

SOCIAL SECURITY, GENDER AND LEGAL PLURALITY: A CHALLENGE FOR HARMONISATION IN SOUTHERN AFRICAN DEVELOPMENT COMMUNITY (SADC)

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Introduction

The Southern African Development Community (SADC) comprises 15 countries¹ in Southern Africa that came together in 1980 with the initial aim of coordinating development projects in order to minimise dependence on the then apartheid South Africa. In 1992 the regional group gained legal autonomy and has since operated as a regional block on much broader issues than before. SADC's main objectives include to achieve development and economic growth, alleviate poverty, enhance the standard and quality of life of the people of Southern Africa, support the socially disadvantaged through regional integration; and to strengthen and consolidate the long-standing historical, social and cultural affinities and links among the people of the region. The objectives are based on principles of sovereign equality, solidarity, human rights, democracy and rule of law among others. One area that the group has been working in harmonising its standards and regulation is in social security and gender.

Increasing levels of poverty and calls for the reduction or elimination of poverty have brought the subject of social security to the fore. The ILO (International Labour Organisation) has also contributed to increasing interest in the area under its programme on extension of social security to the informal sector in Africa and the Global Campaign on Social Security and Coverage for all in Africa. Within the region the SADC Charter of Fundamental Social Rights in SADC highlights the importance of social security as one of the human rights under serious threat.² The formation of a grouping of specialists in social security in the SADC region has given extra impetus to social security as an urgent area in need of transformation and harmonisation.

This paper highlights some challenges to harmonisation of regulation on social security and gender in the SADC region. The paper argues that efforts to harmonise regulation of social security in the region are characterised by a lack of appreciative empirical data and takes a legal

¹ Countries in SADC include Angola, Botswana, the Democratic Republic of Congo, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, South Africa, Swaziland, United Republic of Tanzania, Zambia and Zimbabwe

² The influence of SADC, as regional body in Southern Africa, in social security developments is highlighted in Olivier, 2002: 337-402.

centralist approach, among other issues, which fail to reflect the lived realities of the majority in the region, especially women and may therefore not lead to the intended transformation. The majority of women in the region continue to survive risks of life and subsidise most of the formally recognised forms of survival despite serious exclusion and exploitation. Such survival is taking place within a context of complex plural regulatory frameworks that engender differential social security and insecurity. Unless the harmonisation process reflects this reality it will only perpetuate the gap between practice and rhetoric and the gender disparities in social security. The paper contends that the harmonisation process should be based on grounded inquiries on people's experiences in surviving risks of life; reflect the plurality of the systems including the regulatory frameworks and how these differently impact on men and women.

The paper is into six parts with this introduction as the first part. The second part interrogates the dominant conception of social security and the legal centralist approach to its legal regulation. It argues first that the conception of social security should be broad enough to reflect the reality of plural social responses to risks of life and secondly that that radical legal pluralism offers a suitable theoretical framework for analysing gender and social security in the SADC region. The third part provides an overview of social security and gender in the region, with a focus on the position of women. In the fourth part, the paper examines literature on different proposals on how social security in Africa generally and especially in Southern Africa, should be reformed and argues that the more acceptable integrated proposals fall short of mapping out a reform agenda that would really reflect the position of women in the region. The fifth part discusses the attempts to harmonise regulation of social security and gender in the region and highlights the challenges facing such efforts. The last part is the conclusion which underscores the need for harmonisation to be based on grounded empirical data and reflect the legal pluralities of the social security systems in the region which must go beyond legislation and state recognised regulations if it is to benefit the majority of women.