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Legislated gender sensitivity: SADC's draft protocol on gender and development

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GENDERED ANALYSES of political, economic and social processes in southern Africa show that more women than men are infected by HIV and AIDS,[1] more girls than boys will remain un(der)educated, an unjustifiable number of women will die in childbirth, and girl children will grow up to occupy lower-paid and insecure jobs. Violence against women and children in southern Africa is particularly pernicious due to socioeconomic and cultural practices that discriminate against women and make them vulnerable to physical and economic abuse. Women occupy second-class citizen status in their own countries, and often battle to be heard in the public and private spheres. In an attempt to redress these inequities, the Southern African Development Community (SADC) has joined the African Union (AU) and other multilateral organisations in an effort to eradicate gender inequalities and gender stereotypes on the continent.

This review examines the draft SADC Protocol on Gender and Development of 2006, identifies some of its shortcomings, and suggests how they could be addressed. While the protocol – and SADC in general – needs more 'teeth', it also argues that legislation alone cannot create a region that is gender-aware and sensitive, and that behaviour changes in society cannot be legislated but need to emerge organically as a result of leadership by example, and the use of the media and prominent figures to promote gender awareness.

Inclusive process

The process of drawing up the protocol has been consultative and inclusive of government, civil society, and intergovernmental groups, thus reflecting the general move towards democratic decision- and law-making in SADC. A stakeholders' consultative conference was held in April 2007 during which delegates from 13 SADC member states shared their views. One notable participant in this process has been the Gender Alliance, a group of gender-focused non-government organisations from the SADC region. However, the protocol is a legal instrument, and its success relies on the ability or willingness of member states to comply with its prescriptions. On 20 July 2007 the 14 SADC ministers for gender and women's affairs endorsed the draft protocol at a meeting in Maputo, and passed it on to SADC ministers of justice for legal clearance. It will then be submitted to the Council of Ministers (COM), which will meet on the eve of the summit of heads of state and government to be held in Lusaka in August 2007. The COM will advise the summit on whether it believes the protocol should be adopted. Should this happen, the protocol will need to be ratified by two thirds of member states before entering into force.

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The summit seems likely to adopt the protocol; President Armando Guebuza of Mozambique has already hailed it as a contribution towards the 'deepening of the regional integration process, sustainable development, and the edification of a strong, solid and inclusive community' (South African News Features 2007). It is therefore important to examine its history and its potential for creating gender equity within SADC.

The protocol builds on the African Charter on Human and People's Rights on the Rights of Women in Africa, the African and Beijing Platforms for Action, the 1997 SADC Declaration on Gender and Development, and the 1998 Addendum on the Prevention and Eradication of Violence against Women and Children. Moreover, many SADC member states have ratified the Convention for the Elimination of All Forms of Discrimination against Women (CEDAW). These international instruments spell out a wide array of protective mechanisms for women and children. This is particularly relevant to poorer countries and regions, where the feminisation of poverty has resulted in women and children being more vulnerable to physical and economic exploitation. Women occupy low-paying jobs, while children are often prematurely forced into labour to support their families.

However, these commitments have not been translated into real-life improvements in gender experiences. SADC countries are among the poorest in the global South, with 13 SADC states occupying the 120th position and worse on the Human Poverty Index (SARPN n.d.). This has had adverse effects on the ability of women and other marginalised groups to participate in their societies as equal citizens. In an attempt to eradicate cultural, economic and political discrimination against women and children, and reduce poverty in the region, SADC has renewed its commitment to gender equity in both the public and private spheres, as well as the eradication of violence against women and children.

Overview

The draft protocol deals with a number of important issues and areas relevant to gender equity in SADC countries, namely governance; constitutional and legal rights; education and training; gender-based violence; productive resources and employment; health and HIV / AIDS; peace-building and conflict resolution; and the media, information and communication. It also sets out the remedies, implementation mechanisms, financial provisions, institutional arrangements, and monitoring and evaluation tools which member states should apply and use to ensure that gender equity is achieved. Protocols are the most binding agreements in SADC, and ratification of this document will mean that all SADC governments will need to comply with it. Thus it states that: 'Member States shall harmonise national and regional policies, strategies and programmes related to ensuring gender equality, equity and the empowerment of women and girls in the areas dealt with in the Protocol.' (SADC 2007:37).

