

# CHAPTER 9

## THE CO-EXISTENCE OF GENDER INEQUALITY AND POVERTY IN SOUTHERN AFRICA

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### Abstract

*The Southern African Development Community region is characterised by high levels of gender inequality and poverty. This state of affairs may be attributed to many factors, such as the high level of unemployment, which has a negative impact on the equal enjoyment of rights by women. The region has been progressive and has designed legal reforms that are aimed at the promotion of gender equality and the elimination of poverty. Notwithstanding the progress made, inequalities and an increase in poverty persist, which thwart the strides that have since been made. This persistence is more extreme in the case of women as a vulnerable group as it entrenches the co-existence of poverty and inequality, considering the economic power imbalances between men and women. This chapter provides an overview of the SADC's aspirations on the elimination of gender inequalities and the reduction of poverty as envisaged in the Protocol on Gender and Development. The chapter adopts a human rights-oriented approach to emphasise the importance of legal reform as a foundation for the advancement of gender equality and the elimination of poverty as envisaged in the Protocol. It starts by identifying factors that are a hindrance to the achievement of equality and also attempts to define the concepts of gender equality and poverty, followed by a discussion of the importance of the adoption of the Protocol on Gender and Development. This is not a comparative study on gender equality and the elimination of poverty but a focus on the envisaged aims of the Protocol.*

### 1 Introduction

The Southern African region<sup>1</sup> is one of the five regions in Africa.<sup>2</sup> The Southern African Development Community (SADC) is characterised by

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1 The Treaty of the Southern African Development Community, 1992 established the Southern African Development Community (SADC), with its seat in Gaborone, Botswana, as entrenched in art 2. The SADC region is comprised of the following member states: Angola, Botswana, the Democratic Republic of the Congo, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Eswatini, Tanzania, Zambia and Zimbabwe.

2 These regions are Southern, Central, East, North and West Africa.

the co-existence of gender inequality and poverty.<sup>3</sup> This form of socio-legal contrast is driven by economic power imbalances between men and women.<sup>4</sup> The imbalances characterise the quality of life of people in levels of inequality, which entail the ‘humiliating legal and socio-political effect of repressive conceptions’<sup>5</sup> of equality and non-discrimination. These imbalances are ‘highly unacceptable and are on the increase even in resource-rich countries like, for example, Angola, Namibia and South Africa’.<sup>6</sup> The imbalances limit the region’s potential as the benefits of legal reform do not appear to translate to the substantive conception of equality and the eradication of poverty. The imbalances restrict the capacity of member states to develop socio-legal, political and cultural measures which are essential for the ‘functioning of a good democratic state’<sup>7</sup> in the elimination of all inequalities and reduction of poverty. The situation is exacerbated by high levels of unemployment, which impact negatively on the human rights of women to the achievement of the right to substantive equality. The centrality of the right to equality is a yardstick against which to also eradicate poverty. There is an intersection of gender inequality and poverty, which is extremely severe in the case of women because of their limited access to life-changing resources such as education.

However, the region is engaged in finding concrete ways and solutions to ensure the achievement of gender equality and the reduction of poverty. This is part of its obligation as envisaged in various treaties and conventions that it signed and ratified as a member of the community of nations to ‘champion the process of empowering [men and women] in a concerted manner through addressing gender and development challenges’<sup>8</sup> that are not unique to it. The adoption of the SADC Protocol on Gender and Development (SADC Protocol)<sup>9</sup> is a direct response to challenges that are not unique to it but of global concern.<sup>10</sup> The undertaking is an indication of

- 3 V Gumede ‘Poverty and inequality in Africa: Towards the post-2015 development agenda for sub-Saharan Africa’ University of South Africa, <https://www.vusigumede.com/content/2016/academic%20paper/Poverty%20and%20Inequality%20in%20Africa.pdf> (accessed 10 June 2019).
- 4 O’Regan J in *Brink v Kitshoff* 1996 (6) BCLR 752. The judge pointed out that ‘the co-existence of poverty and gender inequality resulted in deep patterns of disadvantage which are particularly acute against [rural and black women]’; para 44.
- 5 Sachs J in *Fourie v Minister of Home Affairs* 2005 (3) BCLR 241 (CC) para 9.
- 6 ‘Inequality in Southern Africa: Options for redress’ Policy Brief 1-6, <http://www.ioi.org/wcsmp5/groups/public/---ed> (accessed 12 January 2015).
- 7 Moseneke DCJ in *South African Police Service v Solidarity obo Barnard* (CCT01/14) [2014] ZACC 23 (2 September 2014) para 33.
- 8 EB Mwale ‘Presentation on gender equality in Zambia during the civil society/patriotic front dialogue’ 12-13 April 2012, Cresta Golf View Hotel, Lusaka, Zambia, 1, <http://www.fes-zambia.org/media/documents/GEN> (accessed 13 November 2014).
- 9 SADC Protocol, signed on 17 August 2008, Johannesburg, South Africa. As of 2013 13 member states had signed the Protocol (except for Botswana and Mauritius), while the Democratic Republic of the Congo and Madagascar have not yet ratified the Protocol, <http://sadc.int/documents/publications/show> (accessed 25 January 2015).
- 10 The objectives of the Protocol are among others to provide for the empowerment of women, to eliminate discrimination and to achieve gender equality and equity through the development and implementation of gender-responsive legislation, policies, programmes and projects. The Protocol also seeks to harmonise the various international, continental and regional gender equality instruments to which SADC member states have subscribed, such as the Convention on the Elimination of All

the political will to bridge the gap between men and women in advancing the democratic principles – which would otherwise be incomplete without the economic empowerment of women. The region has demonstrated this commitment by adopting various measures that are designed to include a human rights approach, which encapsulates the ‘logic and language of rights’<sup>11</sup> in fighting poverty and gender inequality.<sup>12</sup> A human rights approach acknowledges that poverty and gender inequality are an inter-related African problem and no region can be complacent about these socio-legal and political ills.<sup>13</sup>

