of gender equality (Tong, 1998; Brownmiller, 1999). However, different feminists, such as Gilligan (1982) and Ruddick (1989) argue that women and men are biologically and socially different and that such differences should be recognised and factored into all aspects of societal life everywhere. For example, Ruddick (1989) contends that mothering is a reality of womanhood and a skilled activity, which though socially constructed, makes women adopt the corresponding values of tolerance, non-violence and a

relational ethic of care which makes women distinct from men. In the same vein, but focussing less on mothering and more on womanhood, Gilligan (1982) argues that women tend to adopt an ethic of care because of their traditional roles of caring for others, especially family and community members. In other words, whether a woman has her own biological children or not, she is traditionally saddled with caring roles within society that predisposes her to adopt an ethic of care, empathy and love. Thus while men will approach issues based on traditional moral theories defined by an *ethic of justice*, who and what is right or wrong, women will typically approach issues from an *ethic of care* and *relational* perspective.

Therefore, the radical feminist theory is relevant to this study since it highlights the causes of the marginalization women have experienced in the past and continue to experience, and the adoption and implementation of the SADC Gender and Development Protocol by South Africa seeks to address and correct the injustice women experience. Issues of concern in this regard will be the best way forward for everyone in terms of meeting needs and how to preserve the networks of relationships around people in promoting gender equality, women's empowerment and the eradication of violence against women.



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CHAPTER THREE

Data Presentation, Analysis and Findings

3.1 Understanding Gender and Development

Gender equality has been one of the core goals in international development co-operation for several decades. 'Gender and Development' (GAD) is currently the most prominent approach with respect to gender issues in the field of development co-operation. It has evolved from its earlier forms of 'Women in Development' (WID) and 'Women and Development' (WAD) which came into existence in the 1970s. The WID and WAD approaches concentrated solely on women in terms of integrating them into the economic sphere and production activities, and in terms of overcoming the oppressive structures of capitalism and patriarchy. The importance of the WID approach should not be dismissed as it introduced women's concerns into the field of development co-operation at large. Later, the new GAD paradigm has continued working towards gender equality, albeit from a more holistic perspective through the concept of gender (Visvanathan, 1997; Young, 2002.)

Gender, by definition, refers to the socially constructed relationship between men and women (Moser, 1993). In its focus on the relationship rather than one sex in particular, the GAD approach, in principle, welcomes men as part of the equation. It aims at challenging rigid gender roles and power hierarchies. It views gender relations as highly complex, and women and men as internally heterogeneous social categories instead of monolithic entities (Visvanathan, 1997). However, the GAD approach has recently received some criticism for, intentionally or not, continuing the legacy of the WID approach by mostly concentrating on women (Chant 2000.)

Many scholars¹ have pointed out that the very discourse of GAD, used by both men and women, has tended to marginalize men by way of concentrating more on women as well as presenting men in the homogeneous light of negative stereotypes. Some of the gender stereotypes frequently found in the GAD discourse include viewing all men as "pampered sons and patriarchs" as well as Southern men as lazy, self-centred, ignorant, promiscuous, violent drunkards (White 1997, 2000; Jolly 2004; Datta 2004; Greene 2000; Large 1997). At the same time, stereotypes of women as universally vulnerable, understanding, emotional and caring are prominent (Crewe and Harrison 1998.)

One of the factors contributing to the emergence of male sensitive gender politics in the field of development co-operation has been the internal pressure and criticism by the GAD advocates themselves (Pearson 2000a). The emergence of the “male sensitive GAD” is also linked with the evolution of ‘mainstreaming’ and ‘equality’ approaches in gender policy in development cooperation (Chant and Gutmann, 2000). A general interest during the twentieth century in gender issues, and their relation to globalization, drew attention to the changing roles of men in society (Chant 2000). In the Nordic countries, there has been wider interest in acknowledging and strengthening the role of men in gender policies at large, as well as engaging men in the gender discourse without forgetting the advancement of women’s status at the same time (Varanka, 2005).

Some scholars have gone as far as suggesting a separate approach for men and gender, such as Men and Development (MAD) or Men in Development (MID). However, just as focusing on women only, concentrating only on men lacks the transformative power that enables wider advancement of gender equality. In principle, GAD as a holistic framework does not treat men as a homogeneous group of oppressors or label them as fundamentally bad. Similarly, it does not treat women as somehow closer to “correct” and more acceptable behaviour in terms of gender relations (Young, 1997). Therefore, it can be said that GAD as a framework provides substantial opportunity for working towards gender equality through joint efforts if there is political will to do so.

This is not to say that there is no need for gender-specific development initiatives for men and women as social groups – provided that such initiatives serve the purpose of working towards gender equality. Although the focus of this research is on promoting the role of women as part of gender and development initiatives, the importance of furthering the status of underprivileged women is not to be undermined or dismissed as redundant.

The inclusion of men in the process of Gender and Development

Some feminists have voiced their objections to men’s inclusion by arguing that it would remove attention away from underprivileged women and that men would somehow “take over” (Cleaver 2002). This fear of including men also frequently entails the fear that the limited funds for gender work in development co-operation will be reallocated to men preferentially (Chant and Gutmann 2000). Moreover, some development organizations prefer women-only interventions to avoid entering into the more problematic and complex areas of

relationships and sexual identities (Cleaver 2002). This is further maintained by the lack of guidelines on how to include men and in what particular contexts (Chant 2000).

Some reservations have also been expressed by the men themselves. In development organizations men may fear what other people think if they speak for a shift in focus towards including men (Chant and Gutmann 2000). In addition, not all men are attracted to work towards this goal as it may draw attention to their often more privileged status (Lang 2003). At a more general level, there may also be an ideological gap between the interests of male beneficiaries in the developing countries and the interests of critical men's studies in Western societies (Cleaver 2002).

Some scholars challenge the very idea of men having been excluded in the first place, as they are often in positions of power in development organizations and generally enjoy a more privileged status in society (Cornwall and White 2000).

First of all, the international community is bound by conventions such as the Beijing Declaration and Platform for Action 1995 which specifically mention the need for encouraging men to participate in actions taken towards gender equality (United Nations 1995). Moreover, the UN Commission on the Status of Women (CSW) urges governments, organizations, the UN, international financial institutions and civil society to include men and boys in their gender agendas (United Nations 2004). Several non-governmental organizations (NGOs) have also engaged themselves in promoting the inclusion of men into gender and development.

Secondly, women rarely act as autonomous individuals in their communities. By including men, the development interventions become more relevant and workable, which secures more sustainable results (Chant and Gutmann, 2000). Ultimately this translates into more effective delivery of development services (Cleaver 2002). Including men is also crucial in challenging the traditional gender roles and reducing the workload of women in developing countries (Chant 2000).

Excluding men may be just as problematic with respect to limited budgets for gender work as including men. As men are in key positions in many donor organizations, including men may assist in obtaining a bigger share of funds earmarked for gender initiatives (Chant and

Gutmann 2000). Moreover, Sternberg and Hubley (2004) argue that the fear of distorted budgets in favour of men is unrealistic as there is clear evidence of, for example in the reproductive health sector, that many men approve and care about family planning and the welfare of their families, and in actual fact wish to be involved in activities promoting such goals.

Thirdly, the benefits of women-only projects, which often give less attention to the long-term strategic gender interests of women, are limited. For example, women are frequently unable to influence the course of development of their entire household in issues such as each family member's sexual or dietary behaviour (Chant and Gutmann, 2000). There has also been a lot of debate about the crisis of masculinity, in which men's traditional gender roles are increasingly under pressure as the structures in the economy, society and household change. If not acknowledged, this may increase anti-social or violent behaviour by men (Cleaver 2002; Chant 2000.)

All gendered vulnerabilities must be taken into account when planning for development, which also means that men are not automatically taken as the privileged ones. In fact, men also suffer from social and economic structures, the patriarchy and hegemonic models of masculinity. For example, within the social sector there is increasing demand for initiatives for men in the matters of mental health, exposure to pesticides and HIV-AIDS infections (Cleaver 2002; White 1997).

