

Chapter

5

Wordsmiths at work: The power of research and drafting



Taking Note - Bookie Kgetusigile-Mujura (left) and Gladys Mutukwa. PHOTO: COLLEEN LOWE MORNA

Throughout the nine lives (or drafts) of the Protocol, the Alliance played a critical watchdog role through gathering information and contributing to the drafting of the Protocol, salvaging critical clauses and fighting for the strongest possible language. But as these types of things go, you win some and you lose some. This chapter examines the processes leading up to the initial drafting of the Protocol as well as analysis of the drafting steps, highlighting the importance of being present and represented during this process. The chapter also covers the gains and losses throughout the drafting stages.

Audits and accountability

In 2005 six regional organisations¹ embarked on an audit to review the extent to which SADC member states had begun to deliver on commitments, through regional and international instruments that they had signed, towards advancing the rights of women and achieving gender equality.

The year 2005 was significant for several reasons:

- It was the 25th anniversary of SADC.
- It was the tenth anniversary of the Fourth World Conference on Women in Beijing.
- It was the deadline set in the SADC Declaration on Gender and Development for the achievement of 30% women in all areas of decision-making.
- In September, leaders from around the world were going to review progress towards the implementation of the MDGs five years after their adoption.

A collaborative effort between the participating NGOs, SADC Gender Unit and SADC Parliamentary Forum, the audit covered the eight themes identified in the various instruments as the main areas for advancing gender equality. These areas were: constitutional and legal rights, governance and women in decision-making, economic empowerment, education, violence against women, health

and reproductive rights, including HIV and AIDS, media and communication and institutional arrangements.

The papers were produced by the contributing organisations in line with their areas of expertise, thereby ensuring the relevance and quality of the findings.

The audit took place in three in main steps:

- Comparing the existing provisions and gaps in the key instruments for achieving gender equality including the SADC Declaration on Gender and Development (SDGD); the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (the African Protocol); Beijing Declaration and Platform for Action (BPFA); Convention for the Elimination of All Forms of Discrimination Against Women (CEDAW); as well as the Millennium Development Goals (MDGs).
- Measuring performance by each country against this "package" of commitments.
- Proposing areas and targets for inclusion in the new Protocol.

The audit found that while there has been progress in Southern Africa in all of the eight areas listed above, the audit highlighted the following key gaps:

- Despite several elections in SADC countries over the two years (2003-2005), the average representation of women in the parliaments of the region stood at 20 percent in 2005 when the audit was conducted. Only two countries (South Africa and Mozambique) had achieved the 30 percent target and only one other (Tanzania) was likely to achieve the target before the end of 2005.
- Laws, systems and services for addressing gender violence are inadequate. New forms of gender violence, such as trafficking, are on the rise.
- In virtually every country there are contradictions between customary law and codified law when it comes to women's rights. These contradictions are not addressed in Constitutions.

- Women, and especially young women, are the majority of those living with HIV/AIDS, the pandemic which more than any other has preyed on the gender disparities in the region and added to the already huge burden of care that women shoulder.
- In most countries, poverty is on the rise and increasingly has a feminine face.
- While there has been some progress in raising awareness and challenging gender stereotypes in the media and popular culture, as well as engaging men as partners, the battle to change mindsets is still far from won.
- Effective implementation, monitoring and evaluation of gender policies,

programmes and activities continue to elude those charged with the responsibility of accounting to the public as the gap between policy and practice seems to widen.

The table that follows shows the gaps and challenges that were identified by the audit, the recommendations made for the draft Protocol and the provisions and targets in the SADC Protocol on Gender and Development which was adopted on 17th August 2008.

1. Gender Links (GL), Gender and Media Southern Africa Network (GEMSA), Media Institute of Southern Africa (MISA), Women and Law in Development in Africa (WILDAF), SARDC/ WIDSAA and SaFAIDS.

Table two: THE SADC PROTOCOL ON GENDER AND DEVELOPMENT PROTOCOL FROM A DECLARATION TO A PROTOCOL

GAPS AND CHALLENGES IDENTIFIED BY 2005 AUDIT	RECOMMENDATIONS MADE	PROVISIONS IN THE PROTOCOL ADOPTED 17 AUGUST 2008
CONSTITUTIONAL AND LEGAL RIGHTS		
<ul style="list-style-type: none"> • Affirmative action: There is no explicit reference in the instruments to legal and/or constitutional provisions for affirmative action as a way of redressing gender imbalances. • Age of majority: This is not adequately covered in the instruments, despite the fact that early marriages and young motherhood enhance the risk of problems in childbirth and limit the prospects for economic and self fulfilment among women. • Customary law reigns supreme: Twelve out of the 13 Southern African countries (except Mauritius) have a dual legal system, with customary law governing the every day lives of the majority of women in the 	<ul style="list-style-type: none"> • All discriminatory legislation to be expunged by 2015. • Constitutional reviews and amendments to enshrine gender equality in the Constitutions of all member countries that have not done so by 2010. • Constitutions to state that provisions for gender equality take precedence over customary law by 2010. • Minority status of women abolished by 2010. • Set out women’s rights to bodily integrity and autonomy; security of person and reproductive choice. • Legislation to eliminate harmful practices e.g. FGM. • Standardise maternity provisions to three months paid leave. 	<p>Article 4: Provides for all Member States to enshrine gender equality in their Constitutions. It requires State Parties to adopt and implement legislative measures to eliminate practices that negatively affect the fundamental rights of women and men.</p> <p>Target 1: ✓ By 2015 enshrine gender equality and equity in their Constitutions and ensure that these are not compromised by any provisions, laws or practices.</p> <p>Article 5: Provides for affirmative action to eliminate barriers which prevent women from participating meaningfully in all spheres of life.</p> <p>Article 6: requires that Member States review, amend and or repeal all discriminatory laws as well as enact and enforce legislation to ensure equal access to justice and</p>