The human rights approach is similarly expressed by Lopi who contends that ‘[SADC], like all other sub-regions [in Africa], is characterised with gender disparities in all areas including in the social, economic, political and cultural spheres’.<sup>14</sup> It is in this context that the SADC recognises its fundamental role by developing legal reforms that seek to remove all barriers facing women, such as domestic violence, the lack of representation in the political arena and all other related factors, to ensure equal access to opportunities, in order to ‘build a critical mass of people in facilitating progressive changes in societies’.<sup>15</sup> For example, countries such as South Africa, despite the newcomer status in the elimination of inequalities because of the pre-democratic dispensation, has made progress in the area of legal reform in addressing the issues of inequality and poverty.<sup>16</sup> However, with the challenges that continue to manifest themselves in ensuring that there is equal enjoyment of the rights between men and women, poverty and inequality continue to bedevil the progress made since the attainment of democracy in 1994. During the election parade in May 2019 in South Africa by all the political parties that were vying for the votes of the general populace, their commitments were designed along the lines of striving towards the elimination of gender inequalities and the elimination of poverty in order to free the potential of each person in the advancement of the democratic ideals on the new

Forms of Discrimination Against Women (CEDAW); the Beijing Declaration and its Platform of Action; the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (African Women’s Protocol); and the Millennium Development goals (MDGs). Therefore, the SADC Protocol consolidates and creates synergies between various commitments on gender equality and women’s empowerment into one comprehensive regional instrument that effectively enhances the capacity to plan, implement and monitor the SADC gender agenda, <https://www.sadc.int/issues/gender/> (accessed 10 June 2019).

- 11 P de Vos & W Freedman (eds) *South African constitutional law in context* (2014) 348.
- 12 These measures include, but are not limited to, the SADC Declaration on Gender and Development 1997; the Regional Indicative Strategic Development Plan (RISDP) (2005-2020); the SADC Gender Policy 2007; and other related instruments.
- 13 Preface in F Leach & C Mitchell (eds) *Combating gender violence in and around schools* (2006).
- 14 B Lopi ‘Gender and poverty in the context of human development, health, education and the MDGs’ presentation at the Commission for Africa-Southern Africa Consultation, Lusaka, Zambia, 13-14 December 2004 3; Mwale (n 8).
- 15 Mwale (n 8).
- 16 See, eg, the adoption of the Promotion of Equality and Prevention of Unfair Discrimination Act 2 of 2000 (Equality Act) and the extension of social security to people of foreign origin, who are permanent residents as envisaged in the *Khosa v Minister of Social Development* 2004 (6) BCLR 569 (CC) judgment.

dispensation. This was indicative and an acknowledgment of the existing disparities between men and women, which compromise the desired goals of achieving substantive gender equality and the elimination of poverty.

Against this background, this chapter provides an overview of the SADC's aspirations on the elimination of gender inequality and reduction of poverty as envisaged in the Protocol on Gender and Development.<sup>17</sup> The chapter adopts a human rights-oriented approach to emphasise the importance of legal reform as a foundation in the advancement of the right to gender equality and elimination of poverty as envisaged in the Protocol. It starts by identifying factors that are a hindrance to the achievement of equality by also attempting to define 'gender equality' and 'poverty', followed by a discussion of the importance of the adoption of the SADC Protocol. This is not a comparative study but a focus on the envisaged aspirations in the Protocol, which are meant to promote gender equality and the elimination of poverty.

## **2 SADC's transformative vision in eliminating gender inequalities and poverty**

### **2.1 Reducing poverty and eliminating gender inequality: A mammoth task**

This part highlights the factors that inhibit the facilitation of the achievement of substantive gender equality and the eradication of poverty. In this way, it sets the tone for the definition of gender inequality and poverty and a reflection on these factors as a hindrance to the transformative vision of the region. By transformation is meant the envisaged change that is needed to correct the manifestation of inequalities that results in poverty, especially in the case of women. In a nutshell, the intention is to show that the identified factors in this part encapsulate the intersection of gender inequality and poverty, which impact negatively on the human rights of women in the SADC region.

Gender equality and the reduction of poverty are fundamental goals of the SADC's aspirations as envisaged in the Protocol that are meant to ensure the empowerment of both men and women.<sup>18</sup> Considering the manifestation of inequalities, it is acknowledged that the goals envisaged in the Protocol endorse the transformative vision that is designed to 'create opportunities for women, disadvantaged and marginalised people and communities so they can participate in, and benefit from, the develop-

17 SADC Protocol (n 9).

18 See art 3(a) of the SADC Protocol which seeks to empower women, eliminate discrimination and achieve gender equality and equity through the development and implementation of gender-responsive legislation, policies, programmes and projects.

ment of their communities and nations'.<sup>19</sup> The transformative vision is linked to the creation of decent jobs, access to resources, the enhancement of the quality of social services, and other related factors. The undertaking to advance a transformed region is borne out by the fact that the region is suffering from great disparities in wealth, which mostly affect the more vulnerable women and children. These groups are affected to a greater extent by poverty and inequality than the rest of the general populace.

The United Nations (UN) Economic Commission for Africa has observed that 'the persistence of poverty, mainly due to lack of economic opportunities, is the root cause of all problems placing women in a vicious circle deepening the already critical areas of access to health, education and political participation'.<sup>20</sup> The progress in advancing women is further derailed by the historic inequalities that subordinate women. The impact of this history makes it difficult to achieve progressive legal reforms that may be designed to be sensitive to women's issues, which, in turn, may permeate and be used as instruments of societal change.<sup>21</sup>

The inequalities compromise and hinder the institutional and social foundations for the right and respect of women's human rights that are essential to facilitate changes in a more meaningful way. They limit the development process – the provision of adequate resources, proper flow of national information and the advancement of freedom – which are needed to undertake the obligations effectively.<sup>22</sup>

Gender inequality is defined as the 'difference between men and women which systematically empower one group to the detriment of the other and impact negatively on the [opportunities that may be available to either of them]'.<sup>23</sup> Patriarchy can be understood as a 'social structure that men and women are highly invested in and reproduce in their everyday interaction and prohibition of certain behaviours for men and women and also structures of access to resources, typically [where] men benefit compared to women, but not all women benefit to the same degree and

19 Foreword by G Fraser-Moleketi 'Investing in gender equality for Africa's transformation' in African Development Bank Group *Investing in gender equality for Africa's transformation*, <http://www.afdb.org/fileadmin/uploads/afdb//Doc> (accessed 13 November 2014).