Fourthly, the present discourse and practice of men's inclusion in gender and development work is rather limited in scope as it mostly concentrates on themes such as violence, reproductive health and family planning. For a more holistic approach on gender relations, it is necessary also to include issues such as intra-household budgeting, labour market distortions, education and training, and the legal basis of property rights of men and women, for example. (Pearson 2000b.)

The present-day discourse on development policy emphasizes what is called the 'rights-based approach' which stresses, not the needs, but the rights of people in developing countries in receiving development assistance. Drawing on this approach, Chant (2000) argues that excluding men denies them the rights that have been granted to women, and it is therefore fundamentally unjust. On the other hand, she points out that using the human rights

argument is not very convincing as women have also been excluded from the very concept by creating a separate category of “women’s rights”.

Since men are already involved in powerful positions throughout society, it is even more important to work with them rather than against them. Many political forces in developing countries assign power to men, and it is therefore crucial to include men in joining forces towards gender equality and preventing unnecessary conflicts (Pearson 2000b). However, the actual discourse and practice of GAD have shown that men have been put aside.

Therefore, the notion of negotiated gender roles is important. This way women and men may engage themselves in renegotiating their roles and the models of femininity and masculinity (Cleaver 2002; Chant and Gutmann, 2000). Indeed, strong arguments for so called ‘strategic gender partnerships’ have been presented, in which men are valuable partners in the quest for gender equality. Nordic feminism, particularly, has presented men as important allies in the process of working towards gender equality. In a similar vein, certain activities that target and involve men have been seen positively (Malmi, 2005).

Ways forward to ensure that Gender and Development becomes a success

It is pivotal to step away from the bipolar conflict thinking and the win-lose scenario of power between the sexes, which are all too often taken as starting points. Power is frequently seen as a zero-sum game between the sexes. The real world is better seen as more complex, and consisting of multiple situations in which individuals have differing degrees of power over other individuals. It should be remembered that gender is only one dimension influencing this complex reality of social relations (Pearson, 2000).

Including men is relevant because no policies or practices can escape the fact that gender influences development co-operation in all of its sectors and spheres. Therefore, men are just as much influenced by development co-operation interventions as women are, and should be included as valuable actors in the process – not as obstacles to achieving gender equality for women. It is everyone’s responsibility to take gender into account in a balanced way and ensure that men’s voices are not altogether dismissed in gender and development interventions.

Similarly at the discourse level, men need to be better represented in organizational, national and international guidelines and policies relating to gender and development. As gender is a crosscutting issue, there is a need for greater policy coherence in terms of men as part of 'gender'. There should not be a separate approach for men, but rather the gender mainstreaming approach should be made more coherent with its original definition (Heinonen, 2006.)

Scaling up the unit of analysis from the level of individuals as homogeneous representatives of either sex to the household level may be useful in achieving a more holistic representation of gender relations in a given context.

The implications for the project design in development co-operation include that the sectoral domains of men's inclusion should be seen as more dynamic than merely involving sectors of health and family planning as well as violence against women. Through applying the contextualization of men's inclusion together with gender mainstreaming, there may be a need for redesigning gender interventions. Identifying the groups of vulnerable men in a given context may shed light onto how better to start including male beneficiaries as the other half of the gender equation at all phases of the co-operation projects (Heinonen, 2006.)

When an equal gender partnership is genuinely negotiated and aspired towards, there is no fearing that men will somehow take over. At the same time, there is a need for caution so as to avoid the same pitfalls of the "add-on rationale" by the WID approach. To acquire long lasting structural transformations in gender relationships, the focus should inevitably be on holistic gender relations inclusive of both sexes.

The experiences from Uganda show that gender in the context of development co-operation is still very much concentrated on women, but through the concept of gender partnership there is more room for men in the gender equation. However, the rationale for men's inclusion still seems to be more reflective of the needs-based than the rights-based approach. There is a need for contextualizing the efforts with respect to men's inclusion to understand the local culture, possible forms of resistance and men's priorities and vulnerabilities. Investigating the local best practices in terms of efforts in including men offers a chance for learning and, ultimately, balancing the gender equation in development co-operation (Heinonen 2006).

Gender issues are of great concern within our societies which have been dominated by patriarchal attitudes. Therefore, mistaking 'gender' as a synonym for 'women' is not only old fashioned but also fundamentally unjust (just as excluding women would be). Such misconceptions undermine the work towards gender equality and the empowerment of women.

3.1.1 Understanding empowerment

Empowerment is a construct shared by many disciplines and arenas: community development, psychology, education, economics, and studies of social movements and organisations, among others. How empowerment is understood varies among these perspectives. In recent empowerment literature, the meaning of the term 'empowerment' is often assumed rather than explained or defined. Rappoport (1984) has noted that it is easy to define empowerment by its absence but difficult to define in action as it takes on different forms in different people and contexts. Even defining the concept is subject to debate. Zimmerman (1984) has stated that asserting a single definition of empowerment may make attempts to achieve it formulaic or prescription-like, contradicting the very concept of empowerment.

A common understanding of empowerment is necessary, however, to allow us to know empowerment when we see it in people with whom we are working, and for program evaluation. According to Bailey (1992), how we precisely define empowerment within our projects and programs will depend upon the specific people and context involved. As a general definition, however, it is suggested that empowerment is a multi-dimensional social process that helps people gain control over their own lives. It is a process that fosters power, that is, the capacity to implement, in people, for use in their own lives, their communities, and in their society, by acting on issues that they define as important (Bailey, 1992).

It is suggested that three components of the definitions provided are basic to any understanding of empowerment. Empowerment is multi-dimensional, social, and a process. It is multi-dimensional in that it occurs within sociological, psychological, economic, political, and other dimensions. Empowerment also occurs at various levels, such as individual, group, and community. Empowerment, by definition, is a social process, since it occurs in relationship to others. Empowerment is a process that is similar to a path or journey, one that develops as we work through it. Other aspects of empowerment may vary

according to the specific context and people involved, but these remain constant. In addition, one important implication of this definition of empowerment is that the individual and community are fundamentally connected (Zimmerman, 1984).

3.1.2 Terms and expression used in the SADC Protocol on Gender and Development Equality

- Means state of being equal in terms of enjoyment of rights, treatment, quantity or value, access to opportunities and outcomes, including resources.

Gender

- Means the roles, duties and responsibilities which are culturally or socially ascribed to women, men, girls and boys.

Discrimination

- Means any distinction, exclusion or restriction which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise, by any person of human rights, and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

Gender equality

- Means the equal enjoyment of rights and the access to opportunities and outcomes, including resources, by women, men, girls and boys.

Gender Based Violence

- Means all acts perpetrated against women, men, girls and boys on the basis of their sex which cause or could cause them physical, sexual, psychological, emotional or economic harm, including the threat to take such action, or to undertake the imposition of arbitrary restrictions on or deprivation of fundamental freedoms in private or public life in peace time and during situations of armed or other forms of conflict.

3.2 Contextualising equality and empowerment in South Africa

Although the Constitution does not clearly define an act of discrimination in accordance with the definition outlined in the Protocol, it does in fact make provision for a guarantee of the right to equality, grounds for discrimination and protection against unfair discrimination on the listed grounds enumerated in section 9 (3) of the Constitution, by both the state and the private person. The Constitution has been interpreted and applied creatively by the courts in such a manner that reinforces the right to equality, which to a large extent meets the definition of discrimination as per the Protocol. For example, Section 39(3) states that the

Bill of Rights does not deny the existence of any other rights or freedoms recognised in the law or conferred by customary law, as long as they are consistent with the Bill of Rights. This is of particular significance for the rights of vulnerable people, such as women and children. In the absence of a guarantee that the rights in the Bill of Rights take precedent over custom, traditional practices harmful to women and children would not be deemed unlawful (CGE, 2010).

