

EVENT

Colloquium on the Role of Regional/ Sub-Regional Human Rights Bodies In Advancing Sexual and Reproductive Health and Rights in Africa (28–29 June 2018)

Ebenezer Durojaye

From 28–29 June 2018, the Socio-Economic Rights Project (SERP) at the Dullah Omar Institute (DOI) at the University of the Western Cape, in conjunction with the Kenya Legal and Ethical Issues Network on HIV and AIDS (KELIN), organised a colloquium on the role of regional and sub-regional human rights bodies in advancing sexual and reproductive health and rights (SRHR) in Africa.

It was attended by representatives of regional and sub-regional bodies – namely, the African Commission on Human and Peoples’ Rights, the African Children’s Charter Committee of Experts, and the ECOWAS Court – as well as by civil society groups, academics and delegates of national human rights commissions. Participants hailed from Uganda, Nigeria, Ethiopia, Kenya, The Gambia and South Africa.

The objectives of this two-day event were:

- to review recent developments on SRHR at international, regional and national levels;
- to build the capacity of the personnel of regional and sub-regional human rights bodies on issues relating to SRHR;
- to explore the role of these bodies in ensuring that states are accountable for the realisation of SRHR;

- to foster partnership between these bodies and other stakeholders in order to advance SRHR; and
- to share experiences through case studies about the roles of regional and sub-regional human rights bodies in advancing SRHR.

The colloquium opened with a presentation by Prof Ebenezer Durojaye of the DOI on the evolution of sexual and reproductive health as a cluster of recognised human rights. He said this had come about thanks to a variety of actors, United Nations (UN) processes, international health authorities, and works of feminist scholarship. The presentation traced the history of SRHR from the first International Human Rights Conference in Tehran in 1968 to the International Conference on Population and Development in Cairo, 1994, where a comprehensive definition of sexual and reproductive health rights was adopted.

Prof Durojaye proceeded to explore the link between reproductive health and sexual health, which are often conflated because of a lack of clarity in definitions provided in Cairo in 1994. While there seemed to be some similarity between the two, they should not be treated as one and the same.

Prof Durojaye noted in this regard that the rights to sexual and reproductive health already existed in international and regional human rights instruments. Among the applicable rights are the rights to life, health, dignity, privacy, liberty, non-discrimination, autonomy, and freedom from cruel, inhuman and degrading treatment.

Further sources of the right to sexual and reproductive health include the general comments of UN committees, the concluding observations of treaty-monitoring bodies, reports by UN agencies, and the decisions of national courts and regional human rights bodies.

Thereafter, a presentation by Nkatha Murungi of the African Child Policy Forum dealt with the framework for SRHR under the African human rights system. She explored the protection of SRHR in Africa from 1980 to date, the conceptual frameworks and normative standards regarding SRHR, and several key issues.

Ms Murungi observed that the normative framework has changed significantly, having seen a move from an era of total silence to an era in which there is a multiplicity of frameworks, including provisions in the African Charter, the African Charter on the Rights and Welfare of the Child, the Maputo Protocol, and the African Disability Protocol, and some clarifications provided thereto.

Her presentation drew attention to issues that had to be taken more seriously. For instance, SRHR had to be considered throughout a person's entire life cycle as opposed to only at the reproductive stage. Also, sexual rights have been categorised purely as health rights, and there are questions about the autonomy of children in SRHR matters. Furthermore, most African frameworks on SRHR are tailored for the married heterosexual female, an orientation excluding alternative perspectives from coming to light in discussions that are under way about the continent's approach to SRHR.

Other issues have to do with policies on SRHR



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for persons, and particularly so women, with disabilities; a bias towards reproductive services that overshadows other aspects of SRHR; the role of men and boys in the SRHR discourse in Africa, both as enablers and barriers; the medicalisation of sexuality; and adolescent sexuality in Africa.

The next presentation was by Obi Nnamuchi of the University of Nigeria, who considered the nexus between the Sustainable Development Goals (SDGs) and the right to health. He said each of them has important elements of health embedded in them, given that health is closely linked to poverty, the focus of the SDGs: poverty is both a cause and effect of poor health.

In the discussion that followed the presentations, it was noted that there is need for continued discussion about the distinction between reproductive health and rights, on the one hand, and sexual health and rights, on the other. The continuing barriers to the realisation of SRHR in Africa were also discussed. These include ignorance, the influence of culture and religion, the politicisation of SRHR, and Africa's dearth of experts in this field.

