

HUMAN RIGHTS AND SOCIAL SECURITY DEVELOPMENTS IN SADC: IMPLICATIONS FOR LEGAL EDUCATION

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1. Introduction

Social security is one of the disciplines of study within the social sciences, especially law which is gaining renewed significance in the Southern African Development Community (SADC) region. This is due to a realisation by member states of the poor socio-economic status of the majority of citizens in the region and the need for a renewed response to the increasing poverty levels especially amongst the most vulnerable. This development has to a greater extent been premised on the human rights discourse. It is widely recognised that every individual has a right to dignity, a right to life and related rights to health and education amongst other rights. At the same time the appreciation of the correlative duty on the part of member states to ensure the realisation of these rights has greatly contributed to the renewed impetus to develop social security systems. This resolve has further been strengthened by the related development of the principle of *ubuntu*. The idea of sharing and caring amongst individuals especially with those that are less privileged, excluded and fall below the minimum standards necessary for a life of dignity.

These developments in human rights and social security inevitably have to be reflected in academia. There are therefore related calls for social sciences and law in particular to effectively respond to the developments and produce graduates that are knowledgeable and adequately skilled to be able to effectively respond to the emerging challenges so that they remain relevant to their communities. Law schools in the region are therefore incorporating human rights and “poverty law” in traditional courses and developing innovative methods of teaching that instil the necessary sense of social justice in students. New courses in social security are being introduced in most Southern African universities

and there is a related invigorated growth of clinical legal education with a strong developmental focus in this regard.

This short paper highlights developments in social security from a human rights perspective in Southern Africa and related responses in legal education within the region.

2. Contextual framework

The Southern African Development Community (SADC) is a regional grouping of 14 countries in the southern part of Africa. SADC has a population of about 200 million. Of these 40% live in conditions of abject poverty. SADC countries are relatively interdependent and share a common legacy in many respects. The countries are linked through the phenomenon of labour migration, most were colonised primarily in order to exploit primarily commodities and for some in a manner that resulted in racial discrimination all of which evolved to influence a number of social economic and political outcomes of the region. (Marius Olivier 2002). These factors have resulted in a number of socio economic outcomes which include the following: the majority of the population has been simultaneously marginalized and excluded from participation in productive activities; incidence of under employment, open unemployment and poverty is unequal and highly skewed against the marginalized majority; HIV / AIDS epidemic is having grave consequences in all social and economic spheres in all the SADC countries and the quest for both regional and global integration is resulting in mixed results which are exacerbating the condition of the poor and the under employed and the unemployed both in urban and rural areas.(Guy Mhone 2001).

An ILO study concluded that the regional conditions of limited productivity, high inflation rates, increasing informal sector employment, skewed income distribution, low life expectancies, related emerging democracies and weak subsystems for public administration together create a great need for social security in Southern Africa. (Fultz and Pieris 1999). Despite this need social security in most of the countries in Southern Africa is undeveloped or clearly underdeveloped and poorly coordinated with few exceptions. However there is hope in that most countries have now developed deliberate

policies aimed at reducing poverty and a number of non governmental, community based organisations and traditional authorities are engaged in tailor made solutions that are making a difference. However within a broader context of integration in the region the challenge remain how to develop a normative legal framework that would set standards acceptable to all countries for reducing poverty whilst at the same time balancing this need with country peculiarities. International norms may offer the necessary benchmark and guidance.

3. Human rights framework

Social security is a protected human right both in international instruments and constitutions of some countries of the region. A number of SADC countries for example are a party to the UN Convention on Economic, Social and Cultural rights of 1966 and the ILO convention 102 of 1952 on minimum standards in social security. This has greatly influenced the entrenchment of human rights and social security in the legal systems of the SADC states. Some countries, for example South Africa, have incorporated the right to social security in their Constitutions. A number of countries also have other statutory instruments on social security. However there are variations in the levels of entrenchment and enforcement of social security rights in the region.

At a regional level the SADC treaty commits members to the fundamental principles of sovereign equality of members, solidarity, peace and security, human rights, democracy, rule of law and equity amongst others. According to the treaty the objectives of SADC include to achieve economic growth and development, alleviate poverty, enhance the quality of life of the people of Southern Africa and support the socially disadvantaged through regional integration. In this regard a number of measures have been undertaken. These include the development of the Charter of Fundamental Social Rights in SADC that recognises social security as a right and underpins the need for the development of social security systems. The Charter makes provision for the establishment of comprehensive and harmonised programmes throughout the region. A draft regional code on social security in SADC similar to the European Code on social security has also been developed. The challenge remains the extent to which individual countries will translate

the regional arrangements into national programmes given the divergence levels of development within the region.