The Gender Mapping Report for South Africa “Current Status and Gaps” notes that the constitutional mandate towards attaining gender equality is clear, and legislative reform has provided the building blocks for a gender equitable society. The government does, however, face major challenges in ensuring that constitutional, legislative and policy imperatives on gender equality and women’s empowerment are translated into substantive improvements in the lives of women and girls. Key implementation issues facing government include:

- Proactively addressing the unintended consequences of progressive legislation, policy and regulation to ensure that progress on gender equality remains on track.
- Ensuring that the regulatory frameworks that have been put in place are effectively implemented, enforced, monitored and evaluated, and budgeted for, especially the following components:
 - **Sexual Offence Act**
This Act is not properly implemented because it is still largely unknown and very little quality training on the law has taken place.
 - **Domestic Violence Act**
The Act was not adequately budgeted for, and no consistent training of court and police officials has taken place, leading to inequality in service provision. The Parliamentary Portfolio Committee on Women, Children and Persons with Disabilities held public hearings on the implementation of the DVA in October 2009. The hearings noted the enormous challenges women encounter in exercising their rights contained in the law, and its failure to protect women from domestic violence. There is also a challenge implementing the Act in lesbian, gay, bisexual and transgendered (LGBT) communities.
- The state is battling to align constitutional protection of religious and cultural practices with the secular rights held by women and girls under the Constitution and related legislation.

- There is an imperative to work with a broad range of community and interest groups to address social, religious and cultural beliefs, assumptions and practices that remain as barriers to women's empowerment and gender equality (UNDP, 2010).

Another challenge that South Africa is grappling with is the ineffective implementation of the National Policy Framework for Women's Empowerment and Gender Equality. The National Policy Framework was intended to bring about gender transformation in the country by placing "gender at the very centre of the transformation process within all structures, institutions, procedures, practice and programmes of government, its agencies and parastatals, civil society and the private sector" (JMC Report, 2010). However, this has not been fully accomplished, and the desired implementation of gender mainstreaming in all policy and programme formulation and budget allocation processes not attained.

3.2.1 The promotion of gender equality and women's empowerment

Women's equality of opportunity to participate in politics is a human rights as well as a basic requirement for genuine democracy. The SADC Gender and Development Protocol of 2008, to which South Africa is a signatory, states that State parties shall endeavour that, by 2015, at least 50% of decision-making positions in the public and private sectors are held by women, including the use of affirmative action measures as provided for in Article 5 (Gender Links, 2009).

South Africa has come a long way in ensuring full participation of women in politics and public life. The majority of voters in South Africa are women, accounting for almost 55% of registered voters (Gender Links, 2009). This is indicative of the fact that women in South Africa are active participants in shaping the country's democratic dispensation. For the 2004 elections, women outnumbered men in all age categories in registration figures, where they comprised 11.3 million voters compared to 9.3 million men (IEC, 2004). South Africa also witnessed an increase in the number of female electoral candidates in municipal elections, which has increased from 28.5% in 2000, to 34.8% in 2006.

South Africa had two major opposition political parties that were led by women: The Democratic Alliance (DA) and the Independent Democrats (ID). South Africa does not have national legislation establishing quota or requiring the equal representation of men and women in decision-making positions. The Electoral Act encourages but does not oblige

political parties to ensure equal representation of men and women in their election lists to the national and provincial legislatures, although this has never been enforced (Electoral Act 73 of 1998). The Public Service Act also does not make it mandatory for government departments to ensure equal representation of men and women at senior management level. Presently, the equal representation of women on party political lists depends largely on optional measures adopted by each political party. In the absence of a legislative requirement for political parties and government to implement the equal representation of women in decision-making positions, the achievements of de jure and de facto equality of men and women will be difficult to attain.

Progress has been made by women in their participation in parliament since the first democratic elections in 1994. The progress is notable: up from 27.8% in 1994 to 43% in 2009. It must be stated that this transformation has been brought about by a combination of the ANC's voluntary adoption of the 50/ 50 quota systems, and the number of seats it holds in Parliament. None of the other parties represented in Parliament have implemented a quota system, and women remain under-represented among their Members of Parliament. Women comprise 36.9% of parliamentary Committee Chairs. However, the political will to attaining women's equal representation in the political arena is not so encouraging when a gendered view is taken of leadership position (Development Indicators, 2009). It is regrettable to note that South Africa no longer has a woman deputy president, as was the case before the 2009 elections, as the incumbent was replaced by a man. The same applies to the position of Speaker of Parliament: this position was occupied by a woman, who was replaced by a man after the 2009 elections. This trend appears to be replicated when one considers the growing replacement of women Ministers, Mayors and councillors by men. This means that the gains that appear to have been made are undermined.

The representation of women in provincial legislatures has increased from 25.4% in 1994 to 42.4% in 2009. The 2009 female representation in Parliament as well as in provincial legislatures puts South Africa amongst the leading countries in the world in terms of the number of women in important political leadership positions. In the case of appointments to national and provincial executive councils, the President and the premier have the final say on the appointments. In exercising this power, the President, the premier and the political parties concerned are not in any way bound to consider equitable representation of women, but follow political consideration. Such discretion held by the President, premier or political

party is not subject to judicial review in terms of the provision of Promotion of Administrative Justice Act 3 of 2000 until such time that Parliament passes national legislation providing for the equitable representation of men and women at the national and provincial legislatures and cabinets. Once again, as a result of the 50/50 quota system voluntarily adopted by the ANC, women's representation in Cabinet stands at 41%. In 2004 there were 16 male and 12 female cabinet ministers, compared to 8 females and 27 males' cabinet ministers after the 2009 elections. This has taken the total cabinet representation of women to 43% (Development Indicators, 2009).

Five of nine provincial Premiers, and 40% of provincial cabinet members, or Members of the Executive Council, are women. This is due to the ANC holding the majority in eight of the nine provinces, and living up to its commitment to 50/50. The poor representation of women at this level was single-handedly brought about by the failure of the Western Cape premier, a woman, to appoint a single woman to her provincial Executive Council.

Local government is also showing signs of progress in terms of gender transformation. According to the gender audits carried out by the South African Local Government Association in 2004 and 2006, the representation of women in local government stood at 29% in 2004 and rose to 42% in 2006, following the introduction by the ANC of a voluntary, 30% quota system. With the ANC implementing the 50/50 system for its candidate listed in the 2011 local government elections, this proportion is set to rise. The picture is not as promising within the local government administration, with women still under-represented in senior management positions (IEC Report, 2011).

The database of the Municipalities of South Africa indicates that, of a total of 283 Municipal Managers, only 26 (8.48%) are female, and of a total of 7 968 councillors, only 3 122 (40%) are female. In addition, despite the increase in women's representation, according to the study undertaken by the Commission for Gender Equality (2006), women councillors continue to experience marginalisation and withholding of resources by male colleagues who do not approve of women leadership, leading many to opt not to stand for a second term.

The state is not performing so well when it comes to appointment of women in senior posts within the state bureaucracy, where they remain largely under-represented. The Commission for Employment Equity (EEC) Report (2010) indicates the persistent white male domination of top management positions in the workplace. State departments are still behind targets in

placing women in middle and senior management. According to the Public Service Commission Report (2006), the proportion of women in senior management positions (director level and above) has exceeded the 30% target set. However, this could have a negative effect, in that departments may assume that no further transformation is required (10th EEC Annual report, 2010).

It is apparent that the gender transformation witnessed in the political realm has not been replicated within the private sector, where women remain grossly under-represented in senior management positions. Politically and socially, there is a constitutional imperative for gender transformation in the workplace, to promote equality and non-discrimination, reinforced by measures such as Employment Equity legislation. It is clear from the EEC's 10th Annual Report, as well as recent Businesswomen's Association and Business Union South Africa survey findings that South African Businesses are performing dismally with regard to gender transformation in the workplace. The EEC's Report reveals that women are more represented in administrative than in decision-making and senior managerial functions. Black women in particular comprise a mere 6% of those recruited and 2% of those promoted to top management positions, and constitute 5% of those benefiting from skills development programmes.