However, while the draft protocol is ambitious in its scope, it is thin on sanctions. It simply states that: 'Sanctions for non-compliance with the Protocol shall be imposed in accordance with Article 33(2) of the SADC Treaty', which is in itself non-specific (SADC 2007:37). According to the SADC Treaty, member states that violate SADC treaties and protocols will be sanctioned on a case-to-case basis. The Protocol does not make provision for a peer review system; instead member states are required to submit regular reports to SADC for review; it is not clear whether these reports will be accessible to civil society.

All monitoring and evaluation would be the responsibility of the member state. It appears that non-governmental organisations would have to act as watchdogs and publicly shame non-compliant member states because the protocol does not specify how member states would be punished, other than what is outlined in the SADC Treaty.

On a more positive note, the document is far-reaching and very protective of the rights of women as individuals, and as a vulnerable group. In principle, its treatment of reproductive rights, rights to bodily integrity, and the protection of women against domestic violence and economic exploitation provide women with an effective framework for participating in democratic practices across the region. It also provides for the protection of women in both the public and private spheres, rather than only the political sphere, where the 50/50 campaign has already achieved significant success.[2]

There are four areas which women's groups and civil society should carefully monitor because they would protect women more effectively in situations in which they are most vulnerable. These are quotas for women's participation in public affairs, land ownership by women, trafficking in women and children, and the ever-increasing incidence of violence against women and children. These areas have been included in the protocol, but should be discussed further.

Political quotas

Quotas have provided women with greater access to the public sphere, and many SADC countries have attempted to implement them. However, increasing the number of women in governance will not necessarily benefit all women in those societies. Institutions would need to change from predominantly masculine environments to spaces in which women are provided with the tools they need to succeed (see International IDEA 2005). The mere presence of women in parliaments does not change the institutional culture or nature of policies, especially those developed in parliamentary committees. Often parliamentary committee schedules are not gender-sensitive in terms of the existing social roles of women and men. Women's burden of running and caring for their households limits their ability to function effectively in the public sphere. For historical political and cultural reasons, decision-making processes are dominated by males who often do not allow their female counterparts to engage in discussions unless the issues are related to women, or women demand to make themselves heard. In many instances, women are allowed to speak but their suggestions and comments are not taken seriously.[3] The social and political cultures of southern African institutions need to change in ways that will facilitate the full participation of women as citizens.

Land rights

SADC member states have made inroads into gender equity in the region in various sectors. More women participate in the formal and informal economies than before, mainly because they have won access to micro financing and have established small businesses. As noted earlier, women's political participation has also increased by virtue of representation quotas set by individual governments. However, many battles remain to be fought, especially with regard to land rights. Land is a major issue for women activists because improving women's access to land would be a significant step towards alleviating some of the poverty in the region. Land has always been a contentious issue because of customary laws that prevent women, or individuals, from owning land. In fact, 50 percent of women in southern Africa are farmers. This means that they work on land they will never own as long as customary laws are not changed to reflect the realities of women and land in the region. Women's groups across Africa have pushed for a revision of land laws. In Ghana, for example, women's activism has led to female ownership of land through gift-giving, but many women still do not have access to or ownership of the land on which they farm because of a post-colonial focus on communal land tenure. In Zambia, the National Land Policy stipulates that 30 percent of all land must be earmarked for ownership by women, but this is far from being achieved in practice. In Uganda, women's rights groups advocated co-ownership of land by spouses, but this attempt was derailed in parliament when the clause was not included in the debate records.