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<p>region. Only two countries (South Africa and Namibia) have made it clear in their Constitutions that where there is a conflict between the two legal systems.</p> <ul style="list-style-type: none"> • Marriage turns women into minors: Only seven of the 12 Southern African countries have passed laws giving women and men equal rights in marriage. 		<p>protection before the law.</p> <p>Target 2: ✓ By 2015 review, amend and or repeal all discriminatory laws.</p> <p>Target 3: ✓ By 2010, abolish the minority status of women.</p> <p>Article 7: Provides for State Parties to put in place legislative measures which promote and ensure the practical realisation of equality for women.</p> <p>Article 8: Provides for legislative or administrative measure to be taken to ensure that women and men enjoy equal rights in marriage and that they are regarded as equal partners in marriage.</p> <p>Article 9: Members States to adopt legislation and other provisions to protect persons with disabilities taking into account the particular vulnerabilities of women with disabilities.</p> <p>Article 10: Provides for the rights of widows and widowers</p> <p>Article 11: Provides for laws, policies and programmes to be adopted to ensure the development and protection of the girl and boy child.</p>
GOVERNANCE		
<ul style="list-style-type: none"> • Lack of timeframes beyond 2005: The weakness of the AU position is that it does not have any time frames; while that of the SDGD is that it has no timeframes beyond 2005. • Narrow political focus: The MDGs, that are commanding centre stage in current UN and global efforts, have only one indicator on decision-making as part of the provision on gender equality: women's equal 	<ul style="list-style-type: none"> • Define governance to include: the executive (cabinet, the public service); the legislature (national, regional, provincial, local) the judiciary; political parties; diplomacy and international relations; the media, private sector, civil society. • Target of 50% in all areas of decision-making by 2020 with an incremental approach adopted by each country. 	<p>Article 12: Provides for the equal representation of women in all areas of decision-making, both public and private and suggests that this target be achieved through Constitutional and other legislative provisions, including affirmative action.</p> <p>Target 4: ✓ By 2015, 50 percent of decision-making positions in all public and private sectors are held by women including through the use of affirmative action measures provided for in Article 5.</p>

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<p>representation in national parliaments. This is not only a narrow interpretation of decision-making; it is a narrow interpretation of political decision-making.</p> <ul style="list-style-type: none"> • Fixation with numbers: The SDGD, which is the best known instrument in the region in the area of decision-making because of the 30 percent target, focuses narrowly on numbers with no regard for effective participation. This includes ensuring that women have access to leadership positions within decision-making structures and can input effectively into policy processes. 	<ul style="list-style-type: none"> • Those that have achieved the thirty percent in any area of governance to aim to achieve 50% by 2015 or earlier. • Those that have not achieved the thirty percent to aim to achieve this by 2015 or earlier. • All members to take measures to ensure effective participation of women in decision-making and adopt indicators for achieving this. • Develop indicators on the qualitative difference that gender and good governance make. • All members to draw up an action plan for achieving the above targets and indicators by August 2007. • Annual reports on progress towards achieving these targets. 	<p>Article 13: Provides that Member States should adopt specific legislative measures and other strategies to enable women to participate effectively in electoral processes and decision-making by, amongst others, building capacity, providing support and establishing and strengthening structures to enhance gender mainstreaming.</p>
EDUCATION AND TRAINING		
<ul style="list-style-type: none"> • The African Protocol is the only instrument that addresses gender violence in schools. • None of the instruments address the importance of sex education and youth friendly sexual and reproductive health facilities. • None of the instruments address the responsibilities of adolescent and young fathers, nor what school policy should be towards them. • None of the instruments address the obstacles to good performance by girls, including their dual role as learners and care givers at home, especially in the era of HIV/AIDS. 	<ul style="list-style-type: none"> • Eliminate gender disparity in primary and secondary education, preferably by 2005, and at all levels of education no later than 2015 (MDGs). • Eradicate illiteracy by 2020. • Introduce state supported child development in all members by 2020. • Eliminate stereotypes in educational curricula and school activities. • Set targets for eliminating gender bias in subjects appropriate to the national situation. • Start campaigns on, and end gender violence in schools by 2020. 	<p>Article 14: Provides for equal access to quality education and training for women. It further provides for the adoption and implementation of gender sensitive educational policies and programmes addressing gender stereotypes in education and gender based violence in education.</p> <p>Target 5: ✓ By 2015, enact laws that promote equal access to and retention in primary, secondary, tertiary, vocational and non-formal education in accordance with the Protocol on Education and Training and the Millennium Development Goals.</p> <p>Target 6: ✓ By 2015 adopt and implement gender sensitive</p>