20 United Nations Economic Commission for Africa Sub-Regional Office for West Africa 'Tracking progress in the implementation of regional and international agendas, including NEPAD and other special initiatives in the sub-region' ECA-WA/ICE.15/2012/05 13.

21 J Kabwila-Kapasula 'Patriarchy and oppression of women in 21st century Africa: A conversation with Adichie and Dangarembga' UNISA public lecture, 12 August 2009; F Cooper 'Conflict and connection: Rethinking colonial African history' (1994) 99 *The American Historical Review* 1516.

22 C Himonga 'Law and gender in Southern Africa: Human rights and family law' in W York, S Bradshaw & SN Ngedwa (eds) *The uncertain promise of Southern Africa* (2000) 275.

23 World Health Organization 'Why gender and health?' <http://www.who.int/gender/genderandhealth/en/index.html>, quoted in M Cornell 'Gender inequality: Bad for men's health' (2013) 14 *Southern African Journal of HIV Medicine*, <http://sajhivmed.org.za/index.php/hivmed/rt/printerfriendly/95/151> (accessed 29 January 2019).

some women may also gain from these relationships'.<sup>24</sup>

Inequality between men and women is of particular concern to the SADC, because of the escalation in and manifestation of

violence against women in different forms, in particular, domestic violence and murder-suicides that have become an urgent priority requiring specific legislation, policy and programme development by the member states. Violence against women which is caused by, among other things, economic inequality between men and women, the acceptance of physical violence to resolve conflicts, lack of independence and control in decision-making not only in household affairs but generally, make women more vulnerable to social stigmatization and rejection because of the lack of education and high levels of poverty.<sup>25</sup>

Other areas of concern include the 'feminisation of poverty and the gendered nature of HIV infections and AIDS-related deaths'.<sup>26</sup> These issues are:<sup>27</sup>

- gender norms relating to masculinity which endorse power imbalances between men and women;
- increased vulnerability of women as a result of restrictive laws and policies as well as adverse cultural norms which perpetuate gender stereotypes; and
- violence against women, which fuels and contributes to the limitation of the law in addressing the socio-political imbalances.

These challenges continue to undermine the progress made by the region in terms of the promotion of gender equality in seeking to eliminate the inequalities and the feminisation of poverty. The transformative ideals of the region are unlikely to be achieved in the near future because of the perpetuation of violence and other forms of abuse and discrimination that subordinate women to the non-fulfilment of their rights.

The perpetuation of gender inequality has a direct link to poverty, which is most extreme in the case of women. Poverty is not an easily-

- 24 A Gibbs, S Willan, A Misselhorn & J Mangoma 'Combined structural interventions for gender equality and livelihood security: A critical review of the evidence from Southern and Eastern Africa and the implications for young people' (2012) 15 *Journal of the International AIDS Society* 2.
- 25 K Njogu & E Orcharson-Mazrui 'Gender inequality and women's rights in the Great Lakes: Can culture contribute to women's empowerment?' [www.unesco.org/new/fileadmin/.../Culture-Womens-Empowerment.pdf](http://www.unesco.org/new/fileadmin/.../Culture-Womens-Empowerment.pdf) (accessed 29 September 2015).
- 26 TA Salomao 'Tracking progress on implementation of the SADC Protocol on Gender and Development with special focus on Part Three Governance Articles 12 and 13 Women in Politics and Decision-Making Positions' (2013) *SADC Gender Monitor* 5; MB Kaundjua 'Gender dimensions of poverty and the Millennium Development Goals (MDGs) in Namibia' University of Namibia. He points out that there is a tendency to 'feminise poverty without reflecting on the role of the institutions and ideologies that create and perpetuate inequality, and consequently subject people to poverty' (5).
- 27 M Geldenhuys, C Kaufulu-Kumwenda, S Nabaneh& and K Stefiszyn 'The African Women's Protocol and HIV: Delineating the African Commission's General Comment on articles 14(1)(d) and (e) of the Protocol' (2014) 14 *African Human Rights Law Journal* 685. C Rakodi 'Evaluation of the strategy for women and gender equality in development cooperation (1997-2005): Country case study: Zambia' (2005) School of Public Policy, University of Birmingham; Mwale (n 8).

defined concept but is determined by

- extreme poverty which implies that the households are unable to meet the basic needs required for survival;
- moderate poverty, which refers to conditions of life in which the basic needs are met, but just barely; and
- relative poverty, which is generally perceived to be a household income level below a given proportion of average national income.<sup>28</sup>

These factors are indicative of the fact that people do not have ‘access to physical, social and economic [means] to sufficient, safe and nutritious food that meets their dietary needs and food preferences for an active and healthy life which entails stability, availability, accessibility and consumption and use of food’.<sup>29</sup> These factors endorse the link of poverty to the insufficiency in resources, which are required to maintain an acceptable standard of life.<sup>30</sup>

Rapoo contends that poverty is exacerbated by:<sup>31</sup>

- external dependency, which maintains the enclave economy of the unjustified differentiation between men and women;
- distributive inefficiencies resulting in the informal sectors having unequal access to productive assets and markets;
- allocative inefficiencies, which make the formal sector unnecessarily capital and technology intensive, while the non-formal sectors tend to be without capital and technology – thus making productivity increases