The protocol tries to be sensitive to the land issue. Importantly, Article 7 (9a and e) protects women's access to property and resources by stating that member states shall 'end all discrimination against women and girls with regard to water rights and property such as land and tenure thereof,' and 'ensure that women and girls have equal rights of succession and inheritance of immovable and movable property, with men and boys' by 2015. These provisions are commendable, but again, member states have not done enough to ensure that gender equity and parity are achieved in land ownership. In post-colonial reconstruction processes in African states, land rights have remained tied to customary law in terms of which men own the land collectively or individually. Equity and parity should require that women's access to land needs to be de-linked from customary law and be reconstructed in a rights-based discourse. Until that happens, women as individuals or as collectives need to challenge customary law through the courts and through daily acts of resistance.[4]

Gender-based violence

Article 8 of the draft protocol outlines steps to protect women against all forms of gender-based violence by 2015. These include deterrent sanctions and legal and administrative mechanisms by courts of law and legislatures, and the eradication of all social, cultural, economic and political practices that result in gender-based violence. It states that gender sensitisation and rehabilitation programmes, counselling services, and training programmes for service providers should be made available to support both the survivors and perpetrators of gender-based violence and sexual harassment. However, legislation has not been able to change or adapt social behaviour, and it is therefore unclear how legislating against

gender-based violence would prevent it from occurring. The media have a role to play in changing social patterns, as is rightly pointed out in Article 12(3), by challenging stereotypes and reconstructing non-gender specific images of citizens. Social patterns only change over time, whereas legislation prompts an immediate response which, in the case of gender-based violence, only sets up member states for failure, or at best limited success. For example, Article 8(5) of the draft protocol specifically deals with human trafficking, but does not sufficiently consider the magnitude of the problem.

Trafficking in women and children

According to the Optional Protocol to the United Nations Convention on Transnational Organised Crime (the Palermo Protocol), 'trafficking in persons shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation' (UN 2001). Due to a low rate of development and growth, marginalisation of the developing world, and poverty, women and children in SADC countries are among the most vulnerable populations in the world. The increase in child-headed households and the feminisation of poverty has limited the options open to these two classes of people. This makes them more vulnerable to economic and social exploitation from within their communities and from outside.

In this context, Article 8(5) of the draft protocol lists a number of measures member states should institute to prevent human trafficking, and calls for member states to 'put in place mechanisms by which all relevant law enforcement authorities and institutions may eradicate national, regional and international human trafficking networks'. Recent debates on the efficacy of a Union of African States have highlighted the political and economic gains which could be achieved through a united Africa. 'Open' borders for trade and the free movement of people could lead to many gains for member states. However, one worrying problem that has not been sufficiently debated is that the opening of borders could facilitate trafficking in vulnerable groups and individuals. Trafficking in women and children in the SADC region has increased during the past decade; women are promised better jobs and educational opportunities in relatively more economically successful countries such as South Africa, but are then ensnared in sex work or forced labour.

Not one SADC member state has coherent anti-trafficking legislation. However, trafficking is covered under various laws; for example, the South African Sexual Offences Act covers trafficking under the section on 'Sexual Offence: Adult Protection'. This omission makes it more difficult for governments to apprehend and penalise traffickers within the region. Coherent and harmonised cross-regional trafficking legislation should be drafted and enacted before 2010. In the past, trafficking was highlighted in the 1998 Harare Declaration on the Prevention of Violence against SADC Women and Children when the delegates called for the criminalisation of trafficking in women and children.[5] SADC states have to ensure that their policies on policing and punishment are coherent and consistent. All SADC and AU member states should participate in extradition agreements in order to crack the syndicates which operate with impunity across borders.

A cautionary note is needed. Experience shows that legislation often drives behaviour underground, which means that anti-trafficking laws will drive traffickers underground and make the practice even more invisible than it is now. Robin Pharoah puts it differently when she argues that legislation could 'inadvertently fuel trafficking' because, while policies are meant to prevent the practice from happening, women and children are further marginalised when they lose the work provided through illegal migration or trafficking (Pharaoh 2006). Therefore, in drafting anti-trafficking legislation, governments need to ensure that there are job opportunities available to those vulnerable populations most threatened by trafficking and illegal migration.