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<ul style="list-style-type: none"> None of the instruments address state support for pre-school which research shows is critical for women's effective participation in the labour force as well as for early child development. 		<p>educational policies and programmes addressing gender stereotypes in education and gender-based violence, amongst others.</p>
PRODUCTIVE RESOURCES AND EMPLOYMENT		
<ul style="list-style-type: none"> There is scant reference in the instruments to the gender dimensions of international trade and globalisation. Only the African Protocol refers to the need to recognise non-remunerated work but does not say how or when, and in what way this should inform policy formulation. While there is reference in most of the instruments to supporting women in the informal sector, this is based on the premise that women are destined to remain in Small and Medium Enterprises (SME's). Despite the several gender budget initiatives globally, many of which have been piloted in the SADC region, there is no reference to policies and tools for ensuring gender sensitive resource allocations in the various instruments. 	<ul style="list-style-type: none"> Reduce by half the proportion of people living on less than a dollar a day and or suffer from hunger (MDGs). End the disproportionate presence of women among the poor by 2015. End all discrimination against women with regard to property rights by 2015. Take measures to minimise the negative impact of globalisation on women and to maximise new opportunities. All members to conduct time use studies by 2010; adopt policy measures for reducing the burden of the dual role played by women. Frameworks for analysing budgets and resource allocations from a gender perspective that include: specific initiatives to empower women; employment-equity related allocations; gender sensitivity in the allocation of resources within and between sectors (Annex on gender budgeting). All departments to state in their budget submissions what they are doing to achieve gender equality. Budgets to contain an annex on gender awareness in the 	<p>Article 15: Provides for the equal participation of women in economic policy formulation and implementation as well as ensuring gender sensitive and responsive budgeting.</p> <p>Target 7: ✓ By 2015 ensure equal participation of women and men in policy formulation and implementation of economic policies.</p> <p>Article 16: Recognises the multiple roles of women.</p> <p>Target 8: ✓ By 2015 conduct time use studies and adopt policy measures to ease the burden of the multiple roles played by women.</p> <p>Article 17: Provides and targets around economic empowerment, entrepreneurship and stipulations on trade policies.</p> <p>Target 9: ✓ By 2015 adopt policies and enact laws which ensure equal access, benefit and opportunities for women and men in trade and entrepreneurship, taking into account the contribution of women in the formal and informal sectors.</p> <p>Target 10: ✓ By 2015 review national trade and entrepreneurship policies, to make them gender responsive.</p> <p>Target 11: ✓ By 2015, and with regard to the affirmative action</p>

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	<p>allocation of resources.</p> <ul style="list-style-type: none"> • Safety nets and social service programmes that are easily accessible and monitoring mechanisms to measure the impact of economic policies on targeted beneficiaries. • Ensure that women have equal access to credit by 2015. • Support women to become entrepreneurs; not just in the Small to Medium Enterprise (SME) sector. 	<p>provisions in Article 5, introduce measure to ensure that women benefit equally from economic opportunities, including those created through public procurement processes.</p> <p>Article 18: Makes provision for policies and laws around access to, control of and benefit from productive resources.</p> <p>Target 12: ✓ By 2015, review all policies and laws that determine access to, control of, and benefit from, productive resources by women.</p> <p>Article 19: Provides for reviewing, amending and enacting laws and policies that ensure women and men have equal access to wage employment in all sectors of the economy. It also provides for equal employment benefits for women and men, including maternity and paternity leave.</p> <p>Target 13: ✓ By 2015, review, amend and enact laws and policies that ensure women and men have equal access to wage employment in all sectors of the economy.</p>
GENDER BASED VIOLENCE		
<ul style="list-style-type: none"> • Gender based violence is now accepted as one of the “leading factors for HIV infection” (UNAIDS <i>et al</i>, 2004:47). Yet none of the commitments make any reference to the legal provision of PEP, a course of anti-retroviral drugs that can help to reduce the likelihood of HIV infection after a sexual assault. This shortfall is disturbing given the high prevalence of HIV/AIDS in the Southern Africa region. 	<ul style="list-style-type: none"> • All members to adopt specific legislation on gender violence, including trafficking, by 2010. • Add a section on the relationship between gender violence and HIV/AIDS and the need for laws to ensure that all health facilities are able to administer Post Exposure Prophylaxis or PEP. • Include social, economic, cultural and political provisions in the Addendum. 	<p>Article 20: Makes provision for the implementation of a variety of strategies, including enacting, reviewing, reforming and enforcing laws, aimed at eliminating all forms of gender based violence. There are specific stipulations for the provision of a comprehensive package of treatment and care services for survivors of gender based violence, including the access to Post Exposure Prophylaxis and the establishment of special courts to address these cases. There</p>

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<ul style="list-style-type: none"> • Monitoring and evaluation: Whilst provision is made in the Addendum for ensuring that “all these measure are implemented in integrated manner by all stakeholders”, no mention is made of mechanisms to be used in evaluating whether the provisions have been implemented. • Lack of specific GBV legislation. • Lack of specific laws addressing, or reference to, trafficking. • Weak legal provisions on sexual harassment. • Traditional norms and religious beliefs. • Limited State support for legal aid. • Limited State support for places of safety. • Lack of coordination and resources. • Lack of effective regional monitoring of the Addendum. 	<ul style="list-style-type: none"> • Services, including rehabilitation of offenders. • Education, training and awareness building, including working with men as partners. • Integrated approaches, including institutional cross-sector structures in each country for ending gender violence. • Budget and resources (all gender violence legislation to be costed and a specific allocation made in the budget for combating gender violence.) • Monitoring and evaluation: Construct a composite index for measuring reduction in violence against women; halve current levels by 2020. 	<p>are specific provisions on human trafficking.</p> <p>Target 14: ✓ By 2015 enact and enforce legislation prohibiting all forms of gender-based violence.</p> <p>Target 15: ✓ By 2015 ensure that laws on gender based violence provide for the comprehensive testing, treatment and care of survivors of sexual offences.</p> <p>Target 16: ✓ By 2015, review and reform their criminal laws and procedures applicable to cases of sexual offences and gender based violence.</p> <p>Target 17: ✓ By 2015 enact and adopt specific legislative provisions to prevent human trafficking and provide holistic services to the victims, with the aim of re-integrating them into society, among others.</p> <p>Article 21: Provides for the review, and eradication of traditional norms, including social, economic, cultural and political practices and religious beliefs, which legitimise and exacerbate the persistence and tolerance of gender based violence.</p> <p>Article 22: Provides for legislation which defines and prohibits sexual harassment to be adopted and enforced.</p> <p>Target 18: ✓ By 2015, enact legislative provisions, and adopt and implement policies, strategies and programmes which define and prohibit sexual harassment in all spheres, and provide deterrent sanctions for perpetrators of sexual harassment.</p> <p>Article 23: Sets out the services that States should provide to survivors of gender-based</p>

