



RATIFICATION AND IMPLEMENTATION OF THE SADC PROTOCOL ON GENDER & DEVELOPMENT

BY
MARY GURURE
ATTORNEY-GENERAL'S OFFICE



INTRODUCTION

- Signing of international instruments by Heads of State or Government
- Not legally binding
- Gives signatory status only



RATIFICATION

- Ratify: to make an agreement official by formally approving it.
- Signatory States to ratify Protocol in accordance with their constitutional procedures (Article 40).
- Significance of ratification (Article 41).



RATIFICATION PROCESS IN ZIMBABWE

Section 111B of the Constitution

- Parliament approval.
- Lodging of Ratification papers.



IMPLEMENTATION

- Section 111B(1)(b) of the Constitution.
- State Party obligation to take measures to domesticate the human rights treaties that they have ratified or acceded to, so that those treaties will have effect in the national law.



DOMESTICATION PROCEDURE

There are basically two main approaches to domestication:

- The monist approach – this enables the direct application of a treaty in the domestic legal system once it has been ratified. A State Party which uses this approach does not have to enact legislation to give effect to the treaty in the national law, rather the mere act of ratification makes the treaty applicable in domestic law. (Namibia)



DOMESTICATION PROCEDURE (Cont)

- The dualist approach – under this approach, ratification must be followed by the enactment of legislation, which incorporates the provisions of the treaty into the national law for the treaty to have effect.



DOMESTICATION PROCEDURE (Cont)

- Generally, in the case of human rights treaties, no specific Act of Parliament has been enacted to domesticate the treaties, as is the case with treaties relating to international humanitarian law and refugees.
- Rather, the provisions of human rights treaties are by and large incorporated under the Constitution, various Acts of Parliament, subsidiary legislation, and policies.
- This fragmented approach presents problems in that some of the rights enshrined under the various regional and international human rights treaties that Zimbabwe has ratified have remained undomesticated and, therefore, their enforcement in the domestic legal system of Zimbabwe is problematic.



CHALLENGES

- Litigation – especially where there is no full domestication of human rights treaties; is there capacity to litigate around human rights issues?;
- Attitude of the judiciary – is it conservative or proactive? Can it rely on/cite/take judicial notice of human rights treaties even if they have not been domesticated
- *“Within the limits of the appropriate exercise of their functions of judicial review, courts should take account of Covenant rights where this is necessary to ensure that the State’s conduct is consistent with its obligations under the Covenant. Neglect by the courts of this responsibility is incompatible with the principle of the rule of law, which must always be taken to include respect for international human rights obligations.”* (General Comment No. 9, CESCR).