

## **HeJin Kim – AIDS Rights Alliance for Southern Africa**

In terms of the targets set forth in the SADC Gender Protocol, it has managed to make clear progress, and it needs to be commended for that. However, there are still many challenges remaining.

South Africa has one of the most enabling legal environments in Southern Africa. The South African Constitution guarantees equality before the law and prohibits discrimination based on sex, gender, or sexual orientation. South Africa has the highest ration of representation of women in parliament, and while it still falls short of the 50/50 target, it has a chance to reach this target at the 2016 elections should proactive action be taken before that time. However, an enabling legal environment has not always led to changes in societal attitudes.

### **HIV**

The high rate of HIV infection in South Africa remains a concern, and there are more women living with HIV than men, women amount for 60% of people living with HIV. Furthermore it is necessary to point out that those women who are further disadvantaged due to additional stigma and discrimination, such as transgender women and sex workers, are even more vulnerable to HIV infection. HIV related stigma and discrimination remains a concern in South Africa, and it disproportionately affects women. The recent Stigma Index done by the Human Sciences Research Council highlighted many of those issues, and it raises the point that female respondents were more likely to face external stigma. Furthermore, issues of forced sterilisation of HIV positive women were brought to light, with 498 women indicating that they were sterilised without consent; while this number was not further analysed, it does raise serious questions that need to be answered.

### **Sex work**

Continuing criminalisation of Sex Work, in terms of the Sexual Offences Act 23 of 1957 and the Criminal Law Amendment Act 32 of 2007, poses a serious concern in terms of the human rights of sex workers in South Africa. It perpetuates prevailing gender stereotypes, and it fails to provide agency to sex workers. While abuses exist in within the sex industry, criminalising sex work will only perpetuate and even worsen such abuses. Criminalisation of sex work fails to understand the underlying societal reasons why people would enter the sex industry.

Within South Africa, sex workers report many human rights violations, which are perpetuated because their human rights are not acknowledged. They face stigma and marginalisation which is only worsened by the continuing criminalisation they face.

## **LGBTI persons**

Hate crimes faced by LGBTI persons in South Africa have not diminished; it is clear that there is a systemic social stigma that has led to some of the most heinous crimes. Lesbian women and transgender men face so called "corrective rape", they are often killed; such acts are mainly perpetrated not by strangers, but by people that are known to the victims. These hate crimes are not just issues of sexual orientation, rather they are issues of communities attempting to police or to punish lesbian women and transgender men for failing to adhere to the gender norms and stereotypes in society. These hate crimes are rooted in issues of gender, and it is important to acknowledge that. South Africa has strong policy and legislative provisions to address gender based violence, however the prevalence of these crimes raise questions as to the necessary implementation and enforcement.

Transgender persons<sup>1</sup> in South Africa have access to the Alteration of Sex Description Act 49. This law allows those who identify as a different gender than they were assigned at birth to change the gender on their birth certificates and other identity documents. However, the implementation of this law is seriously lacking; last year, a transgender woman started a hunger strike after years of being led in circles by home affairs. Often civil society organisations must intervene for applications to be processed. This is a serious issue, as identity documents that are accurate are essential to access services. Furthermore, transgender persons face severe stigma and discrimination, and struggle to access basic health services. Again, the legislation framework is enabling, but the implementation is severely lacking.

Transgender persons and gender non-conforming persons face further issues in terms of education; gender segregated facilities and school uniforms can, in some cases, impede access to education. This is further worsened by bullying at schools, and a lack of understanding of how this can impact transgender and gender non-conforming learners. It is important that safe educational spaces are provided, especially in light of further hardships that transgender and gender non-conforming persons face in society.

## **Moving forward**

Understandings of Gender must be broad, it must be reflective of all women in diversity, and all those who face stigma, discrimination, and violence based on gender. Understandings of gender must be inclusive and go beyond simple male-female binary understandings; gender must be

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<sup>1</sup> A transgender person is someone whose gender identity and expression is different than the gender they were assigned at birth. E.g. a transgender woman is someone who was assigned male at birth, but identifies as female; a transgender man is a someone who was assigned female at birth, but identifies as male.

understood to encompass gender identity, expression, roles, stereotypes, etc. And this must be reflected in the post-2015 agenda. While the SADC Gender Protocol refers to all women and girls, it is necessary to acknowledge that there are specific issues that are faced by women who are further stigmatised based on their sexual orientation, their gender expression and identity, or the fact that they are sex workers. What is even more important is that consultation is done with those women directly, in order to acknowledge their agency and their human rights.

Moving beyond 2015, it is necessary that we aim for an enabling social and legal environment for all women in their diversity. It is necessary to move beyond legislation, but to monitor implementation. But most of all, it is important that a human rights approach remains at the core of any intervention.

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