The illegal migration of people across SADC borders to areas and countries with better prospects for survival will continue. It is commendable that the draft protocol has highlighted this as an area of potential crisis, but it falls short because it cannot ensure that alternatives are available to these vulnerable populations; instead, the onus lies on member states.

Conclusion

The draft SADC Protocol on Gender and Development provides a good starting point for addressing issues of gender

discrimination in the region. However, a greater effort should be made to enforce the protocol at the state level, and civil society should be given more space in which to interact with the SADC institutions tasked with eliminating all forms of gender discrimination in the region. SADC has opted for a protocol that binds member states to follow the letter of the protocol; however, it has not provided for punitive measures against those states that do not comply. Issues such as customary law, trafficking, and gender-based violence expose women to abuse and exploitation. Those areas should therefore be monitored, and non-compliance should be should be closely followed and analysed in the report-writing stages of the monitoring and review process. Unfortunately, the document expects civil society to act as the watchdog of governments, without providing any legal punishment for offenders. Implementation is important, but without enforcement the protocol will be yet another powerless regional instrument. Nevertheless, its authors should be commended for creating a document that works towards better protection of women and children in the region.

Recommendations

- Legislation is important as it indicates governmental intolerance of gender-based discrimination against women and children. Member states should be strongly encouraged, both by SADC and civil society as a whole, to ratify the protocol. It will contribute significantly to highlighting the negative daily experiences of women and children in the region.
- Legislation also drives illegal behaviour underground, including trafficking in women and children, sexual harassment, domestic violence, and the economic exploitation of women and children. To this end, member states and policy-makers should ensure a comprehensive approach to policies that address these issues which exacerbate the exploitation of vulnerable communities. Economic and social safety nets should be put into place to ensure that women and children have alternative sources of employment and earnings.
- Social behaviour can be changed through the media with the assistance of government funding. Media awareness programmes could educate citizens in rights-based discourses, and help to break stereotypes. Governments should fund social awareness programmes and public announcements.
- Civil society has a key role to play in ensuring that member states comply with the protocol. Civil society representatives would be invited through a formal civil society interface (see Article 16(5)) to participate in the Regional Advisory Forum. This is a formal body, but the process has not been formalised, which could give rise to a lack of consistency in meetings and reports from civil society. The Regional Advisory Forum should be strengthened and provided with institutional authority to call regular civil society meetings; this authority should be included in the protocol.
- Civil society stakeholders involved in the Regional Advisory Forum should disseminate the information from member states more broadly. The protocol does not mention broader dissemination of country reports therefore civil society should take up this responsibility or the protocol should make provision for country report-back sessions.
- Member states should be obliged to enforce the protocol. Since the protocol does not specify how it should be enforced, member states should individually ensure that they comply with the document by visibly punishing individuals, groups and institutions that which continue to discriminate against women and children.
- Member states should be held to account in terms of the number and scope of meetings held with civil society. Formal arrangements should be made at government level to meet regularly with broader civil society, and collaborative review reports should be created.

Endnotes

1 Fifty nine per cent of all adults in Sub-Sahara Africa infected by HIV and AIDS are women. For every young man who is HIV-positive, three young women are. See http://data.unaids.org/pub/EpiReport/2006/2006_EpiUpdate_en.pdf, accessed on 26 July 2007

2 The 50/50 campaign is aimed at increasing women's participation in parliaments to 30 per cent by 2004 and 50 per cent by 2005. The efficacy of gender quotas have been questioned, among others by International IDEA.

3 For a detailed analysis of women's experiences in the South African parliament, see Britton and Bauer (eds) 2005.

4 See Aili Mari Tripp's analysis of the land issue in Uganda (2004). She points out that only South Africa and Tanzania have enacted legislation requiring co-ownership of land by couples.

5 http://preventgbvafrica.org/images/int_policies/sadcde-civaw.pdf (accessed 11 July 2007).

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