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		<p>violence, including information on services available, accessible, effective and responsive police, prosecutorial, health, social welfare services, accessible, affordable and specialise legal services, specialised facilities and support mechanisms and effective rehabilitation and re-integration programmes for perpetrators.</p> <p>Article 24: Provides for gender education and training of all service providers involved in gender based violence as well as community sensitisation programmes regarding available services and resources for victims of gender based violence.</p> <p>Article 25: Recommends the adoption of integrated approaches a method for reducing gender-based violence.</p> <p>Target 19: ✓ By 2015 adopt integrated approaches, including institutional cross sector structures, with the aim of reducing current levels of gender based violence, by half.</p>
HEALTH		
<ul style="list-style-type: none"> • The provisions on health are heavily biased towards the reproductive health of women. They do not define health holistically nor mention other health needs of women. • The provisions make little reference to the health needs of men, e.g. prostate cancer which afflicts a large number of men in the region. • The rate of maternal mortality has remained steady. • Few of the member states 	<ul style="list-style-type: none"> • Define health to encompass a state of well being; note that women’s health is broader than reproductive health. • Set targets for access to primary health care. • Reduce by three quarters, between 1990 and 2015 the maternal mortality ratio (MDG’s). • Ensure universal access to and use of contraceptives by 2015. • Provide gender and youth friendly access to sexual and reproductive health 	<p>Article 26: Provides for the adoption and implementation of policies and programmes that address addressing the maternal, sexual and reproductive health needs of women of women with a specific target on reducing the maternal mortality ratio.</p> <p>Targets 20-23: ✓ By 2015, in line with the SADC Protocol on Health and other regional and international commitments, adopt and implement legislative frameworks, policies, programmes and services to</p>

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<p>provide reproductive health services free of charge.</p> <ul style="list-style-type: none"> • Often family planning is seen as a “women’s issue”. Men are rarely involved. • The decision to terminate a pregnancy is restricted by legislation in many countries. • Information is often not accessible or relevant, as it is not produced in indigenous languages and for the specific target audience. • The needs of marginalised women are often ignored. 	<p>services free of charge.</p> <ul style="list-style-type: none"> • Greater access to high quality and relevant information targeting the reproductive and sexual rights and services for women and girls. This includes providing information in all vernacular languages, Braille and sign language. • Policies and programmes that address the sexual, reproductive and other health needs of women in vulnerable situations such as prisons, internal displacement camps, refugee camps, elderly women and women with disabilities. 	<p>enhance gender sensitive, appropriate and affordable quality health care, in particular to:</p> <ul style="list-style-type: none"> ✓ reduce the maternal mortality ratio by 75% by 2015 ✓ develop and implement policies and programme to address the mental, sexual and reproductive health needs of women and men; and ✓ ensure the provision of hygiene and sanitary facilities and nutritional needs of women, including women in prison.
HIV and AIDS		
<ul style="list-style-type: none"> • Although the HIV and AIDS epidemic represents the greatest development challenge in the SADC region, few provisions are made specifically related to protecting women and girls from HIV infection. • The MDG provision on HIV and AIDS is broad, covering “HIV/AIDS, Malaria and other diseases”. It makes no reference to gender. • Few of the national policies have specifically addressed the linkages between gender inequality and HIV/AIDS despite the increasing feminisation of the pandemic. • There is limited gender data on VCT services. • The PMTC approach has ignored the role and plight of fathers of infected children, prompting more progressive organisations to talk instead of PPTCT 	<ul style="list-style-type: none"> • Research on preventive methods and information targeted at women. • Preventive messages that address imbalances in power relations; target men, especially “sugar daddies.” • Involving People Living with AIDS (PLWA), and especially women, in public awareness campaigns. • Providing information and services to vulnerable groups including sex workers, truck drivers, miners, migrant labourers, and men who have sex with men. • Reducing stigma and discrimination, and the related gender violence, through an open, frank and human rights driven approach. • Providing legal support to those (and especially women) who experience stigma and discrimination. 	<p>Article 27: Provides for prevention, treatment care and support in accordance with, but not limited to, the Maseru Declaration on HIV and AIDS.</p> <p>Targets 24-26: By 2015:</p> <ul style="list-style-type: none"> ✓ Develop gender sensitive strategies to prevent new infections. ✓ Ensure universal access to treatment for women, men and children infected by HIV and AIDS ✓ Develop and implement policies and programmes to ensure the appropriate recognition, psychological support and allocation of resources to the work carried out by caregivers, the majority of whom are women; as well as promote the involvement of men in the care and support of People Living with Aids.

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<ul style="list-style-type: none"> • There is limited data on who is accessing ARVs. • Home-based care has been viewed as a panacea for caring for People Living with AIDS. 	<ul style="list-style-type: none"> • Increasing the number of VCT and PMTC services and encouraging women to use these services. • Ensuring that HIV positive women who have given birth and their partners have access to comprehensive ARV treatment programmes. • Counselling HIV positive parents who wish to have children on their options. • Equal access by women and men to ARVs; use of gender disaggregated data in monitoring to ensure that this is the case. • Spelling out and providing for the sexual and reproductive health needs of PLWA. • Measuring and recognising the additional burden of care shouldered by women and girls as a result of HIV/AIDS; using this to inform policies. 	
PEACE BUILDING AND CONFLICT RESOLUTION		
<p>This issue was not covered in the initial audit.</p>		<p>Article 28: Provides for the equal representation of women in conflict resolution and peace building processes as well as the integration of a gender perspective in the resolution of conflict in the region. It makes further provision for the treatment of human rights abuses in times of conflict.</p> <p>Target 27: ✓ By 2015 put in place measures to ensure that women have equal representation and participation in key decision-making positions in conflict resolution and peace building processes, in accordance with UN Council Resolution 1325 on Peace Building, Peace-making and Peace keeping.</p>