- 28 JD Triegaardt ‘Poverty and inequality in South Africa: Policy considerations in an emerging democracy’ (2006) ADRU 2, <http://www.dbsa.org/Research/Documents/Poverty%20and%20inequality%20in%20South%20Africa%20Policy%20considerations%20in%20an%20emerging%20democracy.pdf> (accessed 3 October 2014); O Shisana, K Rice, N Zungu & K Zuma ‘Gender and poverty in South Africa in the era of HIV/AIDS: A quantitative study’ (2010) 19 *Journal of Women’s Health* 39. UN-OHRLLS Report entitled ‘State of the least developed countries 2014: Follow-up on the implementation of the Istanbul Programme of Action for the least developed countries’. The report also defines poverty as the inability to meet basic needs, including food, water, safe drinking water, sanitation facilities, shelter, health, education and information; v (executive summary).
- 29 Millennium Developmental Goals Report ‘Assessing progress in Africa towards the Millennium Development Goals: Food security in Africa: Issues, challenges and lessons’ (2013) 21, <http://www.wfdb.org/fileadmin/fileuploads//afdb/DOC> (accessed 13 November 2014).
- 30 K Osei-Hwedie ‘Poverty eradication in Botswana: Towards the realisation of vision 2016’ (2004) 18 *Botswana Journal of African Studies* 7.
- 31 T Rapoo ‘Gender and the “New Africa Agenda”’ (2007) Centre for Policy Studies Brief 49 1-8; N Mbano-Mweso ‘Poverty, women and the human right to water to grow food’ (2014) 15 *ESR Review* 3-6 (she also contends that the ‘co-existence of poverty and gender inequality undermines economic growth and productivity, reinforces the deep inequalities that characterise the current patterns of globalisation and trap vulnerable households in cycles of poverty’ (3)). The Human Development Index Report 2013 entitled ‘The rise of the south: Human progress in a diverse world: Explanatory note on 2013 HDR composite indices’ highlights that the Gender Inequality Index (GII) is reflected in three dimensions, which are reproductive health, measured by maternal mortality and adolescent fertility rates; empowerment, measured by the share of parliamentary seats held by each gender and attainment at secondary and higher education by each gender; and economic activity, measured by the labour market participation rate for each gender (4), <http://hdr.undp.org/sites/default/files/reports/14> (accessed 11 January 2015).

- almost impossible.;
- technical inefficiencies resulting in low technological capabilities, thus limiting the adaptations that can be made to production techniques and the nature of products and services produced [which] in turn, prevent the establishment of value chains [where] levels of productivity of labour, capital and land tend to be low compared to optimal methods of production; and
- extractive industries have further deepened enclave development as the extractive zones became the centre of government and private sector attention and not the basis of diversification [resulting] in the increase in unemployment, deepening of poverty and inequality between and within countries is widening.

With these factors in mind, it is worth emphasising that in the SADC the critical institutional driver of poverty is gender inequality.<sup>32</sup> The tracing of poverty to the foundations of gender inequalities, such as economic imbalances, domestic violence and other related factors, as mentioned above, creates a form of inequality that subjects women to more vulnerability. As expressed by Njogu et al, the foundations of the inequalities are strengthened by the exclusion of women from political and economic decision-making and the aggression of men towards women.<sup>33</sup>

The aggression is also characterised by the ‘expectation that men should be tough, brave and aggressive, frequent fighting or wife beating, institutionalisation and regular occurrence of various crimes against women’.<sup>34</sup> This means that the link between gender inequality and poverty is shaped by a multiplicity of factors, which include, but are not limited to, engagement with power and politics, harmonious rather than conflictual household relationships, and the failure to engage with broader questions of globalisation and economic change.<sup>35</sup>

Generally, it is clear that there is a co-existence of gender inequality and poverty, which is a reflection on the existing inequalities in the entire society. The co-existence of gender inequality and poverty is a form of exclusion of women in the enjoyment of their rights. The interrelationship that exists between gender inequality and poverty highlights the core content of discrimination which is defined in the SADC Protocol as ‘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,

32 O Chabaya, S Rembe & N Wadesango ‘The persistence of gender inequality in Zimbabwe: Factors that impede the advancement of women into leadership positions in primary schools’ (2009) 29 *South African Journal of Education* 235. See also A Porter ‘Extreme poverty set to arise across Southern Africa’ 5 April 2017, Institute of Security Studies, <https://issafrica.org/iss-today/extreme-poverty-set-to-rise-across-southern-africa> (accessed 9 June 2019). Porter points out that by 2040 more than 40 million people are expected to live in extreme poverty because of the pervasive inequality.

33 Njogu (n 24).

34 Njogu (n 24) 8.

35 Gibbs (n 23).



economic, social, cultural, civil or any other field'.<sup>36</sup> Haina is of the view that the definition enables the determination of

- differential treatment, which can be demonstrated as exclusion or favour of a certain sex;
- the rationality that is made for gender preferences; and
- treatment that has a harmful or hurtful purpose or effect.<sup>37</sup>

These factors signify the impact of discrimination on women and its direct link to the continuity of related gender inequalities that usually emanate from traditional prejudices against women, which, for example, relegates their role to that of childbearing.<sup>38</sup> The demotion of women to child bearers was evidenced by the South African Constitutional Court in *Hugo v President of the Republic of South Africa*.<sup>39</sup> Without undertaking an analysis of this judgment, although at face value it appeared to promote the rights of women to equal protection and benefit of the law because of South Africa's historic legacy of inequalities, which were particularly acute against women, the Court indirectly compromised the substantive conception of the rights of women and reduced them to child bearers. The judgment encouraged the conformity of women to behave in a manner that limits their advancement as it perpetuated their socio-political, legal and cultural subordination, which shapes the attitudes and the beliefs about gender roles. The Court advanced the gendered nature of inequalities and poverty. As expressed by Zou, the intersection of inequalities and poverty is demonstrated in 'social institutions and structures, including cultural, legal, social and economic factors, which shape women's ability to socio-economic and political empowerment'.<sup>40</sup>

In essence, the judgment missed an opportunity to equalise men and women in the translation of their equal right to co-responsibility in the upbringing of children. It also focused on the criminal conduct of men instead of the underlying values of equality, which are foundational to South Africa's new constitutional dispensation. The Court entrenched the inequality status between men and women, which is a direct link to the 'co-existence of poverty and gender inequality which compromise the advancement of the democratic participation and changes in socio-economic structures in order to ensure access for all to resources and opportunities'.<sup>41</sup> South Africa's 2013 Country Report on the Millennium Development Goals (MDGs) attributed the co-existence of poverty and gender inequality to the high unemployment rate and low labour force

36 The definition is similarly captured in the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa.

37 L Haina 'The principle of gender equality manifested in China's social security system and relevant problems' in China Society for Human Rights Studies (ed) *Constructing an environment for sustainable human rights development* (2014) 304.

38 Haina (n 37).

39 1997 (6) BCLR 708 (CC).

40 M Zou "'Women hold up half the sky": Engendering the right to development' (2015) *Beijing Forum on Human Rights* 440.