In addition, the CGE 2008 study on the promotion and protection of gender equality in the private sector indicated that:

- Most companies are ignorant of national and regional treaties and country commitments to gender equality;
- Employment equity plans are developed, but not implemented;
- There are no focused gender equality strategies or women's empowerment programmes.

The CGE is also concerned at the invisible elements that continue to marginalise working women, related to the institutional culture within a demonstrated male-dominant environment. These relate to internal policies and practice regarding recruitment and promotion, sexual harassment in the workplace, and access to skills training, coupled with the sense that men are taken more seriously and women have to "earn their stripes" – a situation that is even harder for black women. It is a reality that the gender wage gap remains critical –

in South Africa, this stands at 33.5%, while globally the average is 22.4%. Revealingly, the gap is much higher for women with children.

South Africa has not made significant progress in ensuring that women are sufficiently represented in the judiciary. The education and training programmes for recruitment of judges does not seriously address the need for women empowerment and equitable representation. The country still does not have a woman Judge President in any of its Divisions of the High Court. The 2009 statistics of the Department of Justice and Constitutional Development shows that out of 205 judges in South Africa, of whom 112 are black and 93 white, only 42 are women. Of these 42 women judges, 28 are black and 14 white. The Minister of Justice has undertaken to place gender representation in future appointments of judges as a priority for transformation of the judiciary, but that this move will not overlook the applications of male, and white applicants (Doj&cd stats, 2009).

3.3 High levels of violence against South African women and girl children

South Africa is currently cited as one of the most violent countries in the world. Studies indicate that an estimated 60% of all South African women experience some form of abuse within relationships, and that one woman is raped every 35 seconds. This is an estimate according to research conducted by the Centre for Applied Legal Studies (2006). Although a significant legal and institutional framework has been put in place to prevent and combat acts of violence and serious crime, and address violence against women, high levels of violence against women continue to be perpetuated in our society due to inadequate implementation of these interventions. The South African Police Services (SAPS) is reported to have received 43 330 cases of domestic violence during the period July-December 2006, whilst for the period January-June 2007, they received 45 454 cases (African Gender and Development Index, 2007).

In compliance with the SADC Gender and Development Protocol, the South African Constitution has been crucial in terms of providing for the rights of women and girl-children. Legislation like the Sexual Offences Act makes it an offence to engage in sexual intercourse with a girl child under the age of sixteen (16). South Africa has launched a Victim Empowerment Business Plan, which includes policies such as the Victim Empowerment Charter, Victim Policy Framework and a policy for Compensation for Victims of Crime (CGE Annual Report, 2008). In order to integrate gender equality and fight violence against

women in the prosecution of crime, the Sexual Offence and Community Affairs (SOCA) Unit was established within the National Prosecuting Authority (NPA), mainly to focus on Sexual Offences; domestic violence; human trafficking; enforcement of child maintenance; managing of child offenders and other issues involving victimisation of women and children. This Unit has succeeded in establishing Thuthuzela Care Centres and Sexual Offence Courts. The Thuthuzela Care Centres are responsible for providing victims of sexual abuse with access to police, counselling, doctors as well as court preparations and prosecution. The NPA launched an initiative known as the “Indabezitha Programme”, which entailed the training of traditional leaders on the provision of the Domestic Violence Act (CGE Annual Report, 2008).

There are significant challenges experienced in accessing reliable data on GBV; as a result, the researcher has drawn on research and statistics developed by NGOs and research institutions. Despite the 98 years of celebrating International Women’s day, and the adoption internationally of appropriate legislation, GBV, and violence against women in particular, continues unabated. Brutality against women and girls is rampant in South Africa despite the country’s progressive and responsive legislative framework. The 2001 Human Rights Watch report indicated that girls, independent of economic status or race, were encountering sexual violence in spaces where they theoretically should be safest, namely the home and schools (ibid). This demonstrates a widespread patriarchal norm which perpetuates a harmful expression of masculinity.

According to the SADC Protocol on Gender and Development, the term GBV is used to distinguish violence that targets individuals or a group of individuals on the basis of their gender from other forms of violence. It includes any act which results in or is likely to result in physical, sexual, psychological or emotional, and economic abuse of gender relations. This includes acts of rape, sexual harassment and assault, domestic violence, human trafficking, and harmful cultural practices like female genital mutilation, *ukuthwala* (abduction of future bride, which is termed differently according to the cultural group practicing it), and virginity testing. GBV is one of the greatest obstacles to women’s achievement of equality, development and dignity. This violates women’s human rights and undermines the overall attainment of the Protocol’s objectives. Historically, the criminal system was perceived as not regarding GBV as a serious crime, as was reflected in low conviction rates and sentences for rapists and abusive partners. As a result, the South African

Government took steps towards the eradication of GBV, and violence against women and children in particular, by committing itself to international, regional and national legal instruments geared towards the protection of women against violence, and ratified key legal instruments in this regard, including: The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW); The Beijing Platform of Action (BPA); and the Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa (The CGE report on Victims Charter, 2009).

The target of the SADC Protocol on Gender and Development is to reduce the incidence of violence against women and girls by 5% each year until it is eliminated. This target includes the following five indicators:

1. Number of cases of violence against women reported to the police
2. Number and/or proportion of reported cases prosecuted in the courts
3. Number of perpetrators sentenced and length of sentence
4. Number of women or girls seeking shelter in safe houses for protection from violence against them
5. Proportion of the South African population that knows GBV is a crime

3.3.1 Number of cases of violence against women reported to the police

At present the true extent of sexual violence in South Africa is unknown. Stats SA found that one in two rape survivors reported being raped to the police, while the Medical Research Council (MRC) found that one in nine women reported being raped. Both studies clearly find rape to be under-reported, although their findings differ as to the extent of such under-reporting (Vatten, 2011). In compliance with Constitutional provision, CEDAW and BPA obligations, South Africa introduced the Sexual Offences Act, which makes it an offence to have sexual intercourse with a girl under the age of 16. In order to integrate gender equality and prioritise GBV in the prosecution of crime, the Sexual Offences and Community Affairs (SOCA) Unit was established in the National Prosecuting Authority (NPA). The purpose of this unit is to focus on sexual offences, domestic violence, human trafficking, and enforcement of child maintenance, managing of child offenders and other issues involving victimization of women and children. This unit has succeeded in establishing Thuthuzela Care Centres and Sexual Offences Courts. The Thuthuzela care centres are responsible for providing victims of sexual abuse with access to the police, counselling and health services and support, court preparations and prosecution (CEDAW Report, 2010). Given the state of

GBV in South Africa, a Victims Charter was developed, which aims to provide services to victims of crime to enable them to deal with the associated trauma of crime. The Victims Charter clearly articulates the legal framework for victims to assert their rights in the criminal justice system, and seeks to provide comprehensive and integrated response to victims of crime. Its aims are to:

- Eliminate secondary victimisation in the criminal justice process
- Clarify the service standards that can be expected by and are accorded to victims, whenever they come into contact with the criminal justice system
- Make provision for victims' recourse when standards are not met
- Ensure that victims remain central to the criminal justice system (CGE Report on Victims Charter, 2009).

The following departments are responsible for implementation of the commitments made in the Five Year Implementation Plan of the Victims' Charter:

- Department of Justice and Constitutional Development
- National Prosecuting Authority
- South African Police Services
- Department of Correctional Services
- Department of Social Development
- Department of Health

Research conducted by the CGE however reveals significant shortcomings in the implementation of the Victims' Charter, related to inadequate budgeting, inadequate training and entrenched attitudes and perceptions of police officers towards GBV, and inadequate access to resources such as counselling and safe houses (CGE Report, 2010).

Domestic violence is prevalent in South Africa society, with women the overwhelming majority affected, regardless of race, class and geographic location. Although a comprehensive review of the criminal law in relation to sexual violence is required, the South African Police Service (SAPS) has succeeded in establishing victim Empowerment Programme (VEP) units in their areas, responsible for investigating sexual crimes in terms of Victims' Charter. The SAPS is reported to have received 43 330 cases of domestic violence

during the period of July and December 2009, whilst in January to June 2011 45 454 cases (S.A implementation of CEDAW, 2011).