The second panel, devoted to specific SRHR issues, commenced with a presentation by Sasha Stevenson of Section 27, who examined the factors that led to the Life Esidimini tragedy. She emphasised the importance of advocacy and media coverage in highlighting the human rights violations that occurred.



Studies on involving men in SRHR showed positive outcomes for men, their partners and their children

In her presentation, Dr Daphine Agaba of the School of Public Health at the University of the Western Cape, considered the role of the Health Ombudsman in ensuring accountability in the health-care setting. Using the Life Esidemi events as a case study, she said the Health Ombudsman is a recent creation under South African law, having been established by the National Health Amendment Act of 2013 within the Office of Health Standards Compliance (OHSC) to monitor misconduct by health-care providers and human rights violations experienced by patients in health-care setting.

Dr Agaba noted that the Life Esidemi tragedy led to a thorough investigation and the release of a detailed report by the Ombudsman, entitled *The Circumstances Surrounding the Deaths of Mentally Ill Patients: Gauteng Province*. This report was instrumental in triggering a chain of events that led to adequate redress and compensation for the patients concerned as well as for the families of those who died. The report points to important opportunities for strengthening accountability mechanisms in the health setting.

The presentation by Sibusiso Mkwanzani of Wits University focused on the role of men in realising SRHR in Africa and said they could be involved in SRHR discourse in several ways:

- As clients: This entails increasing the

number of men accessing SRHR services.

- As equal partners: Through education, men could have an increased awareness of the SRHR of women external and internal to their relationships.
- As advocates of change: Men could mobilise other men's involvement.

She noted that studies on involving men in SRHR showed positive outcomes for men, their partners and their children. These outcomes include improving men's sexual health; increasing condom use; delaying sexual debut; decreasing the likelihood of multiple concurrent sexual partners; the promotion of gender equality and open sexual decision-making between partners; and decreased tolerance of gender-based violence, leading to increased willingness to do and take responsibility for domestic chores.

Dr Mkwanzani said, however, that barriers remained to men's involvement in the realisation of SRHR. These were of two kinds:

- barriers at the individual level, stemming from a low income and limited education and awareness; and
- barriers at societal and community levels, deriving from health-facility-related factors and socially inculcated perceptions.

Important questions were raised during the discussion. What were the costs of directing SRHR programming to men? How could the issue of involving men in SRHR be escalated to the regional level, especially in terms of policy-making? How could accountability in the maternal mortality sector be utilised?

The next panel, on the theme of regional and sub-regional human rights experiences, began with a presentation by Chrispine Sibande (University of Pretoria) on the legal and human rights issues of sex work in Africa. He examined laws on sex work across African countries, describing them as relics of colonialism and saying that the majority of the laws penalised activities related to sex work; a few permitted

them, and others occupied an in-between space.

He summarised his findings as follows:

- Sex work is illegal in Angola, Burundi, Cameroon, Comoros, Djibouti, DRC, Egypt, Equatorial Guinea, Gabon, Gambia, Ghana, Guinea, Liberia, Mauritania, Niger, Morocco, Sudan, Rwanda, Seychelles, South Africa, Sudan, Swaziland, Tanzania, Uganda and Zimbabwe.
- Sex Work is legal in Algeria, Benin, Botswana, Burkina Faso, Central African Republic, DRC, Ethiopia, Ivory Coast, Madagascar, Malawi, Mali, Mauritius, Mozambique, Namibia, Reunion Island, Sierra Leone, South Sudan and Togo.
- Sex work has mixed status: It is illegal in Nigeria's northern states, but legal in its southern states.
- Sex work is legal and regulated in Eritrea, Tunisia and Senegal.
- There are no laws at all in this regard in Cape Verde and Guinea Bissau.
- Other legal issues relate to buying sex, brothels, procuring and solicitation. Some countries have laws specifically regarding one or more of these ... so sex work may be legal or illegal: the situation is unclear.

Thereafter, Martha Tukahriwa (The Strategic Initiative for Women in the Horn of Africa) gave a presentation entitled 'Strategies for addressing child marriage in the Horn of Africa'. Using the 'Noura' case as the basis for her talk, she highlighted the prevalence of child marriage in the Horn of Africa and efforts being taken to address it.