41 Kaundjua (n 25) 12.

participation, where the ratio of population-to-employment remains below the target set, resulting in the 'disturbing trends in terms of the differentiation of poverty outcomes according to generation and gender in particular youth and women who remain disproportionately vulnerable to all forms of poverty defined under MDG 1'.<sup>42</sup>

Notwithstanding the co-existence of poverty and gender inequality and their impact on the elimination of gender inequalities and reduction of poverty, the SADC is determined to become part of the community of nations and to ensure that states take responsibility in terms of implementing gender-sensitive legal reforms.<sup>43</sup>

## 2.2 Towards a transformative region: Advancing the principles of the community of nations

This part emphasises the importance of the adoption of the Protocol as a legal reform that lays the foundation for the facilitation of the elimination of inequalities and the reduction of poverty. It provides an overview of the broad framework without an analysis of the specific provisions of the SADC Protocol.

The quest for the redress of inequalities and the reduction of poverty is widespread recognition by the region of the development of a normative and consensual framework that prohibits gender-based inequalities.<sup>44</sup> As correctly captured by the South African Constitutional Court:<sup>45</sup>

[Gender in]equality and [poverty] cannot be separated, because they are both violated simultaneously by [various socio-political factors]. [Those factors] deny equal respect for [human rights], which lie at the heart of equality, and become the basis for [discrimination]. At the same time, the negation by the state [to eliminate the co-existence of gender inequality and poverty] becomes the foundation for the repudiation of equality. Human rights are better approached and defended in an integrated rather than a disparate fashion. The rights must fit the people, not the people the rights. This requires looking at rights and their violations from a person's-centred rather than a formula-based position, and analysing them contextually rather than abstractly.

42 Statistics South Africa 'Millennium Development Goals Country Report 2013' (2013) 5.

43 Eg, South Africa's National Development Plan 2030 envisions the 'elimination of poverty and reduce inequality ... [wherein] all citizens have the capabilities to grasp the ever-broadening opportunities available [that are designed] to change the life chances of millions of our people, especially the youth; life chances that remain stunted by our apartheid history' (5).

44 R Semafumu 'Report on the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women: Harnessing a potential for positive changes' Oxfam GB Southern African Region Study, [https://www.google.com/search?rlz=1C1GGRV\\_enZA783ZA783&ei=fRYCXeKtNvKc1fAPz\\_aOmAw&q=Prohibiting+gender+inequality+in+the+SADC+region&oq=Pr](https://www.google.com/search?rlz=1C1GGRV_enZA783ZA783&ei=fRYCXeKtNvKc1fAPz_aOmAw&q=Prohibiting+gender+inequality+in+the+SADC+region&oq=Pr) (accessed 12 June 2019).

45 *National Coalition for Gay and Lesbian Equality v Minister of Justice* 1998 (12) BCLR 1517 para 112.

Drawing from the judgment, states are obligated to design and develop effective measures that will address the challenges faced by the region. The responsibility is encapsulated in the SADC Protocol.<sup>46</sup> The Protocol is a benchmark against which the region must ensure the achievement of its intended goals in terms of the elimination of gender inequalities and poverty.

The Protocol seeks to give effect to the long-identified thematic areas, to address the challenges faced by the region.<sup>47</sup> These areas include the

use of gender mainstreaming as an important strategy towards gender equality, engendering all macro-economic policies and procedures, consolidating and creating a synergy between various commitments on gender equality at international and continental levels into a comprehensive regional instrument, developing information and education strategies to widen awareness of the international, regional and national policy frameworks on gender equality among the general populace in SADC, promoting dialogue and discussion on women's human rights and gender equality, strengthening a monitoring mechanism for advancing gender equality, and raising awareness of the gender dimensions of the HIV/AIDS pandemic and violence against women and girls, so that both are viewed as emergencies, requiring appropriate actions to be taken at the national and regional levels.<sup>48</sup>

As Munalula contends, the SADC Protocol is therefore designed as a legal reform that 'should result in increased accountability on the part of the member states on issues of gender equality ... by creating common normative standards ... [that] should empower policymakers, service delivery institutions, human rights activists and beneficiaries of the stated rights with the legal tools to demand and claim gender equality'.<sup>49</sup> The Protocol was adopted against the background of the already-existing legal reforms, which have not achieved and addressed the challenges that continue to plague the region.<sup>50</sup> The region continues to be faced with the

lack of representation of women in parliament, inadequate legal frameworks and existence of contradictions between customary law practices and codified law that prevail and worsen violence against women in the face of emerging trends of violence, the impact of HIV/AIDS on women and the burden of care they shoulder, rising of the abject poverty situation of women which depicts a feminine face, remains of stereotypical attitudes in the society and media which make change of mindset difficult.<sup>51</sup>

Mathiba-Madibela further pointed out that the adoption of the Protocol

46 SADC Protocol (n 9).

47 Report on the SADC Consultative Conference on Gender and Development, Gaborone, Botswana, December 2005: 'Reflecting and re-strategising for gender-based regional integration', [http://www.sadc.int.index.php.download\\_file/view/2686/211](http://www.sadc.int.index.php.download_file/view/2686/211) (accessed 25 November 2015).

48 M Mathiba-Madibela 'Monitoring implementation of the Beijing commitments by SADC member states' (2006) *SADC Gender Monitor* 2.

49 MM Munalula 'SADC Protocol on Gender and Development: Roadmap to equality?' (2011) 1 *SADC Law Journal* 190.

50 See the objectives in art 3(b) of the Protocol.

51 C Lowe-Morna 'From a declaration to a protocol' in SADC Report (n 30); Mwale (n 8).

was strengthened by the

- emergence of new institutional arrangements after the restructuring process;
- limited ability to translate the policies into action – at both regional and national levels;
- lack of capacity at national level to review laws and policies pertaining to gender issues;
- inadequate resources and commitment by institutions and member states stalling the process;
- limited efforts to implement declarations and protocols as a drawback which works against successful implementation; and
- the fact that limited human resources, and a shortage of staff, particularly in the area of gender, continue to be a trend that impedes progress both at sub-regional and national levels.<sup>52</sup>

It is worth emphasising that it is the above context that prompted the adoption of the Protocol and its framing in a human-rights-based approach with its linkage to the state's responsibility to affirm the importance of constitutional and legal rights in the elimination of gender inequalities and the reduction of poverty in the region. The adoption of a human rights-oriented approach envisages the integration of human rights into law and/or policy making in the operationalisation of the regulation of the authority of member states. This is particularly important in the area of eliminating gender inequality and the reduction of poverty because the approach serves as a foundation for the empowerment of people not just to know but to also enforce their rights. On the other hand, to hold those responsible accountable not only for the promotion, protection and respect but the fulfilment of the rights. In essence, the human rights approach is two-pronged as it seeks to advance knowledge and the impact of rights on the recipients while, on the other hand, it requires the norms, standards of the laws, policies and the institutions to be based explicitly on human rights values.<sup>53</sup> The approach endorses the aspirations in the Preamble as it seeks to ensure the 'consolidation and the creation of a synergy between the various commitments on gender equality and equity made at regional, continental and international levels into one comprehensive regional instrument that enhances the capacity to report effectively and also addresses new challenges'.