Community-based prevalence studies find that domestic violence, in one form or the other, affects as many as one in two women in some parts of South Africa. A 2007 study conducted in three of South Africa's provinces found that 27% of women in the Eastern Cape, 28% of women in Mpumalanga and 19% in the Northern Province had been physically abused in their lifetimes by a current or former partner, excluding instances of child abuse. The same study also investigated the prevalence of emotional and financial abuse experienced by women in the year prior to the study. This was found to have affected 51% of women in the Eastern Cape, 50% in Mpumalanga and 40% in the Northern Province (CGE Report, 2008).

A study of 1 394 men working for three Cape Town Municipalities found that approximately 44% of these men admitted that they had abused their female partners and approximately 15.3% had committed acts of sexual violence against their partners (Abrahams et al, 2009). The SAPS report for the period 1 April 2007- 31 March 2008 indicated that 182 588 violent crimes were committed against women. These included 91 534 crimes of grievous bodily harm and 2 606 acts of indecent assault. Although the relationship to the perpetrator in these categories is not specified, it is more than likely that most of these attacks were perpetrated by intimate partners or family members (SAPS, 2008). Legislators placed particular obligations in the Domestic Violence Act (DVA) upon the police, in an effort to challenge their long history of neglect of domestic violence. In essence, the police are required to explain to complainants that they are there to provide whatever assistance the circumstances require, which may include helping the complainant to find suitable shelter or obtain medical treatment (Ibid). A study into the implementation of the DVA revealed through interviews with women who had obtained protection orders, varying degrees of police negligence and impotence.

Women had experienced difficulties such as finding the money for documents to be served on the respondents, and lack of information regarding due court process, as impediments to their access to justice. Some women withdrew their applications because they experienced the process as "too overwhelming". Others experienced the court as being unable to cope with the administrative requirements of the Act (Mathews, 2010). While South Africa has eleven official languages, the application forms for a protection order are only available in two of the

eleven languages. Over and above language, the written completion and reading of the application forms poses challenges women with varying degrees of literacy. Further, the forms are not available in Braille, and sign language interpreters for hearing impaired women are not readily available at courts (Ibid).

3.3.2 Number and/or proportion of reported cases prosecuted in the courts

The prevalence of GBV is reflected in stark statistics: between April 2008 and March 2009, 55 114 cases were reported to the police. The number of actual cases was likely much higher, considering only an estimated one in nine women report cases of sexual assault, according to the Medical Research Council (MRC). The MRC also estimated that a woman is killed by her intimate partner every six hours. A total of 52 617 rape cases were reported for the years 2006/2007 throughout South Africa.

A random, representative study of 2 068 rape cases reported in Gauteng in 2008 found that half of these reports led to arrests (50.5%), but only 42.8% of suspects appeared in court. Trials commenced in less than one in five cases (17.3%) and a conviction on any charge resulted in just 1 in 20 cases (6.2%). However, some of these convictions were for lesser charges, so that overall only 4.1 % of all cases reported as rape resulted in convictions for rape (Vatten et al, 2008). Research conducted at ten magistrates' courts in the provinces of Mpumalanga, Gauteng and the Western Cape found that between 12-79% of protection orders in terms of the Domestic Violence Act were made final. However, at seven out of ten courts, fewer than 50% were made final.

3.3.3 Number of perpetrators sentenced and length of sentence

The criminal justice system, in the form of the police and courts plays no small part in aggravating women's experience of GBV. This may be through insensitive, judgemental behaviour that deters victims from reporting. It may also be through their inability to arrest and convict offenders or through their reinforcement and perpetuation of gender stereotypes demonstrated in sentencing (Roots of Rape Crisis, 2010).

In study conducted by the CGE, 15.6% of rape convictions received less than the mandated 10 years minimum sentence. The alternative prescribed sentence for rape, life imprisonment, was very rarely invoked. Thirty four or 41% of men convicted of rape were eligible for life imprisonment. This was handed down in only three cases. This begs the question as to why judges are not upholding the law and whether they are receiving training or awareness-raising

about the reasons for rape and domestic violence, and their obligations in this regard. This research found that one in three (36.4%) rape suspects arrested were granted bail, which, on average, was set at R2 000, or four months' imprisonment (Vatten et al, 2008).

3.3.4 Number of women or girls seeking shelter in safe houses for protection

According to the CGE report on the implementation of the Victims' Charter, most police stations reported that victims of domestic violence and sexual assault are accompanied by police officers to places of safety. The CGE report for Gauteng province, however, highlights that in many instances police officials are unable to secure a vehicle to transport victims to places of safety where they can receive expert medical intervention and support. The report further indicates that safe houses are not always convenient for victims of domestic violence and sexual assaults, as they are sometimes not accommodating in terms of age and gender. Eastern Cape findings reveal that there are few places of safety available and those that do exist are funded by non-governmental organisations that are unable to meet the high demands for this resource (Ibid).

Victims who do not find accommodation in places of safety should be taken to a Victim Support Centre (VSC), but again, access to such centres is uneven in most places, and impossible in others. Findings in Mpumalanga reiterate that there are no readily available places of safety, and that for the safety of victims, and pending the arrests of perpetrators, temporary accommodation arrangements are in the main made with relatives. As noted, Thuthuzela Care Centres were established by the NPA as one-stop centres, convenient for victims of GBV to receive all the necessary services required following sexual abuse, including shelter, until they are able to return home. Many of these centres are not yet fully functional as they have only recently been established (Ibid). Statistics on the number of women seeking or provided with shelter through these Centres are not yet available (Ibid).

3.3.5 Proportion of the South African population that knows GBV is a crime

Part of the problem appears to be that many South Africans still have difficulty defining rape. A 2009 nationwide survey of boys and girls aged between 10 and 19 found that 58% did not view "forced sex with someone you know" as sexual violence; another 30% of all respondents claimed that "girls do not have a right to refuse sex with their boyfriend". Of South African men who knew somebody who had been raped, 16% claimed that the rape survivor had enjoyed the experience and had "asked for it". On 29 January, while addressing 150 Cape Peninsula University of Technology students, Julius Malema, the former ANCYL

president, suggested that the woman who accused ANC President, Jacob Zuma, of rape had a “nice time” with him and said, “When a woman didn’t enjoy it, she leaves early in the morning. Those who had a nice time will wait until the sun comes out, request breakfast and ask for taxi money” (Malema, 2009 ND).

Despite sexual harassment being a major problem in schools, it appears that despite the development and introduction of reading material on the matter, as noted previously, there is no mandatory training for teachers and pupils on this topic, to counter gender assumptions and perceptions that perpetuate this form of GBV.

3.4 Policies and implementation plans put in place after the adoption of the SADC Protocol on Gender and Development

3.4.1 The National Policy Framework on the Empowerment of Women and Gender Equality

The National Policy Framework on The Empowerment of Women and Gender Equality details the principles which will be integrated by all sectors into their own sectoral policies, practices and programmes. It provides guidelines for South Africa as a nation to take action to remedy the historical legacy of treatment of women by defining new terms of reference for interacting with each other in private and public spheres, and by providing and recommending an institutional framework that facilitates equal access to goods and services for both women and men. The policy calls for gender equality to be at the centre of the transformation process in South Africa within all the structures, institutions, policies, procedures, practices and programmes of government, its agencies and parastatals, civil society and the private sector (APRM Report, 2009).

3.4.2 Institutional Mechanisms for the advancement of women

In the South African government, the responsibility for women’s empowerment and gender equality lies with the Minister in the Presidency. The responsibility for gender mainstreaming as a strategy for realising gender equality, rests with all members of the Cabinet. The National Policy Framework for Women’s Empowerment and Gender Equality outlines the structure and functions of the facilitative components of the NGM for women’s empowerment, each of which are located strategically at the highest level of government, within Parliament and amongst statutory bodies. These include the Office on the Status of Women (OSW) located within the Presidency, the Joint Committee on the Improvement of Quality of Life and Status of Women in Parliament, and the CGE that is a statutory body.