4 The principle of *ubuntu*

Ubuntu is a principle of shared responsibility. It is an expression of the solidarity principle that underlies the essence of social security and is of at most importance in the African and especially southern African context. (Olivier 2003). The constitutional court of South Africa has entrenched *ubuntu* as a constitutional principle. In the case of S V Makwanyane 1995 3 SA 391 (CC) the court stated thus:

“The concept is of some relevance to the values we need to uphold. It is a culture which places some emphasis on communality and on the interdependence of the members of a community. It recognises a person’s status as a human being, entitled to unconditional respect, dignity, value and acceptance from the members of the community such a person happens to be a part of...”

This principle is of much relevance within SADC and beyond. As a global community there is need for solidarity to reduce the suffering amongst the under-privileged and therefore devise measures that will ensure support for the realisation of accepted human rights like the right to social security. The extent to which law schools play their part in this solidarity is an emerging challenge.

5 Implications for legal education

Considering the social economic context of Southern Africa and the renewed impetus for effective responses through the provision of social security based on human rights and *ubuntu* principles it is inevitable that legal education must be transformed to reflect the changing discourse. It has been argued that apart from social justice aspects of courses in jurisprudence most other law courses teach students how to operate in a third world commercial legal environment rather than a third world poverty law situation. The teaching of “poverty law” is often neglected in formal law curricula which tend to focus on “rich people’s law” (Mcquoid Mason). This observation is true to most SADC countries.

As a response to general developments around social security and other poverty alleviation programmes, most SADC universities are now introducing social security as a course both at undergraduate and post graduate levels. The faculties of law at the universities of Mozambique, Botswana, Cape Town and Rands Africans have all introduced the subject. However due to problems of capacity especially in terms of expertise in the area it is likely to take some time before social security becomes an established part of the curricula especially in most law courses in the region. One group of experts in social security in SADC has taken the initiative to coordinate comprehensive research in social security within the region and to train academics and policy makers in social security. The project has been running for three years now.

Most universities in the region have also revised the law curricula by mainstreaming human rights, gender and HIV / AIDS. An example is the faculty of law at the University of Malawi which has just completed a revision exercise of its curricula in order to make the law course more responsive to current challenges. It remains to be seen to what extent educators will indeed teach the revised syllabi. The major drawback is that of lack of expertise. Most lecturers have to learn on the job. There is however be more hope in new and young lecturers who seem more interested in the new and emerging areas of the law.

Another development in law schools related to social security and human rights is the introduction and / or strengthening of clinical legal education which is aimed at instilling a sense of social justice in students. Deliberations at the First All Africa Clinical Legal Education Colloquium held in 2003 clearly indicated that most African universities realise the importance of clinical legal education beyond enhancing the general skills of students to specifically building a sense of social justice and developing a large cadre of pro poor lawyers. The development of legal aid clinics and street law programmes which properly integrate academic and community service can provide students with an opportunity to contextualise the concept of social justice while at the same time rendering a service to their communities (Mcquoid Mason). A number of law schools in the region have introduced clinical legal education as part of the law curricula whilst others are reviewing their programmes so that the approach is more developmental and therefore

more relevant to the regional challenges. The major challenges related to clinical legal education include a lack of expertise, financial resources to run the programmes and balancing foundational courses with the more practical courses.

6. Conclusion

The poverty situation in most SADC countries calls for very innovative measures to deal with the problem. Protecting the human rights at stake in this situation on the basis of sound contextual principles is a step towards finding solutions to the problem. Provision of social security in its different forms has already been recognised as one such likely solution. As the discourse develops there is a role to be played by the academia especially in the training of lawyers amongst other activities. Developing relevant and responsive law curricula and the use of teaching methodologies that do not only impart knowledge but also skills that equip students to face the challenges is one contribution that Africa generally and southern Africa law schools in particular could undertake to help the region out of poverty. The responses by most law schools in the SADC region in the area of poverty reduction through the development of social security and human rights discourse is encouraging but remains a challenge.

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