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MEDIA, INFORMATION AND COMMUNICATION		
<ul style="list-style-type: none"> Media provisions in the regional and international commitments are the weakest of all. The MDGs and CEDAW make no reference at all to the media. Gender is not only about women! The only such reference in the SDGD is to “encouraging the mass media to disseminate information and materials in respect of the human rights of women and children”. The clause gives the impression that gender concerns can be equated to women and children. Gender should cut across all topics: The SDGD refers only to stories specifically about women’s and children’s “issues”. This excludes other areas of coverage, such as social and economic circumstances. Women are still under represented in all areas of the media. Only a small proportion of media houses have adopted gender policies, including the public media. Gender mainstreaming among media training institutions, many of which are government funded, remains ad hoc. Media regulatory authorities are male-dominated and they have not integrated gender criteria into licensing and other mechanisms at their disposal for making the media (especially the public media) more accountable to the public 	<ul style="list-style-type: none"> Acknowledging communication as a right; gender equality as intrinsic to freedom of expression; “giving voice to the voiceless” as key to citizenship, participation, and responsive governance. Affirming the key role of the media in changing attitudes and mindsets. Recognition of, and support for, civil society in conducting public awareness campaigns; working to transform gender relations in and through the media. Mainstreaming gender in all information, communication and media laws. Pledging governments and statutory regulatory authorities, and encouraging self regulatory authorities, to use whatever leverage they have, especially in relation to publicly-funded media, to ensure gender accountability. Ensuring that gender is mainstreamed in all publicly funded media training institutions, and encouraging privately funded media training institutions to follow suit. Support and resources for ensuring that women have greater access to, and can use, NICT’s for their own empowerment and to conduct gender justice campaigns. Support and resources for civil society initiatives and networks to conduct research, training, monitoring and advocacy 	<p>Article 29: Makes provision for member states to ensure gender is mainstreamed in all information, communication and media policies, programmes, laws and training in accordance with the Protocol on Culture, Information and Sport. It further requires that State parties shall take measures to promote the equal representation of women in the ownership of, and decision making structures of the media.</p> <p>Target 28:</p> <p>✓ Take measure to promote the equal representation of women in the ownership of, and decision-making structures of the media, in accordance with Article 12.1 that provides for equal representation of women in decision making by 2015.</p> <p>Article 30: Makes provision for gender in media content including increasing programmes for, by and about women on topics that challenge stereotypes and reflect women in diverse societal roles. It also specifically provides that state parties should take appropriate measure to encourage media to play a constructive role in the eradication of gender based violence by adopting guidelines which ensure gender sensitive coverage.</p> <p>Article 31: Provides that State parties should put in place information and communication technology policies and laws in the social, economic, and political arena for women’s empowerment regardless of race, age, religion, or class. These policies and laws shall include specific targets developed through an open and participatory process, in</p>

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<p>on their gender practices.</p> <ul style="list-style-type: none"> • With the exception of South Africa, none of the information and communication ministries in the region have gender units nor have they mainstreamed gender considerations into information and communication policies. 	<p>on gender and the media including ICTs.</p>	<p>order to ensure women's and girl's access to information and communication technology.</p>
IMPLEMENTATION		
	<p><i>Planning</i></p> <ul style="list-style-type: none"> • National action plans for achieving gender equality with targets, indicators and timeframes based on the Protocol drawn up according to a standard format, with each country identifying baseline data against which progress towards achieving targets will be monitored. <p><i>Structures</i></p> <ul style="list-style-type: none"> • National Women's Machineries be strengthened by being positioned strategically; staffed at a senior level; supported by Gender Focal Points (GFPs) throughout government with political champions. • SADC forum of gender ministers and Regional Advisory Group including civil society members be resuscitated to drive the process. • Each SADC National Committee to have a GFP. • The work performed by GFP at national and regional level be recognised in job descriptions and performance agreements; rewarded and remunerated. • An independent SADC Commission on the Status 	<p>Articles 32 – 36: Make provision for gender sensitive budgets and resource allocation; oversight of the Protocol by a Committee of gender ministers; development of national action plans based on the Protocol; and the collection of baseline data for monitoring and evaluation.</p> <p>The protocol provides further that state parties submit comprehensive reports to the Secretariat every two years indicating progress achieved in the implementation of the provisions.</p>

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	<p>of Women (SCSW) comprising eminent gender experts who convene each year to receive and review country reports; initiate research where appropriate; and make recommendations. This body would receive sitting fees for the time it convenes and be serviced by the SADC GU.</p> <p><i>Resources</i></p> <ul style="list-style-type: none"> • All gender structures, at national and regional level, have identifiable budget lines and be empowered to do their work. • Such budget lines not be used as an excuse for not mainstreaming gender in overall budget allocations, as contemplated in the recommendation and framework for gender budgeting under "access to productive resources." <p><i>Monitoring and evaluation</i></p> <ul style="list-style-type: none"> • Annual reports based on the standardised action plan and adjudicated by the CSW. • Support for research by civil society organisations on trends and best practices. • Ensuring that best practices are shared through the annual meeting of the SADC gender minister and Regional Advisory Group. • Sanctions for non compliance in accordance with SADC procedures. 	

The single greatest challenge identified in the audit was to move the SADC region from an era of commitments to an era of implementation.