Each of these components has specific and distinctive mandates, roles and functions. Although the National Gender Policy recognizes the role of civil society as an important component of the NGM, it does not prescribe the functions for civil society, but strives to work through coordinated action. The South African Human Rights Commission (SAHRC) also plays a vital oversight and advocacy role with regard to equality, monitoring and legislation (APRM Report, 2009).

The institutional mechanisms to promote Gender Equality are well-developed in South Africa. The South African model comprises a variety of structures which are all dedicated towards advancing gender equality. These structures are located in the executive branches, Parliament, provincial government, independent bodies such as courts and various commissions, and in civil society.

"...within government, we will continue to insist on implementation of the National Framework for Women's Empowerment and Gender Equality. Concretely, we will soon introduce a system through which gender representation targets and content of programmes become part of the core performance criteria of every government institution and manager."

The national machinery for women's empowerment and gender equality refers to a set of coordinated structures within and outside government which aim to achieve equality for women in all spheres of life: political, civil, social, economic and cultural.

Thus the South African Government considers the National Gender Machinery as critical for facilitating gender-sensitive delivery whilst the responsibility and accountability for implementation lies with the different government ministries and agencies. In South Africa, the responsibility for women's empowerment and gender equality is vested in the Presidency, with the Minister in the Presidency as the Minister responsible for the empowerment of women and gender equality. However, the responsibility for gender mainstreaming as a strategy for realising gender equality rests with all the members of Cabinet (RSA, 2010).

3.4.3 The National Gender Machinery (NGM) for women's empowerment

The National Gender Machinery comprises various structures, tasked with ensuring that strategies geared toward the empowerment of women do not end only at policy level. These structures are responsible for the implementation and monitoring of gender related policies.

The institutional arrangements include government structures and parliamentary structures to independent statutory bodies.

The *National Office on the Status of Women* was located within the Presidency. It is the principal coordinating structure for the National Machinery on gender equality. It constructs, develops and maintains the national gender programme. It develops frameworks and monitors their implementation. It is responsible for developing gender plans, and national strategies to implement them (RSA, 2010).

The *Provincial Offices on the Status of Women*, structures similar to that of the National, were established within the Office of the Premier in each of the provinces of South Africa.

The *Joint Monitoring Committee on the Quality of Life and Status of Women* is a Parliamentary structure that has a central role of facilitating women's empowerment and gender equality through ensuring that all legislation passed by parliament is engendered implemented.

The *Commission for Gender Equality* (CGE) is a statutory body provided for in Chapter 9 of the Constitution. Its main function is to advance the empowerment of women and gender equality. There are other Independent statutory bodies which complement the work of the Commission on Gender Equality, that of advancing the empowerment of women and gender equality, such as the Human Rights Commission, the Independent Electoral Commission, the Public Protector, the Public Service Commission, the Youth Commission, the Land Commission and the South African Law Commission (CGE, 2011).

Gender Focal Points (GFP) in *Government Departments* is the structure within government departments that assists in the formulation and implementation of effective action plans to promote women's empowerment and gender equality in the work of the respective departments. Its main responsibility is to ensure effective implementation of the National Gender Policy.

The Government introduced the *Integrated Governance System* in 2001, to enable effective service delivery. With this shift in governance, an opportunity was created for the NGM to review its systems and its capacity to contribute to the achievement of better service delivery. The result was a Cluster System that allowed for the integration of CEDAW, the Beijing

Platform for Action, other global agreements and related provisions of the National Gender Policy in the programmes of Government. This allows for the integration of gender as a cross-cutting issue, mainstreaming of gender issues into the day-to-day work of Government and aligning and integrating relevant gender equality objectives into appropriate government programmes.

The *Policy Co-ordination and Advisory Services Unit* located in the Presidency until 2009. Provided the overall monitoring of Government performance and compliance with its policy commitments. The National OSW forms part of this Policy Coordination Unit within the Presidency through the Chief Directorate: Programmes. As such it ensures that gender responsive indicators are included within the Government-wide Monitoring and Evaluation Framework and ensures gender mainstreaming in government monitoring processes. Through the reporting of government departments to the Policy Coordination Unit, the OSW is able to monitor overall government programmes to assess progress and compliance with gender equality. This is an important development for mainstreaming (RSA, 2010).

3.4.4 Gender Equality and Women's Empowerment within the Public Service Workplace

The Department of Public Service Administration developed and adopted a strategic framework that seeks to transform the public service with the view of attaining gender equality. The overall goal of the *Strategic Framework* is to locate gender mainstreaming in its social, economic, legal and developmental context. In addition, it delineates the parameters for the content, structure and underlying principles, together with a framework for successful implementation of the strategy.

The objective of the *Strategic Framework* is to outline a strategic approach for gender equality within the Public Service, through a mainstreaming strategy. The *Strategic Framework* is premised on the intent to: 1) advance an effective enabling environment within the Public Sector through progressive policies and guidelines; 2) establish appropriate and sustainable institutional mechanisms; and 3) develop effective operational processes to ensure a transformed, non-discriminatory and fully-inclusive Public Service that reflects the Constitutional values of non-sexism and non-racialism. In addition to the above, national government departments have developed gender policies to provide the enabling framework for budgeting and implementation of the empowerment of women and gender equality programmes and projects (Public Act, 2007).

3.5 Discussion of findings

The findings of the major results of this study are based on the following hypothesis:

- The effective implementation of the SADC Gender and Development Protocol by the South African government since 2008 has played a significant role in enhancing gender equality, women's empowerment and the reduction of gender based violence.

The findings are based on the researcher's observation as well as primary data collected from the conducted interview, presentations and speeches (through the use of content analysis) from key personnel at the Commission on Gender Equality, and documentation review as specified in Chapter One 1.8.1

3.5.1 Gender equality and empowerment

Gender equality and women's empowerment is one of the areas around which there has been the greatest level of activism in South Africa. The proportion of women in parliament has increased from 17.5% at the time SADC Gender and Development Declaration of 1998 to 25% at present. But this ranges from 42% in South Africa to 7% in the DRC. The ruling African National Congress (ANC) in South Africa is the first party in the region to have formally adopted and implemented the Protocol target of gender parity by 2015, in the April 2009 elections. There is a higher proportion (almost 30%) of women at the local level but the gap is even wider, from 1.2% in Angola to 58% in Lesotho (Gender links, 2011).

The fact that gender parity has been reached or exceeded in some countries shows that change is possible. There is no instance however in which such targets have been achieved without special measures being taken, either voluntary or by legislated quotas. These work best in countries with the Proportional Representation (PR) system but can also work in the First Past the Post System (FPTS) as illustrated in the case of local government in Lesotho. The key issue is political will. The fact that women are still least represented in cabinet throws into question the political commitment of leaders (Norma, 2011). Even as the 50/50 campaign escalates, there is an important and growing focus on what happens "beyond the numbers".

The Protocol provides for state parties to ensure that, by 2015, at least 50% of decision-making positions in the public and private sectors are held by women including the use of affirmative action measure as provided for in Article 5. It further provides for member states to ensure that all legislative and other measures are accompanied by public awareness

campaigns which demonstrate the vital link between the equal representation and participation of women and men in decision making positions, democracy, good governance and citizen participation are put in place at all levels.

While the ranges in cabinet are less drastic, even there the gap is from 10% in Mauritius to 41% in South Africa. Such broad discrepancies reflect both the lack of will on the part of some governments as well as what can be achieved when such will is present (Gender links, 2011).

SADC as a region compares favourably with other regions in the world. As a region SADC comes second to the Nordic countries and is ahead of America and Europe (excluding the Scandinavian countries) as well as Sub Saharan Africa. SADC is also well ahead of the global average of 18.3%. There are 108 countries cited on the website of the Inter Parliamentary Union, where SADC countries rank globally and relative to each other against the 108 countries cited. At position three (after Uganda and Sweden) South Africa does the region proud. Angola is also within the top ten. At 108, the DRC ranks lowest among the SADC countries (Morna et al, 2011).