Noura was a victim of child marriage and suffered persistent abuse and forced sexual acts at the hands of her much older husband, until she defended herself one day by stabbing him to death. She was charged and convicted for murder under article 130 of Sudan's Criminal Act, but her conviction is being challenged at a higher court. The Noura case illustrates the

complexity of child marriage as a cultural and religious issue.

Ms Tukahriwa identified drivers of child marriage, among them poverty, lack of education, a weak legal framework, and gender inequality. She recommended law reform, along with the ratification and domestication of regional and international human rights instruments regarding women and children.

Sibongile Ndashe of the Initiative for Strategic Litigation in Africa (ISLA) focused on the role of regional human rights bodies in addressing violence against women in a presentation entitled 'Addressing violence against women as a human rights violation in Africa'. In particular, she examined various decisions of both the African Commission on Human and Peoples' Rights and the ECOWAS Court on violence, arguing that these human rights bodies have taken a less than satisfactory approach.

Referring to the cases of *Doebbler v Sudan and Equality Now v Ethiopia* (the African Commission) and *Njemanze and Others v Nigeria* (ECOWAS), Ms Ndashe said that – contrary to the approach of the CEDAW Committee and the broad definition of discrimination under the Maputo Protocol – the two human rights bodies had failed to recognise violence against women as a form of discrimination.

She recommended in conclusion that regional human rights bodies do much more to develop jurisprudence that regards violence against women in this light.

Teddy Namatovu (Makerere University) made a presentation on sexuality education as a human rights challenge. Taking Uganda as a case study, she examined some objections to sexuality education and said most of them are untenable, noting that the right to sexuality education can be grounded in existing rights such as the rights to information, education, health, dignity, privacy and life.

Ms Namatovu applauded Uganda's recent National Framework on Sexuality Education as

a welcome development in that it adopted UNESCO's definition. However, she identified certain problems in the document stemming from its emphasis on culture and religion and their interpretation of gender identities, roles and expectations.

The second day of the colloquium featured presentations honing in on different aspects of SRHR. Tambudzai Gonese (Southern African litigation Centre) delivered the presentation, 'Lessons from SRHR litigation in the SADC region', which looked at good practices in using litigation to secure SRHR in southern Africa.

Similarly, Linda Kroger (KELIN), in a contribution entitled 'SRHR as a tool for accountability in East Africa: The Kenyan example', showed how litigation has been used to hold the government accountable on HIV and TB issues in Kenya.

Ciara O'Connell in turn drew lessons from the SRHR experience of the Inter-American Court and Commission, notably the Court's decision in *IV v Bolivia* relating to forced sterilisation.

Other presentations dealt with the potential of the African Commission, African Court and African Committee of Experts on the Rights and Welfare of the Child to advance SRHR.

Vinodh Jaichand, an independent consultant, presented 'An analysis of the jurisdiction of the African court and the potential to realise the right to health', noting that the Court is yet to address any case on SRHR but may be called upon to do so in future. He said that one of the barriers to accessing the Court is the need for a declaration by a state before individual cases could be brought to the Court against the state.

In a paper entitled 'The Expert Committee on the Rights and Welfare of the Child and SRHR', Ayalew Assefa explored the many opportunities available to the Committee to advance the SRHR of children and adolescents in the region. These include issuing a general



Useful suggestions for the way forward ... include building the capacity of regional human rights bodies on SRHR issues

comment on ending child marriage and letters of urgent appeal to states where massive violations occur. He noted, however, that the Commission is faced with challenges ranging from political interference to a shortage of funds and skilled officers.

The last two presentations of the day were by Suzanne Shatikha of the Kenyan National Human Rights Commission, who discussed the activities this institution has carried out to advance SRHR, and Berry Nibogora (AMSHER), whose paper, 'Advocating for the rights of key populations in Africa: Challenges and prospects', explored some of the strategies that have been used in overcoming challenges to addressing the SRHR issues of key populations in the region.

At the end of the colloquium, participants offered useful suggestions for the way forward. These include continuing to build the capacity of regional human rights bodies on SRHR issues; exploring strategic litigation on SRHR at the regional level; working to galvanise greater political will and budgetary allocation by African governments; learning from the experience other jurisdictions have had with SRHR litigation; and conducting advocacy on non-conventional SRHR issues.