The **main recommendations** arising from the audit were that:

- Heads of State adopt a Protocol to Accelerate Gender Equality in SADC: This would entail elevating the SADC Declaration on Gender and Development into a Protocol, as contemplated in Article 26 of the Addendum to the Declaration on the Prevention and Eradication of Violence against Women and Children which makes provision for the adoption of legally binding instruments.
- The Protocol breaks new ground globally by incorporating and enhancing all existing commitments, thus creating synergy and harmonising the various reporting processes. The proposed Protocol would take account of all the commitments made by member countries in the various continental and international instruments; but also enhance these by taking account of gaps that have been identified in the existing instruments and in their implementation.
- The Protocol incorporates all existing targets and also sets realistic, achievable targets where these do not exist: These targets include raising the current target of 30 percent women in decision-making by 2005 to gender parity in all areas of decision-making by 2020, in line with the African Union (AU) position, through a phased and incremental approach.
- The Protocol is accompanied by an action planning framework and institutional structures that would ensure regular and effective reporting, benchmarking, monitoring and evaluation, and appropriate sanctions for non-compliance.

The audit:

- Established baseline information from which to work, which basically served as an initial situation analysis;
- Identified areas of weakness or

complete gaps, especially in areas of particular relevance to the region such as HIV and AIDS and trafficking. This information was used to develop recommendations for the draft Protocol which was used as the guiding tool for the drafting process;

- Provided a lobbying tool because member states are signatories to other regional and international instruments which they have not delivered on; the audit served as demonstration of this renegeing.

Three years of paper trails

Alliance members presented the results of the audit at a civil society meeting held parallel to the August 2005 Heads of State Summit. Points for inclusion in the proposed Protocol, which formed the starting point of the drafting process, were put forward at this civil society meeting.

The results were also presented at a December 2005 regional consultative conference *Reflecting and Re-strategising for Gender Based Regional Integration*, organised by the SADC Secretariat in Gaborone, Botswana. Held at a technical level, this forum included in-depth discussions on priorities, strategies, activities and timeframes for the SADC Gender Programme.

One of the main objectives of this conference was to reflect on progress made in the implementation of the SADC Declaration on Gender and Development and its Addendum, as well as identify challenges faced and lessons learned in efforts to achieve gender equality and gender equity in the region.

Once the drafting of the Protocol commenced, one of the main functions of the Alliance was to track the changes in the various drafts, through participation of members in the Task Team described in chapter three and on national delegations described in chapter four. This involved analysing each draft to track losses and gains as well as to establish the issues that

the Alliance still needed to lobby for. This was essential for two main reasons: to ensure that key provisions were not lost or watered down and if they were to bring them back in; and to ensure that all of the Alliance members were aware of the provisions that were still being lobbied for so that this formed the basis for the national consultations and lobbying efforts in each of the countries.

Protocol Alliance members in each of the member states organised consultative meetings with civil society organisations and representatives from government, including ministries responsible for gender and gender machineries. These consultative forums were used as a means to make substantive contributions to the Protocol's content, as well as lobby governments to include crucial provisions in the draft document. Once agreement was reached at these meetings and the drafting of the Protocol got under way, the role of civil society was then to participate in regional consultative meetings with their government delegations to ensure that recommendations were included in the drafts.

Volumes could be written on each of the nine drafts. The first zero draft was 33 pages; the first draft went up to 42 pages and the final Protocol is a succinct 22 pages. On the advice of empathetic high level officials that the initial draft was too long, the Alliance worked closely with the drafters to shorten the document and yet not lose its punch.

With each new draft, Alliance members analysed the document to assess and track the losses and gains. These tools informed the Alliance's strategy, "choosing our battles", which resulted in some instances taking tough choices on which crucial provisions to fight for and which provisions to concede on.

The relevance of the national and regional consultations cannot be overemphasised as it was in these forums that civil society engaged in meaningful negotiations with governments about the content and where positions were won and compromises reached. These positions informed official meetings and moved the process forward.

Rescuing key issues

The draft Protocol was substantially altered at the 2007 Heads of State Summit in Lusaka, with many sections watered down or removed completely. Below are some examples of sections that were rescued and reinstated into the final protocol.

Marriage and family rights

The right of married women to choose whether to retain their nationality or acquire their spouse's nationality; this is a key provision as regard's women's ability to pass on citizenship to their children.



The Protocol supports women s economic empowerment. PHOTO: FRANK WINDECK

Economic empowerment

The clause on ensuring that women benefit equally from awarding of public procurement contracts was removed, but then reinstated as a target to ensure that women benefit equally from economic opportunities including those created through public procurement processes; the clause also includes the use of affirmative action measures to ensure that this happens. This was a huge coup, because state procurement is an area in which governments can make a substantial difference to the economic empowerment of women.

Gender based violence

All of the monitoring and evaluation provisions were removed from the post 2007 Summit draft. Lobbying at the December 2007 strategy meeting resulted in the target of reducing by half the current levels of GBV by 2015 being reinstated.

Health

The target of reducing the maternal mortality ratio by 75% by 2015 was removed

but then reinstated following civil society lobbying efforts.

HIV and AIDS

The post 2007 Summit draft reduced the originally comprehensive section on HIV and AIDS to merely recommending state parties to take necessary steps to adopt and implement policies in accordance with the Maseru Declaration on HIV and AIDS. Alliance members argued that the Declaration fails to take account of the the gender dimensions of HIV and AIDS and it is not binding. The Declaration also makes no reference to the burden of care borne by women and there are no time bound targets.

Because of the disproportionate effect that the pandemic has on women, civil society fought hard for the inclusion on specific provisions to recognise the unequal status and vulnerability of women and girls. GEMSA, which has waged a regional campaign called “Making care work count” worked especially hard to ensure such a provision, providing language at the

December 2007 senior officials strategy meeting to help the process along. The Protocol now contains specific targets to develop strategies to prevent new infections; ensure universal access to treatment and to develop policies and programmes to recognise care work and allocate resources and support to care givers, as well as promote the involvement of men in care and support.



Media, information and communication
Despite the media being a potential driver of democratic participation and change, this section of the draft Protocol was severely watered down after the 2007 Summit with the provisions being largely reduced to ensuring that gender be mainstreamed in media and communication in accordance with the SADC Protocol on Culture, Information and Sport. The major problem with this provision is that the Protocol referred to in fact refers back to the SADC Declaration on Gender and Development. The only target in this section, requiring that state parties ensure 50% representation of women at all levels of decision-making in media, was also removed.