The 2009 elections witnessed South Africa edge closer to the target set by the Southern African Development Community (SADC) Protocol on Gender and Development for achieving gender parity in all areas of decision-making by 2015. But, according to an analysis of the elections conducted by GL and GEMSA, the fact that this has largely been achieved as a result of the commitment by the ruling African National Congress alone to the 50/50 principle; glaring gaps and regression in some areas; and the sexist mudslinging that took place during the elections are a source of serious concern. The concern also point to the fact that gender equality goes beyond women's equal participation in decision-making. Campaigns must address the patriarchal underpinnings of society that affect the way that both men and women behave (Gender Links, 2011).

A summary from a detailed report of Gender Links (2010) of the key gender and election indicators for South Africa shows that on the positive side:

- Women comprised 55% of those registered to vote. This shows that, contrary to prevailing views, women are interested in politics and in being active citizens.

- Representation of women in parliament has increased from 33% to 43% of the total.
- Representation of women Members of the Provincial Legislature (MPL's) has increased from 30% to 42%.
- 14 out of 34, or 41 %, of the new ministers announced by President Jacob Zuma on 10 May 2009 were women. This is roughly consistent with the 42% women in cabinet under former President Thabo Mbeki and 43% under the seven month caretaker administration of now Deputy President Kgalema Motlanthe.
- Of the 14 ministries headed by women, at least eight are in non-traditional areas like correctional services; defence; home affairs; international relations and cooperation; mining; public enterprise; science and technology. This underscores the maturity of our democracy.
- Women deputy ministers are well represented in the economic cluster, including the new minister of economic development and the two deputy ministers of trade and industry. Women are still highly under-represented in economic decision making.
- While the principle of a women's ministry is problematic, the appointment of former Education Health and Allied Workers' Union (Nehawu) President Noluthando Mayende-Sibiya, one of the most powerful and influential women in the trade union movement, to this post was a positive sign. Mayende-Sibiya also serves as a co-convener for South African Progressive Women. She brings a keen appreciation of the role of women in economic development and is an advocate for the recognition and remuneration of the unwaged work of women.
- Women now comprise five out of nine provincial premiers or 55%, up from 44%
- Women comprise 41% of provincial cabinet ministers, going as high as 64% in Gauteng, which is headed by a woman premier.
- Although the proportion of women in the media is still low, the election promoted unprecedented debate on some previously no-go areas such as to what extent 'the personal is political'; whether polygamy is unconstitutional; what is meant by gender aware leadership and how leaders should be held accountable.
- Gender activists played a key role in "pushing the envelope" and ensuring that these debates were placed on the agenda. Women's Net and the Tshwaranang Legal Advocacy Centre invited representatives of political parties to come and account for how their policies would address gender violence. Gender Links, GEMSA and partners in the Gender and Media Diversity Centre (GMDC) formed a strategic

alliance with the Mail and Guardian's Critical thinking Forum; Constitution Hill; the Human Rights Commission and SABC TV International to mount a series of election debates on "The personal is political"; "Polygamy has no place in South Africa" and one on Gender, Elections and the Media. As the analysis of election coverage shows, activists used TV debates, radio talk shows, and leader pages to challenge South Africa's leaders and hold them accountable. Held under the broader rubric of Gender and Leadership, the debates yielded a checklist on gender aware leadership.

Concerns raised from the report of Gender Links (2010) include:

- The 50/50 principle has not been carried to the highest level of government, as South Africa no longer has a woman deputy president.
- While former President Thabo Mbeki had 60% women in deputy ministerial posts, this declined to 38% under as caretaker President, President Kgalema Motlanthe, and 11 out of 28 or 39% under President Jacob Zuma. Deputy ministerial positions are often a training ground for ministers. This decline is therefore regrettable at a time when the ANC has committed itself to gender parity in all areas of decision making.
- The leadership in parliament is now heavily male dominated, with the Speaker, chairman of the National Council of Provinces (NCOP) and almost all the chief whips and leaders of parties, except for the Independent Democrat's Patricia de Lille.
- Representation of women in the NCOP has dropped from 40% to 30%, with only two out of the 16 women (12.5%) in this structure coming from opposition parties, even though they constitute 35% of the members. This again underscores the extent to which the progress towards women's equal representation and participation in decision-making in South Africa rests on the ruling ANC. It underscores the need for renewed vigour in advocating for a legislated 50% quota that binds all parties.
- The main opposition Democratic Alliance (DA), despite being led by a woman, remains averse to quotas stating that it is only interested in "fitness for purpose". It is appalling that Helen Zille's new cabinet in the Western Cape is 75% white and has no women other than herself and Lindiwe Mazibuko. To suggest that these are the only people "fit for the purpose" in Western Cape is not only out of

keeping with the march of history but may indeed be unconstitutional. The action taken by the Congress of South African Trade Unions (COSATU) to raise this matter with the Human Rights Commission and the Equality Court is to be commended.

- None of the opposition parties support quotas. Some argue that the ANC has had a snowball effect on them. This is most noticeable in the case of the Congress of the People (COPE), which mostly comprises former ANC members, and has 48% women in parliament, despite not supporting quotas. But the declines in other parties, and the 'one step forward, two steps backwards' approach to gender parity is likely to call for more obligatory measures to ensure that SADC targets are met.
- The use of sexist slurs by both parties for cheap political point scoring, commented upon extensively in this report after the elections, dealt a blow to democracy and women's rights, and threatened to derail the serious challenges that South Africa continues to face on this front (Gender Links Report, 2010).

In South Africa, initially, the IEC targeted a total of 22 million voters at the cost of nearly R200 million. By the time the registration process closed in February 2009, a total of 23 174 279 had registered as voters for both national and provincial elections representing an increase of 12% from the 2004 national and provincial elections when there were 20 674 926 verified voters on the roll. (Source: IEC) Voter registration statistics released by the IEC showed that in all the provinces more women than men have registered. Overall, women constitute 55% of all registered voters; this runs as high as 58% in the Eastern Cape. Another notable feature was the "Obama effect" in South Africa. The elections attracted a lot of young people. Some 12 million (half of those registered to vote) were in the age group of 18-39. Of these, 6.4 million or 53% were young women and 5.6 million 47% young men. This means that young women are now the most numerous voters in South Africa (IEC Report, 2010).

3.5.2 International human rights instruments towards the reduction of gender based violence

Article 26 of the SADC Addendum on the Prevention and Eradication of Violence Against Women and Children recognises that urgent consideration must be given to the adoption of legally binding SADC instruments

The fact that women are asserting their rights against gender-based violence of various forms, confirms the important role of a rights-based approach to gender-based violence and HIV/AIDS. As Albertyn points out, 'as the epicentre of the epidemic has moved from the first to the third world and from (gay white) men to (poor black) women, so the rights emphasis has begun to shift from a focus on individual rights of privacy and non-discrimination to embrace more global social and economic concerns of poverty and inequality' (2000: 1). In the last few years, numerous international human rights declarations were ratified to take account of, and to give guidelines to, organisations working in legal advocacy, health care delivery, social policy, teaching and awareness-raising, and service provision internationally. These include:

- The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (1993) provides a comprehensive definition of gender-based violence, and recommends that signatories provide effective legal measures to protect women against violence, take preventive measures to change attitudes, and provide services and assistance to women (Soul City: 2008 ND).
- The International Community of Women Living with HIV/AIDS (ICW) has issued twelve statements asserting the needs of women living with HIV/AIDS globally.
- The International Conference on Population and Development in Cairo (1994) and the Fourth World Conference on Women in Beijing's Platform for Action (1995) agreed that human rights include the right of women to control over their sexuality.
- The Barcelona Bill of Rights (Women and HIV/AIDS) includes the right to sexual and reproductive health services in conjunction with gender equity in education and economic independence.
- The ratified Southern African Development Community (SADC) Declaration on Gender and Development (especially the Addendum on Violence) requires interventions at the legislative, social service, and educational levels to remove discrimination against women, to empower them, to promote and protect their human rights, to provide support to those who have been abused, and to take action against perpetrators of gender-based violence.
- The SADC AIDS and STD Programme recognise the linkages between the status of women and violence as factors contributing to the spread of HIV (Klugman 2000).