52 Mathiba-Madibela (n 48). These factors are similarly expressed by Munalula (n 49) 190, by pointing out that the adoption of the Protocol was due to a lack of progress by most SADC countries in meeting targets set under non-binding agreements or pursuing substantive law reform to support gender equality; the importance of the region moving from an era of paying lip-service to regional commitments to one in which they would be compelled to act through the process of an obligatory, action-oriented framework; the clarification of normative expectations for inclusion of and the focus on region-specific manifestations of gender inequality.

53 See Office of the United Nations High Commissioner for Human Rights 'Principles and Guidelines for a Human Rights Approach to Poverty Reduction Strategies' (HR/PUB/06/12) para 15, <https://www.ohchr.org/Documents/Publications/PovertyStrategiesen.pdf> (accessed 12 June 2019).

The broad intention of the region is encapsulated in the objectives of the SADC Protocol, as it envisages to

- provide for the empowerment of women, to eliminate discrimination and to achieve gender equality and equity through the development and implementation of gender-responsive legislation, policies, programmes, and projects;
- harmonise the implementation of the various instruments to which the SADC member states have subscribed at the regional, continental and international levels on gender equality and equity;
- address emerging gender issues and concerns;
- set realistic, measurable targets, time frames, and indicators for achieving gender equality and equity;
- strengthen, monitor and evaluate the progress made by member states towards reaching the targets and goals set out in the Protocol; and
- deepen regional integration, attain sustainable development, and strengthen community building.<sup>54</sup>

These objectives are directly linked to the Solemn Declaration on Gender Equality in Africa, which was adopted by the Heads of State and Government of the African Union (AU).<sup>55</sup> The Declaration commits to and acknowledges the co-existence of gender inequality and poverty as it is 'deeply concerned about the status of women and the negative impacts on women of issues such as the high incidence of HIV/AIDS among girls and women, conflict, poverty, harmful traditional practices, high population of refugee women and internally displaced women, violence against women, women's exclusion from politics and decision-making, and illiteracy, limited access of girls to education'.<sup>56</sup>

This means that Africa, and not only the SADC, had long been concerned about the elimination of gender inequality and poverty as is the case with the international community,<sup>57</sup> as it had already adopted various instruments that are acknowledged in the Preamble of the Declaration as Africa reaffirms its commitment to the principle of gender equality as enshrined in article 4(l) of the Constitutive Act of the AU, as well as other existing commitments, principles, goals and actions, set out in the various regional, continental and international instruments on human and

54 Art 3 Protocol.

55 Adopted at the 3rd ordinary session of the AU Assembly in Addis Ababa, Ethiopia, 6-8 July 2004 (Declaration).

56 See Preamble to the Declaration.

57 Eg, as long ago as in September 1995 the Fourth World Conference on Women held in Beijing, China, produced the Beijing Declaration and Platform of Action which set an international agenda for the promotion of women's human rights, the empowerment of women and gender equality. The Declaration states in no uncertain terms that '[t]he advancement of women and the achievement of equality between women and men are a matter of human rights and a condition for social justice and should not be seen in isolation as a women's issue. They are the only way to build a sustainable, just and developed society. Empowerment of women and equality between women and men are prerequisites for achieving political, social, economic, cultural and environmental security among all peoples', [http://beijing20.unwomen.org/~media/headquarters/attachments/sections/csw/pfa\\_e\\_final\\_web.pdf](http://beijing20.unwomen.org/~media/headquarters/attachments/sections/csw/pfa_e_final_web.pdf) (accessed 29 September 2015).

women's rights. These instruments include the Dakar Platform for Action (1994); the Beijing Platform for Action (1995); the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (1979); the African Plan of Action to Accelerate the Implementation of the Dakar and Beijing Platforms for Action for the Advancement of Women (1999); the Outcome Document of the 23rd Special Session of the United Nations General Assembly on the Implementation of the Beijing Platform for Action (2000); the UN Resolution 1325 (2000) on Women, Peace and Security; and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (African Women's Protocol) (2003).

Drawing from the instruments mentioned above, it is thus concluded that they are given content by the adoption of the SADC Protocol to highlight the progress made by the region in ensuring the narrowing of the inequality gap and the reduction of poverty for both men and women. These instruments acknowledge that gender inequalities in the region – as is the case with the rest of the African continent – require immediate attention to ensure the substantive translation of the legal reform into reality.<sup>58</sup>

For example, article 2(1) of the SADC Protocol requires state parties to harmonise their national legislation, policies, strategies and programmes with relevant regional and international instruments related to the empowerment of women and girls for ensuring gender equality and equity. States are further required to adopt necessary policies, strategies and programmes, such as affirmative action, to facilitate the implementation of the Protocol.<sup>59</sup>

The harmonisation of the Protocol with the already-developed reforms is important for the elimination of the co-existence of gender inequalities and the reduction of poverty. Mlambo-Ngcuka contends that this should

- first, be a moral and ethical imperative which is essential for the determination of the substantive translation of the rights into reality;
- secondly, be the efforts, as evidenced by the adoption of the Protocol in order to achieve a just and sustainable future cannot ignore the rights, dignity, and capabilities of women;
- thirdly, to be effective, policy actions for eliminating inequalities must redress the disproportionate impact on women and girls of economic, social and environmental shocks and stresses;
- fourthly, the women's knowledge, agency, and collective action has a huge potential to improve resource productivity, enhance ecosystem and create more sustainable, low carbon food and energy, water and health systems.<sup>60</sup>

58 Namibia's country report on the African Union solemn Declaration on gender equality in Africa: Ministry of Gender Equality and Child Welfare (2006) 3, [www.genderismygender.com/country\\_report/...reports...namibia\\_report](http://www.genderismygender.com/country_report/...reports...namibia_report) (accessed 10 December 2014).