Following some strong lobbying from civil society, crucial provisions were reinstated. The target for equal representation in accordance with Article 12.1 (which speaks to governance) was one of these. Including provisions on encouraging media to give equal voice to women and men in all areas of media coverage addresses the issue of gender in the media being more than just programmes for and by women. The provision on encouraging the media to play a constructive role in the eradication of gender based violence can be considered a major accomplishment by civil society.

Losses

As with all important negotiations for every gain there is also a loss. The drafting of the Protocol was no different. A mantra became that we should not *throw the baby out with the bath water*. But these concessions were not easy and by no means diminish the importance of the issues and the need to continue fighting for amendments.

The article for inclusion on cohabitation rights was one of the provisions that caused some of the biggest debate at the many national and regional consultative forums. But despite being a very real and relevant issue in the region, government delegations warned that the inclusion of this provision had the potential of derailing the entire Protocol process and in the end this was one of the provisions that they would not budge on.

The recognition of socially excluded and marginalised groups (seen as a camouflage for sexual orientation), explicit reference to political parties in reference to the 50% target of women in decision making, equal rights of succession and inheritance and explicit reference to marital rape in the provisions on gender based violence are the major losses for the Protocol.

Compromises

The following are some of the areas where governments and the Alliance found a middle ground.

Language

Some of the compromises made related to the use of language, which governments considered too mandatory. The replacement of *ensure* with *endeavour* was one such compromise. But there were also gains, such as the removal of, *where necessary and practical* in the Article on access to justice and retaining the more obligatory *shall*, without the qualification. Replacing the word *victim* with *survivor* in the Article on gender based violence was another gain.

Modifications

Constitution and legal rights

- One of the hard fought for provisions was to ensure that all laws, including customary laws, be subject to the national Constitutions. The provision in the adopted Protocol however, is not explicit in providing that Constitutions take precedence over customary law, but rather seeks to ensure that provisions on gender equality and equity in Constitutions are not compromised by other provisions, laws or practices.
- The provision to ensure that no person

below the age of 18 marries was removed from the draft at the 2007 Summit, but was then re-negotiated back in with the qualification: *unless otherwise specified by law, which takes into account the best interests and welfare of the child.*

Persons with disabilities

- This article was removed completely from the draft at the 2007 Summit, but was later reinstated; but rights

Taking stock of losses and gains

Emilia Muchawa of the Zimbabwe Women Lawyers Association notes that a key lesson learnt was that negotiations consist of give and take to reach a win-win position. Below is an illustration of some of those texts that were modified, but not lost.



SA women fought hard for strong gender provisions in their constitution. PHOTO: COLLEEN LOWE MORNA

A mixture of positions on such clauses at domestic level. Botswana, Lesotho, Zimbabwe and Zambia are examples of constitutions that have claw back clauses, which whilst guaranteeing equality for women, negate this by allowing discrimination in issues of personal law or customary law.

The supremacy of constitutions over customary and religious laws: The final version of the Protocol in Article 4(1) provides that "State Parties shall endeavour, by 2015, to enshrine gender equality and equity in their constitutions and ensure that these rights are not compromised by any provisions, laws or practices."

The originally proposed text had read "States Parties shall ensure that by 2015 their constitutions state that the provisions enshrining gender equality will take precedence over their customary, religious and other laws."

This was removed and modified as countries such as Mauritius, indicated that the proposed clause would go against their constitution as religion was more supreme. The region has a

South Africa and Tanzania are examples of countries with constitutions that make the constitution supreme over customary laws and this leads to enhanced protection of women's rights. Though not specifically stated, this modified clause can still be interpreted to imply the supremacy of constitutions over customary and religious laws and practices.

Early marriage: The original version of the protocol provided in Article 4(8) (b) that no person below the age of 18 marries. This was initially removed in between and resurfaced as follows in Article 8(2) (a) providing that no person under the age of 18 shall marry unless otherwise specified by law, which takes into account the best interests of the child. The return of this clause was as a result of the realisation that removing it was ignoring the lived reality of most African societies of the early marriage of girls. If no age of marriage was set, it would imply that the region was condoning this and leaving girls susceptible to early marriage. Some of the researched and known effects of early marriage highlighted included the denial of education for girls leading to economic dependence, and health complications, such as maternal death, due to early pregnancy. Increased risk of HIV infection and susceptibility to violence were also identified as resulting from early marriage. The strongest persuasion came from the fact that this was out of line with international and regional frameworks, such as the Convention on the Rights of The Child and the African Charter on Human and Peoples' Rights, as well as the Protocol to this on Women's Rights.

Marital Rape: Marital rape was specifically identified as an act of gender based violence in the original version of the text, which read in Article 8(2) (1) (a) that member States shall by 2015, enact and enforce legislation prohibiting all forms of gender based violence including marital rape. In its final version the protocol reads as follows: *By 2015, enact and enforce legislation prohibiting all forms of GBV.*

Some member states were clearly repulsed by having such a provision arguing that it did not reflect African customs especially as lobola was paid in most of the countries and this was interpreted to mean consent to sexual intercourse in the marriage. Such a position clearly ignores the reality of rape in marriage and the HIV infection implications of this. This position is also against international standards of model laws on gender based violence. Some countries such as Zimbabwe, South Africa and Namibia have already criminalised marital rape in their domestic legislation. Further, the SADC Declaration on Gender and Development already recognised marital rape as a form of gender based violence.

The removal of the explicit mention of marital rape as an example of a form of gender based violence does not exclude its inclusion, however. This was traded well knowing that if the need for interpretation arose, marital rape could very easily be read to be one of "all forms of gender based violence".