The reason for the persistence of violence and of gender-based violence in post-apartheid South Africa, with a new Constitution that provides the framework for legislation taking account of the position of women, are unclear. In trying to explain this, researchers have pointed to the endorsement of violent means to achieve desired ends, and the displaced aggression vented on women and children. In the face of continuing poverty, social dislocation and marginalisation, and the persisting urban-rural divide, traditional authorities have in some respects retained their role in local governance, tightly circumscribing the status, mobility, opportunities and activities of women. The rigidity with which stereotypical gender roles are being asserted owes its force partly to the conflation of sex and gender: gender roles are violently enforced and enacted on the basis of what biological sex is taken to stand for. This applies to both heterosexual and same-sex relations. Violence and coercion in same-sex relationships often results from enforcing heterosexual norms and role expectations. Where such violence occurs under generally coercive conditions, the denial of HIV risks is common.

HIV/AIDS has added to the burden and vulnerability of women: it has intensified the economic and social insecurity of women; and women's social and economic insecurity, in turn, makes them vulnerable to infection with HIV/AIDS. There are groups of people who are particularly vulnerable. Children, and children affected by HIV/AIDS, who have experienced loss, mourning, family disintegration and economic hardship, or rape and sexual abuse, may adopt high risk coping skills later in life. Adolescent girls are particularly at risk in the context of social and family destabilisation. Relationships, in which the women are considerably younger than men and experience abuse at the hands of older men, are frequent. Additional risks for women in age-differentiated relationships are infection with HIV, teenage pregnancy, and violence at the hands of the male partner during pregnancy.

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CHAPTER FOUR

Conclusion and Recommendations

This chapter is divided into two sections, namely, the conclusion and the recommendations. The conclusion is drawn from an analysis of the evaluation of the SADC Gender and Development Protocol on Equality, Empowerment and Gender Based Violence in South Africa since 2008 and the attendant variables. The recommendations are geared towards dealing with the emergent issues of gender equality, women's empowerment and the reduction of gender based violence in South Africa.

4.1 Conclusion

Woman-power swept onto the Southern African scene in a visible way in 2012. First, Joyce Banda unexpectedly assumed the post as the first woman president of Malawi, and first woman SADC head of state in April. Next, South Africa's former Minister of Home Affairs Nkosazana Dlamini-Zuma, worked her way through several barriers to become the first woman chair of the African Union Commission, after a tough fight in July.

These developments gave an outward show of progress, but only thinly masked the rising anxiety as the clock ticks louder in the count down to 2015. For every step forward, activists counted one step backwards in data collection from the fifteen SADC countries. For example, in South Africa, while the women's ministry championed a bill for Gender Equality that covers many key provisions of the SADC Protocol on Gender and Development, a Traditional Authority Bill that gives sweeping powers to customary courts has prompted women's rights groups to take protest action (Morna, 2012).

There has been a steady overall increase in women's representation in parliament from 17.5% in 1997 to 24.7% in 2009. However if South Africa, whose parliament accounts for two fifths of the total is excluded, the proportion drops to 21%. At 42% South Africa comes closest to achieving gender parity in parliament, but no country has yet achieved this distinction. Five SADC countries (Tanzania, Namibia, Mozambique, Angola and South Africa) have achieved 30% or more in parliament. There has been a significant reduction in the number of parliaments in which women constitute less than 10% of the total (for example Mauritius, Swaziland and Malawi are now all out of that category). The DRC (8% women in parliament) is the only SADC country in this category.

Local government representation is higher than the national but with wider variations. At nearly 30% the average representation of women at the local level is higher than at national level. However, the range, from 1.2% in the cases of Angola to 58% in the case of Lesotho is higher. Six countries (Lesotho, Namibia, South Africa, Mozambique and Zambia) have achieved 30% or higher with regard to women in local government.

Women's representation in cabinet has grown fast, but not fast enough. Cabinet is the one sphere of decision-making in which it is theoretically relatively easy to "ring up the changes" since leaders have the leeway to appoint their inner team. The average representation of women in cabinet in the region has increased from 12% in 1997 to 21.4% in August 2009, (a 9.4% increase). Some Heads of State have shown a willingness to use cabinet appointments for bringing women into leadership, especially in the smaller countries. There have, for example, been marked increases in the representation of women in the cabinets of Namibia, Lesotho and Botswana, even though these do not translate into big numbers in absolute terms, given the small size of the cabinets. However, the fact that women's representation in cabinet is still lower than parliament and local government is a source of concern (Morna et al, 2011).

Crime and Gender-based violence are complex social problems with complex social and legal consequences. Interpol data and crime statistics indicate that South Africa has unacceptably high levels of crime and violence. Levels of interpersonal violence are high, with high (though slowly declining) levels recorded in contact crimes such as murder, rape and aggravated robbery. Although this suggests that crime-combating and crime prevention strategies have resulted in a stabilisation in the occurrence of many crimes, levels of victimisation through crime remain a problem.

Gender based violence has been of concern to the South African government post-1994. Gender based violence remained a concern for the government because there was a lack of an organised and systematic approach to addressing it during the apartheid era. The efforts of the police, the judiciary, the private sector, government and civil society were arbitrary and not prioritised.

Another significant limitation in the context of domestic violence prevention was a lack of a structured plan to manage and coordinate policy development and implementation. Again, given the high levels of crime and gender based violence, and the related fear and anger,

many South Africans perceived the Bill of Rights as providing greater protection to criminals and perpetrators of violence at the expense of victims. In response, government adopted a crime prevention approach that places the rights and needs of the victims at the centre of the crime prevention strategy. That is the National Crime Prevention Strategy (NCPS) which was developed in 1996.

4.2 Recommendations

The state should undertake amendments to the Electoral Act 73 of 1998 to ensure 50/50 representation in political party lists. In the absence of legislative enforcement, political parties need to be encouraged to apply a 50/50 quota system for women at all levels of political representation, and they should be held accountable once the envisaged Equality Bill and proposed electoral legislation amendments have been put in place. Political parties, trade unions and civil society institutions need to put in place mentorship programmes to encourage and support women to advance to leadership positions within these sectors, as well as to put in place measures to bring about transformation to this male-dominated environment.

There is a need for the National Policy Framework on Gender Equality to be legislated, to impose on the public and private sector responsibilities with regard to promoting gender equality, and establish accountability in this regard. There is a clear need to enforce legislative requirements regarding equality in the workplace, and establish accountability for gender transformation in the private sector. There should be gender auditing and monitoring of the private sector, and trade unions should assume a greater responsibility here. The inadequate budgets of entities tasked with promoting gender equality, including the Commission for Gender Equality and the Department of Women, Children and People with Disabilities, should be addressed.

The state needs to identify and take action against harmful traditional practices that violate the rights of women and girl children, and engage with traditional leaders to raise awareness for the eradication of these. The Justice System should respond to instances of criminal acts. Large-scale awareness interventions are required to reveal unlawful practices disguised as custom, to eradicate these, and prosecute offenders.

The state needs to accelerate capacity building and resource allocation to enable the full implementation of the Victims Charter, and related legislation. The state also needs to urgently address its data capture of GBV statistics and incidents, and develop a gender sensitive monitoring and evaluation mechanism to track the implementation of relevant legislation.

Local measures need to be implemented to address women's safety, such as the provision of more street lighting, and creation of places of safety. There is a need for gender-sensitive training for members of the justice system to counter the patriarchal mind set towards GBV, to ensure appropriate and effective implementation of measures and eliminate the perpetuation of harmful stereotypes.

The state, civil society and businesses need to come together to develop integrated initiatives to address GBV, including large-scale awareness campaigns, behaviour-change interventions targeting men, and the formalising of working groups to monitor and develop recommendations concerning enforcement mechanism. Government should speedily implement the creation of one-stop access centres in rural communities, as hubs for state services in response to GBV. Best practice models should be identified for police stations and justice stakeholders, and rolled-out.

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