59 Art 2(1)(b).

60 Preface: P Mlambo-Ngcuka *World survey on the role of women in development 2014: Gender equality and sustainable development* (2014).

She consolidates her argument by affirming that the failure to capitalise on these factors would be a 'missed opportunity because women should not be viewed as victims but as central actors in moving towards the elimination of inequalities and reduction of poverty'.<sup>61</sup> It is deduced from Mlambo-Ngcuka's statement that the SADC Protocol provides for an opportunity for the design of programmes that have the potential to eliminate inequality and reduce poverty. The Protocol further enhances the linkages that correspond to the advancement of strategies that develop an inclusive human rights approach in the elimination of inequalities.<sup>62</sup> The human rights approach entails a broader reform that can have significant benefits for both men and women.<sup>63</sup> For example, Namibia adopted a Gender Policy which is designed to advance a human rights approach in the elimination of gender inequality and the reduction of poverty. This Policy:<sup>64</sup>

- endorses an important principle and a prerequisite for sustainable development and economic growth, which advances equal opportunities and participation, and equitable distribution of resources between men and women;
- encapsulates the concept of gender equality as a human right that should be incorporated in all the programmes that are designed to foster equality between men and women;
- advances gender mainstreaming for the strengthening of women's empowerment and the elimination of gender inequalities in all sectors and institutional policies, laws, and programmes in promoting gender analysis and the use of gender-disaggregated data in order to inform planning and policy development;
- ensures the allocation of resources for a meaningful implementation of gender-related programmes in all sectors through the provision of required budgetary and human resources;
- institutes affirmative measures as the necessary tools to facilitate the process of fast-tracking the achievement of equality;
- recognises customary, cultural and religious practices that guide the way of life among communities, but such practices should not compromise the interpretation, promotion, and protection of the right to gender equality;
- acknowledges the strategic role of men in mitigating gender-based violence;
- entrenches the zero-tolerance for gender-based violence at all levels; and
- establishes the collaboration between various stakeholders in the implementation and monitoring of the developed programmes, in ensuring the achievement of gender equality.

61 Mlambo-Ngcuka (n 60).

62 A Dlamini "'Threads of solidarity" revisited: Gender forums as important sites for contesting gender inequality' (2004) 55 *Transformation* 96; Report of the United Republic of Tanzania: 'Poverty and human development' (2009), Dar es Salaam, Tanzania, <http://planipolis.iiep.unesco.org/upload/Tanzania> (accessed 12 January 2015).

63 H Jansson, B Khumalo & T Shand 'Southern Africa: SADC must engage men for gender equality' 3 March 2014, <http://www.genderlinks.org>GLNEWS>Countries>Mauritius> (accessed 6 October 2014).

64 National Gender Policy (2010-2020) Ministry of Gender Equality and Child Welfare, Windhoek, Namibia 22, <http://www.africanchildforum.org/clr/policy> (accessed 18 January 2015).

Botswana followed the same path by identifying eight critical areas, which are essential for the consolidation of the strategies for the empowerment of women and the reduction of poverty. These areas include:<sup>65</sup>

- women and poverty, including economic empowerment;
- women in power decision making;
- education and training of women;
- women and health;
- violence against women, including women's human rights;
- the girl child;
- women and the media; and
- women and the environment.

South Africa also acknowledges its protracted history of inequalities and adopted the National Development Plan: Vision 2030, as it seeks to eliminate poverty and inequalities by 2030.<sup>66</sup> South Africa is also commended for having adopted and adhered to other regional and international instruments, and the establishment of the 'gender machinery' in government that is aimed at promoting and supporting gender equity, as well as a human rights-based discourse that permeates policy in government and civil society organisations.<sup>67</sup> Considering South Africa's history, the progress so far made advances an unprecedented political and constitutional commitment, which endorses the entrenchment of human rights for both men and women and especially for the prohibition of racial discrimination which characterised the pre-democratic dispensation which had a huge and negative impact, especially on black and rural women.<sup>68</sup>

The judiciary of the Republic of Uganda has adopted a policy entitled 'Gender Policy: Attaining Gender Equality in Access and Treatment by the Judiciary'. The aim of the Policy is to 'provide gender mainstreaming within the judiciary by addressing gender sensitive concerns as an institution and also addressing key gender obstacles to court users, more specifically, [on] access and delivery of justice to females and males and organisational development and management in terms of representation and how the judiciary can be more gender-responsive, gender aware and

65 Botswana country report on the implementation of the Beijing Platform for Action (Beijing Plus 20 years), Gender Affairs Department, Ministry of Labour and Home Affairs, June 2014 8, <http://www.unwomen.org/-/media/.../59/botswana-review-beijing20.ashx> (accessed 18 January 2015).

66 Adopted on 11 November 2011 5, <https://www.gov.za/documents/national-development-plan-vision-2030> (accessed 23 January 2015). H Zarenda 'South Africa's National Development Plan and its implications for regional development' (2013) Trade Law Centre Working Paper 34 D13PW01/2013, Stellenbosch 1-17.

67 R Moletsane 'Looking back, looking forward: Analysing gender equality in education 10 years after Beijing' (2005) 64 *Agenda: Empowering Women for Gender Equity, Beyond Beijing* 80-88.

68 A Westaway 'Rural poverty in South Africa: Legacy of apartheid or consequence of contemporary segregationism?' Paper presented at the conference *Inequality and Structural Poverty in South Africa: Towards Inclusive Growth and Development*, 20 September 2010, Johannesburg, South Africa.



gender-sensitive in its day to day working'.<sup>69</sup>

The strides taken by the identified countries in the region requires an oversight and evaluation of the impact of the developed measures in the elimination of gender inequalities and the reduction of poverty. The quest for the fulfilment of the latter (gender inequality and the reduction of poverty) is driven by:<sup>70</sup>

- first, social factors, which take into account the people's basic human rights and the safeguarding of the vulnerable from poverty and exploitation;
- second, there is the democratic factor, which determines the functioning of the political system in relation to decision-making and implementation, resource distribution, allocation of opportunities and the achievement of justice; and
- third, there is the impact of the global system on the implementation of decisions, not only in the region but also in Africa generally.