Sarry Xoagus-Eises, Alliance Focal Point in Namibia reflects that media practitioners realised in Livingstone, Zambia in December 2007 that the media draft Articles (29-31) had been changed several times in terms of content, messaging and wording. In some cases, wording such as *endeavour* and *shall* dominated the debate and this was dependent on the interest attached to the issues contained in these articles by individuals and government departments.

Issues that were closer to our hearts; sexual orientation, cohabitation, rights of widows and widowers, the girl and boy child, representation, gender-based violence and participation were delivered, with the exception of sexual orientation rights. We had to lobby the South African delegation to deal with this and that, they did. At the end of the negotiations, this was clustered in the clause on "social exclusion".

Gems in the Protocol

It is easy to dwell on the negative. What is more important and challenging is to take up the unique aspects of this sub-regional instrument which include:

Time bound targets: The greatest success of the Protocol on Gender and Development is that it has 28 time bound targets. This puts it streaks ahead of other regional and international instruments which do not specify timeframes within which to achieve the commitments made towards achieving gender equality.

Affirmative action: Evidence from across the region shows that affirmative action measures are one of the ways to increase women's representation in decision making. This is evidenced by the fact that no SADC country has achieved gender parity in parliament (the target set by the SADC Protocol for 2015) and that all of the countries which have achieved and exceeded the 30 percent target have some form of quota. Five countries (Angola, Mozambique, South Africa, Tanzania and Namibia) have achieved or exceeded the 30% target set for 2005 by the SADC Declaration on Gender and Development. Only one SADC country, Lesotho, has exceeded the SADC target of 50% in local government with 58% of local councillors in Lesotho being women. Lesotho and Tanzania are the only countries that have a legislated or constitutional quota, in the other countries political parties have implemented voluntary quotas. The affirmative action clause recognises the need for member states to put in place measures to fast track women's representation and participation in all spheres and to create an environment conducive for such participation.

Recognising multiple roles of women: It is an accepted fact that women have multiple roles to play in their private and public lives and that this has an effect on economies, because much of the work that women do is unrecognised and as a result unremunerated, and this has, to date, not been effectively quantified. The Protocol recognises the multiple roles of women and also requires

member states to conduct time use studies which should be used to inform policy measures to be taken to ease the burden of the multiple roles played by women.

Emerging issues — Trafficking: Trafficking is one of the major emerging issues in the region that has the potential to reverse some of the gains made in the gender justice sector if it continues unchecked. Because it is a relatively new issue it was not covered in the SDGD or the Addendum; provisions in other instruments are weak and legislation preventing this form of GBV is non-existent in most countries. Article 20 (5) of the Protocol requires member states to enact and adopt legislative provisions to prevent human trafficking as well as provide holistic services to survivors. They are also required to put in mechanisms to eradicate human trafficking networks, as well as improve data collection mechanisms. Joint actions against human trafficking across countries are required as well as capacity building, awareness raising and sensitisation campaigns for law enforcement officials. All of this should be in place by 2015.

Financial provisions: One of the major stumbling blocks in ensuring that gender is taken into account in all programmes and policies is the allocation of resources. The protocol requires member states to back up their commitments to gender equality by ensuring gender sensitive budgets and



Gladys Matukwa (left) and then Zambian Minister of Gender and Development Patricia Mulasikwanda. PHOTO: COLLEEN LOWE MORNA

planning and designating resources towards initiatives aimed at empowering women and girls, as well as mobilise resources for the successful implementation of the Protocol.

Monitoring and evaluation: As the saying goes, *if it's not counted it doesn't count*. Article 35 addresses the issue of implementation, monitoring and evaluation and requires that member states develop their own national action plans with measurable timeframes as well as collect and analyse baseline data to measure progress against. It also requires member states to report on progress achieved in the implementation of the Protocol to the SADC Executive Secretary every two years.

Lessons learned



The lessons learned during the long and arduous drafting processes may be summarised as:

- Conducting good quality research and having all the facts from the start is an essential first step. The initial audit that was conducted was a situation analysis and equipped the Alliance with the crucial baseline information from which to plan its work.
- Working with organisations with expertise in specific areas enriched the process because it ensured that the information gathered was relevant and of high quality.
- Developing a checklist at the start of the process to ensure that nothing was left out meant that there was a framework within which to work.
- National consultations with civil society organisation and governments were organised in each country and it was in these forums that civil society engaged in meaningful negotiations with governments about the content and where positions were won and compromises reached. These positions informed gender officials meetings and moved the process forward.
- Having representatives from a number of the SADC countries ensured that there was group collaboration across all countries and that the Alliance was

represented on a number of different fronts, including as representatives on Government delegations at regional forums. This became very important especially in identifying some of the national reservations to the hardly contested provisions.

- It was essential that after the various regional meetings where the content of the Protocol was changed that the alliance tracked, monitored and conducted analysis on this. Tracking tools and position papers were developed to track what was lost, gained and what still needed to be lobbied for – this ensured that all of the Alliance partners were, as it were, *reading from the same song sheet*.
- It was essential to have a checklist at the start of the process to ensure that nothing was left out.
- Monitoring and analysis tools – what was lost, gained and still to be lobbied for position papers – were critical for tracking the negotiations and lobbying at regional and national levels.

Checklist



- ✓ Have audits and research been conducted to establish a strong baseline for the areas and issues that need to be addressed in a legally binding document on gender equality?
- ✓ Has an international and regional commitments framework been used to contextualize and pull together in the protocol the standards and benchmarks that countries should aspire to reach?
- ✓ Have a series of checklists been developed to identify the gaps and provide a structured approach to make recommendations to eliminate the gaps?
- ✓ Are tracking tools in place to monitor changes, losses and gains as a developing protocol moves through a series of drafts?
- ✓ Are activists ready with alternative strategies and wording should more strongly worded texts be rejected?