These factors contextualise the content of a human-rights approach and, as noted above, broadens a deeper understanding of the rights framework between the governor and the governed. In essence, the development of legal reforms seeks to minimise the long-term effects of inequalities that may not only compromise the integrity of men and women but the broader social fabric and wellbeing of society.<sup>71</sup> The approach intends to translate the formal conception of the legal reform into reality, because of the inability of the legal instruments to change the practical realities faced by the general populace on their own.<sup>72</sup> Women are subordinated because reforms remain on paper without a conception of how they are going to be implemented. The lack of urgency in crafting strategies designed to give content to the reform meant to address the disparities between men and women undermines adopted legal measures. The subordination is perpetuated by what could be referred to as a lack of commitment by member states due to a variety of reasons which they attribute to a lack of resources (both human and financial) in dealing with gender-sensitive policy or legal frameworks.

In the South African context, the inclusion of socio-economic rights in the 1996 Constitution, which rights have a direct impact on the enjoyment of equal rights and the reduction of poverty by women, are internally qualified by 'access to' and the 'progressive nature' of their realisation.<sup>73</sup> The limitation as endorsed in the Constitution has potential for a 'snail-pace approach' in the elimination of inequalities and the

69 Adopted in December 2012 7.

70 n 6.

71 Report of the Committee on African Affairs New York Bar Report entitled 'Gender-based violence laws in sub-Saharan Africa' (2007) 6, <http://www.reproductiverights.org/sites/default/files/doc> (accessed 13 January 2015).

72 C Murray et al 'Women's rights' in R Louw (ed) *South African human rights yearbook* 1996 (1998) Centre for Socio-Legal Studies, University of Natal ISBN: 1-868402754 296.

73 See secs 26 & 27 of the 1996 Constitution.

reduction of poverty. This is the case in Namibia where socio-economic rights are included as 'directives of state policy' and not entrenched in the Constitution, which carries more weight than the policy decisions taken by the state. The position adopted by the two countries constrains the economic advancement of both men and women. It also widens the bridging of the gap in accessing empowerment opportunities that are designed to ensure the balancing of the scales between men and women.

However, the adoption of the SADC Protocol is an acknowledgment of the co-existence of inequality and poverty between men and women. It gives effect to the recognition of the many facets of life that emanate from legal and socio-political factors, which reinforce the unequal power balance in societies. The adoption signifies the 'constitutive element of social relations in general which is expressed along the fabric of relations and institutions through socio-political and legal practices'.<sup>74</sup> It further reinforces the importance of the substantive conception of a designed measure as a political and legal resource that can be used to shape the translation of declarations and protocols into a practical reality.

The region's transformative vision, as endorsed in the SADC Protocol, seeks to give effect to the Millennium Development Goals<sup>75</sup> on the reduction of poverty and the elimination of gender inequalities, to:<sup>76</sup>

- include women in planning, budgeting, and policy-making processes in a meaningful way;
- promote the economic rights and opportunities of women and girls;
- address the gender dimensions of HIV and AIDS;
- strengthen the collection and analysis of gender-disaggregated data; and
- ensure that essential public services such as health and education benefit women, men, girls, and boys equitably.

These factors are essential for the entrenchment of the fundamental human rights of both men and women and not mere socio-political advancement but as an affirmation that:<sup>77</sup>

- ensures equal access to education and the participation in business and economic decision making fully;
- serves as a key driving force against poverty when they are better educated, healthier and with greater access to land, jobs and financial resources;
- increases the earning power of household incomes; and
- translates gender equality into better prospects and reduce the poverty of future generations.

74 Kandijua (n 25).

75 The eight goals adopted at the UN General Assembly 56th session on 8 September 2000 were to be implemented by 2015.

76 Available from [http://www.undp.org?gfe\\_rd=cr&ei=M2FQ](http://www.undp.org?gfe_rd=cr&ei=M2FQ) (accessed 27 October 2014).

77 MDGs (n 29). EISA Research Report 37 'Consolidating democratic governance in the SADC region: Mauritius' (2008).

The above principles seek to redirect the focus of the region on its history of failures, which led to the adoption of the SADC Protocol to the rebuilding of a better understanding of the impact of poverty and gender inequality alleviation strategies that seek to advance the quality of life for all. The adoption of the Protocol was and continues to be a necessity for SADC as a significant instrument in fighting against the inequalities and the subjection of women to poverty, which is encouraged by violations that perpetuate women's subordination.

The main target is to remove all the barriers as highlighted in part 2 of this chapter, that are expressed in unequal power imbalances between men and women that entrench the feminisation of poverty, especially in the rural areas and among the unemployed. The removal of such barriers, in turn, will affirm the legitimacy of the legal reform in the context of the human rights approach, by promoting principles and standards of gender equality.<sup>78</sup>

### 3 Conclusion

This chapter highlighted the importance of the SADC Protocol as a yardstick against which the aspirations for gender inequalities and the reduction of poverty may be eliminated in the SADC region. It defined gender inequality and poverty, which prompted the identification of several factors that continue to plague the aspirations of the region in an endeavour to eliminate these inequalities. It also acknowledged that although progress has been made in the development of legal reforms that are meant to address these challenges, it has been a mammoth task for the region to address the inequalities as evidenced by the plethora of instruments that have been adopted. This resulted in the adoption of the Protocol on Gender and Development, which consolidated the existing instruments in addressing the continued manifestation of the challenges faced by the region. The Protocol is highly regarded as a benchmark against which the performance of the region will be determined in the elimination of inequalities. Considering the factors identified in this chapter, it also remains to be seen whether the Protocol will achieve its intended objectives. This contention is driven by the plethora of other legal instruments not only of the SADC but also in Africa generally, which have not yet yielded the positive results of eliminating gender inequalities and reducing poverty as evidenced by the further adoption of the Protocol in addressing, particularly, women's challenges.

78 N Mohlakoana & J Dugard 'More work for women: A rights-based analysis of women's access to basic services in South Africa' (2009) 25 *South African Journal on Human Rights* 546.

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